



Legislative
Assembly
of Ontario

REVIEW OF HAMILTON WENTWORTH DETENTION CENTRE

Office of the Provincial Advocate
for Children and Youth for Ontario

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HAMILTON WENTWORTH DETENTION CENTRE

INTRODUCTION

The Office of the Provincial Advocate for Children and Youth (Provincial Advocate) launched a review of the Youth Justice Unit at the Hamilton Wentworth Detention Centre (HWDC) on June 12, 2008. Upon completion of the review, a preliminary report with recommendations was provided to the Ministry of Children and Youth Services (MCYS) and the senior management of the youth unit at HWDC for response and comment. The report was not distributed or made public due to the closure of the HWDC youth unit on March 31, 2009.

As of spring 2009, MCYS closed all youth units in adult correctional facilities, including those at the Kenora Jail, Thunder Bay Youth Centre and Ottawa Carleton Detention Centre.

The reason for these closures is explained on the MCYS website:

Young people in conflict with the law have very different needs from adults. That is why Ontario is moving youth out of correctional facilities and into separate secure custody facilities dedicated to young people. These facilities will provide young people with effective programs and more opportunity for rehabilitation.¹

Unfortunately the transfer of the youth units from adult correctional facilities into dedicated youth facilities did not appear to resolve many of the problems the Provincial Advocate noted in the 2008 Review of HWDC. In early spring 2009, the Provincial Advocate began to receive reports from young people at Brookside Youth Centre that gave cause for concern. In August 2009, residents at the recently opened Roy McMurtry Youth Centre raised serious concerns. Several common themes were noted: (1) the right of young people to contact the Provincial Advocate was obstructed; (2) young people were “deposited” at the youth units and youth centres but provided with little in the way of effective programming or opportunities for rehabilitation; and (3) the level of basic care provided was inadequate in many areas.

As the result of these concerns, the Provincial Advocate has deemed it appropriate to release the Review of HWDC in order to establish a documented record of the types of issues that have been identified but not resolved over time or change in location.

¹ Ontario, Ministry of Children and Youth Services, *About Youth Justice Services in Ontario*. Retrieved November 13, 2009, from <http://www.children.gov.on.ca/htdocs/English/topics/youthandthelaw/about.aspx>

RATIONALE FOR REVIEW OF HWDC

The review was prompted by a number of complaints from young people, family members and service providers. These concerns included: peer violence, lack of programming, obstructed access to the Office of the Provincial Advocate for Children and Youth, the locking of young people in cells for excessive amounts of time and allegations of excessive use of force by staff against young people,

MANDATE AND AUTHORITY

The Office of the Provincial Advocate for Children and Youth is an independent Office of the Legislature established under the *Provincial Advocate for Children and Youth Act, 2007* (PACAYA).² This legislation authorizes the Provincial Advocate to “conduct reviews whether in response to a complaint or on the Advocate’s own initiative” and to “provide advice, and make recommendations to entities including governments, ministers, agencies and service providers responsible for services.” The legislation defines a “systemic review” as “providing advocacy to a group of children or youth who are in similar circumstances either in response to a complaint or request by one child or youth or on the advocate’s own initiative and includes the review of facilities, systems, agencies, service providers and processes.”

The Provincial Advocate provided notice of the review, as required under the legislation, to the Assistant Deputy Minister, Youth Justice Services Division of the Ministry of Children and Youth Services (MCYS).

METHODOLOGY

The findings of this systemic review are based on interviews with young people in detention and custody at the Hamilton Wentworth Detention Centre. Additional information was obtained through interviews with service providers, formal communication with senior management at the detention centre and/or Ministry Regional Office, and casework relevant to complaints at the facility.

The Provincial Advocate also considered recommendations from coroner’s inquests in Ontario, MCYS policies, reports commissioned by the provincial government, the United Nations Convention on the Rights of the Child (UNCRC) and other international human rights instruments, as well as federal and provincial legislation as a means to establish a baseline of comparison for the information obtained from the young people at HWDC with respect to their opinions about the level of care they receive. For ease of reference, relevant portions of these laws, documents, policies, conventions and recommendations are included in each section of the report.

² S.O. 2007, c.9

Interview Process

Interviews with young people were staggered over a number of weeks in order to limit the amount of disruption at the institution and to allow the Provincial Advocate to have an ongoing presence at HWDC for a period of time. Interviews were conducted at HWDC during the months of June, July and August 2008 on a biweekly basis. Advocates interviewed young people in teams of two, with one Advocate conducting the interview and the other recording information.

On each visit, a different unit was selected for interviews. The Advocates obtained a copy of the nominal roll upon arrival and used this list as a means to ensure that each youth living on the unit had an opportunity to be interviewed if present at the institution on the day of the interview. A total of 46 youth were interviewed.

The role of the Advocate and a young person's right to contact the Advocate was explained to each young person.

All the young people interviewed were advised beforehand that their participation in the process was voluntary and that their anonymity would be protected, with the following exceptions: (1) abuse disclosures subject to the reporting requirements of the *CFSA* and (2) any information that the young person was a danger to himself or anyone else. The interviewers were satisfied that the youth understood the limits of confidentiality and that interviewers would ensure that any quotes used in the report not reveal the identity of the speaker. These assurances are standard for reviews conducted by the Provincial Advocate.

FINDINGS

Background Information

Hamilton Wentworth Detention Centre is known as a "shared" or "co-located" facility, which means that the Youth Justice Unit is located within an institution that houses predominantly adult offenders.

Generally speaking, there are three types of individuals held in detention centres: those awaiting a bail hearing, those who have been denied bail and ordered detained in custody until trial, and those who have been granted bail but are waiting for a surety to step forward and "post" the bail. At times, months or even years can pass between the bail hearing and the trial date.

The young people at HWDC live in quarters separate from the adult inmate population. In addition to youth in custody under the category of "detention," the unit also houses some youth who have already received a sentence and either have outstanding matters to be dealt with in court or have been transferred to the facility for reasons that may include issues related to security. Although the facility is operated by the Ministry of Community Safety and Correctional Services, senior administrators of the

Youth Justice Unit report to the Ministry of Children and Youth Services (MCYS) and the unit is expected to function according to the policies and procedures of MCYS Youth Justice Services Division (YJSD).

There are two types of detention in the province of Ontario: open detention and secure detention. The Youth Justice Unit at HWDC is a place of secure temporary detention.

The legislation governing the care and treatment of young people receiving Youth Justice Services in Ontario is the *Child and Family Services Act (CFSA)*. Previously the *Ministry of Correctional Services Act (MCSA)* applied to some young people (those alleged to have committed offences after their 16th birthday and before their 18th birthday), but the sections of the legislation relevant to this group of young people has been repealed.

I. Demographic Information

GENDER

The youth in this review were males.

AGE

They ranged in age from 16 to 19, and all were alleged to have committed offences before their 18th birthday. The table below illustrates the age distribution of the interviewees.

age of youth	not indicated	16 years	17 years	18 years	19 years
no. of youth	4	11	18	12	1

HOME COMMUNITY

Young people were asked to identify their home community. The results were as follows: Toronto (65.2%), Peel Region (15.2%), Western Ontario (8.69%), Other (4.3%), and No information Recorded (6.5%).

The relatively high number of youth from the Toronto area can be attributed to the closure of the Toronto Youth Assessment Centre (TYAC) in spring 2004. After that date, youth who normally would have been held at TYAC were sent to either Hamilton Wentworth Detention Centre or Brookside Youth Centre in Cobourg. A large proportion of those who normally would have been detained at HWDC (i.e., young people arrested in the Hamilton area) are currently being housed in various other detention centres in western Ontario.

II. Basic Care

FOOD

“Sometimes we don’t get enough. Want more, so we gamble for food... Sometimes staff gamble with us.”

“There are fights for it. Sometimes late at night. There is no juice. Give it with your meal, supposed to save it.”

