

# SUMMARY OF THE CHARTER RIGHTS PARTICULARLY RELEVANT TO CHILDREN

The Charter rights apply to all persons, including children. Additionally, there are a number of Charter rights which are specifically applicable to children. There are also some general rights which may have a particular significance for children.

For the purposes of the Charter, a child is a person under 18 years of age. This is so because of the definition of 'child' under s. 3.

## RIGHTS SPECIFIC TO CHILDREN

### Right to protection of families and children (s. 17)

Section 17 confers a right of protection to families and guarantees the right of every child to such protection as is in his or her best interests and is needed by him or her by reason of being a child. This right to protection should be considered for proposed laws or policies that touch on aspects of family life and that affect family relations. The notion of 'family' is to be interpreted broadly to include extended families, gay and lesbian families and single parent families. The best interests of the child should be taken into account as the paramount consideration in all actions affecting a child.

### Rights of children in the criminal process (ss. 23 and 25(3))

Sections 23 and 25(3) guarantee certain rights for children in the criminal process. Both of these sections recognise the particular vulnerability of children in criminal proceedings. Section 23 is concerned with the detention of children in the criminal process, whereas section 25(3) is concerned with their procedural rights, especially during the investigatory or trial stages of criminal proceedings.

Section 23 guarantees that accused children who have been detained must be segregated from detained adults at all times, whether before or after

conviction, and that accused children must be brought to trial as quickly as possible. Section 23 further assists in ensuring that children who have been convicted of an offence will be treated in an age-appropriate manner. These rights (and particularly s. 23(2)) mean that children should be detained for the shortest possible time. The right of children to be segregated from adults does not mean that child offenders should automatically be removed to adult prisons when they turn 18.

Section 25(3) provides that children charged with criminal offences have the right to a procedure that takes account of their age and the desirability of promoting their rehabilitation.

This right requires that special and appropriate procedures are in place that take account of the age, maturity, and intellectual and emotional capacities of the child, and that procedures are in place that emphasise the rehabilitation of the child. For example, trial procedures may need to be modified to ensure the child understands and can participate in the proceedings, and alternatives to detention or imprisonment should be available. Services that provide treatment, education or other assistance may be available either in conjunction with detention or imprisonment, or as part of a non-custodial order. Section 25(3) is in addition to the rights accorded to adults under the other provisions of s. 25 (that is, the right to be presumed innocent

(s. 25(1)), the minimum guarantees (s. 25(2)) and the rights in relation to appeals against conviction and sentence (s. 25(4)).

### **GENERAL RIGHTS WHICH MAY BE SIGNIFICANT FOR CHILDREN**

The following general rights may be significant for children and will often need to be read in the light of other provisions of the Charter that specifically seek to protect the interests of children.

#### **The right to protection from torture and cruel, inhuman or degrading treatment (s. 10(a) and s. 10(b))**

Section 10(a) and s.10(b) guarantee the rights of a person not to be subjected to torture or treated or punished in a cruel, inhuman or degrading way. The assessment of whether an act amounts to cruel, inhuman or degrading treatment is relative and depends on factors including the duration of the treatment, its physical or mental affects, and the age, vulnerability and state of health of the victim. Hence, the particular vulnerability of children is relevant in the application of these rights.

#### **The right to not have privacy, family, home or correspondence unlawfully or arbitrarily interfered with (s. 13(a))**

Section 13(a) ensures that a person does not have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Particular attention should be given to this section in the context of laws or procedures that concern the removal of children from the family unit. This right does not mean that a child should not be removed from his or her home in, for example, an abusive situation. However, care should be taken to ensure that whatever arrangements are made for the child take into account the interests of privacy, family and the home of the child.

#### **The rights of Aboriginal persons to enjoy their identity and culture and to maintain their language and kinship ties (s. 19(2)(a)(b)(c))**

Section 19(2)(a) to (c) recognises that Aboriginal persons hold distinct cultural rights and that they must not be denied the right, with other members of their community, to enjoy their identity and

culture, and to maintain their language and kinship ties. This section gives children the right to be exposed to, and to learn about, their cultural heritage, their community and their languages for the purpose of having the opportunity to enjoy their identity and use their language. It also recognises that kinship plays an important role in Aboriginal communities and that the notion of kinship ties is closely linked to other cultural and religious practices. The right to maintain kinship ties is particularly important in the context of removing children from their homes, fostering, adoption and other processes where Aboriginal children could potentially be taken away from their families. Again, this right does not mean that a child should not be removed from his or her home, for example, in an abusive situation, but that care should be taken to ensure that whatever arrangements are made for the child, the child's right to maintain contact with his or her kin is respected.

#### **The rights of persons awaiting trial (section 21(6))**

Section 21(6) ensures that a person awaiting trial must not be automatically detained in custody, but that his or her release may be subject to guarantees to appear for trial, and at any other stage of the proceeding including execution of judgment if appropriate. In its application to children, regard should be had to the rights guaranteed under ss. 23 and 25(3) and to the understanding that, due to their particular vulnerability, children should not, where possible, be detained, including prior to trial.

#### **The right to humane treatment when deprived of liberty (section 22)**

Section 22 ensures that persons deprived of liberty must be treated with humanity and respect for the inherent dignity of the human person, and that persons detained without charge are segregated from persons convicted of offences (except where reasonably necessary) and are treated in a way that is appropriate for a person who has not been convicted. Again, given the particular vulnerability of children in the criminal process, these rights must be read together with and in the light of s. 23.