Youth Agency and the Culture of Law

Emancipation or Leaving Home

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As a child or teenager, living at home may sometimes be difficult. In many cases, difficulties at home may be temporary, and can be dealt with in many ways, such as: having discussions with the people you live with; setting boundaries and rules at home; or seeing a counsellor. In exceptional circumstances, living at home may be unbearable or even dangerous. This handout outlines the various ways that minors living in Ontario can leave the control of their parents or guardians, or in other words, seek "emancipation". As you read this handout, consider what the legal framework of emancipation implies about youth and family, and why the government's role in ensuring the wellbeing of young people shifts depending on their age.

The process of applying to a court to be freed from the control of your parents is generally referred to as "emancipation". Although some states in the U.S.A. have an emancipation process, most of Canada does not have laws on emancipation. In fact, Quebec is the only province in Canada that allows minors to apply to the court to be emancipated from their parents, and emancipation requests are only granted in special circumstances where there are serious reasons for the request. [1]

1. Examples of "serious reasons" that would warrant a request for emancipation could include circumstances where one or both parents may be difficult to locate or unreasonably withholding consent to a valid request, or where it is very important for a minor to begin working or be able to sign a lease to an apartment without the involvement of a parent.

Case Study

Tarek is 16 years old and lives in Markham with his mother and father. Until he turned 14, Tarek got along well with his parents. More recently, however, Tarek's relationship with his parents has been difficult, to the point where Tarek dreads coming home from school. Tarek's mother needs to know everything that Tarek is doing, and is constantly invading his privacy, for example by listening in on his phone conversations and reading his emails and Facebook messages. They get into huge fights on a regular basis. Tarek and his father don't fight as often, but Tarek finds him distant and difficult to talk to. Tarek doesn't tell his parents much anymore, and is starting to find it unbearable to be at home. He is thinking of moving out, and his friends think he should as well. Tarek's closest friend, Curtis, told Tarek that his uncle owns an apartment that he can rent out to Tarek. Tarek hasn't spoken to his parents about this, but given his mother's controlling nature, the chances of her allowing him to move out are close to non-existent.

Tarek hasn't decided what to do, but is interested in gaining some independence from his parents.

QUESTIONS TO CONSIDER:

1. What are Tarek's options short of moving out of home?

2. Can he "emancipate" himself from his parents?

Leaving the Care of your Parents

Although a minor cannot apply for emancipation in Ontario, minors who are 16 years or older can withdraw from parental control under s. 65 of the *Children's Law Reform Act*. What does it mean to withdraw from parental control? This means that minors over 16 can choose at any time to leave the family home and live independently, without having to obtain the permission of their parents or the court. Keep in mind that regardless of whether you leave the family home, the law in Ontario requires you to attend school until you turn 18 or graduate high school.

As attractive as leaving home might sound to Tarek in the case study above, it comes with major financial hurdles.

For instance s. 31(1) of the *Family Law Act* obligates every parent to provide support for his or her unmarried child until that child turns 18. However, if a 16 or 17 year old like Tarek *voluntarily* withdraws from parental control by leaving home, Tarek's parents are no longer required to provide financial support to him. In other words, Tarek is on his own financially. While a landlord in Ontario cannot refuse to rent an apartment to a minor who is 16 years of age or older under the *Ontario Human Rights Code*, how would Tarek pay his rent, food, and other basic necessities?

In many provinces, Tarek might be eligible for social assistance after leaving home. But again, that depends on his age as well as the specific circumstances of his case. In Ontario, social assistance is provided through an agency called Ontario Works, and is delivered in monthly payments that can help cover costs associated with basic needs, including shelter and food. You may be eligible for social assistance in Ontario after turning 16, but you might first need to show that your parents are unable or unwilling to support you or let you live at home, or that you have experienced physical, emotional, or sexual abuse while at home.

Furthermore, if Tarek wanted to leave home before turning 16, he would not be entitled to social assistance. His options are more limited, as discussed below in "Child Protection and Children Under 16 Years of Age".

What Does it Mean to Voluntarily Withdraw from Parental Control?

