



ADDRESSING THE LEGAL NEEDS OF LGBTQ2S YOUTH EXPERIENCING HOMELESSNESS

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Introduction

The legal issues facing youth experiencing homelessness are complicated and multi-faceted. When the legal problems of LGBTQ2S youth experiencing homelessness are neither identified nor addressed, the consequences that exacerbate or cause homelessness persist. For illustration, if a young person loses their employment due to discrimination based on sexual orientation, they may be unable to pay their rent. Or if a young person is assaulted by a roommate who learns they are transgender, and both are charged by the police, they will be given a bail condition that does not allow them to be within 100 metres of each other, and they may become homeless if they have no other resources to rely upon. Addressing the underlying legal needs of LGBTQ2S youth experiencing homelessness is a vital step in removing the barriers to access and maintain stable housing. Ideally, legal steps are taken early enough to prevent homelessness from occurring in the first place.

This chapter will provide an overview of the most common legal issues experienced by LGBTQ2S youth experiencing homelessness, and will cover a rights-based framework of how to identify and meet the legal needs of this population. The information and case studies contained in this chapter have been collected through the ongoing work of the Street Youth Legal Services program of Justice for Children and Youth.

Justice for Children and Youth and Street Youth Legal Services

Justice for Children and Youth (JFCY) is a legal aid clinic based in Toronto, Ontario that has protected and advanced the legal rights and interests of children and youth throughout Canada for almost 40 years. The clinic engages in public legal education, law reform and casework at all court levels to ensure compliance with Canadian legislation, the Canadian Charter of Rights and Freedoms and the United Nations Convention on the Rights of the Child (UNCRC).

JFCY has provided the Street Youth Legal Services (SYLS) program for over 16 years. It is a collaborative and community-based program designed to establish a trusting relationship with street-involved youth, to assist them to understand their legal rights, resolve their legal difficulties and take control of social barriers in pursuit of meaningful participation in the broader community. In a coordinated partnership with more than 30 agencies, the SYLS lawyer provides legal information, advice and representation to street-involved youth by reaching out to the youth through a variety of programs and at locations where they spend their time—at service agencies, drop-ins, youth shelters and health clinics.

Over the years, some of the most frustrating moments for the SYLS lawyer have been to meet a young person experiencing homelessness in a legal rights workshop or in conversation on-site at a partner agency, and discover the youth had a legal issue that went unaddressed and subsequently harmed both their housing situation and—of equal importance—their dignity as a person. These legal issues may be related to employment, access to education or immigration. Examples of those issues and others are provided in this chapter. Sometimes the legal problem can still be dealt with, but not when it occurred too far in the past to address (e.g., evidence has been lost or limitation periods have expired). It is disheartening to hear a young person say, “I wish I had known that earlier,” particularly when they have experienced human rights violations, victimization or a lack of advocacy that caused or exacerbated their homelessness situation. This chapter is designed to raise awareness and identify ways to prevent these situations from occurring.

JFCY and SYLS encourage lawyers and non-lawyers to familiarize themselves with the legal issues that affect LGBTQ2S youth experiencing homelessness, learn how to identify these issues, and then ‘put the wheels in motion’ for preventive and proactive measures. We believe many different actors are required to ensure these needs are met. For academics, this includes gaining knowledge and expertise through research to understand the legal needs of LGBTQ2S youth experiencing homelessness, and best practices to meet those needs. For agencies and government, this includes creating targeted policies and space for appropriate learning and development. For front-line workers, this means seeking out LGBTQ2S-appropriate legal services for the young person. The authors of this chapter stress that non-lawyers must not provide legal advice or act as legal representatives for youth; doing so would be both irresponsible and illegal in many circumstances. Instead, service providers should refer youth to LGBTQ2S-appropriate legal services. *Due to the nature of this last challenge, we have set out specific “Tip” sections in this chapter that we hope will be helpful to front-line workers.*

Legal Issues of LGBTQ2S Youth Experiencing Homelessness

This section will provide an overview of the most common legal issues that affect LGBTQ2S youth experiencing homelessness. These youth face discrimination, criminalization, engage in survival economies, have high rates of negative police interactions, will often receive by-law fines or tickets, experience violations of their housing rights, may not have valid immigration status, face challenges of income security, and struggle to secure employment that adheres to employment rights standards.

