



## CRC 2003 Review: Background Note 4 on the CRC and Canadian Law<sup>1</sup>

# Children's Rights Should be Protected by Law in Canada

### Long Overdue

In 1995, the Government of Canada made its first report on implementation of the Convention on the Rights of the Child, following ratification in 1991. The review of that report by the UN Committee on the Rights of the Child concluded:

*“The Committee expresses its concern about the value of the Convention in domestic law. Certain basic provisions and principles of the Convention, particularly those relating to non-discrimination, the best interests of the child, and respect for the views of the child, have not always been adequately reflected in national legislation and policy-making.”*

*“In view of the fact that the Convention can only be referred to before the courts as a means of interpretation of national legislation, the Committee recommends that further steps be taken to ensure the effective implementation of the Convention at the national level.”*

(Concluding Observations, CRC/C/15/Add.37, articles 11 and 23.)


In 2003, Canada was chided by the UN Committee for failing to address the 1995 recommendations and asked to “make every effort” to do so, with specific encouragement to introduce the Convention into law in Canada.

### Charter is inadequate in addressing children's rights

Canada has many federal laws that relate to children and each province has many more. But the Convention on the Rights of the Child has not been made part of Canadian law.

One argument says embedding the Convention in Canada's laws is not necessary because of the Charter of Rights and Freedoms. The Charter is inadequate to protect the rights of children for three reasons: first, it applies only to the public sector (governments) and not to the other actors included in the Convention; second, the Charter makes no specific reference to children, and 20 years of application has not provided guidance in this area; third, it does not adequately address important areas for children, such as the right to health and education.

<sup>1</sup> This is the fourth 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.



Children’s rights are complex and specific to the dependencies and development of children—they need specific attention beyond the Charter. The Convention was adopted after the Charter of Rights and Freedoms. It is consistent with the Charter, but provides more direction and integrates various rights, taking into account the best interests of a child as well as a child’s perspective.

Others argue that existing laws are adequate. But there are gaps within and across our legislative framework, and some children fall between the cracks of different laws. The Convention provides an integrated framework for existing and future laws.

It is also argued that it would be too difficult to bring all laws into compliance with the Convention. It is contradictory, however, to say that current laws are adequate, while at the same time arguing that it would be too difficult to make them comply.

### **Senate Committee Findings**

The Interim Report on Children’s Rights by the Senate Human Rights Committee focused on the need to bring the Convention into Canadian law as its first recommendation. It called for enabling legislation, which would legally require all laws in Canada to comply with the Convention.<sup>2</sup>

After another year of study, the final report confirmed this finding and provided many examples of the positive changes for children in Canada that would result from this move. The final report also recommended that Canada fully comply with the Convention, which means making it part of Canadian law.

### **Action before Canada’s 2009 Report**

A decade has passed since the 1995 recommendation. Two Senate Committee reports, based on cross-country hearings and almost three years of study, provide solid reasons for the federal government to take this step, which should be made before Canada’s third report in 2009.

The Canadian Coalition for the Rights of Children (CCRC) proposes introducing a new law in the next year to make the Convention part of Canadian law, allowing 10 years for a legal review process to make all existing and new laws consistent with the Convention.

<sup>2</sup> *Who’s In Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children.* Interim Report, Standing Senate Committee on Human Rights, November, 2005, p. 1. See chapters 3, 4, and 5 for need and rationale for enabling legislation.