Letourneau v Haskell

16-year-old Scott Haskell suffered a major dilemma, namely whether to reside with his mother and alcoholic stepfather, or strike out on his own despite his limited financial means. Two years earlier, Scott's parents had divorced. Scott's father was awarded custody and Scott accordingly went to live with him. Both his parents soon remarried. Scott began fighting with his father and stepmother, however, and went to spend his summer holidays with his mother. When Scott tried to return to his father's home before school started again, his father refused to take him back and made it clear that Scott was not welcome into his home under any circumstances.

Scott began living with his mother and her new husband. Scott's mother applied for custody, and was awarded it by the court. Scott's stepfather, however, had a severe drinking problem and Scott soon found it unbearable to live in that house. Scott's mother testified herself that the conditions were intolerable for Scott, and were causing him psychological damage. At 16 years of age, Scott moved out and lived with an older couple whom he paid weekly for room and board.

Despite all these problems with Scott's living conditions, he continued to attend school, entering Grade 12 with an impressive average, and worked a summer job.

At trial, the judge ordered both parents to pay support to Scott. Scott's mother appealed the decision. In determining whether Scott's mother should continue to support him financially, Justice Clements looked at the following provisions of Ontario's *Family Law Reform Act* (now ss. 31(1) and (2) of the *Family Law Act*):

> (1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years.
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> (2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control. R.S.O. 1990, c. F.3, s. 31 (2).

Scott's mother argued that since Scott withdrew from parental control, the second provision applied and she should not be required to financially support him. Justice Clement, however, disagreed. Considering the purpose and philosophy of the Act, he interpreted the legislation differently and decided that although Scott had indeed withdrawn from parental control, he did not do so *voluntarily*. Rather, he was compelled to do so because of the difficult conditions he faced in each of his parents' homes. Because Scott could not be seen as *voluntarily* withdrawing from parental control, his parents would still be obligated to support him financially until he turned 18.

In his decision, Justice Clement discussed the relevant provisions under the *Family Law Act,* and what it means to withdraw from parental control:

> In the view of this Court the concept of the "withdrawal from parental control" at age 16 [under s. 31(2) of the *Family Law Act*] means a "voluntary" withdrawal, the free choice, indeed, of the child to cut the family bonds and strike out on a life of his own. On taking on this personal freedom the child assumes the responsibility of maintaining or supporting himself. It is his choice, freely made, to cut himself away from the family unit. Once this choice is freely made and the responsibility accepted by the child, the family unit has, in effect, been severed and the responsibility of the parents to support the child thus ceases.
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> If the child is driven from parental control by the emotional or physical abuse in the home brought on due to the circumstances in the home, then surely he cannot be compelled to remain there. These cases may be analogized to a term of "constructive" withdrawal from parental control. The choice of leaving was not voluntary but of necessity to ensure the physical and mental well-being of the child.
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> There will be cases where the parent or parents, due to the inability of the child and the parents to get along, will, in the best interests of the family unit and perhaps with the consent of the child, cause a child to set up

residence elsewhere on attaining the age of 16. This is not a withdrawal as envisaged by the Act.

QUESTIONS TO CONSIDER:

1. What is the difference between a "voluntary withdrawal" and a "constructive withdrawal", and why does that matter for the court? How does this apply to Scott's circumstances?

2. If Tarek decided to move out, would his circumstances qualify as voluntary or constructive withdrawal? Is Tarek's mother's behaviour as extreme as Scott's parents' behaviour?

3. Under what conditions should withdrawal from parental control not be considered voluntary? Alternatively, what would a voluntary withdrawal look like?

Choosing Which Parent to Live With

Suppose Tarek's parents decided to divorce. Tarek decides that moving out on his own would be too difficult, and since his mother's invasive and controlling behaviour was his main concern while at home, he thinks his next best option would be to live with his father until he graduates high school and starts working. Can Tarek choose who he lives with?