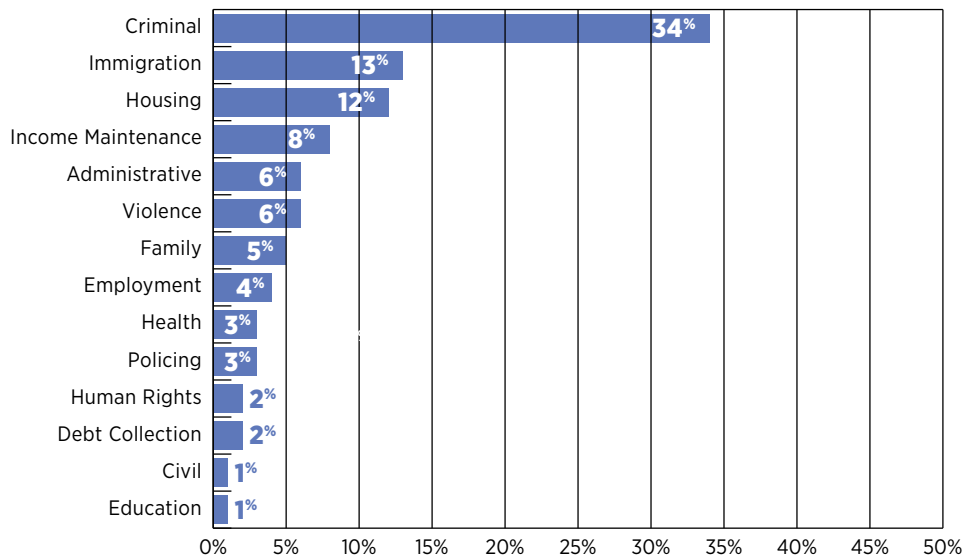
For illustration, the SYLS program intake statistics for 2016 are:

SYLS INTAKES BY AREA OF LAW/SUBJECT*	NUMBER
Criminal	103
Immigration	39
Housing	36
Income Maintenance	24
Administrative	18
Violence	18
Family	15
Employment	12
Health	9
Policing	9
Human Rights**	6
Debt Collection	6
Civil	3
Education	3
TOTAL	302

**Many intakes have overlapping categories; for these statistics, the intake is categorized by the primary area of law involved.*

***Discrimination is often identified in the intake process, but for these statistics, the intake is categorized by area of law (e.g., discrimination by law enforcement will be categorized under policing).*

SYLS INTAKES BY PERCENTAGE



Many of the legal issues affecting LGBTQ2S youth experiencing homelessness directly or indirectly affect other areas of the young person's life, and specifically their housing situation. As such, addressing the legal needs of this population is key to combating their circumstances of homelessness.

While youth will experience overlap across these areas of law, this chapter will address the following in turn:

- Discrimination
- Criminal Justice
- Immigration and Refugee status
- Housing
- Income Security and Employment

Discrimination

Many LGBTQ2S youth experiencing homelessness will have experienced overt discrimination. But discrimination can also be subtle and difficult to discern. We often struggle to name the unequal treatment that occurred or to gather the necessary evidence that allows us to ‘call out’ discrimination with confidence. Whether it is overt or covert, identifying discrimination is the first step in taking legal action to address discrimination.

LGBTQ2S youth experiencing homelessness face discrimination based on numerous factors, including their sexual orientation and gender identity, as well as intersecting identities such as age, race, ethnicity or receipt of social assistance. They may face discrimination in their interactions with law enforcement, by-law officers, employers and housing providers, or in accessing services such as transportation, social assistance and education. Such discrimination creates barriers that affect a young person’s ability to obtain and maintain housing. It also deeply affects a young person’s dignity and sense of self-worth.

Discrimination is any form of unequal treatment on specified grounds that results in disadvantage, and includes treatment that may deny benefits to or impose extra burdens on an individual; it may be intentional or unintentional.¹ Exact factors or ‘grounds’ will vary from jurisdiction to jurisdiction. In many jurisdictions, these grounds include: age, ancestry, colour, race, citizenship, ethnic origin, place of origin, creed, disability (including mental health), family status, marital status (including single status), gender identity, gender expression, sex and sexual orientation.² To understand and alleviate discrimination, it is essential to become familiar with the applicable human rights or anti-discrimination legislation in your area.

To illustrate, in Canada, the Canadian Human Rights Act prohibits discrimination on the basis of race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability, or record of offences³ for all federally regulated

¹ The Ontario Human Rights Commission (OHRC) defines “Discrimination” as “any form of unequal treatment [...] that results in disadvantage, whether imposing extra burdens or denying benefits. It may be intentional or unintentional. It may involve direct actions that are discriminatory on their face, or it may involve rules, practices or procedures that appear neutral, but have the effect of disadvantaging certain groups of people. It may be obvious, or it may occur in very subtle ways. Discrimination needs only to be one factor among many factors in a decision or action for a finding of discrimination to be made.”

² These grounds are common in many North American jurisdictions. Others may also be included, for example, in Ontario, Canada, the Ontario Human Rights Code also protects individuals for the receipt of social assistance (in housing contexts only), or for record of offences (in employment only).

