



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Recommendations for re-examining and/or removing words and expressions that are outdated, discriminatory or stigmatizing, with suggestions for substitutions in keeping with the spirit of the Act

A submission to the Ministry of Children and Youth Services
by members of the
Children in Limbo Task Force

With participation of youth from
Our Voice Our Turn

December 10th, 2014



Executive Summary

This brief of the Children in Limbo Task Force with the participation of youth from Our Voice Our Turn is focused on the urgent need to modernize stigmatizing words in the Ontario *Child and Family Services Act* (CFSAct), its regulations and relevant directives. Every organization has a culture, and the language used within its services reflects that culture. The words used portray the attitudes of the agency's administration and staff, attitudes that permeate services. They greatly affect how the community regards the agency, and how clients regard themselves. The self images, development and achievements of children and youth in the care of this province are very much influenced by the language and attitudes of the system in which they find themselves, through no fault of their own. It is time to modernize and humanize the language by eliminating demeaning terms such as "apprehend," "custody," "runaway," thus effecting a positive change to the Act and to the culture in which we all live.

This Task Force recommends that the Ministry of Children and Youth Services:

1. undertake a systematic, comprehensive review of the language of the CFSAct, as well as relevant regulations and directives, through the lens of the United Nations *Convention on the Rights of the Child*;
2. consider using the "Children's Rights Impact Assessment" developed by UNICEF as a tool in this process;
3. ensure that consultation across Ontario with youth in care and formerly in care becomes an integral part of this process. This will help to ground the language of the revised legislation and regulations in the reality of the youths' experiences.

We wholeheartedly welcome the review and invite Ministry officials involved in the process to have further consultation with the Children in Limbo Task Force as appropriate.

THE ISSUE

The *Child and Family Services Act* (CFSA) and its interpretation in policy and practice uses some language that is outdated, stigmatizing and discriminating to children and youth. One significant result has been the use in every-day conversation of hurtful terms that have become part of the culture of today. Child welfare legislation must be modernized to reflect a more humane, personalized, and child-focused attitude towards children and youth in care.

The Children in Limbo Task Force is among a number of Ontario child welfare organizations that have for some years pleaded for this change. In preparing for this submission, the Task Force has consulted extensively with the youth most affected by the language - youth in care and youth formerly in care. Their contributions have helped us to ground our recommendations in the reality of the experiences of children and youth in the care of children's aid societies.

“When you change the language, you change the culture.”

(Irwin Elman, Provincial Advocate for Children and Youth)

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A. 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 of Ontario’s children, youth and families who are involved with child welfare.”⁽¹⁾

The members of the Task Force whose names appear below have prepared this submission in order to bring to the fore their concern about the negative impact upon children and youth in care, and upon their families, of words and expressions in the *Child and Family Services Act* (CFSAct) that are discriminatory and stigmatizing.

The Task Force became acutely aware of the seriousness of this issue as a result of a series of province-wide focus groups with youth in care and youth formerly in care. The focus groups were originally designed to shed light on the youths’ experiences with the Court system.⁽²⁾ However, the conversation often drifted into the youths’ experiences coming into care, revealing their emotions at that pivotal time and later. For example, they spoke about confusing language:

“Often things are said in ways that go way over your head and then you’re asked, ‘Do you understand?’ and of course you say ‘Yeah sure’ – but you don’t.”

(Youth in Focus Groups)

In this submission, we describe how expressions such as “apprehension,” “probation,” and “custody” - with their connotation of criminality – contribute to the youths’ sense of alienation.

“The impact of such labels can be devastating to children and youth who are healing from neglect, abuse and/or abandonment by their families of origin. We must change the lexicon, in the system, to better affirm to children and youth that they are not offenders, victims, or the property of others, but rather individuals full of potential for achievement and success in each of their own ways.”

