



What is the Best Interests of the Child?

“I have the right...to be treated like a human”

~ Shaking the Movers III – Child Rights in Education: CRC Articles 28, 29, and 42, 2009, 19

Children are important and their needs and interests are different from adults. The Best Interests of the Child (BIC) is one of the main principles in the UN Convention on the Rights of the Child reminding all adults that when decisions are being made, adults need to consider the impact of those decisions on the lives of children. The first important step to meet children’s needs and interests is for adults to listen to children when they communicate what is in their best interest.

Decisions are being made all the time that impact children’s lives, for example:

- when government is implementing policies and deciding on services;
- businesses are designing products;
- schools are creating a learning environment;
- communities are facilitating safe spaces to develop relationships;
- and families are creating safe households.

“Young people look to adults for guidance, but want to make decisions for themselves”

- (Best Interests of the Child: Meaning and Application in Canada, 2009, 13)

Children’s best interests must be a priority when these decisions are being made by adults, whether they are parents, teachers, lawyers or politicians. Unfortunately, the Best Interests of the Child (BIC) is not always considered and can be misused, for example, in custody cases, divorcing parents often favour their own interests leaving the child to be at the centre of conflict. Another example is when children are not consulted before being considered for adoption or placement in foster care. In most cases, they are older than the age of five; therefore their participation in decision-making needs to be considered to prevent the misuse of BIC.

A Rights-Based Approach to the BIC

To ensure the implementation of the Best Interest, the Convention puts children at the center and establishes a rights-based approach to interpreting the BIC, including:

- ensuring that children understand their rights and can make informed decisions
- recognizing the evolving capacity of children to decide for themselves
- creating opportunities to be responsive to the needs and wants of individual children rather than being adversarial to children’s opinions
- using collaborative approach in decision-making while considering the evolving knowledge about child development

Decisions that support the rights in the Convention are considered to be the most supportive of children's best interests. Therefore, the BIC is a guiding principle embedded in the Convention, and not a formula. For a society to fulfill children's rights and best interests, and to effectively implement the principles of the Convention, dialogue between children, adults and various institutions must be consistently encouraged.

Canadian Dialogue on the BIC

The Government of Canada acknowledges the existing gaps and the work that remains:

“[The Government’s response to the Committee] required extensive discussions and collaboration [] ensuring that policies and programs were again considered through the lens of the [BIC] principle and the [UNCRC]. [] The Government will not waver from its goal of making Canada a better place for children and their families.”

~ Convention on the Rights of the Child: Third and Fourth Reports of Canada, 2003, p. 207

Policy and Legal Trends in Canada:

The BIC is mentioned in specific laws and court decisions related to family life, immigration, child welfare and youth justice but it is not embedded as a general principle of law in Canada. The lack of coordination in responsibilities between the federal and provincial government creates problems for implementation of the BIC. For example, there is the major gap in the youth criminal justice system that does not consider the best interests of young people. The federal government is responsible for the youth criminal justice system, but program development for the youth in the justice system is a provincial responsibility. The significant gap contributes to the lack of resources available for preventive programs in youth rehabilitation.

“Young people need information, safe places, and support to sort through family cultural pressures, peer group pressures, and what it means to be Canadian, in order to develop their own identity.”

~ Best Interests of the Child: Meaning and Application in Canada, 2009, 62

Jordan’s Principle: Example of the BIC in Practice in Canadian Public Policy

In 2009, Parliament passed resolution motion in support of Jordan’s Principle, which gives priority to the best interests of children caught in federal and provincial disputes over funding of services. However, a study by the First Nations Child & Family Caring Society of Canada and Canadian Paediatric Society suggests that federal and provincial governments and territories are not adequately implementing Jordan’s Principle. A gap remains between the need to embed the BIC as a general principle into all laws that affect children; hence the need for the Government of Canada to develop a comprehensive legal and policy framework to implement the BIC and children’s right in general.

The BIC for All Children: Our Full and Daily Responsibility

The BIC contributes to a child-friendly society where children are able to participate as citizens and allows them to express their views and demands without discrimination. Encouraging respectful conversation between different parties and affirming the child’s perspective in everyday conversation can lead to a child-friendly society. Through respect and conversation, the practice of making decisions in the best interest of the child will become a naturally integrated part of everyday life in schools, families, communities, institutions and governments.

More information:

Visit the Canadian Coalition for the Rights of the Child website where additional supporting documents can be found, <http://rightsofchildren.ca>
Children’s Rights International Network’s General Comment on the Best Interests of the Child: <https://www.crin.org/en/library/publications/crc-general-comment-best-interests-child>
For the full UN Convention on the Rights of the Child: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>



Canadian Coalition
for the Rights of Children

Coalition canadienne
pour les droits des enfants