³ Record of offences applies to a conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

activity in the country (Canadian Human Rights Act, 1985). In 2016, the Canadian government introduced an amendment to include “gender identity and expression” on the list of protected grounds. Non-federally regulated services, facilities, housing, places of employment, and membership in unions, trades and professional associations are protected under provincial legislation, such as the Ontario Human Rights Code. These services and provisions are commonly referred to as “protected social areas,” and services such as housing, shelter services, educational institutions, police services, public transportation and health care fall under this purview.

In the United States, the Civil Rights Act of 1964 is the central piece of legislation that prohibits discrimination on the basis of race, colour, religion, sex and national origin in several areas, including many services, public facilities, housing, employment and federally funded educational institutions (Civil Rights Act, 1964). In a 2012 case (*Macy v. Holder*), the Equal Employment Opportunity Commission (the authority that oversees employment-related complaints under the Civil Rights Act), ruled that employment discrimination on the basis of gender identity was prohibited under Title VII of that Act. With respect to housing rights, the Fair Housing Act prohibits housing discrimination based on race, colour, national origin, religion, sex, disability and familial status (Fair Housing Act, 1968). The Fair Housing Act also prohibits discrimination on the basis of nonconformity with gender stereotypes, which can be interpreted to encompass lesbian, gay, bisexual or transgender persons (United States Department of Housing and Urban Development, 2017).

Individual state laws may also help protect against discrimination in specific social sectors, and may enhance the protections already in place under federal law. For example, in California, the Fair Employment and Housing Act of 1959 protects against discrimination by employers, labour organizations, employment agencies and apprenticeship programs on the basis of disability, medical condition, marital status, sexual orientation, age (with respect to persons over the age of 40), pregnancy, and childbirth, in addition to race, colour, religion, national origin or sex (Fair Employment and Housing Act, 1959). And in Illinois, the Bill of Rights for the Homeless Act protects individuals experiencing homelessness from discrimination on the basis of their housing situation (Bill of Rights for the Homeless Act, 2013).

To effectively provide services for LGBTQ2S youth experiencing homelessness, service providers must become familiar with the anti-discrimination laws in the area in which they work.

Tip

Front-line workers should ask themselves these questions during their conversations with LGBTQ2S youth experiencing homelessness:

- Has this young person been treated differently or had different rules applied to them?
- If yes, do they fall into a protected group of individuals, for example, identification as LGBTQ2S?
- If yes, can I link the differential treatment to one of the protected identity groups?

Even if the answer to the final question is not clear, it is advisable to obtain legal advice as early as possible. A lawyer can assist in determining the different ways in which the youth was treated differently. Note that the young person may not be aware that what they were experiencing was discrimination.

The following is an example of the discrimination faced by LGBTQ2S youth experiencing homelessness when accessing the shelter system.

Case Example

A.W. is a 20-year-old transgender man experiencing homelessness. He was kicked out of his family home shortly after his family learned of his transition. At one point, A.W. stayed at a shelter in the small city where he was from for a couple of weeks. A.W. was initially placed on the men's side of the shelter, but the shelter staff moved him to the women's room when they discovered that he was a transgender man. Though he asked the shelter staff not to share his gender identity with other residents because he feared aggression, a staff member announced A.W.'s gender identity in front of all shelter residents. A.W. subsequently learned of a shelter in a neighbouring city that he thought would support his gender identity. When he went to the shelter, the staff told him they could not place him in the men's shelter because he was a transgender man. A.W. tried to go to the women's shelter, but was not admitted there either. A lawyer in this situation could have advocated to the shelter to remind them of their obligation to provide services that are not discriminatory against his gender identity. If that were unsuccessful the lawyer could have pursued other legal mechanisms. For example, in Ontario, the lawyer could have assisted A.W. to make a complaint to the Human Rights Tribunal of Ontario.

LGBTQ2S youth experiencing homelessness may also experience discrimination when administrative rules seem to treat everyone the same, but result in a barrier amounting to discrimination.

Case Example

B.R. is a transgender woman who required a change of gender marker on her citizenship documentation; however, her home country did not permit a change of gender marker on birth certificates, and without an amended birth certificate, Canadian federal rules did not permit her to amend her citizenship. This created barriers to employment and housing opportunities for her, as her identification did not reflect how she presented in person. B.R. sought the assistance of a lawyer who obtained a court order that legally declared her female. B.R. then used the court order to apply for a change of citizenship documentation. Without this legal help, B.R. would have continued to face barriers that deeply affected her housing security.

Although Canadian federal regulations have changed, this is an example of the discriminatory administrative barriers that confront LGBTQ2S youth experiencing homelessness. Front-line workers are particularly well suited to identify similar forms of discrimination, as they often assist their clients to navigate local administrative systems, such as obtaining identification or registering for school. As soon as a barrier arises that a housed, cisgender or heterosexual individual would not face, a lawyer should be consulted for legal advice.