“[If you] had enough food, you wouldn’t be gambling.”

Concern about food	Percentage of young people with concern: 38(82.6%)	
Type of concern	Quantity 26 (56.52%)	Quality 29 (63.04%)
Issues identified	<input type="checkbox"/> Portion size too small <input type="checkbox"/> Dinner served too early, hungry at night <input type="checkbox"/> Hygiene issues: Mice/hair and fingernails in food <input type="checkbox"/> Not cooked properly/cold	

The majority of the young people who were interviewed identified concerns about the food provided at the detention centre. In response to direct questions, more than half of the youth indicated that the amount of food was insufficient; portion sizes were too small, and because dinner was served so early (approximately 4 p.m.), they became hungry at night.

Do people gamble for food here?	Yes 26 (56.52%)	No 17 (36.9%)	No answer 3 (6.5%)
Reasons identified for gambling for food	<input type="checkbox"/> Not enough to eat <input type="checkbox"/> Not enough to drink <input type="checkbox"/> Snacks <input type="checkbox"/> Exchange food don’t like <input type="checkbox"/> Fun		

The young people also directly linked the scarcity of food to fighting and gambling at the institution. More than half answered “yes” to the question “Do people gamble for food here?” They reported that at times staff were sometimes complicit in the gambling and might offer food as a reward to a young person who was willing to do additional chores.

Legislation, Policy, Inquest Recommendations, Human Rights

Ministry of Correctional Services Act & Child and Family Services Act	<ul style="list-style-type: none"> To receive meals that are well balanced, of good quality and appropriate
United Nations Rules for The Protection of Juveniles Deprived of their Liberty	<ul style="list-style-type: none"> Food should be presented at normal meal times Meals to be “of a quality and quantity to satisfy the standards of dietetics, hygiene and health
Canada’s Food Guide	<p>Males aged 14-18</p> <ul style="list-style-type: none"> Vegetables and fruit (8 servings daily) Grain and products (7 servings daily) Milk and alternatives (3-4 servings daily) Meat and alternatives (3 servings daily)

D.M. Inquest Recommendations	Recommendation #24	Rationale
	<ul style="list-style-type: none"> The ministry responsible for youth in detention and custody is to provide adequate amounts of nutritious food to all youth in detention. The amount of food should provide the required balanced nutrition and caloric intake for youth. 	<p>“The above recommendations will help prevent food from becoming a form of currency that enables peer violence. This was supported by youth testimony.”</p>

Youth Justice Services Manual	Requires policies and procedures developed by the institution to minimally state:	Date of policy
10.2 Menu Development	<ul style="list-style-type: none"> Portions must be adequate to the physical growth and development of young persons Provisions for young people who request extra food or require additional calories Where possible, menus should reflect the cultural diversity of young persons. 	April 1, 2006

HWDC's Response

The formal response from HWDC included the following points:

- Dinner is served at 4:30 p.m. in order to coordinate with the meal schedule in the adult units.
- All youth receive a daily evening snack delivered between 6 p.m. and 7 p.m. that consists of a sandwich, piece of fruit and juice. On Saturdays a package of cookies is added to the snack.
- Operational managers oversee the loading of meals on trays, and youth unit operational managers monitor.
- The types and amount of food complies with the Canada Food Guide under the direction of a nutrition consultant from the Ministry of Community Safety and Correctional Services.
- The food plan provides portions of approximately 3300-3500 calories per youth per day.
- All cases where youth have special dietary requirements or restrictions are accommodated.
- During the past year there has been one altercation between two youth related to a food item.

Commentary

A sample HWDC menu was provided as part of the formal response from the facility. Brief observations about the menu were:

- no beverages are served with the evening meal;
- the diabetic meal is often the same as the regular meal but served in "reduced portions"; and
- the daily menu includes 8 or 9 slices of bread per day.

That young people are hungry and that they fight and gamble for food in a provincial facility, whether a custodial facility or another type of residence for children and youth, is problematic. It seems unlikely the problem would continue if a sufficient amount of food was available at times when adolescents are expected to be hungry. Although the written response from HWDC indicates that evening snacks are delivered between 6 p.m. and 7 p.m., operational managers advised the Provincial Advocate that the evening snack was provided at 4:30 p.m. with the evening meal. It appears that residents are expected to save the snack until later in the evening, but it is not clear that the meal is presented as a "dinner plus snack" with the idea that young people save the snack part until later.

CLOTHING

"Clothes are dirty. I get bumps. [Staff] said they were not clean and to wear the underwear inside out."

"It gives me a rash. It has been recycled, it smells like cat. I wear it and get bumps on my skin."

Percentage of young people with concerns about clothes	31 (67.39%)
Major issues identified re clothes	<input type="checkbox"/> clothes not clean, not washed properly <input type="checkbox"/> not enough clothing changes

The young people identified two major issues:

- the clothes provided by the facility were not clean; and
- a change of clothing was not provided with appropriate frequency.

Legislation, Policy, Inquest Recommendations, Human Rights

<i>Child and Family Services Act</i> AND <i>Ministry of Correctional Services Act</i>	To be provided with clothing that is of good quality and appropriate for the child given the child’s size and activities and prevailing weather conditions
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MCYS Youth Justice Services Policy and Procedures: Direct- Operated Secure Custody/Detention	Excerpts from policy	Date of policy
5.6 Clothing and Linens	<ul style="list-style-type: none"> • The Youth Center Administrator shall provide male young persons with a minimum of 7 sets of laundered underwear each week. • In facilities where there are no washers or dryers in the units, clothing shall be issued and exchanged for clean clothing at least three times a week; more often if possible, for underwear, socks and shirts. • The Youth Centre Administrator shall ensure that sufficient quantities of clothing, including underwear, are available. 	April 1, 2006

HWDC's Response

HWDC indicated that young people are provided with adequate and clean clothing upon admission, and twice a week thereafter. Underwear, socks and T-shirts are exchanged daily, and additional clothing is stored on the units and available to youth at all times. The clothing for youth is sent off-site to be cleaned by Trilcor, and the youth unit is equipped with a washer and dryer that youth can use when they request. The facility also indicated that the clothing, once returned from Trilcor, is sorted and folded by young people under staff supervision and that clothing with "obvious defects" is identified and removed from supervision.

Commentary

It is not unreasonable to expect that young people should be provided with clean clothes on a regular basis. Ministry policy requires that clothing be issued and exchanged at least three times a week. HWDC offers two changes a week.

Problems relating to clean clothing and regular changes of clothing are rarely raised by young people at other Youth Justice facilities. In our experience the only other facility where young people reported concerns with clothing was the Toronto Youth Assessment Centre (TYAC) when it was in operation. Clothing had not previously been identified as problematic at HWDC until the review conducted by the Office of Child and Family Service Advocacy (OCFSA) in 2005 following the closure of TYAC.

BEDDING

Concerns about Bedding	39 (84.78%)
Type of Concern	<ul style="list-style-type: none"><input type="checkbox"/> No pillows<input type="checkbox"/> Need warm blankets/out of blankets<input type="checkbox"/> Bed bugs<input type="checkbox"/> Not clean<input type="checkbox"/> Cold at night

A large majority of young people at HWDC raised concerns about bedding, particularly with regard to cleanliness. Other issues included the lack of such appropriate bedding items as blankets and pillows. Although there were no direct questions about hygiene, it is a concern that came up repeatedly and was raised by approximately 40% of the young people interviewed. Complaints about hygiene included problems with mice and bedbugs, unsanitary items found in food and the distribution of clothing and bedding that was unclean.

