



## **Children's Rights: Making Canada Work Better for Young People A Discussion Paper**

### **Introduction**

Children's rights could be an asset for federalism, rather than using federalism as an excuse for lack of implementation or a shield to avoid accountability. This hypothesis was the focus for discussion at a special event to honour the 25<sup>th</sup> Anniversary of Canada's ratification of the Convention on the Rights of the Child. The goal is improving implementation across the different jurisdictions that are part of the federal state in Canada.

The panel discussion and workshop were sponsored by the Canadian Coalition for the Rights of Children, the Interdisciplinary Research Laboratory on the Rights of the Child (IRLRC) and the Human Rights Education and Resource Center at the University of Ottawa. A discussion paper, distributed in advance, identified features of a children's rights-based approach that could improve governance for children and issues for further discussion. (Appendix A).

At the panel discussion, Irwin Elman, Ontario's Child Advocate, emphasized the importance of listening to children and including them in decision-making processes that affect them. Honourable Senator Jim Munson reflected on his years of work for children's rights in the Senate, emphasizing the importance of advocacy and persistence to change the way government works in Canada. Elys Gardiner, a student advocate for children's rights, emphasized the importance of children knowing about their rights and having opportunities to give their input when decisions are made that affect them.

At the workshop, three speakers reflected on their experience in specific areas of children's rights:

Dr. Sabastien Grammond, Jordan's Principle and the rights of indigenous children;

Dr. Rebecca Bromwich, young people and the criminal justice system; and

Dr. Sue Bennett, child protection and clinical services for children.

In addition, Cheryl Milne, LLB and MSW, provided a brief overview of related legal considerations. Dr. Graciela Jasa Silveira, a legal specialist in gender and children's rights, outlined how Mexico moved toward integration of the Convention into its constitution in order to ensure implementation in its federal state.

A wide range of ideas and suggestions were offered by the speakers, participants, and supporters of the Coalition who could not attend, submitted through e-mail and phone calls. This discussion paper lists them under general themes, without attribution to specific persons, for the purpose of stimulating further discussion within the children's rights community in Canada.

For its part, the Canadian Coalition for the Rights of Children will build on these ideas in its on-going efforts to promote full implementation of the Convention. The Coalition invites readers to consider what they can do and submit further suggestions for broader consideration.

The IRLRC, working with the Coalition, will identify aspects for further exploration, feeding into plans for a wider conference on the implementation of human rights in Canada, planned for June, 2017. Implementation of children's rights will receive further attention in that event.

### **Contextual Considerations**

**Improvement is necessary.** Implementation in Canada lags behind other comparable countries, twenty-five years after ratification. One of the repeated reasons given for weak implementation is the jurisdictional division of powers for public policies that have significant impact for the well-being and rights of children. Greater cooperation is needed within each level of government, between levels of government, and with civil society organizations that work with children.

**This issue is not a partisan one.** In 2007 the Coalition hosted a dialogue between young people and Members of Parliament from three major parties to discuss the findings of a three-year Senate study on children's rights, entitled, "*Children: Silenced Citizens.*" MPs from all political parties agreed that children in Canada are not well served by the current jurisdictional division of powers.

**Co-ordination committees are not an adequate solution.** The official government response to the 2007 Senate report was that various coordination committees would solve the problem. At one time there were more than 12 federal/provincial/territorial committees of officials addressing specific aspects of children's policies, along with the Interdepartmental Working Group on Children's Rights within the federal government. While resources were spent on meetings, travel, and salaries for officials, there is little evidence of outcome improvements for the lives of children. Most have limited engagement with young people as rights-holders themselves, and there is no transparency about what is discussed or actions taken, which are essential elements of taking children's rights seriously.

Officially, the Continuing Committee of Officials for Human Rights, a federal/provincial/territorial committee, is responsible for coordinating implementation of all human rights commitments. In reality, it coordinates reports to the UN and distributes concluding observations to other government officials. It is limited to procedural co-ordination, but Canada cites this committee in its reports to UN treaty bodies as a coordinating mechanism for implementation of human rights.

