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COVID-19 and the right to education: analyzing the effects of the pandemic on the right to education for children and proposing next steps

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The COVID-19 pandemic has changed the delivery of education in Ontario. Students have been forced to adjust to various forms of alternative schooling methods both online and in-person. While some students may have adjusted well or even developed a preference for the new learning methods, others have struggled to learn in this new environment.

In this paper, I hypothesize that the changes in learning methods caused by COVID-19 have had a detrimental effect on the right to education for some students, a right that should be guaranteed to children under both international obligations, under the United Nations Convention on the Rights of the Child, and domestic law obligations, under the *Education Act* in Ontario. The purpose of this paper is to explore, from a right-based perspective, the potential negative impacts of COVID-19 on children's education in Ontario and to make post-pandemic school recommendations, based on those negative impacts, for the new school year in fall of 2021 and beyond.

Roadmap

I will begin by discussing what a right to education is and how it is defined by the United Nations Convention on the Rights of a Child ("the Convention"). This exploration is of particular importance because the right to education, as defined by the Convention, extends beyond the traditional interpretation of education that is pure academic learning. Then, I will discuss the ways in which COVID-19 has worsened access to the right to education for some students in Ontario. Finally, I will discuss what COVID-19 has taught us about education and make recommendations for the new school year in the fall.

I. Introduction to the Right to Education

To understand how children can achieve a right to education, it is necessary to explore the right itself. The right to education is grounded in international law through the Convention and has been, in some ways, adopted into provincial legislation. In this section, I will discuss the international origins of the right to education and how it has been adopted domestically.

a. *The United Nations Convention on the Rights of the Child*

In 1991, Canada ratified the Convention, which provides a foundation for the protection of children's rights globally.[1] This right was also outlined in the earlier International Covenant on Economic, Social, and Cultural Rights, which has also been used to ground children's rights in Ontario. However, this paper will consider mainly the rights as articulated by the Convention, as it is more recent and encompasses aspects of the earlier Covenant as they relate to children.[2]

Though the Convention has not been formally adopted into domestic law (and is therefore not legally binding), it nonetheless can and should underly Canadian law and policy for two reasons. First, as noted by the Supreme Court of Canada, the *Canadian Charter of Rights and Freedoms (*"the Charter") is presumed to provide "at least as great a level of protection as found in Canada's international human rights obligations".[3] Thus, the obligations of the state should at the least meet the obligations of the Convention. Second, per the principle of statutory

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[1] *Convention on the Rights of the Child,* 20 November 1989, *United Nations* (entered into force 2 September 1990)), online: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [*CRC*].

[2] *International Covenant on Economic, Social and Cultural Rights,* 16 December 1966 (entered into force 3 January 1976), online: < https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

[3] Halsbury's Laws of Canada (online), *Infants and Children (2018 reissue),* "International Law and Children's Rights ", at HIC-13 "Convention on the Rights of the Child in Canada." Online: < https://advance.lexis.com/api/permalink/6d9671de-66a9-4475-9f3d-9b1107b80899/?context=1505209>; Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia, [2007] 2 S.C.R. 391, at para. 70.

interpretation that statutes should be construed consistent with international obligations, statutes pertaining to children's rights should be interpreted with the Convention in mind.

Before I detail the right to education as articulated in the Convention, I wish to note that there are limitations to children's rights via the Convention. Convention rights are not absolute, and rights violations may be reasonable in some circumstances. For instance, Article 4 of the Convention, which details general obligations, states that "appropriate" measures should be taken with regard to "the maximum available resources".[4] Thus, during COVID-19, it is possible that some limitations placed on a child's right to education could be reasonable as Ontario takes appropriate measures to keep the province safe. However, not all limitations placed on children's rights are reasonable, and this paper will detail the violations I believe are not reasonably justifiable despite COVID-19.

Articles 28 and 29 of the Convention detail the right to education. Article 28 recognizes the right of a child to access education and the regulation of discipline:

> 1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
> (a) Make primary education compulsory and available free to all;
> (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
> (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
> (d) Make educational and vocational information and guidance available and accessible to all children;
> (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

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[4] *Convention on the Rights of the Child,* 20 November 1989, *United Nations* (entered into force 2 September 1990)), online: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [*CRC*].

> 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.[5]

Article 29 articulates the aims of education.[6] Article 29 notes that education should go beyond academic textbook learning to, amongst other things, the development of a child's personality, the development of respect for human rights and freedoms, the development of respect for a child's parents and cultural identity, and the preparation of the child for responsible life in a free society. As noted in the United Nations' General Comment of Article 29, "Education in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society".[7]

Accordingly, violations to the right to education in this context go beyond a lack of access to formal schooling. For instance, a student who can access textbook learning on math, but is unable to access textbook learning or other resources to better understand their own cultural identity, their rights, or develop their personality may nonetheless not have access to a full and holistic right to education. Additionally, Article 29 calls for schools to provide "the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations". In other words, children should know and understand their rights. As described by the United Nations Article 29 Comment, "…children should…learn about human rights by seeing human rights standards implemented in practice,

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[5] *CRC, supra* note 1 at article 28.

