



February 25, 2005

Director, CFSA Review
4th Floor, Hepburn Block
80 Grosvenor Street
Toronto, Ontario
M7A 1E9

Dear Sir/Madam:

This document is in response to the invitation made by the Ministry of Children and Youth Services in their news release dated January 28, 2005 to comment on the Child and Family Service Act.

The Probation Officers Association of Ontario represents Probation Officers who work in close contact with youth who are often under the governance of this piece of legislation. This legislation is often a guiding document in the development of case management of youth in conflict with the law.

The CFSA, proclaimed in 1985, was a result of a number of events including the government's vision to consolidate children's services with the hope of improving services to individuals and families. The legislation was developed keeping in mind, the emerging legislation at the time: the Young Offenders Act, The Charter of Rights, The Ontario Human Rights Code and FIPPA.

Much has changed and developed in the areas of Child Welfare, Children's Mental Health and the Youth Justice system. This submission hopes to address some of the issues that are evident with the CFSA due to the change in federal legislation concerning young persons in conflict with the law. The review is timely in that the government has once again made a move to consolidate children and youth services under one Ministry, namely the Ministry of Children and Youth Services.

The guiding principles of Youth Justice Services include community needs, purposeful interventions, continuity of care, least intrusive interventions, professional discretion, privacy and rights of the young Person. These principles are mirrored in the Youth Criminal Justice Act and are also reflected in the current Child Welfare legislation.

One of the primary issues concerning our Association is the introduction of the new legislation, the Youth Criminal Justice Act. In addition, Youth Justice Services, formerly delivered by the Ministry of Children and Youth Services and the Ministry of Community Safety and Correctional Services, have been integrated into one Ministry dealing with young persons age 12 to 17. To better serve the young persons involved in our service, we would like to promote that the definition of a young person by age be consistent across all legislation.

Given that Youth Justice Services work closely with Children's Aid Societies, we recommend that information-sharing be addressed in the legislation so fewer hindrances exist in gathering and sharing information between these groups. Improvements in this area would be beneficial to planning for and meeting the needs of the young person and in the completion of reports for the Judiciary.

At times, the Youth criminal justice system is utilized to "gain control" over young people who are out of their "parental control". The issues that are at hand may not be criminal in nature, but rather child protection/mental health issues. As a result, such youth may be brought into the Youth Justice system and potentially negatively influenced as a result. To rectify this, we suggest that the legislation more clearly define and allow for youth defined by the CFSA to be "out of control" or "in need of protection" or "at risk" to have more access to detention as a means to control and eventually modify behaviour. In keeping with this, these places of "detention" should be separate and apart from young people in conflict with the law.

The Youth Justice Service now deals with youth ages 12-17 but if the CFSA does not come into line with the federal legislation there will be discrepancies as to when we, as Probation Officers, can act as Peace Officers. Presently we can only act as Peace Officers when dealing with youth under the age of 16. This could create difficulties in continuity of care and the perception of equality and fairness to our clients. If we are to be an integrated system that exists to provide better service to our client groups then it is paramount that there be consistency in the legislation.

With the creation of the Ministry of Children and Youth Services and the changes that are occurring in integrated Youth Justice Services, now is the perfect opportunity to look at how the systems designed to provide service to our Youth can better work together through legislation, visions and policy.

Thank you for the opportunity to provide feedback to this legislative review. Should you wish any further information from our Association, we would be happy to accommodate.

Sincerely,

Donald Larman
Vice-President
POAO

Suggested Changes and Revisions

Throughout the document where reference is made to the Young Offenders Act, there should be reference made to the new federal legislation, the Youth Criminal Justice Act.

Definitions under Section 3(1) CFSA need to be brought into line with the new legislation and Ministry name. Examples include “Minister”, “young offender services”.

Section 5(2) – Appointment of Program Supervisor – Will this include the Program Supervisors appointed under the new Youth Justice Branches?

Section 31(1) – Society agreements with sixteen and seventeen year olds – Historically as Ministry of Community and Social Services (known as Phase 1) and Ministry of Community Safety and Correctional Services (known as Phase 2) Probation Officers, the Phase 1 Probation Officers dealt with the youth under the age of 16 therefore may have not felt the need to research this section more closely. The Phase 2 Probation Officers did not have occasion to even utilize the Act but now that we are a united service, this Section may well apply to more of our clients and may assist in meeting client needs.

Part III – Child Protection

Section 37(1) – Definition of a child – Will this be addressing the new youth Justice legislation in conjunction with the Ministry’s vision to have services for youth be the same for all youth age 12-17.

Definition of place of safety Section 40(10)– Will places of safety still include Detention facilities as defined by the Act and federal legislation? Once the move is made to have all young persons in conflict with law age 12 –17 placed together it may be prudent to look at having Child welfare issues kept separate and apart from Criminal Justice issues.

Part IV – Young Offenders

The title needs to be renamed to reflect the federal legislation definition.

Definition – “federal Act” needs to include the Youth Criminal Justice Act

Definition – “place of open custody”, “place of open temporary detention”, “place of secure custody” needs to reflect the legislative changes

Definition – “young person” – young person for our Ministry now includes youth aged 12 –17 by way of the federal legislation YCJA..

Section 91(1) & (2)– Approval of provincial director for provision of services to person over sixteen - The Ministry of Children and Youth Services, Youth Justice Branch now deals with youth age 12-17 so does this section automatically apply?

Section 93(1) – There is debate at present as to what level of detention a youth should enter into as a first point of entry. Consideration is given to the youth’s previous history as well as nature of current alleged offence. The Provincial Director makes this determination but some Justices feel they should be determining the level of detention. When addressing this Section there should be cross-referencing between the CFSA and the YCJA.

Section 93(2) This Section should also give consideration to response to previous community supervision by way of Probation, the community supervision or conditional supervision portion of Custody and Community Supervision or Custody and Conditional Supervision orders and Deferred Custody orders.

Section 94(1) – The section speaks to places of medium security and Ontario has chosen to have only 2 levels of security, open and secure.

Section 94(2)(e) – needs to reflect the changes in the federal legislation where the document is now a Pre Sentence Report under Section 40 YCJA.

Section 95(b) – Needs to reflect the change in federal legislation where a temporary release is now called a Reintegration leave Section 91 YCJA

Section 97(1) – Wording needs to change to reflect the YCJA when referring to

- 97(1)(c) temporary release needs to read reintegration leave Section 91 YCJA
- 97(1)(d) transfer referring to Section 24-2-9 YOA is now addressed under Section 88(c) YCJA
- 97(6)(a)(i) – medium security does not exist
- 97(6)(a)(iii) – needs to reflect reintegration leaves not temporary releases
- 97(6)(a)(iv) – change reference to section 24-2-9 of the federal Act

Part V – Rights of Children in Care

Section 103 –108 - Will there be discussion to consolidate the portion of the Correctional Services Act (Part V) that deals with rights with the CFSA and have all youth ages 12-17 governed by one piece of legislation?

Extraordinary Measures

Can this section apply to youth justice clients who are over the age of 16? Again the previous system was not apprised of the particulars of the CFSA but the integrated system will allow for all young persons by definition of the YCJA to be afforded the same services and equal opportunity and treatment.

Section 114(1)(2)

Will access to Secure Treatment programs be available for our clientele sixteen years of age or more who meet the criteria?