Most rights-holders in Canada do not even know about this committee; its work is not public or transparent. For example, provincial advocates for children’s rights were not involved in preparing the provincial reports that were part of the last official report on the state of children’s rights in Canada. In response to pressure from human rights groups, the committee now meets occasionally with a few representatives of human rights groups in Canada, primarily to hear civil society concerns.

After 25 years it is clear that current coordinating mechanisms are inadequate to facilitate implementation of the Convention in Canada. Stronger mandates and leadership at more senior levels of government are necessary to fulfill the duties of governing bodies in the Convention.

**We can learn from other federal states.** Countries who have made more progress than Canada for the well-being and rights of children have some common features in place. The basic pathway to more effective implementation of the Convention is known, and the steps are feasible in Canada:

1. The Convention is incorporated into national law in some way and taken seriously as a framework for children’s policy (beyond the aspirational stance taken in Canada).
2. Establishment of an institutional focal point for implementation, such as an Office of a Commissioner for Children's Rights.
3. Use of data about the real-life situation of children, analysis of the societal context in which children are growing up, and evidence-based policy-making for children, e.g. use of Child Rights Impact Assessments in the policy formation process.
4. Regular monitoring and public reporting on the status of children, including targets for progressive realization and progress toward targets, using outcome data, along with the amount of money spent in programs, to be accountable for progress in implementation.
5. Systemic inclusion of the voice of young people in all areas where decisions are made that affect young people.

***“Together, we are working hard to create the conditions that will allow all children and youth to be treated with dignity and respect, protected from harm, given equal and full opportunities for survival and development, and have a voice in matters that affect them.”***

Mr. Terry Duguid, Parliamentary Secretary to the Minister of Families, Children, and Social Development, speech to the forum on November 22, 2016.

# Observations and Suggestions for Improvement in Canada

## Lead by Example

A culture of lead-by-example could make substantive gains for children and induce other actors to improve as well. The principle of progressive realization applies to each actor as well as to the national state of Canada. Instead of using our federal system as a shield to avoid accountability for lack of action or blaming other jurisdictions when gaps are identified and failures become obvious, every department of every governing body and every civil society actor could lead-by-example to implement relevant provisions of the Convention within its scope of influence.

A culture of continuous improvement, based on the Convention principle of progressive realization, could replace the practice of using the lowest minimum standards as the measure of compliance. Following are some examples of what could be done:

- **Learn and implement good practices by other actors.** The government of New Brunswick, for example, is using a Child Rights Impact Assessment to make sure impacts for children are considered in its policy development process. It also uses comparative data from other provinces to analyze strengths and areas for improvement. Other provinces and departments of the federal government could learn from this example.
- **Take a pro-active instead of reactive stance at department and agency levels.** Every federal/provincial/territorial department could apply relevant general measures of implementation in its own policies and programs to make improvements between reviews, instead of waiting for Heritage Canada to lead a backward-looking, minimalist review process.
- **Civil society actors can assist in holding all levels of government accountable.** This would complement the role of civil society in the official review process every five years. After twenty-five years of experience, it is clear that reliance on the official monitoring and reporting process to achieve progressive realization is not adequate.
- **Lead by using the language of children's rights consistently.** Consistently using the language of children's rights and referring to relevant provisions in the Convention could help to increase awareness and encourage implementation. Article 19 in the Convention, for example, could be used to bolster the initiative to end violence against children. It was noted that children's rights language has been removed or downplayed on federal government websites over the last decade. A system-wide approach is needed to show that the federal government takes children rights seriously in all relevant areas of government.
- Child-friendly, age-appropriate versions of the Convention could be widely available so all children have easy access to them. After 25 years, polls still show that most children in Canada do not know about their rights. That is not surprising when the language of

children's rights is not consistently used by those who have responsibility to help children understand their rights. Although systematic research has not been done, it was reported that the prevalence of children's rights language on websites and in other public education resources is less now than it was in the first ten years following adoption of the Convention. If accurate, this trend can be reversed by multiple actors who adopt a strategy of leading-by-example.