If the matter goes to court, a child's preferences will be considered as part of the court's determination of the best interests of the child (under s. 24(1) of the Children's Law Reform Act). The older the child, the more a court will take his or her preferences into account. A judge may also appoint a children's lawyer to represent the child and his or her wishes to the judge making the decision. But the judge still makes the final decision.

Child Protection and Children Under 16 Years of Age

What if you are under 16 and feel that you cannot live at home? In Ontario, laws on child protection allow for the government to intervene where parents are unable to provide a minimum standard of care for children under 16. Minors who are under 16 can seek protection from their parents under Part III of the Child and Family Services Act. In such a case, a Children's Aid Society will investigate the allegations, and take the child into their care where necessary. The Children's Aid Society is then responsible for providing temporary care for the child, for example by placing

the child in a foster home or group home, or ensuring that a foster parent can care for the child. The Children's Aid Society may also look to other relatives or friends who can care for the child.

In cases where children are unable to be returned to their parents after a certain period of time, the child may enter the permanent care of the government, and thereby be referred to as a Crown ward. Once a child becomes a Crown ward, the Children's Aid Society will try and secure an adoptive home for the child.

According to s. 37(2) of the *Child and Family Services Act*, a "child" (defined as a minor who is under 16) is in need of protection where:

a) the child has suffered, or is at risk of, suffering physical harm inflicted by the parent or caused by that parent's failure to act

b) the child has been, or is at risk of, being sexually molested or exploited by the parent, or by another person where the parent knows or should have known that there was a risk and failed to protect the child

c) the parent has failed to provide or allow medical treatment that is necessary to cure, prevent or alleviate physical harm or suffering

d) the child has suffered, or is at risk of suffering,

emotional harm resulting from actions, failure to act, or neglect by the parent

e) the child has suffered emotional harm and the parent has failed to provide or allow treatment to remedy or alleviate the harm

f) the child has been abandoned, the parent has died or is unavailable to act as a parent and has not provided otherwise for the child's care, or the child is in residential care and the parent refuses or is unable to resume the child's care

g) the child is less than twelve years old and has killed or seriously injured another person, or caused serious damage to another person's property and the parent has contributed to this in some way

h) the parent is unable to care for the child and consents to protection

As with decisions involving custody, access, and guardianship, a court will make a decision about child protection based on the *best interests* of the child.

DISCUSSION

As a whole class or in groups or pairs, discuss the above factors that the Court must consider in determining if a child is in need of protection. What does each mean to you? Consider phrases like "failure to act." Can you think of an example where this would apply?

How does the Legal Situation for Minors Between 16 - 18 Compare with the Legal Situation for Minors Under 16 years of Age?

As illustrated by the above sections, your options with regards to leaving home can be quite different depending on whether you are over or under 16 years of age. Recall from above that if you are 16 or over, you can choose to withdraw from parental control and protection. If you are deemed under the law to have left home voluntarily (rather than being compelled to leave home, as Scott was in Letourneau v Haskell), you are not entitled to any financial support from your parents. You can, however, apply for social assistance to provide financial support for your basic needs, although you may be required to show that living at home or receiving financial support from your parents is difficult or impossible. If you do receive social assistance, the amount of support you receive may not be much.

If you are under 16 years of age, the law says that you do not have the capacity or agency to voluntarily withdraw from your parents' control. Rather, if you are unable to live at home because of mistreatment or the inability of your parents to provide basic care, you can turn to a teacher, police officer, religious leader or another adult you trust to report your problems. You could even phone a Children's Aid Society yourself. In this way, the relevant child protection service agency can be brought into action, investigate your situation, and possibly remove you from your parents' control.

In the event that you are removed from your parents' control, you are not independent and are not allowed to live on your own. The Children's Aid Society that is involved is then responsible for ensuring you are properly cared for.

Children's Aid Society of Peel v S(P)

D was 14 years old and 17 weeks pregnant. She ran away from home after her parents found out about the pregnancy. D was afraid of giving birth and wanted an abortion.

After D left her parents' home, her parents signed a temporary care agreement with the Children's Aid Society of Peel, and D was placed under their care. D's mother stated that she had no choice but to sign the agreement, because D refused to come home and stay with them. They agreed that D should stay with the Children's Aid Society until they could repair their relationship and she could return to the family home.