(Marvin Bernstein, Chief Policy Advisor, UNICEF Canada)

This document describes how children and youth feel when they come into care and why the language used can have a positive or negative effect not only upon their sense of self and their relationship with their family but also their view of child protection services and child welfare agencies.

“By changing the language, the culture in child welfare would shift. Workers and other professionals would conceive of the children, the youth, and families differently, as would the children themselves.”

(Jacqueline Smith, member, Children in Limbo Task Force)

The focus groups also revealed the youths' frustration with the language used in reference to child welfare procedures:

“... We hear all these terminologies, right, that we don't know, and people just expect that you know - and so that creates images in your head.”

(Youth in Focus Group)

In 2005, the Ontario Association of Children's Aid Societies addressed the issue of language change in the CFSA and recommended, “that serious consideration be given to modernizing some of the archaic and/or stigmatizing language in the CSFA.”⁽³⁾

The Task Force presented its first submission on the subject of language change in 2005 and again in 2010.

In the next sections, we look at the issue of language in the context of the *United Nations Convention on the Rights of the Child* and through the prism of the experiences of children and youth in care.

In the process of preparing this new submission, the members of the Task Force once again engaged in dialogue with youth in care and youth formerly in care. The youth themselves canvassed their peers and diligently studied the CFSA. Their suggestions for change are included in our recommendations at the end of this document.

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(The Task Force would like to express thanks to Susan Leopold (student, Masters degree in Social Work, Smith College) for her assistance in preparing this Submission. The Task Force is also very grateful to Wendy Hayes for the submission's beautiful design.)

B. LOOKING AT THE LANGUAGE OF THE CFSAS IN THE CONTEXT OF THE UNITED NATIONS *CONVENTION ON THE RIGHTS OF THE CHILD*

Children in Care Have a Right Not To Be Subjected to Discriminatory, Stigmatizing Language.

According to Article 2 of the *United Nations Convention on the Rights of the Child*, 1989, all children have a right to protection from “discrimination of any kind, irrespective of the child’s or his or her...status.” This would encompass discriminatory or stigmatizing language or behaviours. Article 3 of the same *Convention* also guarantees to children the right to have their best interests treated as “a primary consideration” in all actions concerning them, while section 1(1) of the *Child and Family Services Act* stipulates that “The paramount purpose of the Act is to promote the best interests, protection and well being of children.” Current and former children in care should be consulted to obtain their views and suggestions for alternative language that is non-stigmatizing and non-discriminatory. This would be consistent with Article 12 of the *Convention* which provides children with the right to express their views freely in all matters affecting them, with “the views of the child being given due weight in accordance with the age and maturity of the child.”

Yet in Ontario the legislation with reference to children in care or before the courts is replete with terms that are demeaning. There are a number of laws – such as the *Child and Family Services Act*, the *Youth Criminal Justice Act*, and the *Children’s Law Reform Act* - which all contain discriminatory terms that dehumanize and confuse youth and even imply criminality. They persist with objectionable language despite many worthwhile submissions over the past decade that criticize the terms applied to our young citizens who fall into the temporary or permanent care of Ontario’s children’s aid societies and are the ultimate responsibility of the Province of Ontario. A few primary examples follow.

APPREHENSION

“*Apprehension*” is one of the most objectionable terms used in provincial legislation, including the *Child and Family Services Act*. Instead of saying that a child was “apprehended”, with all the implicit connotations of criminality that might spring to mind, it might be preferable to say that a child was given into care, or was placed into the care of a children’s aid society without the consent of the child’s parent or caregiver.

It is important to be aware that the language of legislation has spill-over and may influence societal attitudes. Currently the majority of children coming into the care of children’s aid societies are of school age and are greatly affected by the language they hear around them.

“Once other kids find out that you’re in foster care you get looked at in a different way; it’s like you get judged.”

“... ‘Oh, you are not with your parents? Oh, you’re not with your relatives’ ... ‘you must have done something wrong’ or ‘you’re bad or something.’ ...”