Legislation, Policy, Inquest Recommendations, Human Rights

The United Nations Rules for Juveniles Deprived of their Liberty	<ul style="list-style-type: none"> Standard is clothing that is “clean when issued, kept in good order and changed often enough to ensure cleanliness.”
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MCYS Youth Justice Services Policy and Procedures: Direct-Operated Secure Custody/Detention	Policy Provisions	Date of Policy
5.6 Clothing and Linens	<ul style="list-style-type: none"> At minimum each young person will be provided with a fire retardant mattress, one pillow with a pillowslip, two sheets, a blanket and a towel. Sheets, pillowslips and towels will be laundered at least once a week and before reissue to another young person 	April 1, 2006

D.M. Inquest Recommendations	Recommendation #25 Bedding and Clothing
	<ul style="list-style-type: none"> All youth must have a full set of clean bedding that is changed once every week and replaced as required.

HWDC’s Response

HWDC stated that clean bedding is provided for young people once a week and that they have is no information to support allegations of bugs or rashes. All mattresses on the unit are hygienic, with built-in pillows.

Commentary

Despite the information HWDC provided, almost 85% of the young people interviewed had concerns about the bedding. Further, although HWDC states that mattresses are equipped with “built-in pillows,” young people describe slightly raised “bumps” that do not provide enough support for the neck or head. HWDC did not provide any information to dispute the young people’s contention that it was cold at night and difficult to obtain warm bedding.

The concerns the young people reported with respect to basic care paint a picture of an environment marked by neglect and deprivation. There is not enough food, especially in the evenings, resulting in hunger, gambling and fighting; changes of clothing are insufficient, and clothes are often unclean or in

poor condition; no pillows are provided; not enough clean bedding and warm blankets are available; and there are legitimate questions in the minds of young people as to whether the unit is sanitary or hygienic.

III. Programs

EXERCISE, RECREATION AND FRESH AIR

The *CFSA* and the *MCSA* provide similar standards for exercise and recreation, stating that young people have the right to “participate in recreational and athletic activities that are appropriate for the young person’s aptitudes and interests in a community setting wherever possible.”

A large proportion of the young people interviewed indicated they were taken to the gym and almost half said they were taken to the gym every day. There was no indication that any of the young people participated in any recreational activities in a community setting.

Gym	I go to gym 86.9% (40)	I go to gym every day 43.47% (20)
Fresh Air	Concerns about access to fresh air/yard	Type of concern
	27 (58.6%)	<input type="checkbox"/> Rarely go outside <input type="checkbox"/> Depends on mood of staff <input type="checkbox"/> Only those on lock-up go outside regularly

Close to 60% of the young people interviewed reported concerns about access to fresh air.

Legislation, Policy, Human Rights, Inquest Recommendations

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty	<ul style="list-style-type: none"> Daily exercise should take place “in the open air whenever weather permits.”
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MCYS Youth Justice Services Policies and Procedures: Direct-Operated Secure Custody/Detention	Provisions	Date
7.5 Recreation Programs	<ul style="list-style-type: none"> Each young person shall be provided with the opportunity to go outside daily. 	April 1, 2006

Given that these young people are being held in confinement, it seems reasonable and humane to advance the position that they should be entitled to have both gym and fresh air every day. Indeed, the young people are under the impression that they are supposed to have access to the gym and fresh air every day, but access to the yard area depends on the whims of staff working in the unit. For example, one young person said he had gone out for fresh air only once during one particular month but twice the previous week; some reported they had not been out for fresh air in months. It was also reported that youth “on lock-up” status were guaranteed to go outside every second day, and for that reason, some young people committed infractions so they would be on lock-up and thus able to go out into the yard.

HWDC’s Response

HWDC said that there’s a “yard area” for residents in the Youth Justice Unit and that opportunities for fresh air are provided daily, weather permitting.

Commentary

A major discrepancy exists between the reports of young people about access to fresh air and the formal response of the facility.

CHURCH/RELIGIOUS ACTIVITIES

Provincial legislation states that children in care and young people in custody have the right to “receive religious instruction and participate in religious activities of their choice.” Almost 70% of the young people reported participating in chapel or religious activities.

Church Religious Activities	Concerns
	<ul style="list-style-type: none"> <input type="checkbox"/> Programs mostly Christian <input type="checkbox"/> No Islamic programs <input type="checkbox"/> Young people not able to regularly access programs

A number of young people stated they met with Christian volunteers and participated in chapel and Bible study even though they were not Christian, because there was little religious programming for non-Christian faith communities. Although 70% of the young people indicated they did participate in these activities, a number of them reported they were not taken to chapel or Bible study on a regular basis despite indicating their interest.

Legislation, Policy, Human Rights, Inquest Recommendations

United Nations Convention on the Rights of the Child, Article 30	<ul style="list-style-type: none"> • A child shall not be denied the right to “profess and practice his or her own religion.”
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MCYS Youth Justice Services Policy and Procedures: Direct-Operated Secure Custody/Detention	Provisions of Policy	Date
7.6 Religious and Spiritual Care	<ul style="list-style-type: none"> • A young person has the right to receive religious instruction from a faith group of his/her choice, to participate in chosen religious activities and to express views about decision on religious practice. 	December 6, 2006

HWDC’s Response

HWDC stated that representatives from Christian and non-Christian faiths groups are available on request and that an Imam comes to the youth unit every Friday. HWDC also indicated that native smudging is offered in the chapel on a daily basis; however, scheduling depends on the adult unit’s use of the chapel.

Commentary

While it is commendable that the religious programs in place are welcoming of all faiths and beliefs, it is not clear that sufficient effort and attention has been given to ensuring all religious rights are being upheld. For example, the HWDC program schedule for September 2008 indicates Islamic prayer takes place every Friday from 1:30 p.m. to 3:15 p.m., but young people interviewed during the summer months stated that Muslim programming at the institution was sporadic and they were under the impression Islamic leaders were having difficulties gaining access to the detention centre.

Furthermore, young people who indicate an interest in religious instruction or other activity should be permitted to exercise this right on a regular basis, with special accommodations for young people who are not able to participate or receive religious instruction in a group setting.

SCHOOL

School	I go to school	I am on the waiting list
	69.56% (32)	17.39% (8)

The majority of the young people reported attending school, and slightly more than 15% stated they were on the waiting list for school. The youth told Advocates that one of the reasons for the list was that, in a unit of 20 people, only six or seven were permitted to be in class at a time.

A number of young people also stated that people on lock-up lost their place in school and had to wait to be readmitted. Aside from having to wait, the youth had no other complaints about the school program.

HWDC's Response

HWDC confirmed that courses fill up and young people may have to wait for an opening, but that other course options are made available during the waiting period.

Commentary

Academic work should be made available to all young people who are registered for school. For youth who are newly admitted to the institution, a very short waiting period is understandable—time is needed to complete the registration process that the relevant board of education requires. Otherwise, shortly after the initial admission to custody, the opportunity for schoolwork should always be possible, either in the living unit or cell—even in the secure isolation area if a young person is placed in secure isolation for an extended period of time.

VOLUNTEERS

Do you see any volunteers?	Yes	Types of activities provided by volunteers
	30 (65.2%)	<input type="checkbox"/> Drug/substance abuse program <input type="checkbox"/> Playing chess/checkers/cards <input type="checkbox"/> Chaplain <input type="checkbox"/> Steel band <input type="checkbox"/> Life skills <input type="checkbox"/> AA <input type="checkbox"/> Library <input type="checkbox"/> Bingo

More than half of the young people interviewed reported they participated in programming that was conducted by volunteers who came into the institution. There were no complaints about the volunteer programs.

GENERAL PROGRAMMING

“All day on the range, walking around or watching TV. After school and gym [there is] nothing to do.”

“We need to keep ourselves busy. You just sit and watch TV.”

“I’d say we are locked in our rooms. It would be nicer to do programs, go outside.”

“Very little to do. No TV during the day. No books of interest. Leads to fights.”

Is there enough to do here?	Yes
	15.21% (8)

A common complaint of young people was that there was little to do at the institution, aside from “going to gym and school.” The information contained in the program schedule the institution provided confirms this: the main programs are school, gym and religious programming. Many of these programs are offered at the same time.

