



## CRC 2003 Review: Background Note 2 on Best Interests of the Child<sup>1</sup>

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# Best Interests of the Child: From Principle to Practice in Canada

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

*States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and to this end, shall take all appropriate legislative and administrative measures.”*

(Convention on the Rights of the Child, Article 3.)

### Core child rights principle is inconsistently applied in Canada

The “best interests of the child” is a core principle in the UN Convention on the Rights of the Child; yet its implementation in Canada’s courts, institutions and programs has been uneven. In some federal laws, such as the *Divorce Act*, it is the primary consideration for determination of custody and access, but it has been interpreted in different ways by the courts. In other laws affecting children, such as the *Immigration Act* and *Youth Criminal Justice Act*, it is one factor to be considered among others, and not necessarily the primary one. In the area of services and programs for children, the “best interests of the child” principle is often ignored.

At the provincial level, there is also inconsistency in use of the principle to guide legislation, such as child welfare laws, and implementation of the law. In the public arena, there is a lack of awareness about the principle itself, and then wide differences in understanding what it means and how it can be implemented. “Best interests of the child” can also be used inappropriately as a rationale for particular policy positions.

<sup>1</sup> This is the second in a series of background notes on the 2003 Review of Canada’s Second Report under the Convention on the Rights of the Child. It accompanies an overview of the recommendations, entitled “Canada and the CRC: 2003 Review Report,” prepared by the Canadian Coalition for the Rights of Children.

## Recommendations reflect specific concerns

In 2003, the UN Committee on the Rights of the Child recognized that Canada upholds the general principle of *“primary consideration for the best interests of the child.”* However, the Committee expressed concern that the principle:

- *“Is not adequately defined”*
- *“Is not reflected in some legislation and programs affecting children”*
- Has *“insufficient research and training for professionals”* to implement it

The Committee recommended that Canada take the following actions:

- *“The principle be appropriately analyzed and objectively implemented”*
- *“The principle be integrated into all revisions of legislation, legal procedures in courts, administrative decisions, and programs and services that impact children”*
- *“Research and educational programs for professionals be reinforced to ensure that article 3 is fully understood and the principle effectively implemented.”*

(Concluding Observations, Paragraphs 24 and 25)

The CCRC has proposed to work with the Government of Canada to increase awareness of this principle, what it means, and how it can be implemented in Canada.