“You get put away and, like, you’re in your own section now; you’re a loser.”⁽²⁾

Youths in Focus Group

Surely some of the problems that give rise to this labeling arise from societal attitudes that are partly derived from the tone of the legislation that affects the children to whom it has been applied.

CUSTODY

“*Custody*” is another term with heavy negative connotations implying that the custodian has punitive or controlling features. It does not indicate any aspect of choice or free-will on the part of the child or youth. Nor does it indicate caring or concern on the part of the custodian. To many young people the word may provoke images of criminality and handcuffs or mental health institutionalization and restraints. The judicial image is reinforced by the use of references to becoming a “ward,” or being “committed” to a child welfare institution, or of being the subject of a “case” conference. The child welfare system maintains “case files” or records and conducts “hearings,” terms used as well in reference to the criminal justice and mental health systems. No wonder children and youth in the child welfare system feel stigmatized! While it is true that “*custody*” is a term that persists in family law, it is important that more caring terminology be used in the child welfare context where many children in care have already previously been subjected to victimization and abuse. Thus, it might be gentler to say that a child was placed in the care of a child welfare agency or residence, rather than referring to “*custody*” or commitment to an institution.

SOCIETY WARDSHIP AND CROWN WARDSHIP

The terms “*society wardship*” and “*Crown wardship*” persist in Ontario legislation, but in no other province. The distinction between children’s aid society and provincial responsibility is also an outmoded and artificial one as all children in the care of the children’s aid societies are ultimately the responsibility of the Province of Ontario. It would be preferable to refer to children being placed into the temporary or permanent care of a children’s aid society.

ADOPTION PROBATION

Negative language persists into adoption as a child is placed on “*adoption probation*” for at least six months before an adoption can be finalized. Are the prospective adoptive parents on probation or is the child being tested to ensure quality goods for the prospective parents? Perhaps it could be said that the child was in the initial or first phase of an adoption placement. Although this is the twenty-first century, to some people even the adopted status still has some negative connotations akin to those of over one hundred years ago. Even legislation relevant to adoption requires modernizing to expunge demeaning terms.

C. CONSULTATION WITH YOUTH IN CARE AND YOUTH FORMERLY IN CARE

In order to ground this report in the reality of those most affected by the legislation, the Task Force consulted extensively with youth in care and youth formerly in care. The youths expressed relief that a new effort was being launched to change the language. As evidence of their struggle they referred us to two publications: “My REAL Life Book”⁽⁴⁾ and “Blueprint for Fundamental Change to Ontario’s Child Welfare System.”⁽⁵⁾

One participating youth identified a specific area that he believes should be researched as the process to modernize the language continues:

“[...] research into how] language affects specific racial groups within the child welfare system, since [the system] is comprised of a vast variety of ethnic groups which all interpret language differently. If explored, I think this would have some reinforcing factors as to why changing the language is so important...”

The youths also set out to read the CFSA in its entirety. Their immediate reaction upon starting to read the CFSA was twofold:

One was that the tone of the legislation and the profusion of unfamiliar terms left them with the distinct impression that this piece of legislation had no connection whatsoever to their experience, to their lives.

The second was that reading the CFSA triggered in them strong emotions about how they felt the child welfare system in general regarded them, i.e. essentially as second-class citizens. While it is not within the scope of this submission to delve further into this aspect of the youths’ experiences, it is a reminder that more needs to be done to better understand the youths’ experiences of being in the care of the State.

The youths did identify many words and expressions in the CFSA that needed to be changed: for example: “Runaway” – as in “Warrant to Apprehend Runaway Child” [CFSA 43(2)]. They reacted strongly to the use of this word in this context. Given the negative connotation of this term, it labels a youth who has left home as automatically delinquent whereas, in fact, running away may have been a healthy reaction to a dangerous situation (e.g. physical or sexual abuse).

