

Community Issues in Criminal Justice

“Necessity is the plea for every infringement of human freedom; it is the argument of tyrants; it is the creed of slaves.”

William Pitt
1759 - 1806



Betwixt & Between; When Does a Child Become an Adult?

Ed. note: Our piece entitled **Of Rights & Responsibilities**, published in the *Winter, 2007 Issue of The Reporter*, examined the issue of lowering the age at which children might be charged under the Youth Criminal Justice Act. But there is another side to that discussion, which relates to the issue of when a child is “allowed” to begin taking on the responsibilities of adulthood. The discussion that follows examines this issue.

There has been a much discussed trend in North America over the past 2 decades for young people to remain at home well past their age of majority. Putting off getting married, the rising costs associated with higher education, skyrocketing prices for homes and the need to save for the down payment and the increasing consumer attraction for purchasing non essential items have all influenced the decision of many young people to remain in their family home until their late twenties and even thirties.

There are of course also cultural differences at play in determining the acceptable or appropriate age at which to leave one’s home, and gender can be an important factor as well.

Usually marriage is a precipitating factor in encouraging and/or allowing a young person to establish their own household with their new spouse.

In Canada, a recent survey reported that in 2006, **43.5%** of young adults between 20-30 years of age still resided with one or both parents. This represents a significant increase from the **27.5 %** in 1981 (<http://www4.hrsdc.gc.ca/indicator.jsp?indicatorid=77&pf=1>). The percentage was highest in Newfoundland and Labrador where 52.2% of young people lived at home. In the same year, 50% of young men and women aged 20-24 lived with their parent(s) (*ibid*).

So in the face of this reality, it becomes an interesting issue when we ask what the *minimum* age is for a young person to be legally allowed to live independently from his or her parents or guardian.

The answer to this question is not as straightforward as one might expect. Surprisingly perhaps, there are virtually no guidelines concerning this matter in any legislation that address issues of child protection, safety and rights from most countries. There are detailed laws which deal with children requiring state intervention, the rights of the child under state ward ship or control, the age at which and with whom a child can have sexual intercourse, can drink, can drive, can vote, can kill (military service), can gamble or can leave school to list just a

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few. But legislation around when a young person can legally leave home or the guardianship of a responsible adult is strangely lacking.

And this can result in considerable tensions, pain/hurt and frustrations/anger for those families in which a young person decides that they would rather live on their own.

From a wider perspective, the question of the rights of a child is closely related to the issue of our understanding of adolescence. This is an uncertain and somewhat vague stage in the development of a human being and is certainly laden with cultural values and associations. What is recognized by most societies, however, is that adolescence involves biological, social and psychological changes; where the differences arise is in the determination of what exactly these changes entail, which are the most important ones and in the difficulty of measuring some of these changes objectively (especially social ones).

Most societies around the world have come to recognize the age of 18 as the “age of majority” in the area of jurisprudence. This is the age at which the person transitions from being a dependent individual, with specified rights and protections, to one who is legally responsible for his or her actions. However, there is a range of variation around this age of 18 in terms of when one achieves specific rights. 14 to 16 year olds in many western countries can legally work or take out a driving license but they cannot sign a business contract or buy a house or car before age 18. Sexual activity is legal between minors from as young as 12 in some societies although there are rules around the age limits of their prospective partners. Voting can be at 18 (although some countries can delay that until 25), while drinking alcohol or smoking may be deterred until 19 or even 21 years of age.

One of the unresolved issues in the West, and perhaps more especially, in North America, concerns the matter of what exactly can and should be expected of an adolescent and even more importantly, how they should be treated by their family and society as a whole.

This ambiguity is perhaps best demonstrated in the Canadian justice system. The *Youth Criminal Justice Act (YCJA)* of 2003 clearly establishes the rights and special protections of young people under the age of 18 who engage in criminal activity. However, the *Act* allows for the Crown to seek adult sentences for

minors (16 – 17 year olds) if the crime of which they are accused is especially violent – specifically murder and aggravated sexual assault. Fortunately, a recent Court decision to retain the burden of proof on the Crown in seeking an adult sentence has at least not further complicated our commitment to treating under 18 year olds as individuals requiring special rights and protections.

It has been an interesting historical trend in Western societies over the past three hundred years (since the Industrial Revolution) to gradually extend the age of childhood/adolescence upwards. This shift has been both a judicial trend (starting with the early need for laws to protect children from unsafe, inhuman and exploitative labour demands) and a social one.

The social factors involved in this changing relationship of young people to society combine demographics, growing economic wealth, changing labour demands (such as increased skill levels required) and the rising importance of an education in fulfilling many public and private roles in an increasingly more complex world, to name just a few.