[6] *Ibid* at article 29.

[7] *General Comment No. 1: The Aims of Education (Article 29)*, OHCHR, 2001, online: < https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx>

whether at home, in school, or within the community. Human rights education should be a comprehensive, life-long process and start with the reflection of human rights values daily in life and experiences of children".[8] The teaching of children's rights is important because it allows children to understand their entitlements, particularly in times when their rights are vulnerable. It also allows children to respect the rights of others and live within a rights-respecting society. During COVID-19, when children experience many uncertainties and changes to their education and life outside of their control, it is particularly important to empower children to provide their own opinions on their situation.

Broadly speaking, the Convention demonstrates that the right to education is not fulfilled by providing only formal schooling. Contextualizing Article 29 in the time of COVID-19, this right is likely not fulfilled by online lectures with little to no student interaction. Further, Article 29 should call us to consider our education system's ability to provide learning beyond traditional school subjects.

b. Domestic Law

As aforementioned, the Convention has not been formally incorporated into Canadian law. However, Ontario has recognized aspects of the right to education in the Ontario *Education Act*. The *Education Act* recognizes that persons between the ages of 6-21 (i.e. resident pupils) have "the right, without payment of a fee, to attend school in a school section, separate school zone or secondary school district, as the case may be, in which the person is qualified to be a resident pupil".

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[8] *Ibid*.

Though the *Education Act* has no explicit mention of the right to education and the associated responsibilities to provide a certain standard of education, it nonetheless denotes a child's right to education in their area of residence. Further, the *Education Act* specifies certain standards for education that are reminiscent of Articles 28 and 29. For instance, it denotes certain purposes of the *Education Act*, like creating a positive school climate without bullying, gender-based violence, homophobia, transphobia, or biphobia, and to create a safe learning environment.[9]

Also, per the Act, the Ministry of Education provides extremely detailed curricula that are to be taught each year.[10] During this pandemic, it is thus important to ensure that these Ministry curricula are being upheld and taught comprehensively to students and that students are achieving key learning outcomes set by the Ministry. If not, alternative learning outcomes could be explored that better help students achieve their right to education.

II. Introduction to Education during COVID-19

Over the course of the pandemic, schools in Ontario have shifted through multiple scenarios of online and in-person learning. Consequently, many students were asked to adapt to different forms of learning at different times. This section will briefly discuss these changes to provide context for the effects of COVID-19 on education discussed later in this paper.

In Ontario, school districts underwent various changes in response to local public health orders. Since different Ontario regions were affected differently by the pandemic, there was

[9] Education Act, RSO 1990, c E.2 at s.300.0.1.

[10] "The Ontario Curriculum" (2021), online: *Ministry of Education* <http://www.edu.gov.on.ca/eng/curriculum/elementary/>.

variation in school response as well. Changes in schooling began in early 2020, when many schools in Ontario shifted to virtual classrooms in response to the first wave of COVID-19. However, at the start of a new school year in September 2020, some schools moved to offering both virtual and in-person learning in a hybrid model. For instance, schools in the Peel and Toronto Districts offered the option for students to go in 2-3 days a week in smaller cohorts of 15 (with online classes and asynchronous learning the other days) and the option to learn in a purely virtual setting with an online teacher. In early 2021, many school boards such as York-Catholic, Upper Canada, and Dufferin-Peel shifted to a hybrid model which combines in-person and online students into one classroom.[11] Other boards, like the Peel and Toronto District School Boards, continue to offer separate classrooms for virtual and in-person learning.[12] Currently, school districts are reacting to new regional health orders in response to evolving COVID-19 restrictions. As of early April 2021, schools in Toronto, Peel, and Wellington-Dufferin-Guelph were ordered closed in hopes of curbing a surge of cases.[13] Additional schools with outbreaks were also closed.[14]

School boards have also opted to change learning structures. For instance, both secondary and elementary schools have implemented asynchronous or independent learning modules to complement the typical synchronous learning. Asynchronous learning can involve pre-recorded

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[11] Jessica Wong, "As school boards blend in-person and virtual classes, criticism emerges for hybrid model" (16 Oct 2020), online: *CBC News* <https://www.cbc.ca/news/canada/hybrid-in-class-online-teaching-1.5762022>.

[12] "Virtual School", online: *Toronto District School Board* <https://www.tdsb.on.ca/Virtual-School>; "In-Person Learning", online: *Toronto District School Board*: <https://www.tdsb.on.ca/In-Person-Learning>; "Online Learning", online: *Peel District School Board* <https://www.peelschools.org/secondary/programs/online-learning/Pages/default.aspx>.

