

RECOMMENDATIONS

to the Ministry of Children and Youth Services
regarding the
Third Legislative Review of the
Child and Family Services Act



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A Submission to the Ministry of Children and Youth Services
by members of the Children in Limbo Task Force
November 2015

INTRODUCTION

The Children in Limbo Task Force was established in 1989 as a task force of the Sparrow Lake Alliance, founded by Dr. Paul Steinhauer, to “bring together people from all sectors and disciplines, who would inspire, support, teach and learn from each other, and who are committed to working towards ensuring a better life, particularly, for all Ontario’s children, youth and families who are involved with child welfare.” (As described in the Children in Limbo Task Force website: <http://childreninlimbotaskforce.ca>)

In December 2014, the Task Force presented a Submission to the Ministry of Children and Youth Services, entitled “Modernizing the Language of the *Child and Family Services Act*.” In the June meeting of the Task Force, 2015, we met with members of the Ministry to further discuss the ideas presented in the Submission. The Ministry staff requested more information, and as a result the “language” sub-committee of the Task Force decided to continue to meet with the purpose of providing the Ministry with further information concerning modernization of the language, and, as well, to discuss other important issues related to the *Act*.

This brief is a follow-up to the December 2014 Submission, to reinforce our recommendations and also to include recommendations for other revisions to the *Act*.

(The December 2014 Submission is enclosed.)

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Since the *United Nations Convention on the Rights of the Child (CRC)* has been ratified by Canada, but has not yet been fully incorporated into Canadian domestic law, its enforceability in the courts has been marginalized, although it can be used to interpret and provide context to the meaning of particular legislative language. One way of correcting this problem in terms of the *Child and Family Services Act (CFSA)* is to incorporate the *CRC* into a new standalone subsection of section 1 of the *CFSA*. The objectives here are to ensure that the *CRC* is made applicable to the *CFSA* in its entirety (and not simply to specific provisions) and that it applies to all courts, tribunals, decision-makers and service providers carrying out statutory duties under the *CFSA* (and not just service providers alone).

We recommend:

That a new subsection 1(3) of the *CFSA* be enacted, which would state or have language similar to: ‘In interpreting and applying this *Act* in its entirety, and in giving effect to the paramount and other purposes enumerated in this section, regard shall be had to the *United Nations Convention on the Rights of the Child*, adopted by the General Assembly of the United Nations on November 20, 1989, and to which Canada is a ratifying party.’

PERMANENCY

The *Child and Family Services Act* has the power to provide clear definitions and dictate protocols that will bring accountability to our Child Welfare system and ensure that the best interests of children are at the core of our work in permanency planning. It is the right of every child to have permanency. A child in the foster care system is at risk of “being in limbo” without a lifelong family or community connection.

Permanency of placement is fundamental to child development in all the important domains, in particular in terms of emotional, social, cognitive and moral development. Children often have to wait far beyond the statutory limit for a final decision about their lives. Multiple adjournments and lack of timely assessments often delay the process.

We recommend:

Greater accountability to ensure that the statutory timelines are adhered to in practice and at court. The child’s rights to this should be enshrined in the legislation. Mechanisms for accountability should be clear, concise and shared by all participants involved in the Child Welfare system from top to bottom.

We also recommend that the legislation set timelines for implementation of permanency plans for children who have been made Crown Wards; and that the child’s rights to this be enshrined in the legislation.

(The document “Effective, Coordinated Permanency Planning is Crucial to Positive Outcomes” by Gail Aitken is enclosed.)

AGE OF PROTECTION

Ontario’s definition of “child” in Part III of the *Child and Family Services Act* is inconsistent with article 1 of the *Convention on the Rights of the Child* and other provincial and federal legislation. For many years, child welfare advocates have urged the Government of Ontario to increase the age of protection for children from 16 to 18 years of age, in keeping with

legislation in many other provinces and territories. A child's right to protection should not turn on his or her place of birth or residence.

We recommend:

That the age of protection be changed to 18 in accordance with the definition of a child in article 1 of the *CRC*.

AGE OF CONSENT TO ADOPTION

In Ontario, children aged 7 and older are required to consent to their own adoption, after receiving independent legal advice, and this can only be dispensed with by the court in very limited circumstances. It is strongly recommended that the age of consent be raised to 12, which would better reflect a child's understanding of the laws of adoption. This would be consistent with both the age limit for other *CFSA* proceedings, and with the approach taken by the rest of Canada and the United States to a child's consent to adoption. A judge hearing an adoption application would still have to consider the child's views and preferences about the proposed adoption whatever the age of the child. If the age of consent remains low, the legislation should be amended to allow the court to dispose with the child's consent if it is in the child's best interests.

(A published paper, "Child's Consent to Adoption – the Ontario Perspective" by Elizabeth A.W. Keshen, is enclosed)

We recommend:

That the age of consent to adoption be raised to 12, with the child's views and preferences under that age being given due consideration if they can be reasonably ascertained.