For example, the HWDC program schedule for September 2008 indicates that on three out of five school days, recreation is offered during the same time as the school program operates:

- Unit 1BR—Tuesdays, Wednesdays and Thursdays during school hours; Mondays and Fridays outside of school hours;
- Unit 1BL—Mondays, Wednesdays and Fridays during school hours; Tuesdays and Thursdays outside of school hours;
- Unit 5AL—Mondays, Tuesdays and Wednesdays during school hours;
- Unit 5BR—Tuesdays, Thursdays and Fridays during school hours; and
- Unit 5AR—Mondays, Thursdays and Fridays.

Similarly, smudging is offered daily, but during the same time period as the school program operates. (As noted earlier, HWDC indicates that smudging is offered in the chapel on a daily basis; its schedule, however, depends on the use of the chapel by the adult unit.)

Youth detention centres present a prime opportunity for the province to invest in youth at risk. Young people who are charged with serious crimes are likely to be detained in custody for significant periods of time. In a recent high-profile case of a young person charged under the Youth Criminal Justice Act, the time between arrest and completion of the trial was three years. Similarly, the December 2008 Annual Report of the Auditor General of Ontario noted that court backlogs are at their highest level in 15 years.³ (The Auditor General identifies backlogs as cases where criminal charges have been pending

³ p 204

before the courts for eight months or more, which is the condition stated in the guidelines issued by the Supreme Court of Canada.)

Unless sentenced as adults, all the young people charged under the Youth *Criminal Justice Act* will eventually be released back into the community. Some will have their charges withdrawn by the Crown, others will be found not guilty, some will be convicted and released from custody, and some will be sentenced to a further period of incarceration. Many of these young people will have spent months or perhaps years in detention doing very little. The lack of reintegrative and rehabilitative programming is problematic. The youth at HWDC are essentially deposited into the facility and “warehoused,” which does little to promote the long-term protection of the public.

Legislation, Policy, Human Rights, Inquest Recommendations

Ministry of Children and Youth Services Youth Justice Services Manual: Custody/Detention Facilities	Provision	Date
7.2 Program Model	The program model shall minimally include the following: <ul style="list-style-type: none"> • Provision of programming from the time young persons are scheduled to get up in the morning until the time they are scheduled to go to bed at night 	April 1, 2006

United Nations Standard Minimum Rules for the Administration of Juvenile Justice	13.3 Detention Pending Trial
	While in custody, juveniles shall receive care, protection, and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

D.M. Inquest Recommendation	Recommendation # 12	Rationale
	Programs for youth should be numerous. The following are not to be considered programs: assisting with cleaning, taking showers, and telephone access	<ul style="list-style-type: none"> Evidence, in reports and in testimony, submitted to the inquiry demonstrates that “Dusk to dawn” programming does work in order to: <ul style="list-style-type: none"> Reduce peer on peer violence Assist in the rehabilitation process Keep youth mentally and physically active

J.L. Inquest Recommendations	Recommendation #55
	Programming must include community resources such as counselling, medical, psychiatric and mentoring programs. Parents and peer groups should be welcomed by youth facilities and incorporated into daily life in a consistent fashion across all systems.

HWDC’s Response

“Despite the physical limitations and the influence of the adult unit culture significant efforts have been focused on programs for youth to ensure they are not ‘warehoused’... [R]ecently, a new diversity program, facilitated by a Brock University Professor, entitled King Within, was added to the program inventory occurring Friday evenings. This program gives youth the opportunity to explore their diverse backgrounds and customs and describe how these impact the world today.”

Commentary

The program schedule provided in the HWDC response does not reflect the concept of “dusk to dawn” programming. More emphasis on “gang-exit” programs, parenting programs, treatment programs and reintegration programming is recommended. As most of the youth at HWDC are from Toronto, significantly more effort needs to be made to engage and allow young people access to Toronto-area community agencies willing to work with Toronto-area youth in custody at HWDC in order to assist the transition of these young people back into their home community.

Although not stated in the programming schedule provided to the Provincial Advocate, senior management at HWDC indicated that employment counsellors attend the institution on a monthly basis. The Provincial Advocate was able to confirm this with the service providers in question. This type of programming should be more frequently and widely available.

IV. Lock-up/Lock-down

Close to 60% of the young people reported being in “lock-up” or “lock-down” (they use the terms interchangeably to refer to situations when a young person or group of young people are locked in their cells outside of the usual routine) as a consequence of committing infractions, and almost one-third indicated they had been placed in secure isolation at least once during their stay at the detention centre.

The layout of the living areas at HWDC may generally be described as an enclosed space with a “common area” surrounded by cells. Young people sleep in these cells and are restricted to their cells for certain periods of time each day. In addition, residents may be restricted to their cells or moved to the secure isolation area for longer periods of time if they receive a consequence known as “Loss of Day Program” (LODP).

The young people reported that lock-up was often implemented as a punishment or consequence, but they also complained of situations in which they were left locked in their cells later than they should have been (“late unlock”) or taken back to their cells earlier than they should have been.

Their complaints about lock-up can be categorized as follows:

Arbitrary use of lock-up: The young people provided examples of being locked in their cells for frivolous reasons or such minor infractions as not stepping out of the washroom in a timely manner, laughing at staff or asking for a condiment at mealtimes. They also reported situations in which everyone was kept locked in their cells beyond the time they should be released or returned to cells earlier than the schedule indicated, and these instances were unrelated to a behavioural consequence.

Due Process Issues: The youth reported that operational managers have told them an appeal process exists for those who wish to dispute the appropriateness of a particular consequence, but when they ask front-line staff (Youth Services officers) about this, the officers say there is no avenue of appeal. Concerns were also expressed about pre-set consequences for fighting without regard to the circumstances of the situation (described as starting at five days’ lock-up for the first fight and five more days for each additional fight). Some youth alleged that when they were on lock-up they were not told how long the lock-up would continue.

Basic care: Sometimes, it was reported, the youth were not allowed to shower for several days and had to suffer the removal of the mattress from the cell during the day until 8 p.m.

Programming: The young people said there was no school or access to other programming while on lock-up.

HWDC's Response

HWDC stated that lock-up as a consequence requires the approval of a manager and that lock-up must follow a process; also the young people on lock-up are reviewed daily. They also indicated that youth have access to individualized program material and academic work during this time.

Commentary

A detention centre's daily routine, including the time young people are released from their cells and the time they are returned to their cells, should be adhered to and monitored, the Provincial Advocate believes. The use of lock-up for any other reason but routine, the Advocate also believes, is an extremely intrusive measure and a practice that, if it occurs at all, should be strictly monitored with appropriate safeguards in place.

Lock-up in a cell or placement in secure isolation as punishment is not permitted under the *CFSA*, and it is not something that was practised by the facilities that have historically fallen under the jurisdiction of the *CFSA*. In "direct-operated" facilities that were formerly under the jurisdiction of the *Ministry of Correctional Services Act*, however, "lock-up units" or locking a young person in his/her cell in a living area that is not a secure isolation unit was quite common and continues to be prevalent in. At the present time, HWDC is exempt from the provisions of the *CFSA* relating to lock-up and secure isolation.

The Provincial Advocate believes the current provisions of the *Child and Family Services Act* with respect to the use of secure isolation are sufficient to handle crisis situations. However, the Advocate acknowledges there are situations in which it is appropriate for a young person to be removed from the group and to receive individual programming for a period of time. In such cases, the practice should be circumscribed, and a clearly delineated appeal process should exist and be communicated to the young people. It was reported, however, that operational managers acknowledge that a young person has a "right to appeal" a behaviour report or lock-up, yet front-line staff have denied youth access to this process. The Advocate believes there should be no situation where a front-line staff or manager can lock up a young person without notifying the superintendent, and the onus should be on the superintendent to ensure the young person is aware he has a right to appeal this decision.