Criminal Justice

LGBTQ2S youth experiencing homelessness may find themselves involved in the criminal justice system as the accused, the victim, or both. In many cases, but not all, involvement with the criminal justice system is connected to being an LGBTQ2S youth experiencing homelessness. Experiencing homelessness typically means spending a lot of time in public places, and some jurisdictions have responded by enacting legislation or deploying law enforcement in a targeted way to try to restrict the use of public space by individuals experiencing homelessness (Bill of Rights for the Homeless Act, 2013). The resulting ‘criminalization of homelessness’ is a phrase used to describe situations where jurisdictions have used the criminal justice system or law enforcement as a response to the high visibility of homelessness (O’Grady, Gaetz, & Buccieri, 2013). The lack of

awareness about the consequences of this criminalization, as well as other criminal justice system involvement with LGBTQ2S youth experiencing homelessness, often continues and exacerbates situations of homelessness.

While statistics for the population of LGBTQ2S youth experiencing homelessness in Toronto seeking legal services has not been gathered, the 2015 data on the broader group of youth experiencing homelessness reveals that 28% of youth experiencing homelessness seeking legal services are doing so because of a criminal legal matter. A further 7% seek legal services for quasi-criminal matters related to the province of Ontario's Safe Streets Act for incidents relating to panhandling or squeegeeing, or for other 'street tickets' associated with homelessness, like sleeping in a public space, loitering, drinking in public or failing to pay transit fare (Justice for Children & Youth, 2015). These statistics represent only the legal issues for which youth experiencing homelessness sought the advice of a lawyer, and do not include unreported legal issues or instances of victimization. This research demonstrates that youth experiencing homelessness experience high levels of victimization for which they do not seek assistance (Gaetz, 2002, at 25, 31, 41, 44), and we can extrapolate that many more LGBTQ2S youth experiencing homelessness would fall into this latter category (O'Grady, Gaetz, & Buccieri, 2011). Furthermore, some LGBTQ2S youth experiencing homelessness engage in sex work, which makes them vulnerable to both criminal charges (depending on the jurisdiction) and victimization by pimps, johns and by law enforcement.

Case Example

A.T. is a queer youth who is unstably housed and has been sleeping on the streets periodically for many years. A.T. has mental health issues stemming from a childhood of neglect and poverty. A.T. is not out, and struggles with their sexual orientation and gender identity. A.T. was harassed on public transit by another rider and called a "fag". A.T. reacted strongly, got into an altercation with the other rider, and was subsequently charged with assault. The arrest, bail process and pending criminal charges caused A.T. to lose their job, and as a result they could not pay their rent.

We believe that were it not for A.T.'s intersecting identities as an impoverished queer young person, they would not have come into contact with the criminal justice system and consequently suffered greater housing insecurity.

Identifying Criminal Law Issues

Criminal law-related legal issues are often the most obvious to identify, since a LGBTQ2S youth experiencing homelessness who has been charged clearly has a legal problem that needs attention. They are required to make court appearances, are given disclosure of the allegations against them and, notably, must make a decision on how to proceed with their charges. Navigating this system is undeniably easier with representation by a lawyer, and can result in a positive outcome, such as a withdrawal of the charges if the allegations cannot be proven (this requires a decisive opinion by a lawyer) or advocacy for an appropriate diversion.

Many LGBTQ2S youth experiencing homelessness may avoid dealing with the criminal issue and thus have outstanding warrants for their arrest. If they have been a victim of crime, they may decide not to report instances of victimization. They may also hesitate to approach the police to report a crime. This decision is, in part, because they may have had negative police interactions in the past, have a general and often well-founded fear of authority, and already feel marginalized. Previous interactions with police may make youth too fearful to attend a court appearance or turn themselves into police when they are aware of an outstanding warrant. A conversation with a criminal defence lawyer about the criminal justice system and its processes and consequences may be useful in helping the young person make informed decisions. A lawyer could also help ease fears and make appropriate arrangements with police. The long-term effects of criminal justice involvement on the youth's housing, employment and other stability-related factors should be emphasized to all involved.

Impact of Criminal Justice Involvement

Involvement in the criminal justice system can carry serious consequences for LGBTQ2S youth experiencing homelessness, including criminal records that interfere with gaining housing or employment. In addition, bail conditions imposed on an individual could require them to leave their home. For example, a bail condition may require that the young person have no contact with someone who lives at their home, or no attendance at a specific property (sometimes that property is the homeless shelter where the youth has been staying). For marginalized LGBTQ2S youth, these types of bail conditions may cause a long period of housing disruption, effectively putting them back on the streets or increasing their reliance on the shelter system.

Tip

Front-line workers assisting LGBTQ2S youth experiencing homelessness with issues related to criminal law should:

- Be aware of the consequences of criminal legal issues, including the different ways a criminal charge may affect the person's housing situation.
- Assist by raising the housing concerns with the young person's lawyer and the Crown Attorney (prosecutor), so they can ensure bail conditions don't result in homelessness.
- Provide support letters to the court that may help the young person avoid bail conditions that affect their housing.