- A joint public information strategy, by governments and child-serving agencies, could explain the Convention and address common questions about the meaning of children's rights, to foster greater understanding and support for implementation.
- Use schools to inform all children in Canada about their rights. We need to scale up from small awareness projects, given the high percentage of children who report not being informed about their rights. Evidence from the Rights-Respecting Schools initiative shows the benefit of integrating teaching and practice, to build rights-respecting relationships between children, adults in care-giving positions, and the community.
- Age-appropriate information about issues that affect children could be made widely accessible through electronic means.
- Public education about the development of children in general could be expanded to foster broader understanding of how implementing children's rights benefits the whole society.

## **Data Collection and Analysis**

There is broad agreement that measuring progressive realization requires improved data collection and analysis of the situation of children across Canada. Significant gaps in basic data were noted in the last review. Every review has concluded with recommendations for substantive improvement in data analysis to inform policy and programming. Implementing those recommendations would benefit everyone. Modern technology makes it feasible.

Academics and civil society organizations have useful information about living conditions for children, often closer to their lived reality, but there is no infrastructure for bringing that information together in a way that informs public policy. Significant public resources are spent on that research but its value is not captured for the benefit of all children. A rights-based approach could bridge those divides.

- Starting early on preparations in Canada for the next official review could engage all parties to address the long-standing issues with the quality of data analysis in Canada, using modern technology to make reliable information readily accessible, also for young people.

- Early public disclosure of information about the situation of children in Canada would assist all actors who want to contribute to the progressive realization of children's rights. All provinces and territories supported ratification; so it is reasonable to argue that the Convention principles of transparency, public disclosure, and public accountability apply across jurisdictions. They could be used to break through territorial refusal to publicly disclose information that young people and the public have the right to know.
- Evidence-based research that shows progress and good results could be leveraged across the federation if there were better avenues for sharing that information.
- Mandate a specific governmental body/agency with collecting data about children's rights, e.g. a Deputy Commissioner of the Canadian Human Rights Commission.
- Establish a Tri-Council of federal/provincial/territorial Research to collect and analyze data and research studies on children in Canada.
- A National Observatory for Children, an initiative introduced by UNICEF Canada, could be mandated to collate existing evidence and research identified gaps, working with advisory groups that bring together expertise across Canada.
- Civil society advocates for children's rights could increase collaboration, working with provincial children's advocates and the PM Youth Council, to maximize analysis being done by different agencies and its national impact.
- Violence against children is a specific area where substantive improvements in information and analysis would inform more effective measures to implement Article 19's commitment to protect children from all forms of violence. The Canadian Incidence Study of Reported Abuse and Neglect provides useful information; broadening its narrow scope could add valuable information. Every research study of violence against children finds that most incidents of violence are not officially reported; knowing about children impacted by all forms of violence is essential for realization of their right to be free from violence.
- For child welfare, another area of data gaps and weak analysis, the Truth and Reconciliation Commission recommended annual reports for all indigenous children in care. Annual reports would benefit other children as well and have the potential to lead to significant improvements between the five year official reviews. 2017 would be a good year to start releasing annual reports.
- On-going work on the development of outcome indicators that are rooted in the Convention, for use to regularly monitor and report progress, such as the Global Child project, could benefit from the use of outcome measures and evidence-based research for discussion in Canada in the lead-up to the next UN review.

## Legal Reform

For twenty-five years the official position of governments has been that Canada implements children's rights through policies and programs and does not need to make them part of Canada's laws. Experience with the Jordan's Principle initiative clearly illustrates both the inadequacy of that position and the benefits of making children's rights part of the legal framework for the federation. Jordan's Principle states that, when a jurisdictional dispute arises regarding public services for a First Nations child that are otherwise available to other children, the government of first contact should pay for the service and address payment disputes later. Parliament unanimously passed a resolution to support it, but implementation was left to policy, programs, and coordination. It did not happen. First Nations children continued to fall through the cracks as authorities used delays, narrow interpretations, and other strategies to avoid paying for necessary services. In 2016 the Canadian Human Rights Tribunal ruled that this was discrimination, which brings the issue under the legal framework of the Canadian Human Rights Act.