D. CONCLUSION AND RECOMMENDATIONS:

The Need for Child-Centered Language

The Children in Limbo Task Force, along with many Canadian child welfare organizations, has for some years strongly urged that the language in child welfare legislation and related agencies be modernized to reflect a more humane, personalized, and child-focused attitude towards the children and youth in their care. Consultation with young people affected by this language has indicated that even from their earliest school years they feel stigmatized and face discrimination, whether in foster care or group homes, because they are not with their birth parents.

Given that, generally, children and youth in care have been traumatized due to circumstances for which they were not responsible, it is all the more necessary that they be protected from further harm. No matter how complex and arduous the process, it is essential to change the demeaning terminology used in relevant legislation, and to eliminate hurtful words that have seeped into everyday language that applies to children and youth for whom our society is responsible.

Based on our consultation with youth in care and youth formerly in care, and on our collective experience in the fields of Child Welfare and Children's Mental Health, this Task Force urges the Ministry of Children and Youth Services to review and revise the language of the *Child and Family Services Act*. Archaic words and expressions should be modernized to better reflect today's society. In particular, we urge that the language used with reference to the First Nations, Metis and Inuit children and youth, better reflect their individual identity and culture, and that they should be directly involved in the determination of this language. As one youth put it "***We keep losing who we are.***"⁽⁴⁾

In this report, we have highlighted certain words and expressions that illustrate the need for change, such as "apprehension," "custody," "runaway" and "ward of the State" that singled them out as second class citizens. These are but a few examples and clearly a more comprehensive examination of the language of the CFSA is required.

In summary, we urge the Ministry of Children and Youth Services to

1. Undertake a systematic review of the language used in the CFSA through the lens of the United Nations *Convention on the Rights of the Child*.
2. Consider using the "Child Rights Impact Assessment" developed by UNICEF as a tool in this process.
3. Ensure that consultation with youth in care and youth formerly in care becomes an integral part of the review process across the Province. This will help to ground the language of the legislation in the reality of the youths' experiences.

E. REFERENCES

1. As described in the Children in Limbo Task Force website:
<http://childreninlimbotaskforce.ca>
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3. Proposed Child and Family Services Act Amendments: A Position Paper of the Children's Aid Societies (February 2005).
4. My REAL Life Book: Report from the Youth Leaving Care Hearings (2012). Office of the Provincial Advocate for Children and Youth: Toronto, ON.
5. Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group (2013, January). Office of the Provincial Advocate for Children and Youth: Toronto, ON.

F. APPENDIX

1. *Examples of archaic, stigmatizing, and discriminatory words and expressions and suggestions for change:*

SELECTED CURRENT TERMS	SUGGESTED TERMS	EXAMPLES OF APPEARANCES IN ONTARIO CHILD AND FAMILY SERVICES ACT, Revised Statutes of Ontario, 1990, Chapter C.11
Indian, Native (Please note: First Nations, Metis and Inuit peoples should be directly involved in the determination of substitute terms)	First Nations, Metis, Inuit	CFSA, R.S.O., 1990, c C-11, PART X
society wardship	temporary guardianship or temporary care	CFSA, R.S.O., 1990 c C.11, s 61
Crown wardship or ward	permanent guardianship or permanent care	CFSA, c C-11, s 61
apprehension or apprehend	bringing or taking into care	CFSA, c C-11, s 40; s 41; s 42
Licensee	guardian	CFSA, c C-11, s 141; s 142; s 194
Custody	guardianship or care (of an agency)	CFSA, c C-11, s 94
runaway or runaways	child or youth who has run away	CFSA, c C-11, s 43
commitment (to a secure treatment centre)	placement	CFSA, c C-11, s 114
peace officer	police officer	CFSA, c C-11, s 41 (one youth asked if 'peace officer' was the same as 'police officer' and, if not, "did the difference matter?")