The net result of these influences has been the ability of families to encourage and sustain the delay of the age upon which their children are required to become independent. Thereby, individuals could remain being treated as “children” by their families until they are well past their 18th year.

However, even if this is a possibility for those who desire it, what are the options for those who wish to actually shorten this age of dependency?

Under Canadian law, there are two relevant sections of the *Criminal Code* which deal with rights of the child in regards to his or her parents or legal guardians. *Section 218* makes it an offence for a parent to “abandon” their child under the age of 10, while *section 215* stipulates it an offence to withhold the “necessities” of life from a child under the age of 16. Such necessities include food, shelter, clothing, etc.

The rights of a child to receive continuing care past the age of 18 (and up to 22 years of age) is mandated through the *Family Law Act* of Alberta (2003) whereby a young person who is enrolled full-time in an educational institution is considered to be “child”.

Canadian and provincial laws make it mandatory for

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all individuals up to the age of 16 to be registered in school. Failure to do so will elicit government intervention. Working under the age of 14 is not allowed (unless under exceptional circumstances such as in family businesses) and even then special conditions may apply for youth under the age of 16. Marriage is legal only upon the attainment of the age of 18, with the approval of the parents at 16 **or** if the girl is pregnant/or already with child.

These laws therefore curtail what a youth may do, but do not make it clear what and when a youth **can** do something in respect to living independently.

The situation, therefore, is that a parent or guardian is legally responsible for the care and maintenance of a youth until the age of 16, or up to the age of 22 if the “child” remains a full time student. The *legal* obligation of a parent to a child would appear to terminate at age 16 if the youth has left school, has become married (with parent consent) or **has left home on their own volition.**

Some American states have enacted legislation that “**emancipates**” a youth from his family and absolves his parents or guardians from any legal/financial obligations. The State of Connecticut, for example, has a process whereby a youth who is at least 16 years of age may file a “Petition for Emancipation” with the court.

In order to be eligible for this petition, the youth must meet one of the following criteria:

- be married;
- be in the U.S. armed forces;
- be living apart from his or her parents and be managing their own money; or,
- the court decides that emancipation is in the best interest of the youth or the parents or a child of the youth
(http://www.larcc.org/pamphlets/children_family/teen_emancipation.pdf)

Successful completion of this process will provide rights and responsibilities to the emancipated youth not enjoyed by other teenagers. There are both benefits and drawbacks to these new circumstances and the court will determine whether the youth really understands them and can meet them. Once emancipated, a youth cannot reverse the process!

It should be noted that while other States do address the issue of youth emancipation, the associated processes and rights do vary across the country

(see, for example, <http://www.empirestatecoalition.org/emanc.html>; http://www.youthrights.net/index.php?title=Texas_Emanicipation_Law; http://www.youthrights.net/index.php?title=New_Mexico_Emanicipation_Law); and, <http://www.cls4children.org/Emancipation.htm>) (this document suggests that in California, the youth may even be as young as 14 to request emancipation).

No other country in the world has an “emancipation” process in place. However, it is clear from a review of the literature, that youth who have attained the age of 16 and have decided to leave home are less likely to be considered runaways by the law and thereby be forced to return home.

The various states of Australia have laid out some instructive parameters around the issue of teenagers leaving home. Principally, young people have the right to leave their parental care from as young as 14 (for boys in Tasmania; 16 for girls) to 17 for both sexes in Victoria. All the rest have 16 as the age at which a young person can decide to be on their own without their parents consent. Even though parents and others may be concerned about the youth’s safety and well being, the authorities and courts will not become involved in trying to return the youth if the following conditions are met:

- the youth has a decent place to live,
- the youth has enough money to live on,
- the youth is mentally healthy, and
- the youth is not involved in drugs, prostitution or any other illegal activities
(<http://www.legalaid.vic.gov.au/736.htm>).

If one of the above conditions is deemed by the courts not to be met, the courts can then determine where and with whom the youth will live (and not necessarily with the parents).

New Zealand law is basically similar to Australia’s. A youth aged 16 can leave home without parental consent, although until they are 17, the authorities can return the youth home if they are considered to be “at risk” (<http://www.youthlaw.co.nz/default.aspx?z=35>). Two interesting asides here are that in New Zealand, a 10 year old child can be prosecuted for murder and manslaughter and a 17 year old youth charged with a criminal offence will appear in the adult court system and not the Youth Court (*ibid*).