Every effort should be made to keep the young person who is removed from the group still in the various programs; for example, school work can be completed on an individual basis or with the assistance of a tutor, and a young person dealing with substance abuse can have one-on-one counselling. As noted in the inquest into the death of D.M., neither sweeping nor cleaning can be considered legitimate "programs," and the institution must resist seeing programs as privileges and

begin to regard rehabilitation and reintegration, instead of deprivation and containment, as the primary goals of the institution.

The concerns about the conditions of confinement for those who are on lock-up at HWDC are:

- poor access to showers;
- lack of mental stimulation; and
- removal of mattresses

Based on the interview responses, it is difficult to determine whether the removal of mattresses is a regular procedure approved by the facility or simply the practice of one staff member.

A number of the young people interviewed had the impression that some staff were more comfortable having fewer people out of their cells and that this accounted for situations in which residents were locked up for minor infractions, “late unlock” and being “burned for dayroom time” i.e., returned to cells earlier than scheduled. One might speculate there are staff who are not interested in interacting with young people or feel safer having them locked in their cells rather than out in the day room. The problem of “excessive lock-up” has been identified internationally, and in England and Wales there are performance targets geared toward ensuring that “inmates” are out of their cells for a specified number of hours each day; privatized facilities that fail to meet their contractual obligations in this regard face financial penalties.⁴

Although the Provincial Advocate has received complaints about young people being placed in secure isolation for weeks and even months in facilities around the province, there is no evidence from young people at HWDC that the excessive use of secure isolation is a problem.

V. Staff-Youth Relations

“A handful [of staff] try to talk to you and get you off what you are doing. Only a few are genuine assholes.”

“Kids treat [some staff] like shit and they’re still positive, others stand around and do nothing.”

“[Some staff] swear at us. Tell us if we don’t shut up while they are watching TV, then go back to cells. Some do things to bait you, and then you swear and go in lock-up.”

“You should fire the COs. We have to strip naked and they make comments about us. One particular CO says, ‘Let me see the pink’ when we bend over.”

⁴ Owers, A., (2007) “Time out of Cell: A Short Thematic Review.” London: HM Inspectorate of Prison.

“[They say] ‘These kids are animals. They are here for the shootings.’ They think they can say whatever they want.”

Do staff treat young people in a respectful manner?	Yes 27 (58.69%)
Do young people treat staff in a respectful manner?	Yes 27 (60.86%)
Do staff people care about the young people here?	Yes 23 (50%)

There are several significant points that can be drawn from the responses to the sections of the questionnaire that centred on staff-youth relations:

- Almost 60% of the young people felt staff treated youth in a respectful manner.
- Many young people who stated that staff were respectful to youth clarified that their response described “some staff” or “many staff” but not “all staff.”
- Although the young people are in a Youth Justice unit, they said that they refer to staff as “COs” and that staff refer to them as “inmates.”
- Slightly more than one-third of the young people interviewed reported that regular access to the gym, the yard or religious and cultural programming was uncertain and “depends on staff.”
- Almost 20% of the youth felt there were some staff who “instigated” violence or bad feelings between residents.
- Some young people reported that some staff referred to residents as “killers” or “animals.”

In the Review of the Roots of Youth Violence report, the Honourable Roy McMurtry and Dr. Alvin Curling included a section entitled “The Impact of How Youth Are Treated.” Below are two excerpts from this portion of the report:

Overly aggressive, belittling, discriminatory and other inappropriate conduct towards youth is an issue that permeated our discussions... Although most frequently raised in relation to front-line police officers, the issue is by no means restricted to them. It extends into courtrooms and correctional facilities. It is apparent to us, as it has been to so many before us, that individuals at many levels within our justice system believe that aggressive suppression and control by physical dominance, and sometimes demeaning treatment, will limit crime or “teach youth a lesson”...⁵

...We fully understand that it is the youth who is being provocative. But it is the adult who is being paid to discharge a public function for a public goal. That goal is to minimize the chances of the youth re-offending and maximize the chances that their experience in the justice system will have some positive aspect on their life. To achieve

⁵ p. 77

that goal, youth must be treated with respect and dignity; they cannot be expected to respect a system that does not respect them.⁶

In a later section of the report, McMurtry and Curling describe principles for community policing that include concepts such as fairness, civility and respect. This framework might reasonably be considered an appropriate representation of existing ministry policy. For the past several years, MCYS has publicly stated its desire to transform the culture of Youth Justice Services from a reliance on “static security” to a “relationship custody/therapeutic relationship” model. From the perspective of the Provincial Advocate, the expected culture shift has not occurred in the five years since MCYS assumed responsibility for institutions that previously fell under the jurisdiction of the Ministry of Community Safety and Correctional Services.

One example of the type of behaviour the Provincial Advocate finds completely unacceptable is illustrated in the reports from young people that some staff make disrespectful comments (“Show me the pink”) during strip searches. Prior to this review, these types of comments had only been reported to occur at the Toronto Youth Assessment Centre (TYAC), and the Advocate’s Office made a number of complaints on behalf of young people during the time TYAC was in operation.

A related issue is the allegation a number of young people made that some staff have referred to some residents as “animals” and “killers.” While there are young people at HWDC, and indeed in facilities across the province, who have been charged with very serious crimes that have received a great deal of media attention, it is important to note the *Youth Criminal Justice Act (YCJA)* requires that the custody and supervision system be “safe, fair, and humane.”

HWDC’s Response

HWDC indicated that staff receive training and are expected to behave in a professional manner. The facility does not have any record of complaints made about the types of comments attributed to staff in the quotes from youth in this report. As well, the management team is not aware that staff have made any of these statements.

Commentary

The Ministry must prepare and support employees to work in a fair, civil and respectful manner with young people in spite of feelings of fear and dislike, and in a manner that is consistent with the principles of the *YCJA*. Most importantly, only those who are genuinely interested in working with young people and can commit to engaging in therapeutic relationships with young people should be hired to work in youth custody and detention centres. Staff at Youth Justice facilities must receive appropriate specialized training, as required by the UN Minimum Rules for the Administration of Juvenile Justice, and support in de-escalation, crisis intervention and physical-restraints techniques. The ministry must

⁶ p. 79

ensure that staff not only receive training in how to cope effectively with situations even if, and especially if, they feel frightened, but training in how to interact professionally and appropriately with a young person they may dislike.

VI. Safety

PEER VIOLENCE

Are young people adequately supervised here?	Yes 36 (78.26%)
Percentage of young people reporting concerns about their safety	24 (52.17%)

	Percentage of young people reporting concerns about fights/violence	Types of concerns reported
Fights/Violence	26 (56.52%)	<ul style="list-style-type: none"> <input type="checkbox"/> Fights are allowed to go on too long <input type="checkbox"/> Safety <input type="checkbox"/> Staff implicated in youth violence <input type="checkbox"/> Fights over food or because there is nothing to do

From the perspective of the Provincial Advocate, it should be the goal of every youth detention/custody facility that even the most vulnerable resident should feel safe.⁷

Slightly more than half of the young people interviewed reported concerns about fighting and violence. The biggest concern in this area, with approximately 30% of the young people raising it, was that fights are permitted to go on too long without staff intervention. Young people reported that this type of response from staff makes them feel unsafe and concerned about injury. A large number of youth have reported this problem each time the Provincial Advocate or the previous Office of Child and Family Service Advocacy has conducted a review at the institution. During the year before this review, a number of youth who had moved to other facilities reported to the Provincial Advocate their concerns about the slowness of staff response to fights at HWDC. All these young people indicated they would not have been comfortable raising this issue while still living at HWDC.

⁷ Adapted from the work of Her Majesty's Chief Inspectorate of Prisons for England and Wales (1999). *Suicide is everyone's concern: A thematic review*. London: Home Office

Approximately 10% of young people spoke about staff conduct contributing to peer violence. This was perceived to occur in two different types of situations:

- when staff place a young person on a range or in a cell where it is known the young person in question will be beaten up; and
- when staff talk to young people about other young people, thus instigating a violent act.