The youths identified other terms from their experiences that are commonly used in the child welfare world - in directives, in reports, in spoken language - which they found objectionable. Below are some examples of current terms and their suggested alternatives

<u>Current Term</u>	<u>Suggested Term</u>
adoption probation	initial phase of an adoption placement
“case” conference	conference regarding (name of child, youth)
A “minor”	person under the age of _____
oral evidence	verbal evidence
to furnish	to provide
contravention	violation
disability	challenge
remuneration	reimbursement
expenditure	expense

Two terms which elicited very strong anger at children’s aid societies were “*case*” and “*files*.” Former youth in care described how distressing it was for them to read the reports that had been written about them while they were in care.

“All I want is to be like any other child. Do you know how it feels to have your life typed and filed?”

(Kayla, former Youth in Care, in “My REAL Life Book”, p.3)

2. Watch your Language! You are Scripting my Life Narrative!

In child welfare, as in all other human interaction, we use language that is loaded with meaning. We might not stop to consider what we are actually saying and what words we are using, but that does not mean that choice of words does not matter. Indeed we are scripting the narrative of the lives of children and youths in our, society's, care. The words we use have connotations as well as denotations, some that may be intended and some not.

When we use words such as “*apprehension*” “*custody*” and “*probation*”, the connotations are those of criminality. And that may very well be where child protection had its origin. The relationship between “*welfare*” and “*penalty*” and between “*care*” and “*control*” has been studied in recent times (Jackson, 2003, p. 623). According to some of those studies, “*deprivation*” and “*depravation*” were linked in the minds of policy makers when they started to “*police*” families. “A 1933 legislation in Britain placed child victims and child offenders on a continuum of delinquency” (Jackson, 2003, pp. 624f, 637).

In the US, the New York Society for the Prevention of Cruelty to Children was founded in 1874 (NYSPCC). In a 1894 report, the NYSPCC pointed to “twenty years of earnest, hard work in this great city involving the custody of over 230,000 little outcasts most of whom but for the interference of the Society would today be mature criminals” (Watkins, 1990, p.501). Fraidin says that there is as much construct to how we understand families and children in “need” of child welfare as there is fact. “The narrative is one of brutal, deviant, monstrous parents and children who are fruit that doesn’t fall far from the tree” (Fraidin, 2012, p.98f). The stories we tell, the words we use, “construct social reality” (Delgado, in Fraidin, 2012, p.99). The media, Fraidin says, tell only the child abuse horror stories, but most children in foster care are there because of allegations that they were neglected not abused. And often those allegations are only poorly founded and positives in the families ignored. The families may “just” lack money, he says (Children’s Defense Fund 2005 in Fraidin, 2012, p. 99).

If we use terminology that belongs in the criminal justice system when we talk about children in care, we are acting as if we still consider that there is an intimate connection between child welfare and juvenile criminality. Instead of scripting a narrative with that kind of negative outcome for the children in our care, we could take into account the birth families’ strengths and successes and not just consider their flaws. And we could use non-judgmental, non-discriminatory language and, consequently, the children would have a very different version of their lives’ narratives.

Children have a right to know the story of their lives (Granofsky, 2010). As Dr. J. R. Wilkes says, children and youth need to know the truth (Wilkes, 2002). They should know why they were taken into care, their care history and the decisions made about their lives and the reasons for them. And they should be helped to keep memories alive. In telling the stories, it is essential that the tone and the words we use, are non-judgmental. How the stories are communicated matters. How are the children’s parents described? Are they described as failed people or as people with strengths and weaknesses like everybody else? What language, what words are used to describe to the children that they were taken into care? Are they talked about in the third person? Is a particular child

referred to as “it”? (Goddard in Saunders and Goddard, 2001, p. 445). Do the children hear themselves talked about as “files” or “cases”? Are the words we use associated with the criminal justice system? Do the children understand what is being communicated?