One of the key challenges for a youth under the age of 18 who leaves their home is to find suitable (safe) and

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affordable accommodation. In most of North America, it is illegal for minors to sign binding contracts (such as leases) so getting into a rental property is impossible without an older guarantor becoming involved. Therefore the importance of youth emergency shelters and other non - profit agencies in accommodating homeless youth. In Australia and New Zealand, it is legal for youth 16 and older to sign a lease but finding a willing landlord may be difficult. In the United Kingdom, although youth can also sign leases, local social service agencies *have an obligation* to find suitable accommodation for youth aged 16 – 17 who request it

(<http://www.youthinformation.com/Templates/Internal.asp?NodeID=90596>;
http://shelter.dev.squiz.co.uk/get_advice/advice_for_young_people/leaving_in_a_hurry#0).

Of course, an equally important need for a young person going on their own is financial. Employment at 16 is not impossible (although most western countries have historically demonstrated the highest percentage of unemployed are in the 16 to 24 year old age bracket) but to find a job that now pays sufficiently to cover accommodation, food and other basic needs is not easy.

Young people therefore, without adequate financial means, are the most vulnerable to becoming engaged in illegal activities – usually out of necessity. Petty theft, drug dealing and prostitution are the most likely sources of funds for those in the most desperate state. Engagement in such activities, and subsequently being charged and convicted, results in an indeterminate interaction with the legal system and social services, which may well extend into their age of majority.

Summary and Conclusions

From this brief review of the literature around the legalities and realities of young people leaving their parental/guardian residences, it would appear that the most common age is 16. Although 16 and 17 year olds are generally considered to be “minors” and therefore dependent individuals. Most jurisdictions are largely concerned whether the young person is able to live in “safe” conditions –i.e.: has appropriate housing, have the necessary financial means and is not involved in criminal behaviour. Even in those jurisdictions where the parent/guardian has the legal responsibility or right to retain custody of the under 18 year old, the chances of an unwilling 16 or 17 year old to be returned home if they have

demonstrated a safe alternative is extremely low.

Furthermore, it would very unlikely for the issue to be brought before the courts if the police determined that the circumstances did not warrant it. Living with a suitable relative or older friend in an appropriate environment, continuing in school, being provided for by their own income or by a relative and possibly receiving counseling and support from public agencies would all mitigate against forcing the youth to return home.

Of course, the early departure of a youth from home is often the most difficult for the parents and the families impacted. The reasons for leaving are diverse and varied. Sometimes the young person leaves because of unresolved conflict and disagreements between family members and sometimes it is only because the young person desires to have more independence than the parents are willing or prepared to give.

The chances of success for a young person to be able to look after themselves once they leave their home hinges greatly upon their personality and level of maturity. Some 16 year olds can be extremely mature and quite ready for an independent lifestyle (or certainly one with fewer constraints than many families can or should have to allow).

If these young people feel unable to remain an integral part of their family structure and demonstrate such discontent through antagonistic or unhappy behaviour, it may well be best for all concerned that the youth be allowed to leave.

If at all possible, parents/guardians should strive to keep the communication channels with their child open and supportive as far as they can. Again, they have a responsibility to ensure that their child is safe and has access to the basic needs of life – food, shelter and clothing. The more they can support their child, the greater and easier the chances of a successful outcome for all involved.

But no matter how hurt, betrayed or upset the parent(s) may feel, they need to accept the fact that as of the age of 16, their child has a right to determine their own course of living, and residing away from their home may be one way through which to act upon this desire.

***Sometimes, love can be tough
for the adult as well.***

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Our goal is to provide information and
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are interested in criminal justice reform and
preventing crime in our communities. We
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Incorporated 1949

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Dear Friend of The John Howard Society of Alberta,

Over the course of the last several years, we have seen our on-going funding for the Society fail to keep pace with the rate of inflation. We had been fortunate, in that the money raised by our bi-annual Casino was increasing over this same period, and provided some measure of relief from the otherwise dire circumstances in which we would have found ourselves.

Starting with our last Casino in 2007 however, we are seeing a decline in the funds raised by this activity and, while we continue to diligently seek out new funding sources, we find that we are falling further and further behind in our ability to properly fund our important work in research into criminal justice and corrections, which is the foundation upon which we build our policy and legislation analysis and recommendations.

At this time then, we are appealing to you for your financial support in whatever degree you are comfortable providing. This is especially important at this time as, between now and December 31, 2008, the Alberta Government, through its Community Spirit Program, will match every dollar received by the Society from its supporters. And of course, all donations are receipted, and are tax deductible.

Your kind and generous support is greatly appreciated.

The John Howard Society of Alberta

Sheryl Skaalerud, C.A.

President