Full implementation of Jordan's principle is required to redress and prevent discriminatory practice against First Nations children in the area of child and family services. The Jordan's Principle experience also illustrates the vital role of rights-based advocacy by civil society organizations to realize the rights of children in Canada.

The lesson for Canada's children, reinforced by experience in other countries, is that incorporating children's rights into Canadian law will make Canada work better for young people across the Canada. The Concluding Observations from the last review ask Canada to:

*“find the appropriate constitutional path that will allow it to have in the whole territory of the State Party, including its provinces and territories, a comprehensive legal framework **which fully incorporates the provisions of the Convention** and its Optional Protocols and provides clear guidelines for their consistent application. “*  
(UN Committee on the Rights of the Child, Concluding Observations: Canada, CRC/C/CAN/CO/3-4/ paragraph 11)

### The Convention and Canadian Law

- The rulings of the Canadian Human Rights Tribunal in the case of indigenous child welfare show that Canada can no longer credibly argue that it adequately implements the Convention through existing government policies and programs. It will no longer be able to avoid accountability by claiming that the UN Committee does not understand how the federal system works in Canada. Before the next review Canada has to find a way to respond to the helpful recommendation about legal reform and be able to table what path it is taking to make children's rights part of Canadian law.

- There is more than adequate expertise in human rights law in Canada to do better for our children. Bringing together relevant government, academic, and civil society expertise could lead to identification of a practical path forward to achieve the goal in the five years between the 5<sup>th</sup> and 6<sup>th</sup> review.
- Establish a monitoring mechanism for discrimination involving children. It should include public education resources, easy access for children to report cases of discrimination, public awareness of cases, community support systems for children claiming discrimination, and a network of pro bono lawyers willing to take cases of discrimination
- The federal government can develop model legislation in key areas where there might be overlap with the provinces and establish opt-in provisions with financial incentives.
- In other areas of federal jurisdiction, i.e. indigenous children and immigration, the federal standards are lagging rather than leading the way in rights protection for children. Making them consistent with best practices in children's rights would show leadership and result in improving the lives of some of the most vulnerable children in Canada.
- Ratify the third optional protocol to the CRC, making an international communication mechanism available with regard to child rights violations at all levels of government.

## **Specific areas for legal reforms**

**Criminal law:** The federal government can lead by example in this area, and interjurisdictional initiatives could build on good practices in some provinces. The reality that corrections and mental health services are under provincial jurisdiction, while criminal law is federal jurisdiction, requires a high level of co-operation.

- Removing denunciation and deterrence from the youth justice provisions, as part of its review of the criminal code, would lead by example, to bring our criminal law into compliance with the Convention and good practice internationally. Adding them was justified as response to one enquiry into one case, the Nunn Commission, which did not take account of children's rights, whereas broader evidence across Canada supports positive outcomes from practices that reflect the provisions in the Convention. Quebec, for example, has retained rehabilitation as the highest priority in its youth justice system.
- In addition, a review of the experience of youth in the criminal justice system highlights the importance of giving more consideration to the experience of indigenous and minority youth, as well as increasing preventive and diversion strategies that incorporate mental health, education, and personal support. The Convention and good practices in the implementation of the relevant articles provide a path for improvement in Canada.
- Learn from comparative studies of the disparities in rates of youth incarceration across Canada, to inform policy and good practices.

- Prevention of violence against children would benefit from repealing section 43 of the Criminal Code and strengthening public education at all levels of government; it does not need to be one or the other. Both together has been most effective in other nations.

**Child Welfare Legislation:** In the last 25 years, the pattern in Canada has been repeated expensive enquiries into tragic deaths of children in care that result in hundreds of good recommendations which are acknowledged, but only partially implemented, e.g. the inquest into the death of Katelynn Sampson in Ontario.

In addition, research has now documented the negative outcomes and costs to the Canadian economy when the rights of young people in the care of the state are not protected.

- Some provinces are following good practices in reform of child welfare legislation. The federal government could use its convening power to highlight good practices and help all provinces ensure that the provisions of the Convention are fully incorporated, to improve the way child protection works across the country. It can be argued that the current situation results in discrimination against some children because of where they happen to be born in Canada.
- The Truth and Reconciliation Commission recommendations for child welfare reform are consistent with the Convention. While they rightly focus on indigenous children, implementation could benefit other children as well.

