Children in Limbo Task Force Symposium
Jewish Family & Child Services
Lipa Green Centre, 4600 Bathurst Street, Toronto
November 24, 2017 from 8:30 am- 4 pm
Other speakers: Dr.Harriet MacMillan, Dr. Wendy Mandel, Landy Anderson and Youth – Moderated by Dr. Gabrielle Israelievitch

CHILDREN AT THE CENTRE: THEIR RIGHT TO TRUTH AND VOICE
SPEAKING NOTES: MARV BERNSTEIN

<u>Question</u>: From your varied experience as a Children's Advocate, as Policy Advisor for OACAS, as Chief Counsel for CCAS and from your ongoing fight for Children's Rights, within UNICEF and beyond, how do you assess the health of the many systems you have been and are involved in and what are the needed steps towards fulfilling the goal of keeping children at the centre, and honouring their right to truth and voice?

INTRODUCTION

I would first like to acknowledge being on traditional Indigenous lands and thank Jewish Family & Child Services for hosting this event. I would also like to recognize the Children in Limbo Task Force for sponsoring this Symposium. As a member of the Children in Limbo Task Force myself for well over two decades, I would particularly like to thank the planning subcommittee of the Task Force that devoted so much time in developing and organizing a program, which includes the voices and perspectives of young people. I'm especially pleased to see such a large turnout and the participation of our inspirational leader for so many years, our past Chair, Dr. Jim Wilkes.

As a final acknowledgement, I would like to take this opportunity to thank Irwin Elman for close to two decades of strong and passionate work on behalf of the children and youth of Ontario. These are very challenging positions and Irwin has taken the amplification of youth voice to a new level, which has informed and shaped this new legislation.

DISCUSSION OF SYSTEMS

By way of introductory context, I have worked with different child-serving systems in various roles and in different parts of the country. A common theme is that the professionals involved, by and large, are individuals who care deeply about the well-being of children and youth and want to see them enjoy better outcomes and be provided with opportunities where they can thrive and reach their full potential.

The limitations relate not to the individuals, but to the systems themselves that, at times, fail to put children at the centre of service delivery and decision-making, and too often operate in silos. There are some ground-breaking provisions in the new *Child, Youth and Family Services Act* which will hopefully bring about positive changes in the life conditions of Ontario's children and youth. However, the true litmus test will be whether we can translate these aspirational principles or 'paper rights' into 'lived rights' for children and youth in terms of their daily life experiences.

So, **what are the needed steps towards fulfilling the goal of keeping children at the centre, and honouring their right to truth and voice? –**

Based upon my experience, and in the short time allotted, I would suggest 3 steps:

1) My first suggestion is to move away from paternalistic and needs-based systems that have traditionally dictated the range and quality of services provided to children and youth. This requires a paradigm shift, where we see and treat children as rights-holders, who have fundamental entitlements that create corresponding obligations on the part of government. It also means treating every child with dignity and respect. Although we often hear the word 'dignity' used in a general sense, the UN Committee on the Rights of the Child has provided guidance by stating: "*[t]he concept of 'dignity' requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy."*

   The best example for me in establishing a child rights-based framework at the provincial level is the Government of Saskatchewan adopting a set of eight *Children and Youth First* Principles in 2009 as a kind of Bill of Rights for Saskatchewan's Children and Youth. These Child-Centred Principles, which were based upon provisions in the *Convention on the Rights of the Child*, were first developed by my former Office in 2007 as a set of guiding principles for the Office to protect the rights and well-being of all children and youth in receipt of government services in Saskatchewan, as reflected in law, policy, programming and practice.

In the case of Ontario, it would be timely to enact a Private Member's Bill – Bill 57, the *Katelynn's Principle Act (Decisions Affecting Children)*, *2016*, which would incorporate the full scope of Katelynn's Principle. This Bill would require any person making a decision affecting children under Ontario legislation, to apply Katelynn's Principle. This broad application of Katelynn's Principle would be consistent with the first recommendation of the Katelynn Sampson Inquest Jury Verdict, which reads, in part, as follows:

> "*That all parties to this inquest ensure that Katelynn's Principle applies to all services, policies, legislation and decision-making that affects children*."

The first two elements of Katelynn's Principle, as set out in Bill 57, state that the "*the child must be at the centre of the deci*sion" and secondly that "*the child is an individual with rights. The child must always be seen, the child's voice must be heard, and the child must be listened to and respected*."

The enactment of Bill 57 would represent a welcome piece of companion legislation to the *Child, Youth and Family Services Act*, since the latter Act does not explicitly name Katelynn's Principle, or set it out in its entirety, and limits its application to service providers, rather than applying it to legislators, policymakers and decision-makers, such as the courts and tribunals.

Additionally, Katelynn's Principle is not referenced in the *Child, Youth and Family Services Act* as applying across all provincial ministry

divisions, although that is what is contemplated by the Coroner's Jury. This suggests that that the rights set out, as individual components of Katelynn's Principle, are only required in the child welfare domain, even though we know that children and youth involved in child welfare often cross over into the realm of other ministries – such as education, health and justice.

