Justice for Children and Youth (JFCY) is a legal clinic with a mandate to advance the rights and dignity of children and youth in Canada. We fulfill our mandate in part by intervening in higher court test case litigation as an intervener. Acting as an intervener is a process whereby we request the permission of an appellate level court, normally the Supreme Court of Canada (SCC), to participate in a case that will have broad and far reaching consequences for children’s rights. I will focus my remarks on our appellant intervention advocacy work as an integral tool for taking action to advance children’s rights and preventing the discrimination children as a class continue to experience.

At JFCY, our work is rooted in the perspective that there must be adequate frameworks for enforcement and accountability of children’s rights. Otherwise, these rights become ideals rather than normative rules of entitlement. We view our appellate advocacy as essential to ensuring that Canada is held accountable for its international commitment of upholding and implementing children’s rights consistent with the United Nations Convention on the Rights of the Child (UNCRC).¹

Children’s rights remain controversial in the Canadian legal system – children by default are thought of as property with limited personal agency. Judges, lawyers, and service providers still often take a largely paternalistic approach to children and youth. Young people continue to be stigmatized, criminalized and penalized for behaviour that is inextricably tied to their level of maturity, growth, and development. Young people are often forced to prove their entitlement to rights they should be guaranteed as of right including the right to participate in decisions about them; to attend school; and the ability to maintain a relationship with their siblings living outside their home. On a daily basis, we advocate for children and youth whose rights are neglected by inadequate, under-resourced and overlapping institutionalized systems including child welfare, youth criminal justice, immigration, health care, education and others.

While children are afforded numerous rights, responsibilities and entitlements by Canadian domestic law, the UNCRC does not yet have the force of law in Canada. However, the UNCRC is now included in the preamble of the Youth Criminal Justice Act (YCJA)² and numerous provincial child welfare statutes across the country, including Ontario’s Child, Youth and Family Services Act.³ The UNCRC is recognized as a tool to contextualize our interpretation of both the Charter of Rights and Freedoms (the Charter) and provincial and federal laws that affect children rather than conferring rights in and of itself.

² Youth Criminal Justice Act SC 2002, c 1 [YCJA].
³ Child, Youth and Family Services Act, 2017, SO 2017, c 14, Sch 1 [CYFSA].
Despite these limitations, in the course of Justice for Children and Youth’s interventions in cases heard by the Supreme Court, we have witnessed some momentum in the recognition of children’s rights. In a common law legal system, this is promising and important because these cases inform and influence the application of laws in future cases and contribute to systemic change.

We take an interdisciplinary approach to our appellant-level intervention advocacy to help courts understand the significance and importance of legal rights for children. This involves structuring legal arguments in order to articulate the lived realities of children and youth. We use research and social science literature related to childhood development and the UNCRC as tools to do this. Justice for Children and Youth sees the Children’s Rights Academic Network as essential to our work because we rely on Canadian academic research related to children’s rights to effectively advance our legal arguments. We always draw on the UNCRC, the general comments of the United Nations Committee on the Rights of the Child, Optional Protocols, and guidelines to try and push for greater recognition and respect for children’s rights – these documents collectively articulate clear standards for meaningful children’s rights.

When reflecting on trends in Supreme Court case law since the Canadian Foundation for Children, Youth, and the Law v. Canada corporal punishment case (2004), we can observe some progress in recognizing and promoting child rights. In R. v. D.B. (2008), the Court recognized the reduced moral blameworthiness of youth before the criminal justice system is a principle of fundamental justice – a concept fundamental to Canada’s values that must contextualize any assessment of a life, liberty and security of the person argument under section 7 of the Charter.

In A.C. v. Manitoba (Director of Child and Family Services) (2009), the Court recognized the importance of a child’s evolving capacity to make medical decisions with increased age and maturity. In A.B. v. Bragg Communications (2012), the Court recognized that the inherent vulnerability of children as a class necessitates special protections based on age rather than the temperament or sensitivity of the particular child. In Kanthasamy v. Canada (2015), the best interests of the child was held to be a singular and significant focus in decisions related to unaccompanied children seeking humanitarian and compassionate grounds for permanent residence. This case saw an analysis of best interests that shifted from a paternalistic

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5 See, for example, UN Committee on the Rights of the Child, General Comment No 10 (2007) on children’s rights in juvenile justice, UNCRCOR, 44th Sess, UN Doc CRC/C/GC/10 at para 5-15.


assessment to a child-centered assessment consistent with a young person’s unique experience and perception of time. All of these decisions reference the UNCRC and social science literature.

In 2019, we are again before the Supreme Court of Canada as an intervener in R. v. K.J.M., seeking to expand the application and force of children’s rights, this time in the criminal justice context. This case relates to added protections young people must be afforded related to how quickly their criminal proceedings must proceed to trial. After the Supreme Court’s 2016 decision in R. v. Jordan, Canada has switched to a timeline-based assessment to assess how quickly a criminal proceeding must proceed to trial and determine what constitutes an unreasonable delay that could justify a stay of proceedings.11 In R. v. K.J.M., we are arguing that it is discriminatory for young people to have their youth criminal justice matters proceed to trial under the same timeline applicable to adults. It is our position that in order for young people to receive equal protection, their youth criminal justice matters must be brought to trial much faster than adults consistent with their perception of time and heightened vulnerability. We have used the UNCRC, the General Comments of the Committee on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),12 and social science literature to make this argument.

We are hopeful that this decision, when released, will further advance the rights and protections young people receive both in the youth criminal justice system and more broadly. Each appellate-level case has the potential to create greater momentum towards more robust rights for children and youth.

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