Legislation, Policy, Inquest Recommendations, Human Rights

D.M. Inquest Recommendations	Recommendation #23 Addressing Peer Violence
	<ul style="list-style-type: none"> • A standard of zero tolerance must be established for all youth facilities. • Recognizing the duty to protect youth and prevent violence, management styles must address issues of institutional violence and support a “zero tolerance of violence” culture for managers, staff and amongst the youth. • All incidents of violence must be investigated fully with a view to examining levels of supervision, problems with the physical plant, behaviour of youth and staff. All incidents of violence must be treated seriously and followed up with appropriate responses for both youth and staff.

HWDC’s Response

HWDC stated that its policy requires staff to intervene immediately when youth are involved in altercations and that a lack of response from staff is addressed immediately. HWDC also noted that over the past three years, peer-on-peer violence at the HWDC youth unit has decreased by approximately 40%. The administration attributes the reduction in peer violence to a number of strategies, including the following: zero tolerance to peer and staff assaults, training of staff in relationship custody, implementation of recommendations by the local Youth Violence Committee and increased staff and programs on the units.

Commentary

The Ontario government has commissioned two reports concerning the safety of youth in secure custody facilities:

- The Report on Youth Vulnerability in Secure Custody Facilities⁸
- Safe and Secure: Eliminating Peer Violence in Ontario’s Phase II Secure Detention Centres.⁹

It is beyond the scope of this review to summarize the findings of these reports. Suffice it to say that both reports make recommendations with regard to programming, case management, staff-youth interaction and institutional culture as part of the overall strategy to make youth facilities safer.

EXCESSIVE USE OF FORCE

In response to direct questions about the issue and in response to questions in other areas, more than half of the young people interviewed raised concerns about staff’s excessive use of force. The types of concerns included the following: being choked, put in a headlock, beaten up, staff too rough, punched, shoulder popped, thrown down against a wall or floor or a knee in the face.

Concerns about physical restraints and use of force by staff	24 (52.17%)
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During the course of the review, a number of young people reported witnessing situations in which they were very concerned about the type and amount of force staff used on young people. Most, including those who alleged they were victims of excessive force, would not come forward because they were fearful of retaliation.

For the past four years, the Provincial Advocate and its predecessor have been concerned about the response of MCYS when a young person over the age of 16 makes a complaint of excessive or inappropriate use of force and have raised these concerns in discussions and correspondence with ministry officials. (Allegations of abuse or excessive use of force made by young people under the age of 16 are investigated by child welfare authorities.) Historically the ministry response to these complaints was limited to a statement that the matter “would be investigated.” More recently a review of the ministry’s response to this type of complaint during the year 2008 indicates that MCYS offered to provide a “summary of the investigation” in situations where an investigation report was requested, but would not agree to provide copies of investigative reports and related documentation. The Provincial Advocate believes that the full investigation report and related documents are necessary to ensure the investigation was thorough and impartial and to determine whether the custody facility has responded

⁸ Ellis, Desmond (1997) *Report on youth vulnerability in secure custody facilities for young offenders*. Ellis Research Associates, Oakville Ontario.

⁹ Leschied, Alan., Cunningham, Alison., and Nada Mazaheri. (1997). *Safe and Secure: eliminating peer to peer violence in Ontario’s phase II secure detention centres*. London: London Family Court Clinic.

to the concerns of young people in a way that ensures other young people would not be subject to similar treatment.

During the course of the review, a young person contacted the Provincial Advocate and made an allegation that he had been subjected to an excessive use of force by staff while at HWDC. In July 2008, the Provincial Advocate contacted MCYS to advise the ministry of the complaint, request a thorough investigation by an investigator external to the institution and request a copy of the investigation report be forwarded to the Provincial Advocate upon completion of the investigation. The Provincial Advocate also indicated that the young person had identified potential witnesses to the incident and requested they be interviewed. Subsequently the young person requested that the Provincial Advocate be provided with photographs of his injuries, and this request was forwarded to the ministry.

Despite repeated requests, MCYS provided no information other than a summary of the findings of the investigation and the conclusion that there was no evidence to corroborate the allegations the young person made. The ministry also failed to respond to the Provincial Advocate's inquiries about the young person's entitlement to the investigation report. In October 2008, the ministry reaffirmed that no further information would be provided to the Provincial Advocate. In November 2008, the Provincial Advocate made a final request for the investigation report and related documentation. When no reply was received from MCYS, the Provincial Advocate filed a court application in November 2008 for the purpose of obtaining access to the investigation report and related documents, including photographs of the young person's injuries. The ministry provided the requested documents before the court date and satisfied with this response, the Provincial Advocate withdrew the court application.

After reviewing the package relating to the ministry's investigation of the complaint, the Provincial Advocate came to the conclusion that the investigation was insufficient for the following reasons:

1. Its failure to complete a thorough investigation

The investigation appears to have relied solely on the documentation prepared by staff at HWDC at the time of the incident. There is no indication that witnesses to the incident were interviewed, including the witnesses whose names the young person provided.

2. Its failure to Investigate all allegations

Specifically, the investigation appears to have focused on whether the use of force was justified, rather than whether it was appropriate or excessive.

3. Its failure to gather or consider all relevant information

The conclusion that the allegations were inconsistent with his injuries appears to have been made in the absence of medical evidence. Further, based on the documentation completed by staff at HWDC, it appears that the young person was asserting his rights before the use of force, and it is important to note that the concerns the young person raised at the time of this incident were similar to those that have been identified in this review.

4. Its failure to conduct an impartial investigation

The investigation was conducted by an investigator who was also a manager employed at HWDC.

In a full and proper investigation, all relevant allegations made by a young person and all relevant testimonial and documentary evidence should be gathered and considered. In this case, the complainant's allegations (i.e., of excessive force) do not appear to have been investigated, so it would be impossible to conclude that his complaint was without merit. Further, non-party witnesses may have had important information as to whether the force was excessive, and medical evidence would be key to determining whether the youth's allegations were consistent with his injuries.

In order for an investigation to be both impartial and perceived to be impartial, it must be conducted by an investigator who is both appropriately qualified and external to the facility. In this case, the investigator was a manager at HWDC and as such had also been required to respond to and participate in use-of-force situations. Such a circumstance makes it difficult for him or her to conduct a fair and impartial investigation.

In the absence of an impartial and thorough investigation, whether staff acted appropriately or inappropriately in this situation remains unclear, and the Provincial Advocate is still unable to ascertain whether any additional measures should be taken at HWDC to ensure the safety of this young person and other young people at the facility.

On December 15, 2008, the Provincial Advocate wrote to the MCYS regional director to outline the above noted concerns and make the following recommendations:

The Advocate's Office is concerned about the response of the Ministry of Children and Youth Services when a young person over the age of 16 makes an allegation that he or she was assaulted or abused by staff while in custody. An appropriate standard of investigation is that which the Ontario government set for Justice LeSage when he was tasked to review the police complaints system to develop a model that was "fair, effective, and transparent." In our view, a "fair" investigation is one which is conducted by an impartial, fully trained investigator external to the institution; an "effective" investigation requires that both complainant and respondent witnesses be interviewed and that all issues raised are thoroughly examined; and "transparency" is achieved through the completion of a detailed report that is forwarded to the Office of the Provincial Advocate for Children and Youth at the request of the young person.

On January 14, 2009, the regional office of the MCYS responded that while they "note" the concerns of the Advocate's Office, the ministry maintains that the level of review in this case was appropriate.