Another consequence of involvement in the criminal justice system is the increased risk of victimization for transgender youth who face the potential of being incorrectly placed in all-male or all-female jail cells or prisons upon arrest, while waiting for trial, or while serving a sentence. This raises the risk of violence perpetrated against them by other inmates or correctional staff, as well as other forms of discrimination. Advocacy by correctional staff, front-line workers, lawyers and others is necessary at these points to ensure the youth is appropriately placed and has a guarantee of safety.

Immigration-related legal issues will be discussed in further detail below; however, criminal charges have a unique impact on non-citizens. It is important for those who work with LGBTQ2S youth experiencing homelessness to inquire into a young person's immigration status as soon as they present with a criminal issue. Flagging immigration status early and seeking the assistance of an immigration lawyer can mean the difference between the devastating result of being deported to a country where the young person may face discrimination or persecution, and gaining legal status in the host country, which keeps them safe from persecution and provides the necessary stability to become housed.

Immigration and Refugee Status

Immigration and refugee laws will vary depending on the jurisdiction where immigration status is being sought. Generally, someone may be classified as citizen, permanent resident, protected person or refugee (often inferring permanent resident status); or as visitor, student or worker (implying a temporary stay); or without any immigration status.

It is important to recognize that some LGBTQ2S youth experiencing homelessness may have precarious immigration status, meaning they may not have immigration status at all, or may not be citizens of the country where they are residing. A study conducted on youth experiencing homelessness in Toronto showed that nearly one-quarter of youth surveyed had been born outside the country (Gaetz, O'Grady, & Buccieri, 2010), and another study revealed that nearly 20% of newcomer youth experiencing homelessness identified as LGBTQ2S, while 17% were questioning, did not know, or preferred not to disclose (Centre for Addiction and Mental Health & Children's Aid Society of Toronto, 2014, p. 9). LGBTQ2S newcomer youth have often fled their home country to escape persecution and discrimination based on their sexual orientation, gender identity or gender expression. A total of 145 nations are parties to the United Nations 1951 Convention relating to the Status of Refugees (The 1951 Refugee Convention) and 146 countries are parties to the Convention's 1967 Protocol.⁴ The 1951 Refugee Convention and 1967 Protocol both place an obligation on the signatory countries not to return a refugee to the country where they fear persecution or a threat to their life. Canada is a party to both the 1951 Refugee Convention and the 1967 Protocol. The United States is a party to the 1967 Protocol (United Nations High Commissioner for Refugees, 1976). Some LGBTQ2S youth who are fleeing discrimination or persecution may not realize that refugee protection is available to them.

Consultation with a trusted immigration lawyer is integral to determining what options might exist for a young person in such a situation, though young newcomers may be hesitant to speak about their status or to seek the help of a lawyer. Newcomer LGBTQ2S youth experiencing homelessness may not know that what is said to a lawyer is confidential, or they may have a deep and often well-founded distrust of the authorities. They may also fear for their own safety or for the safety of family members in their home or host countries.

⁴The 1951 Convention relating to the Status of Refugees defines a refugee as someone "who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Membership in a political social group has often been used to include individuals who fear persecution on the basis of gender, sexual orientation or gender identity.

It is important to help the youth understand that speaking to a lawyer for legal advice is a protected conversation that is confidential, covered under solicitor-client privilege and should not result in being reported to the authorities. Language barriers for newcomers to North America also pose an additional challenge. The use of interpretation services will likely be necessary to ensure that legal nuances can be properly explained and understood.

Tip

Front-line workers should:

- Ease any fears of reporting the youth may have by letting them know that all information will remain confidential, and that the front-line worker has worked with the lawyer before, or by speaking to a lawyer for information about the youth's options without disclosing the identity and location of the youth.
- Identify and inform the lawyer about any interpretation needs or arrange to have an interpreter attend with the youth during meetings with the lawyer.

Even if a young person has a strong claim for immigration status, they may be too frightened to seek status, afraid of a negative result on their immigration application, feel uncertain about the court processes, or fear additional scrutiny from state authorities. Each of these concerns must be acknowledged and met with patience.

Case example

A.G. is a gay youth from a nation that is in political turmoil. He fears for his life should he return, based on his sexual orientation as well as his refusal to join a local rebel group (the rebels threatened him after he refused to join them). He came to Canada on a student visa that expired 2 years ago. He has been living in shelters ever since, and relies on the little his mother can send him from his home country. He is too afraid to seek work or housing, knowing he may be asked for identification. A.G. knows a claim for refugee protection is a possibility for him, but he is too afraid to make the application. He fears he may lose his claim and be sent back home. Eventually, A.G. builds a strong trust relationship with a shelter staff member and a lawyer who comes to the shelter. With their support, he makes a claim for refugee protection and is then eligible for a work permit, for which he applies. Thanks to these steps, he has been able to seek housing of his own.

