

**Children's Rights and Family Law Reform:
Submission by the Canadian Coalition for the Rights of Children**

Introduction

The Canadian Coalition for the Rights of Children (CCRC) appreciates the government's plans to update and modernize Canada's family laws to better serve current needs. The primary focus of the Coalition is respect for and realization of the rights of children affected by the processes and decisions made in Canada's family court system. The Coalition is a national network of organizations and individuals committed to implementation of the Convention on the Rights of the Child in Canada and globally.

The following recommendations are based on research into good practices in Canada, the obligations of Canada as a duty-bearer under the Convention, and recommendations made in previous reviews of how Canada implements the Convention. We note that Canada is currently undergoing its 5th/6th review, which makes this an excellent opportunity to demonstrate progress in the realization of the rights of children across Canada.

1. Include explicit legal recognition that all decisions affecting children shall give primary consideration to the best interests of the child and must be consistent with the Convention on the Rights of the Child.

The Convention provides an important comprehensive framework for determining the best interests of the child and ensuring that the rights of the child are given priority in all decisions. There are precedents for this, including the Youth Criminal Justice Act at the federal level and Ontario's Supporting Children, Youth, and Families Act. Explicit reference to the Convention in family laws would also help to ensure that decision-making processes take account of the inter-dependent and inter-related rights of children that are often directly affected by decisions made in the family court system.

As well as adding this provision as a general principle, as a separate article 1.1, the Coalition recommends also embedding explicit references to the rights of children in relevant articles throughout the revised law. Some examples are discussed later.

In the last review of how Canada implements the Convention, Canada was asked to incorporate both the Convention and the principle of the best interests of the child into all relevant domestic legislation:

The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislation, administrative and judicial proceedings as well as in all policies, programs, and projects relevant to and with an impact on children.” (Committee on the Rights of the Child, Concluding Observations: Canada, para.35, CRC/C/CAN/C/3-4, p. 8.

For guidance on determining and implementing the core principle of the best interests of the child, the Coalition suggests the government make use of General Comment 14, prepared by the UN Committee on the Rights of the Child; it includes more specific legislative suggestions and international good practices relating to family law.

2. Include a requirement that the views of the child must be seriously considered, using age-appropriate good practices of doing so in the various decision-making processes.

Research shows that consideration of the views of the child can benefit all parties involved in family court processes. A workshop on family law, during a 2009 national conference on Best Interests of the Child, sponsored by the Coalition, brought together professionals from various fields to focus on learning from practical experiences in ways to consider the views of the child. While practical challenges were recognized, there was agreement that the positive benefits outweigh the challenges and that there is value in starting early in the process.¹ Since then, good practices have developed in individual courts and small projects across the country. The Coalition is convinced that there is enough competency to make it a requirement, which will be an incentive to mainstream good practices.

Considering the views of the child is essential for determining the best interests of a child and for realizing the rights of children under the Convention, as articulated in Article 12. Article 9, which addresses separation from parents, explicitly states that in all proceedings, “*all interested parties shall be given an opportunity to participate in the proceedings and make their views known.*”

Consideration of the views of the child should be established as a general principle and incorporated into more specific provisions in family law.

During the last review of children’s rights, Canada received the following recommendation:

¹ Canadian Coalition for the Rights of Children. “The Voice of the Child in Family Law,” *Best Interests of the Child Meaning and Application in Canada*, pp. 24-31. Published by the CCRC, c. 2009. Available at <http://rightsofchildren.ca/wp-content/uploads/2016/03/BIC-Report-ENG-Web.pdf>.

Specifically, the Committee recommends that the views of the child be a requirement for all official decision-making processes that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment. The Committee also urges the State party to ensure that children have the possibility to voice their complaints if their right to be heard is violated with regard to judicial and administrative proceedings and that children have access to an appeals procedure. (Committee on the Rights of the Child, Concluding Observations: Canada, paragraph 37, CRC/C/CAN/C/3-4, p. 8.

For guidance on implementation of this requirement, the Coalition recommends use of General Comment 12, prepared by the UN Committee on the Rights of the Child; it includes guidance on methods for considering the views of the child in judicial processes such as family courts.

3. Adopt a child rights' perspective on parental support and access issues

The Convention articulates that children have rights in relation to parental support and access, especially articles 9, 18, and 24. The current law treats these primarily as negotiations between opposing parents in a disputed divorce; framing them as a child's right would give greater priority to the best interests of the child. Approaching these as a matter of the rights of the child could also help to reduce delays and excessive litigation, which are not in the best interests of a child, and give greater weight to the views of the child in the decision-making process. This would be in keeping with a ruling by the Supreme Court that it is a right of a child to have custody and access determined from the perspective of the best interests of the child. (Gordon v. Goertz, [1996] 3 S.C.R.27)

The Coalition recommends that giving priority to the best interests of children be incorporated into the specific sections of the law dealing with child support orders, such as section 15, section 16, and section 17.

Giving priority to the best interests of children should also lead to strengthening the means of enforcing parental support orders. An unacceptably high percentage of parental support orders are in arrears in Canada.

4. Incorporate recognition of children's rights into legal provisions that describe the duties of the various actors in the family court system.

It is important that all parties involved in family disputes be required to give priority to the best interests of any children involved. The current law includes under the duty of legal advisers a requirement to advise clients about possibilities for reconciliation, but it

does not require them to advise clients on how to give priority to the best interests of any children involved in a situation. That focus is also missing in specific provisions regarding the duty of the courts and jurisdictional issues. Giving clear priority to the best

interests of children could help to reduce delays and the use of excessively litigious approaches to legal representation that are designed to obtain advantage over an opposing adult but do great harm to children involved.

The Coalition recommends that explicit direction to give priority to the best interests of children be incorporated into the sections outlining the duties of various parties, such as section 9 on the duty of legal advisors and section 10 and 11 on the duties of the courts.

5. Protect the right of children to be free from all forms of violence and ensure long-term attention to protect the rights of children involved in cases that involve domestic violence.

The Coalition appreciates the expressed intention to pay more specific attention to evidence of domestic violence in cases coming to family courts, with particular regard for the safety and negative impacts for children. The Coalition recommends that revisions incorporate explicit reference to Article 19 of the Convention which articulates the right of every child to be free from all forms of violence. General Comment 13, prepared by the UN Committee on the Rights of the Child, provides additional guidance for states on ways to incorporate Article 19 into family legislation and family courts.

The safety of children being returned into the custody of a parent with a history of violence received specific attention in the last review of children's rights in Canada. Canada was specifically asked to "*establish mechanisms for ensuring effective follow-up support for all child victims of domestic violence upon their family reintegration.*" (Committee on the Rights of the Child, *Concluding Observations: Canada*, para. 47.d, CRC/C/CAN?CO,3-4, p. 10.)

Summary

The Coalition appreciates the expressed intention to modernize the legislation governing Canada's family court system, with the goals of greater consistency, reducing delays, improving access to justice, encouraging mediation and less litigious resolution of individual cases whenever possible, reducing poverty and uncertainty associated with divorce, and better addressing family violence. Most important of all is strengthening the laws to ensure that the rights and best interests of children are given top priority in all the decision-making processes that affect them.