SAFE, FAIR, HUMANE

The Youth Criminal Justice Act requires that young people be held in custody facilities that are safe, fair and humane. Is that the case here?	Yes	No	No Answer
	20 (43.47%)	20 (43.47%)	6 (13.04%)

The question that generated the most discussion was one that identified a standard of care from the Youth Criminal Justice Act that requires young people to be held in facilities that are “safe, fair, and humane.” The results were split equally, as the above table reveals. In addition to “yes/no” responses, youth were given the opportunity to provide further information.

VII. Rights

ACCESS TO FAMILY

Allowed visit with family?	Yes 34 (73.91%)
Allowed to call family?	Yes 37 (80.43%)

Legislation, Policy, Inquest Recommendations, Human Rights

The right of a young person in custody to speak with and receive regular visits from family is enshrined in provincial legislation and international human rights instruments. Both the *Child and Family Services Act* and the *Ministry of Correctional Services Act* state that residents in a facility should be allowed to “speak in private with, visit and receive visits from family regularly.” In the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, rule no. 59, regarding contacts with the wider community, states that “adequate communication with the outside world...is essential to the preparation of juveniles for their return to society,” and “Juveniles should be allowed to communicate with their families, friends, and other persons or representatives of reputable outside organizations.”

United Nations Rules for the Protection of Juveniles Deprived of their Liberty	59. Contacts with the wider community
	Adequate communication with the outside world ...is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends, and other persons or representatives of reputable outside organizations.

The majority of young people reported that the institution allows telephone calls and visits from family. Since many of the residents at HWDC are from the Toronto area, long-distance charges are incurred when telephone calls are made to parents. For situations in which collect calls from Hamilton pose economic hardship on the family, social workers at the institution facilitate contact with family, and these calls are paid for by the institution. However, some young people indicated they were unaware of this practice, while other young people reported that due to the high demand, social workers were often unable to arrange more than one call a week for each young person whose family was unable to accept collect calls.

Young people disagreed with the practice of defining family as immediate family members, to the exclusion of extended family and/or significant others. Young people who were fathers indicated this restrictive definition made it difficult for them to be supportive parents, as they could not visit with their significant others regularly and in private.

HWDC's Response

HWDC stated that the individual circumstance of each young person is reviewed, and that extended family members and significant others are not arbitrarily excluded. HWDC further stated that proposed visitors are reviewed for appropriateness by the social worker, case manager, legal guardian and other stakeholders to determine what is in the youth's best interest.

Commentary

The Provincial Advocate holds the position that all steps should be taken to encourage young people to stay connected to immediate and extended family and, with appropriate safeguards in place to ensure public safety, young people should be permitted to determine who constitutes their family. This is particularly important for young people who have been in the child welfare system and may have developed important familial relationships, including relationships with significant others, in the absence of supports from their immediate or biological family.

ACCESS TO THE PROVINCIAL ADVOCATE

"They make fun of me because I want to call the Provincial Advocate."

"If you want to call the Advocate's Office, they treat you with disrespect. They treat you well while the Advocate's here."

"They won't give us the number... they try to frame youth who want to call the Advocate."

"Staff make fun of kids who phone. Tell other kids he is soft."

“When we ask to call, staff say it is not our right to call...Say you guys are on vacation.”

“[When the Advocate calls us back, you should] call us back through the social workers. If you call the OMs, the message will never reach us.”

Allowed to call Advocate?	Yes	No	No answer
	14 (30.43%)	14 (30.43%)	14 (39.13%)

Several youth who were interviewed expressed surprise at seeing representatives from the Provincial Advocate. They said that the staff and operational managers at HWDC had told them that there was no point in calling the Provincial Advocate because all the Advocates were on vacation. Throughout the interview process the youth revealed that it was difficult to contact the Provincial Advocate because the number was not posted in any of the living units. Some young people indicated they were able to memorize the number from posters they had seen in the offices of the professional staff. (Shortly after the issue was raised, senior management at HWDC indicated that posters had been supplied and affixed to areas near the telephones in each of the living units.)

The young people also reported that staff retaliated against those who called the office, that return messages from the Advocate were not passed on and that staff made negative comments about young people who contacted the Advocate.

Legislation, Policy, Human Rights, Inquest Recommendations

Provincial Advocate for Children and Youth Act	Obligations of Services Providers <ul style="list-style-type: none"> inform children and youth of the role and existence of the Advocate and how the Advocate may be contacted afford a child or youth who wishes to contact the Advocate’s Office the means to do so privately and without delay provide the Advocate with private access to children and youth
Child and Family Services Act	Rights of Children and Youth <ul style="list-style-type: none"> right to be informed of the existence of the Office of the Provincial Advocate for Children and Youth right to speak in private with and receive visits from the Provincial Advocate for Children and Youth

The problems reported by young people at HWDC represent a serious violation of the rights of young people and undermine the intent of the legislature in creating the Office of the Provincial Advocate as a safeguard for young people in the care of the province.

HWDC's Response

HWDC stated that staff members are advised of the requirement to provide youth with access to the Provincial Advocate, that the management team articulates to staff their responsibility to accommodate all requests to contact the Advocate and that immediate action is taken against any staff member restricting access to the Advocate or threatening retaliation for contacting the Advocate. HWDC also stated that there are no reports indicating that messages from the Advocate have not been passed on to youth.

Commentary

The Provincial Advocate agrees that messaging from the HWDC management team supporting a young person's right of access to the Advocate's office is a good first step. However, a process of auditing compliance with this directive needs to be in place to ensure that the right is protected.

VIII. What Would Make Things Better?

Young people were asked if they had any ideas about what would make things better at HWDC. The top four responses were as follows:

- ❑ more programming (25% of responses)
- ❑ better food (15% of responses)
- ❑ better relations with staff (13% of responses)
- ❑ improved access to family (10% of responses)

CONCLUSION

The United Nations Convention on the Rights of the Child (UNCRC) confirms and describes the fundamental human rights of all children. The governments that have ratified it have legally agreed to fulfill its provisions. Canada signed the convention, which is legally binding, on May 28, 1990, and ratified the convention on December 13, 1991. The CRC contains specific provisions regarding the care and treatment of children and youth in the youth justice system.

Other international human rights instruments applicable to youth justice include:

- Standard Minimum Rules for the Treatment of Prisoners: The Standard Minimum Rules (1955)
 - addresses areas such as single cell accommodation, cleanliness of the institution, clothing and bedding, food, and exercise and sport
- UN Minimum Rules for the Administration of Juvenile Justice: the Beijing Rules (1985)
 - provides guidance on children’s rights and needs, specialized training for personnel dealing with juvenile justice cases, fair and humane systems emphasizing the well-being of the child
 - UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) sets out standards for physical environment and accommodations, opportunities for association with peers, physical exercise, possession of personal effects, food quality and preparation, sufficient bedding cleaned regularly, access to parent and/or guardian and contacts with the wider community,
 - guarantees the benefit of meaningful activities and programs

In the domestic context, The *Youth Criminal Justice Act* (2003) requires the “safe, fair and humane custody and supervision of young person” and both the Ontario *Child and Family Services Act* (1990) and the *Ministry of Correctional Services Act* (1990) set out standards of most aspects of care for youth in detention and custody.

Despite the articulation of international and national standards, for more than a decade the Office of Child and Family Service Advocacy and the current Office of the Provincial Advocate for Children and Youth have identified a number of similar concerns at a number of youth detention facilities. Regardless of the location of the detention centre (Metro West Detention Centre, Toronto Youth Assessment Centre, Hamilton Wentworth Detention Centre) the findings have been similar:

- poor attention to basic care issues;
- lack of programming;
- peer violence;
- problematic staff-youth interactions; and
- a culture of deprivation and containment rather than reintegration and rehabilitation.

The response from each of the successive ministries responsible for this area of youth justice (Ministry of the Solicitor General and Correctional Services, Ministry of Public Safety and Security, Ministry of

Community Safety and Correctional Services, Ministry of Children and Youth Services) have also been consistent: there's a stated intention to make improvements, later followed by explanations that physical plant limitations, the continued co-location of youth justice units in adult facilities and Ministry Employee Relations Committee (MERC) agreements—agreements reached as the result of collective bargaining—have unfortunately overridden the good intentions of the ministry to make change.