Obtaining stable housing is very difficult for LGBTQ2S youth experiencing homelessness who also have precarious immigration status, as they will often not have national identification and will not qualify for social assistance, and can therefore work only informally and precariously ‘under the table.’ They will not have the financial resources necessary to obtain housing, and may not be able to find a landlord who will rent to someone without proper identification. The young person may also refrain from seeking housing or accessing any social services for fear that someone will report them to authorities. These factors result in a significant risk of long-term homelessness, victimization and abuse. Consultation with a trusted immigration lawyer and ensuring strict confidentiality of the young person’s status are integral to allowing the young person to try to obtain legal status, thereby affording them the stability to access and maintain stable housing.

Tip

Front-line workers who work with non-status LGBTQ2S youth experiencing homelessness should:

- Establish a trusted relationship with a knowledgeable and competent immigration lawyer who can be consulted by staff and meet with the youth upon request.
- Develop an ‘emergency plan’ with the young person, including the names and phone numbers of any family or friends in the country, or contacts for any possible sureties who may be contacted if the young person is detained by immigration authorities.

Housing

Toronto-based research on youth homelessness shows that having an agreement for an apartment or room is no guarantee of stable housing (Gaetz, 2002). LGBTQ2S youth experiencing homelessness who at some point obtain housing continue to face a range of legal issues that affect their housing stability, such as evictions, illegal fees, illegal entry by a landlord, or a landlord failing to maintain the property (Gaetz, 2002). These legal issues result in precarious access to housing and increased instability of housing that LGBTQ2S youth may have established. In some cases, being an LGBTQ2S-identified young person can cause some of these issues.

Case example

E.K. is a transgender man with limited financial means. He moved into an apartment with a roommate, signing the lease. Because his identity documents had not yet been amended to reflect his gender identity and chosen name, the landlord was aware that E.K. was transgender. Soon E.K. began receiving harassing text messages from his landlord, who also entered the unit illegally on several occasions. When E.K. told the landlord the text messages were discriminatory, the landlord referred to him as “little girl” and made other transphobic remarks. E.K. left the apartment not long after, feeling unsafe in his home, and began couch-surfing and staying in shelters.

Legal issues in housing have a direct effect on young people’s ability to successfully and sustainably exit street life.

Tip

Front-line workers should:

- Be alert to these issues and be well informed about applicable housing law in the area in which they work, and
- Know the rules for when a landlord can legally enter a unit, increase rent and evict tenants, as well as a landlord’s obligations for maintenance and repairs.

Income Security and Employment

Secure and stable income is an essential element in a long-term housing solution for LGBTQ2S youth experiencing homelessness. Addressing the legal issues related to income security and employment has a direct impact on a young person’s housing situation.

Front-line workers will often know to canvass the availability of social assistance for a young person. They should also be aware that if a young person is denied social assistance or disability benefits, or they are not receiving the benefits to which they may be entitled, a mechanism to appeal the denial of benefits often exists. In Canada, appeal boards for social benefits have a provincial mandate. In Ontario, the Social Benefits Tribunal hears appeals for individuals who have been refused social or disability assistance, or who disagree with

the amount or type of benefits they receive (Social Justice Tribunals Ontario, 2017). In the United States, the Office of the Disability Adjudication and Review (ODAR) performs a similar function and has a federal mandate (Social Security Administration, 2017). A positive outcome in an appeal can often open new housing opportunities. In Canada, LGBTQ2S youth experiencing homelessness are also protected from discrimination by social assistance workers through local anti-discrimination laws.

Tip

Front-line workers should:

- Familiarize themselves with these programs and their related appeal bodies;
- Refer youth to trusted and experienced lawyers; and
- Support youth through the process.

Child support may be another income source for LGBTQ2S youth experiencing homelessness. Most jurisdictions in both Canada and the United States impose a general obligation on parents to provide necessary clothing, food and shelter for their children who are under the age of majority. This obligation may not cease for children who have been forced to leave their home because the parents do not accept their sexual orientation or gender identity. In Canada, for example, a child can bring a child support application against their parent(s) in these situations. For youth who wish to attend post-secondary institutions, parents may be forced to provide financial support throughout their child's time at college or university, even if the young person is over the age of majority. In the United States, parents may be forced to pay a legal guardian or reimburse the county where that child resides for their costs (American Bar Association, 2003, p. 38).

Case Example

R.K. is a queer youth who came out to her parents at the age of 16. Her parents did not accept her sexuality and she was forced to leave home. She lived on the streets for a year before she met an informed social worker who referred her to a legal aid office that helps youth seek financial support from parents who are no longer caring for them. With the help of the legal aid office, R.K. secured regular support payments from her parents throughout her teen years, which allowed her to pay for rent, as well as throughout her years of post-secondary education, something she could not have done without child support.