The enactment of Bill 57 would then establish a whole-of-province legislative framework that respects the rights of children and youth and their voice and participation. It could also ultimately be incorporated as one part of a provincial Bill of Rights for Ontario's children and youth, based upon extensive consultation with such children, youth and other stakeholders.

A second suggestion is to more meticulously consider the impacts upon different groups of children and youth, using a child-rights sensitive lens, before introducing new or amended legislation, policies and programming that will affect them. Impact Assessments are not new and have been used in a variety of policy domains in Canada, such as environmental protection, health, gender, equity and privacy.

Here a positive example is the progressive steps taken by the Governments of New Brunswick and Saskatchewan regarding their innovative use and implementation of Child Rights Impact Assessments.

Specifically, a Child Rights Impact Assessment is a tool for assessing the potential impacts of a proposed or existing policy, law, program, or decision on children and their rights. The *Convention on the Rights of the Child* is the framework used to assess these impacts. The impacts identified can be positive or negative; intended or unintended; direct or indirect; and short-term or long-term. The focus of a Child Rights Impact Assessment is to evaluate how matters under consideration will promote or undermine the fulfillment of children's interdependent *Convention* rights and overall well-being.

In New Brunswick, there is now an all-of-province commitment to using Child Rights Impact Assessments. Since February 2013, it has been mandatory for all New Brunswick government departments to complete a Child Rights Impact Assessment and attach it to a Memorandum to Executive Council whenever a proposed law or policy is being forwarded to Cabinet for its consideration and approval. In Saskatchewan, the Ministry of Social Services has used Child Rights Impact Assessments as a framework for reforming child welfare and adoption legislation, and for ongoing policy and programming development. Each of these provinces has gone the extra mile and developed its own simplified and user-friendly assessment tools.

There is an opportunity here for the Province of Ontario to develop and apply a Child Rights Impact Assessment process not only during the next 5-year review of this legislation, but also in the short term, as new regulations, directives and policies and procedures are

considered and rolled out as necessary implementation measures. Without such a child-rights based impact analysis, we run the risk of setting off potential unintended negative consequences for children, notwithstanding the government's best intentions. An Ontario Child Rights Impact Assessment model could build upon the experiences and lessons learned, both internationally and in other Canadian jurisdictions. The implementation of such a framework would then put Ontario children front and centre in all government decision-making and be consistent with one of the recommendations made by the Coroner's Jury in the Katelynn Sampson Inquest, which states:

> "*The Government of Ontario, Ministry of Children and Youth Services, Ministry of Education, Ministry of the Attorney General, Family Rules Committee, Ontario Association of Children's Aid Societies, Association of Native Child and Family Services Agencies of Ontario and Children's Aid Societies of Ontario implement a Child Rights Impact Assessment process for future reviews of legislation, regulations, directives, policies and procedures, to screen for the impact upon children's rights."*

3) A final suggestion on my short list is to modernize and eliminate any stigmatizing and dehumanizing language in relation to children and youth - not only in legislative language, but also in daily practice. As we all know, words are important and reflect the culture of organizations, institutions, professions and governments.

   A positive example here is the Ontario Ministry of Children and Youth Services changing its legislative language in its new *Child, Youth and Family Services Act*, in response, at least in part, to much strong and

persistent advocacy from the Children in Limbo Task Force, together with current and former youth in care (with the assistance of the Office of the Provincial Advocate for Children and Youth). When asked for their impressions of the Act, youth were particularly upset about the term “runaway,” because it automatically labels them ‘delinquent’ when they may, in fact, be extricating themselves from a dangerous situation involving physical or sexual abuse. This term was ultimately removed from the new legislation.

As well, the Children in Limbo Task Force successfully argued that the word ‘apprehension’ should be deleted from the new legislation. The language of ‘apprehension’ has been a controversial and stigmatizing term for decades in our child welfare legislation and vernacular, implying that the taking of youth into care could be equated to the apprehension of suspected criminals. This pejorative term has now been replaced with the more appropriate language of “bringing children to a place of safety.”

In Ontario, it would be important to go beyond child welfare legislative language and examine all provincial legislation to determine whether there is unintentional demeaning language used to describe children and youth in various contexts. The model that was used by the Children in Limbo Task Force, in consultation with youth, would be a useful template for the provincial government. In that scenario, youth would be asked to review a piece of legislation and identify words and phrases that they consider objectionable and suggest appropriate substituted language. Professional education could then follow, with

training sessions given to make sure that everyone is aware of the new respectful nomenclature.

CONCLUSION

In conclusion, there are many ways in which we can better strive to put children at the centre and honour their right to truth and voice. We can all become child advocates in our own right, and find opportunities to make a positive difference in the lives of children and youth. This is a collective responsibility that doesn't just rest with legislators and government officials, or even statutory Child and Youth Advocates. This point is reinforced in the last component of Katelynn's Principle, which is one of those elements not carried over into the *Child, Youth and Family Services Act*. It reads:

> "*Everyone who provides services to children or services that affect children are child advocates. Advocacy may potentially be a child's lifeline. It must occur from the point of first contact and on a continual/continuous basis thereafter."*