Although D's parents agreed that the Children's Aid Society should continue to care for D, they were deeply against an abortion, in part because of their religious beliefs (D's parents were both members of the Pentecostal Church). They offered, instead, to care for the child after it was born.

The Children's Aid Society applied to the court for an order for temporary custody of D, under the Child and Family Services Act, so that they could consent to the abortion on D's behalf. Although D's parents had agreed that the

Children's Aid Society would have temporary care of D, they requested that the court permit them to retain their parental right to consent to or refuse medical treatment on D's behalf so that they could prevent the abortion.[2]

Evidence from several professionals who assessed D was provided to the court. A social worker reported that D had nightmares about giving birth and was showing signs of depression. A medical doctor recommended an abortion for D, noting specifically her young age and resulting health risk to the infant. D had also recently received medication for a sexually transmitted disease that could pose a risk to the child. A psychologist performed an assessment on D and concluded that she was of average intelligence and that her judgment was not impaired. The psychologist also concluded that she felt no conflict and was not ambivalent about her decision to have an abortion.

D submitted an affidavit to the court stating that she wanted to stay in the care of the Children's Aid Society and have an abortion. She also stated that she wished to graduate from high school and become a nurse, and that having a child would not allow her to do this.

D's parents, on the other hand, believed that it was in the best interests of both D and her unborn child to refuse to consent to an abortion.

2. The court has the power to permit D's parents to retain this right under 62(1) of the *Child and Family Services Act*.

In making his decision, Justice Karswick had to determine whether to consider the best interests of the unborn child. Just prior to this court appearance, several recent decisions from the Supreme Court of Canada had indicated a refusal to recognize the legal status of an unborn child.[3]

Acting on behalf of a lower court, Justice Karswick was bound by these decisions and therefore could not consider the interests of the unborn child (who also had no legal representation at the hearing).

Justice Karswick, therefore, was left with considering how to balance the interests of D with those of her parents. He looked to the Child and Family Services Act, which clearly indicates that the best interests of the child are the most important consideration. Justice Karswick decided that, regardless of her parents' wishes, it was in the best interests of D to award temporary custody to the Children's Aid Society, and accordingly give the Society the right to consent to any medical treatment or procedure that D required.

3. See *Borowski v Canada* (1989), *Tremblay v Daigle* (1989), and *R v Sullivan* (1991).

QUESTIONS TO CONSIDER:

1. Do you agree with Justice Karswick's assessment? Why or why not?

2. To what degree do you think that D's "best interests" were upheld in this case? What about the fetus?

Conclusion

Depending on your age and the circumstances you are experiencing at home, leaving the care of your parents or guardians can result in very different situations. These situations reflect how serious or harmful the situation is at home, as well as how the law views the maturity of young people at different ages.

If you are under 16 years of age, the law does not recognize your capacity to leave home voluntarily or to live independently. In most cases, the law and the various social services you deal with (e.g., Children's Aid Societies) will view your parents or other family members as best suited to take care of you. If living at home poses a serious risk to your wellbeing, a Children's Aid Society may remove you from your parents' care. You may then be placed with another relative or in a foster home, enter the permanent care of the government, or be adopted. While you may choose to leave home once you turn 16, leaving home raises the question of whether your parents will continue to support you financially, and if not, how you will support yourself.

Regardless of your age, leaving home can be a stressful and challenging process. The law around leaving home and obtaining financial support can be complicated depending on each person's unique circumstances. The complications in the law not only make leaving home difficult, but also raise important questions about how the law views the agency and capacity of young teens. Whatever situation

may drive someone to consider leaving home, it is important to speak to a trusted adult or organization that can provide information and advice specific to the situation. There are a number of resources that provide assistance to youth experiencing difficulties at home.

Key Terms

- Emancipation
- Social Assistance
- Voluntary Withdrawal
- Constructive Withdrawal
- Child Support
- Crown Ward
- Best Interests of the Child