Issues related to employment law are of enormous concern for gaining and maintaining income security. Stable, paid employment has a clear link to both prevention and alleviation of homelessness. The most common employment-related legal issue for youth experiencing homelessness is non-payment of wages, and for LGBTQ2S youth experiencing homelessness, it is harassment and discrimination in the workplace. There are employers who seek to take advantage of young people experiencing homelessness because of their age, inexperience and the precariousness of their living situations, often by skirting employment and anti-discrimination laws, counting on the young person to be in too much financial need to complain, or too limited in resources to have access to legal recourse, or both.

Case Example

D.N. is a young transgender woman of colour living in a downtown shelter in Canada. Through a work placement program she obtained employment at a large chain pharmacy and department store for a designated period of time, with potential to be employed permanently after the placement was completed. D.N. submitted a request to work in the cosmetics department of the store. She was initially told her requested position would be given to her. Shortly afterwards, she was told her presence in the cosmetics department might make some customers feel “uncomfortable,” and she was ultimately placed in a position where she was not interacting with customers. The lengthy ‘probation’ period of the placement program left her feeling powerless to complain or to make further requests. She was also unaware of legislation designed to protect her in these circumstances, or that legal recourse would have been available to her. D.N.’s experience is typical for many LGBTQ2S youth experiencing homelessness. As an individual experiencing homelessness, she benefited from a specialized employment program. However, she felt limited in her ability to exercise her rights because of her precarious situation. This example highlights the importance of being well versed in anti-discrimination rules. Understanding these rules will serve to protect employment rights and prevent violations of legal rights.

Tip

Front-line workers must:

- Be alert to employment law issues and be well informed about local employment laws.
- Know the rules about minimum wage, overtime and termination, to be able to identify related legal issues.
- Make a referral to a trusted lawyer.

Providing Law-Related Support to LGBTQ2S Youth Experiencing Homelessness

This section provides guidance on how to assist LGBTQ2S youth experiencing homelessness who are faced with legal issues that affect their housing situation. The goal is to alleviate the legal problem that is causing homelessness or preventing housing security. This section will include information on:

- Identifying legal issues and gaining knowledge of the law;
- Finding legal help; and
- Providing support during the legal process.

Identifying Legal Issues and Gaining Knowledge of the Law

In order to identify legal issues, front-line workers must know what the law is. That is not to say that non-lawyers need to know all the practical steps in solving legal issues, but they must know enough about the law to identify—or at least develop a gut feeling—that something is amiss, and then take steps to seek legal information and appropriate supports.

This begs the question: What is the applicable law? The answer, as described in the first part of this chapter, is that it depends on where the young person is, since municipal, provincial or state and federal laws may differ significantly. Service providers should therefore become familiar with the laws in their jurisdiction; if that is not feasible, they should at least become familiar with the ways in which LGBTQ2S youth experiencing homelessness are confronted with legal issues, and consult with a trusted lawyer each time a young person presents with a problem.

Tip

Front-line workers can help identify the legal issues of LGBTQ2S youth experiencing homelessness by:

- Being attentive to legal issues in their conversations with youth;
- Attempting to identify legal issues with the affected youth;
- Giving basic information to the youth on why a legal right may exist; and
- Connecting the young person with a trusted lawyer.

Finding Legal Help

The next step is to find trustworthy and competent legal help. This includes gaining familiarity with local legal aid services and their limitations, and locating different or additional legal services where gaps may occur. Depending on where the young person is located, this may be easy or challenging. Nevertheless, establishing these essential connections is vital to addressing and remedying both the legal issues and the housing consequences those legal issues cause or exacerbate.

While legal services and programs designed for street-involved youth, such as SYLS in Toronto, are not common, most Canadian provinces and territories have some form of publicly funded legal aid that provides free legal assistance for a limited number of issues to low-income individuals. In the United States, the Legal Services Corporation (2017) funds legal aid clinics throughout the country, with ‘Judicare’ providing funding to pay lawyers in the private bar to represent low-income clients for a variety of legal issues in some states, while the public defender system is available for low-income individuals who need assistance for criminal matters. In addition, the American Bar Association has a division dedicated to youth experiencing homelessness (American Bar Association, 2013). Other examples of local legal aid initiatives include the Urban Justice Center and the Sylvia Rivera Law Project, both in New York City.

Securing trustworthy and competent legal support requires doing some homework. As marginalized individuals, LGBTQ2S youth experiencing homelessness may be at greater risk of retaining legal counsel who do not approach each case in a culturally sensitive way or through an anti-oppression lens, or may not provide competent representation. Lawyers must be understanding and approachable to gain the trust of their clients, so youth are comfortable explaining their situation.