## **Coherence in Policy for Children**

Documented research shows that children fare better under a comprehensive and coherent policy framework that integrates different dimensions of well-being and rights. The Convention provides such a framework, while allowing local and provincial diversity in program design and delivery.

- The mandate of an Office of a National Commissioner for Children could facilitate coherence, rooted in the Convention. Working with children, it could help to ensure that children are considered in all areas of policy-making and address inconsistencies and gaps that harm children. It could also share good practices across jurisdictions.
- Expanding the use of Children's Rights Impact Assessments as a tool to assess impacts for children in the early stage of policy development could assist coherence and cooperation across departments and jurisdictions.
- The federal government could lead by adopting a robust, broad approach to the existing human rights review of proposed legislation rather than the current minimalist review for egregious violations as its test of compliance. A progressive realization approach would result in more helpful assessments for cabinet deliberations.
- The federal government could lead by taking children's rights into consideration in new and innovative ways, such as: assessing infrastructure projects from the perspective of young

people, e.g. the design of public buildings; assessing the impact of transportation policies and spending for young people; and linking the right to a healthy environment with energy and climate change policies. For energy and climate change, putting children at the center can help to give greater weight to long-term impacts as a balancing factor to short-term considerations (the seven generations approach of indigenous people).

## **Use the Review Process to make Progress in Canada**

Instead of treating the treaty review process as a necessary nuisance, with governments adopting an adversarial stance toward civil society, it could be used as a vehicle for making progress for Canada's children. That would provide better value for both the tax dollars spent within governments and voluntary resources and donations on the civil society side.

- Public reporting on follow-up to the concluding observations on an annual or on-going basis could reduce the wasteful repetitiveness of repeated recommendations with no change and no response. Civil servants track this, but the information is never shared with the public. A more open and consultative process between the official reviews would foster cooperation on identified achievable goals and recognition that there may be better ways to achieve some of the goals in Canada. Including young people in this process would help to ensure that their priorities and knowledge about what could work for them are given serious consideration. That would be preferable to the current, unproductive process.
- Use the youth-friendly version of the Concluding Observations to report back to young people what has or has not been done since the last review.

## **Other Specific Suggestions for Improvement**

- The federal government could lead by example in areas that are clearly under its own jurisdiction, such as children who are impacted by the immigration system and indigenous children. Protecting the rights of undocumented children, for example, or ending the use of immigration detention with children, would also demonstrate international leadership.
- The federal government can lead by example in areas that are under provincial jurisdiction through research and comparative analysis, as part of exercising its responsibilities to monitor and be accountable for progressive realization of children's rights.
- Linking relevant matters in the mandate letters for cabinet ministers with fulfilling Canada's obligations could assist in building public support across the country. The CCRC has written letters to cabinet ministers highlighting positive links and has made submissions to national consultations encouraging greater use of the Convention in the development of national plans for action.
- The Convention could be used to design measures to monitor the outcomes of current national strategies that affect children, e.g. poverty and early childhood development, for progressive realization of children's rights.

- Greater use of stories that link the real-life impacts for children with the systemic factors that harm them and contribute to their needs can help to reduce “blaming parents” and increase understanding of the benefit of children’s rights in Canada, e.g. the Adverse Childhood Experiences study.
- Consider a Federal/Provincial/Territorial Summit for Children to share research, good practices, indicators of progress, and include the voices of children and youth in dialogue with government leaders. This could be part of the 150<sup>th</sup> Anniversary events, with a focus on Making Canada Work Better for Young People in the next 150 years.
- Create opportunities to meet regularly to develop strategies for improving implementation of the Convention, as we are doing today.