One of the key recommendations of the Provincial Advocate is that the MCYS begin to recognize that provincial investments in youth detention centres are not just investments in bricks and mortar, but investments in positive outcomes for young people and as a result, increased community safety.

The Provincial Advocate would like the ministry to simply comply with the letter and spirit of federal and provincial legislation, international rights conventions and inquest recommendations. Young people in detention should regularly be provided with healthy food in sufficient quantities that it won't be a source of fighting and gambling, or something staff can use to reward a resident. Youth should also be provided with clothing and bedding that is clean and in good condition, and adequate blankets and pillows should be issued.

The environment at the facility should focus on engagement, rehabilitation and reintegration, rather than containment and deprivation. There are several issues here regarding programming, which is key for rehabilitation and reintegration. First, programming requires more emphasis, and its availability should be increased. Second, efforts should be made to avoid any overlap of programs and provide programming that occurs from dusk to dawn. Third, programming should not be seen as a privilege, but as a right; loss of it should not be used as punishment or as a consequence of misbehaviour. Every effort should be made to continue to engage a young person who has been removed from the group in programming, even if this programming is done on his own or needs to occur on a one-to-one basis. Fourth, significant effort should also be expended to increase the visibility and access of Toronto-area community agencies willing to work with Toronto-area youth in custody at HWDC in order to assist the young people's transition back into the community.

With regard to safety, the expectation of the Provincial Advocate is that even the most vulnerable resident in the population must feel safe. Minimally, this means staff should intervene in fights immediately. As noted in the body of the report, HWDC is the only institution in the province in which youth have regularly and repeatedly reported that it "takes too long" for staff to intervene in fights between young people. Reports on peer violence commissioned by the province have made recommendations related to programming, case management, staff-youth interactions and institutional culture as part of the overall strategy to make youth facilities safer, and yet the promise of their implementation and a culture shift toward relationship custody within youth justice remains largely unfulfilled.

Interactions between staff and young people should be guided by the standard articulated in the Report on the Review of the Roots of Violence: fairness, civility and respect. While acknowledging that the ministry has made attempts to transform the culture at youth custody facilities from one based on static

security measures to one of “relationship custody,” the Provincial Advocate has observed that this concept remains abstract and theoretical in most institutions. The ministry must make significant investments in staff training and support, particularly in the areas of de-escalation, crisis intervention, physical restraints and dealing in a professional manner with young people who inspire fear or dislike.

Finally, the ministry must take steps to ensure that safeguards for young people in the care of the province are respected, especially for those youth being held in youth custody and detention facilities.

The concerns in this regard are twofold:

- the response of the ministry when a young person over the age of 16 makes an allegation of inappropriate or excessive use of force; and
- young people being obstructed from accessing the Office of the Provincial Advocate for Children and Youth.

The Provincial Advocate believes that the complaints process for allegations relating to the excessive or inappropriate use of force should be elevated to the standard set by the Attorney General of Ontario when he tasked Justice Lesage with reviewing the police complaints system: fair, effective and transparent.

In our view, a “fair” investigation is one that is conducted by an impartial, fully trained investigator external to the institution; an “effective” investigation requires that both complainant and respondent witnesses be interviewed and that all issues raised are thoroughly examined; and “transparency” is achieved by the completion of a detailed report that is forwarded to the Office of the Provincial Advocate for Children and Youth at the request of the young person.

With regard to the issue of access to the Provincial Advocate, young people at HWDC reported that posters giving contact information for the Provincial Advocate are not displayed, and they experience retaliation for calling the office. Young people was also reported that both staff and management had told them there was no point in calling the Provincial Advocate because all the Advocates were on vacation, and operational managers were not passing on messages from the Provincial Advocate to young people. It is our understanding that immediately after being notified of these concerns, posters were installed in all the living units.

Senior management should make regular tours of the units to ensure that information about how to contact the Provincial Advocate is easily accessible to young people. Due to the pervasiveness of the problem, it may be useful to involve the social work department on an interim basis to facilitate calls between the Advocate and young people. Nevertheless, the law requires that young people who wish to do so should be permitted to contact the Advocate privately and immediately on request. Young people should not be required to wait for the availability of a social worker. They should also never have to expect retaliation for contacting the Advocate.

RECOMMENDATIONS

It is recommended that—

(Basic Care)

1. HWDC provide young people with additional food in the evening after dinner and before bedtime.
2. HWDC ensure that the clothing distributed to young people is clean.
3. the Ministry of Children and Youth Services plan a food menu for youth justice facilities to specifically meet the physical and developmental needs of adolescents.

(Programming)

4. HWDC schedule programs that do not require young people to choose between school, recreation and faith-based programming.
5. HWDC increase access to faith-based programming, including non-Christian faiths.
6. HWDC ensure that young people have regular access to faith-based programming.
7. HWDC ensure that academic programming is available to all young people who are registered in school, regardless of their placement in the facility.
8. HWDC increase the number of programs available to young people with a focus on reintegrative and rehabilitative programs.
9. HWDC consult with agencies and develop a plan to increase access for Toronto community agencies willing to work with young people at HWDC and assist in their transition back into the community.

(Lock-up)

10. the daily routine that indicates when young people are to be released from their cells and when they should be returned to their cells is communicated to young people, posted and followed.
11. the consequence for misbehaviour not be forfeiture of programming, although it may be appropriate to remove a young person from the group, and HWDC dispel the notion that programming is a privilege, with deprivation and containment as the status quo—this to be communicated in writing to staff.
12. every effort be made when a young person is removed from the group, to engage him in programming, such as school work, which can be completed individually or on a one-on-one basis with a tutor.(Cleaning, taking a shower and telephone calls are not to be considered legitimate programs.)

(Staff-Youth Interactions)

13. the standard for staff-youth interactions be communicated to staff as “fairness,” “civility” and “respect.”
14. the ministry ensure only those who are genuinely interested in working with young people and can commit to engaging in therapeutic relationships with young people be hired to work in youth custody and detention centres.
15. the ministry develop and implement a training plan to provide staff at direct-operated youth custody and detention centres with appropriate training and support in de-escalation, crisis intervention and physical-restraints techniques.

16. the ministry ensure that staff receive training and support in coping effectively with situations that frighten them and in situations with a young person they dislike.

(Safety)

17. HWDC staff be instructed in writing to intervene in fights immediately.

18. the appropriate level of safety in any youth justice facility be one in which even the most vulnerable resident feels safe.

(Complaints about Excessive of Inappropriate Use of Force)

19. the ministry ensure the system for investigating allegations of excessive or inappropriate use of force meets the following standards:

- ❑ Fairness: the investigation is conducted by an impartial, fully trained investigator external to the institution; all allegations are investigated; all relevant parties and witnesses are interviewed; and all relevant documents are examined.
- ❑ Effective: both complainant and respondent witnesses are interviewed and all issues raised are thoroughly examined.
- ❑ Transparency: completion of a detailed report is forwarded to the Office of the Provincial Advocate for Children and Youth at the request of the young person.

(Access to Family)

20. HWDC expand the definition of family beyond immediate family members to grandparents or other extended family members; that pregnant girlfriends be considered family.

21. HWDC increase telephone access to family for young people whose families are unable to pay for long distance calls between Hamilton and the hometown of the young person.

(Access to the Provincial Advocate)

22. HWDC regularly inspect living areas to ensure information about the Provincial Advocate and means of contacting the Advocate is readily available to youth.

23. in situations where young people feel there is a risk of retaliation for contacting the Provincial Advocate, HWDC develop a system in which it is widely known to young people that social workers are available to assist in facilitating access between young people and the Provincial Advocate.

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