Tip

The front-line worker should:

- Be aware that some lawyers may not be able to effectively represent an LGBTQ2S youth experiencing homelessness.
- Build relationships with trustworthy and competent lawyers and individuals in the justice system before the need arises, to have contacts in place when necessary.

Providing Support During the Legal Process

Finally, the role of front-line workers in supporting LGBTQ2S youth experiencing homelessness with legal issues does not end on the date a referral to a lawyer is made. LGBTQ2S youth experiencing homelessness need support throughout the legal process, as it can be long and stressful. Front-line workers are also an important point of contact for lawyers working with particularly marginalized youth, as these youth will continue to access services such as housing, meals or healthcare, but may not be able to communicate with their lawyer regularly. Having the worker seek consent early from the young person to speak to the lawyer may avoid the lawyer having to drop the case due to a lack of communication, and can also provide a conduit for messages from the lawyer to the client.

In summary, a lawyer is often not the first contact for an LGBTQ2S youth experiencing both homelessness and a legal issue. Front-line workers should become familiar with the common legal issues that LGBTQ2S youth experiencing homelessness face. This allows workers to provide appropriate support to the young person during the various stages of the legal process.

Conclusion

In our experience, key elements missing from the prevention of legal problems that cause or exacerbate LGBTQ2S youth homelessness are that:

1. Legal issues are not identified at an early stage;

2. Youth are not connected or referred to a lawyer who can help them deal with legal issues before their housing stability is affected; and
3. Youth are not supported through the legal processes that ensue.

This chapter provides practical steps that both lawyers and non-lawyers can use to address legal issues encountered by LGBTQ2S youth experiencing homelessness, along with information on the most common legal issues these youth face. This marginalized population needs access to a responsive justice system that is rights-respecting and non-discriminatory, and takes into account their intersecting identities. We hope this chapter is a valuable tool to open the doors to justice for LGBTQ2S youth experiencing homelessness.

References

- American Bar Association. (2003). Legal rights and options for runaway teens. Retrieved from: http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/resourcecenter/runaway_2003_revised_authcheckdam.pdf
- Bill of Rights for the Homeless Act, 2013. IL Stat. 775 ILCS 45 (2013).
- Canadian Human Rights Act, 1985. (RSC, c H-6). Retrieved from: <http://canlii.ca/t/52c3f>
- Centre for Addiction and Mental Health, & Children's Aid Society of Toronto (2014). *Hidden in our midst: homeless newcomer youth in Toronto*. Retrieved from: https://www.camh.ca/en/research/news_and_publications/reports_and_books/Documents/Hidden%20in%20Our%20Midst%20Final%20Report_Nov%202014.pdf
- Civil Rights Act, 1964, 42 U.S.C., Pub.L. 88-352. (1964).
- Fair Employment and Housing Act, 1959, CA Stat. §§ 12900-12996. (1959).
- Fair Housing Act, 1968, 42 U.S.C. 3601-3619. (1968).
- Gaetz, S. (2002). Street justice: Homeless youth and access to justice. Retrieved from: http://www.homelesshub.ca/sites/default/files/Street_Justice.JFCY.02.pdf
- Gaetz, S., O'Grady, B. & Buccieri, K. (2010). Surviving crime & violence: Street youth and victimization in Toronto. Retrieved from: http://jfcy.org/wp-content/uploads/2013/10/SYLS_Surviving_the_Streets_2010.pdf
- Justice for Children & Youth. (2015). *Street Youth Legal Services*. Retrieved from: <http://jfcy.org/en/community-partnerships/street-youth-legal-services>
- O'Grady, B., Gaetz, S., & Buccieri, K. (2011). *Can I see your ID? The policing of youth homelessness in Toronto*. Toronto, ON: Justice for Children & Youth and Canadian Observatory on Homelessness Press.
- O'Grady, B., Gaetz, S., & Buccieri, K. (2013). Policing street youth in Toronto. In S. Gaetz, B. O'Grady, K. Buccieri, J. Karabanow, & A. Marsolais (Eds.), *Youth homelessness in Canada: Implications for policy and practice*. Toronto, ON: Canadian Observatory on Homelessness Press.
- Ontario Human Rights Commission. (2017). Appendix 1: Glossary of Human Rights terms. Retrieved from: <http://www.ohrc.on.ca/en/teaching-human-rights-ontario-guide-ontario-schools/appendix-1-glossary-human-rights-terms>
- Safe Streets Act, 1999. ON, S.O. 1999, c. 8. (1999).
- Social Justice Tribunals Ontario, Social Benefits Tribunal. (2017.) Retrieved from: <http://www.sjto.gov.on.ca/sbt>
- Social Security Administration, Office of the Disability Adjudication and Review. (2017). Retrieved from: https://www.ssa.gov/appeals/about_odar.html
- United States Department of Housing and Urban Development. (2017). Retrieved from: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination

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