FINANCIAL SUPPORT OF CROWN WARDS

It is essential to extend support for Crown Wards to pursue post-secondary education from the stability of their foster homes or appropriate alternative. Recent changes to provide Continued Care and Support for Youth (previously called Extended Care and Maintenance) until age 21 are to be commended, as is continued collaborative effort between the Ministry of Children and Youth Services and the Ministry of Training, Colleges and Universities to facilitate post-secondary education for as many Crown Wards as possible. Such programs, as well as health care benefits, have been proven to be cost effective as they reduce the likelihood that these young people will have a lifetime of costly dependency due to their lack of preparation for stable employment. In 2015, few youth (especially previous Crown Wards) can be considered successfully independent at 21; and a possible graduated program of supports until age 25 could be considered which would increase chances of success and independence.

We recommend:

That the age of eligibility for Continued Care and Support for Youth be raised to the age of 25.

PREVENTION AND EARLY INTERVENTION

The Preamble to the *United Nations Convention on the Rights of the Child* states that

“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community...”

We recommend:

That the *Act* requires Children’s Aid Societies to provide early intervention services, and sometimes longer-term interventions, in order to prevent children from coming into care in the first place.

MODERNIZING THE LANGUAGE OF THE *Child and Family Services Act (CFSA)*

We recommend:

That the language of the *Act* be modernized to remove words and expressions that are outdated, discriminatory or stigmatizing, with suggestions for substitutions in keeping with the spirit of the *Act*.

Examples of problematic wording in the current act include: “apprehension,” “custody,” “runaway.”

Youth in care have spoken loudly and clearly about the way that language affects the whole culture of the child welfare environment in which they are being raised. Their voices have been included in the Submission the Children in Limbo Task Force presented to the Ministry of Children and Youth Services in December 2014:

MODERNIZING THE LANGUAGE OF THE CHILD AND FAMILY SERVICES ACT: RECOMMENDATIONS FOR RE-EXAMINING AND/OR REMOVING WORDS AND EXPRESSIONS THAT ARE OUTDATED, DISCRIMINATORY OR STIGMATIZING, WITH SUGGESTIONS FOR SUBSTITUTIONS IN KEEPING WITH THE SPIRIT OF THE ACT.

(The Submission is enclosed)

We were delighted to hear that in response to this Submission, and surely others, the Ministry has placed the issue of language change high on its priority list for review.

At the request of the Ministry, we have identified additional information for consideration in accomplishing this. We have studied the legislation of other countries and found words and expressions that are more child-sensitive and less confrontational than some of the language used in our legislation. As an example: the expression “to apprehend a child” is used in the *CFSA* and in day-to-day child welfare practice. Yet its connotation is one of criminality and this places a heavy and unfair burden on children who come into care.

The following are examples of alternative expressions used in other jurisdictions:

In the United Kingdom: Children Act 1989

<http://www.legislation.gov.uk/ukpga/1989/41/section/33>

Section 33 Effect of a Care Order

*“Where a care order is made with respect to a child, it shall be the duty of the local authority designated by the **order to receive the child into their care and to keep him in their care** while the order remains in force.”* (our highlights)

Irish Child Protection Legislation

http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/EN_ACT_1991_0017.PDF

*“Where it appears to (the Child and Family Agency) that a child requires care or protection that he is unlikely to receive unless he is taken into its care, it shall be the duty of (the Agency) **to take him into its care** under this section.”* (our highlights)

Australia – Northern Territory Legislation

<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/linkreference/CARE%20AND%20PROTECTION%20OF%20CHILDREN%20ACT?opendocument>

The object of this Division is to ensure the CEO has the power to take urgent action for children who might be in need of protection. ...

*The CEO may take a child **into provisional protection** if:*

*(a) the CEO reasonably believes: (i) the child is in need of protection; and (ii) **the provisional protection** is urgently needed to safeguard the wellbeing of the child; and*

(b) no protection order or temporary order is in force for the child. (our highlights)

The enclosed copy of the full Submission that we presented to the Ministry of Children and Youth Services in December 2014 contains many examples of language that youth in care and workers in the field of child welfare consider discriminatory and stigmatizing. It also contains suggestions for alternatives. The Children in Limbo Task Force hopes that this Submission can serve as a stepping-stone to making the necessary changes to the language of the *CFSA* and stands ready to assist the Ministry in this endeavour.

CONCLUSION

We were invited to add suggestions as to how the process for making changes to the Act might go forward. We offer the following:

- 1. Consultation with youth in care and youth formerly in care, with special regard to First Nations, Inuit and Metis youth.**
- 2. Consultation with front-line workers.**
- 3. Comparison with the child welfare legislation of other Canadian jurisdictions and countries.**

Thank you to the Ministry of Children and Youth Services for your attention to this Submission. We are grateful for the opportunity to participate, and we hope that the Submission will be helpful as you pursue the task of improving the *Act* for the betterment of the children and youth of the Province of Ontario.

Respectfully submitted by Members of the Children in Limbo Task Force:

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