*“The Government of Canada takes its human rights commitments seriously. We continue to work in partnership with provinces and territories, indigenous community groups, non-government and community stakeholders as well as international organizations to advance laws, policies, and programs that promote and protect children’s rights, including the right to the highest attainable standard of health and child well-being, so that they can have a real and fair chance to succeed.”*

National Child Day message by the Ministers of Health, Justice, and Families, Children, and Social Development. November 20, 2016

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## **APPENDIX I: Discussion paper distributed in advance of workshop**

### **Children's Rights: An Asset for Federal – Provincial Relations in the 21<sup>st</sup> Century**

#### **Introduction**

2016 is the 25<sup>th</sup> Anniversary of Canada's ratification of the Convention on the Rights of the Child. Implementation follows ratification to achieve progressive realization of children's rights. Implementation of the Convention across Canada remains the major challenge. Major gaps in implementation were evident during the Third-Fourth Review of Canada by the UN Committee on the Rights of the Child in 2012. Many basic recommendations for Canada, repeated from the first and second reviews, show systemic gaps and limited progress over 25 years.

These reviews also show the limitations of monitoring and reporting as a mechanism for improvement. Other mechanisms are needed to encourage implementation between the five-year international reviews.

A significant challenge for effective implementation in Canada is the need for federal-provincial cooperation in most policy areas. For years Canada's federal system was named as a reason for lack of progress. However, Canada's Constitution is not an obstacle to cooperation in other areas. Other federal states have made significant progress in 25 years, and all states have some level of shared responsibilities. After this was pointed out, there was a shift in the last review toward highlighting progress in one province, but without accountability for all provinces.

Canada's children deserve better than this. More importantly, rather than federalism being a barrier for children's rights, the Canadian Coalition for the Rights of Children is convinced that children's rights could be an asset to improve cooperation between all levels of government.

Why and How?

#### **Features of Children's Rights that could Strengthen Federalism**

**Child-centered:** Children are at the center of policy discussion rather than either federal or provincial governments, shifting focus away from unproductive "blame the other" jurisdictional disputes or territoriality.

**Outcome-oriented:** Children's rights focus on outcomes for children more than program deliverables. Voters are most interested in impact for children from tax dollars invested by any level of government. There can be flexibility and difference in programs, in response to regional differences, within a common commitment to progress for all children under the Convention.

**Coherence:** The Convention, a comprehensive, integrated framework, can help to co-ordinate policies that affect children and prevent children falling through the cracks of different ministries at all levels. It is a tool for policy coherence, ensuring that progress in one policy, e.g. the Canada Child Benefit, is not undermined by changes or insufficient attention to other programs.

**Data-Sharing and Analysis:** Data ultimately belongs to the children as the rights-bearers and should be transparent and publicly assessable rather than held back by any government as exclusive property of one ministry for political purposes. Major data gaps in Canada's report are routinely blamed on unwillingness of provinces to submit data to the federal government.

Rights-based, public and transparent systems would be able to hold every government accountable for failure to produce data. Data should be available early in the process as a common basis for discussing progress rather than being used as a weapon in a confrontational process that can be manipulated for political purposes more than for the benefit of children.

**Public Accountability:** Targets based on the concept of progressive realization can provide useful measures for short and long-term progress. Regular public reporting on progress and mechanisms for children to claim their rights increase accountability for commitments made to children in the Convention.

**CRIA as early bridge-builder:** Child Rights Impact Assessment, a tool to implement the Convention, can be used by all levels of government for an early and impartial assessment of potential impact of policy options that affect children. It fosters cross-government cooperation to address identified issues. Use elsewhere confirms that this can save money and improve policy responses to emerging issues.

Questions for Discussion:

1. Data-sharing and Analysis: Better data on children in Canada is a common goal; what mechanisms could be established to move ahead on this? What would be the benefits of better data in your area of work related to children's rights?
2. Coherence: In your field of work with children, have you identified lack of coherence between departments and levels of government? How might using the Convention as a basis for policy-making at all levels contribute to greater coherence and benefit children?
3. Outcomes: In your field of work with children, how could a Convention-based focus on the status of children and the outcomes of public policies add value to the more prevalent use of program deliverables?
4. Public Accountability: How could regular reporting on progress be done in a way that would advance progress in your field of work? Do children have access to effective mechanisms to claim their rights?
5. CRIA: Do you think the use of CRIA would be of benefit in your area of work? Do you think it could be feasible? (See factsheet on CRIA for summary of what CRIA is.)