Language is powerful. It gives form to our thoughts. “Social groups have unequal access to power, status, and resources and, therefore, unequal access to shaping the narratives of people in society” (Kelly, 1996, p.423). “Language can justify, encode, enact, and make discrimination routine. As a product of culture, language is a reservoir of ideas for portraying out-groups. Discriminatory practices linked to or resulting from language and language use are an integral part of this wider language–power context” (Sik Hung Ng, 2007, p. 107 ff).

A struggle against dehumanizing language is fought in many different contexts. One such example is the language used to describe patients with various handicaps (Leopold et al., 2014). Language is power, as the authors say. “The state of Arizona has outlawed use of terms like ‘disabled’ and ‘handicapped’ in its state laws in favour of people-first language” (Leopold, 2014, p. 2). The authors speculate that “physicians generate emotional distance as a coping mechanism” by using words such as “cases” when referring to patients or as “diabetics” instead of “persons with diabetes” which would make it clear that patients are more than the sum of their particular diagnoses. I think that the same mechanism may be at play in child welfare: lawmakers, lawyers, judges and social workers may tend to create emotional distance to the families and children in the child welfare system and use terminology of “the other,” and they may not be aware that that is what they are doing.

By changing the language, we might become aware of our attitudes and struggle with them and change them as need be. And it is a much-needed change of attitude and of culture in child welfare that is the important point about changing terminology. Bettelheim believed that children hear attitudes first, next behaviour (non-verbal) and then words.

As Hartley has observed, language is used “not just to name things, but, more importantly to work out how to behave toward other people and the world out there” (Hartley, 1982 in Saunders, 2001, p. 448). “The power of language to ‘demean, exclude, stereotype and misrepresent’ is poignantly expressed by people who have suffered oppression. In Western culture, language has played and continues to play a prominent role in the oppression of women, older people, gays and people with disabilities” (Saunders, 2001. p.448) and no less in how we conceive of children and youth in care.

“The dynamics of language use and language change are tied to social identity” (Hogg, 1996, p.379). “The feminist movement has brought about significant changes for many women, and changes in language use played a significant part in this change” (Saunders, 2001, p. 449). A youth in care should not be described in terms belonging to the criminal justice system. And he or she should not be talked about as a “children’s aid child” or a “foster-child,” but rather as a child who is in care, or a child who is in foster care. The children are not just those labels! When their birth families are described, the same principle applies. They should not just be described as their failing whatever it may be.

If we change the words, the language, used in child welfare, how we think of the children and youth in care and their families will change. And the youths will think of themselves

more positively and will be able to face their histories with courage and their futures with hope.

A comparison among different countries' organization of child welfare found that some focused on child and family welfare and others on child protection only. "The holistic systems promote early intervention and preventive work and there is an assumption that there should be a continuum of care. The protection of children from abuse is seen as one aspect of child welfare, but there is an expectation that intervention should have taken place to prevent this and that it is legitimate to intervene early. There is a strong family support focus" (Katz, 2006, p. 42). "Where the underlying focus is on risk (rather than on support) it may be harder to build a culture that validates the authority of practitioners to exercise judgement and that values the time spent on communication" (Katz, 2006, p. 438). And communication is essential in order to ensure that children are heard, that they are informed about the facts of their lives, that they get the ongoing support needed to integrate the information, and that workers have time to get the support from supervisors that they need to convey the often difficult information that they must communicate to the children in the most sensitive and respectful language possible.

Recommendations:

- "Watch Your Language"!! Avoid labeling and discriminatory words and descriptions!
- Change the wording in the Legislation and in daily practice.
- Include in the Legislation children's right to know their own stories, as, for example, their parentage.
- Include in the legislation an obligation for all workers, all professionals to answer to the child in person or in writing regarding decisions made on the child's behalf.
- Include in the Legislation an obligation to adhere to the UN Convention of the Rights of the Child.
- Consider returning to a child welfare system based upon prevention instead of upon risk.

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