[13] Ryan Rocca, "'We have failed our children,' health group says as more Ontario school closures announced" (6 April 2021), online: *Global News* <https://globalnews.ca/news/7741070/childrens-health-coalition-ontario-school-closures-covid/>.

[14] Caryn Liberman, "COVID-19: 'Every indication' schools will remain open, Ontario education minister says" (29 March 2021), online: *Global News* <https://globalnews.ca/news/7727140/ontario-education-minister-schools-open-covid/>.

lectures and assigned tasks that students are to complete at their own pace.[15] Some secondary schools have also opted to further change their structures from semester to "quadmester". This structure involves breaking the school year down into four, rather than the traditional two, blocks where students study two subjects at a time in a more condensed fashion.[16] Some high school boards have also opted to cancel final exams and instead evaluate students using coursework.[17]

III. Achieving the right to education during COVID-19

In this section, I will discuss the effects of the educational changes during COVID-19 on students and assess, given the effects, some areas where the right to education is not being achieved in Ontario. Identifying the negative impacts of COVID-19 and how they violate the right to education for some children is important because it can ground suggestions for how school should look in September 2021 and moving forward post-pandemic.

This section of the paper will focus on two main topics: the effect of COVID-19 on student health and the effect of COVID-19 on equal access to education. I chose these two areas of impact because they contain important insights as to how and where the right to education is not being achieved in Ontario. Further, though academic literature on the impact of COVID-19 on education is lacking as the pandemic is ongoing, there are still some media reports and primary research that has documented such impacts on student well-being and access to education. Also, to better understand some of these findings and to provide a student-focused

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[15] "Asynchronous (Independent) Learning Activities", online: *Toronto District School Board* < https://www.tdsb.on.ca/Virtual-School/Virtual-School-Elementary/Asynchronous-Learning-Activities>

[16] "Secondary", online: *Toronto District School Board* <https://www.tdsb.on.ca/In-Person-Learning/Learning-and-Instruction/Secondary >

[17] "Pandemic prompts some Ontario boards to scrap plans for high school final exams this year", online: *CBC News* <https://www.cbc.ca/news/canada/toronto/no-final-exams-high-school-students-some-ontario-boards-this-year-pandemic-1.5761304>

perspective, I have conducted student surveys to gain insight on their outlook, which are not representative of all students in Ontario, but can provide a small starting point to understanding student viewpoints.

a. *Effect of COVID-19 on student health*

The World Health Organization defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".[18] COVID-19 has impacted all three aspects of student well-being. As a result, students may not be able to access their right to education to the best of their ability.

The pandemic and associated stay-at-home orders have had negative effects on students' physical health. A review conducted by Public Health Ontario reports decreased access to school health care services including nursing, physiotherapy and occupational therapy, speech-language therapy, diet and nutritional counselling, and the like.[19] The pandemic has also had an adverse impact on student diet and activity levels. A survey of Canadian parents found that only 4.8% of youth (2.8% of girls and 6.5% of boys) were meeting combined movement behaviour guidelines during COVID-19 restrictions and that children and youth were experiencing significant declines in all physical activities (indoor and outdoor play, sports, and walking).[20]

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[18] "Constitution", online: *World Health Organization* < https://www.who.int/about/who-we-are/constitution>.

[19] Ontario Agency for Health Protection and Promotion, "Negative impacts of community-based public health measures during a pandemic (e.g., COVID-19) on children and families." (2020) at p.5, online: *Public Health Ontario* <https://www.publichealthontario.ca/-/media/documents/ncov/cong/2020/06/covid-19-negative-impacts-public-health-pandemic-families.pdf?la=en> [*PHO* Report].

[20] Moore et al., "Impact of the COVID-19 virus outbreak on movement and play behaviours of Canadian children and youth: a national survey" (2020), 17:85 IJBNPA.

These changes in students' physical routines (i.e., removal from school structure, increase in sedentary activities, and increase in consumption of certain foods) may also be associated with an increase in children's anxiety, depression, irritability, boredom, and stress.[21] As schools provide stability to children, a sudden closure can cause significant disruptions in family routines that negatively affect the mental health of children.[22] A survey conducted by Children's Mental Health Ontario found half of Ontario's children and youth at risk for mental health issues during the pandemic. Further, more than half of the parents surveyed noted behavioral changes in their children and a quarter of parents reported that their children "felt sad or hopeless almost every day for a couple of weeks or more".[23] Similar studies have been conducted in other countries with similar findings. For instance, an American study reported that the proportion of mental-health related visits to emergency departments for children aged 5-11 and 12-17 years in 2020 increased approximately 24 and 31%, respectively, from 2019.[24]

In general, the lack of in-person learning has caused decrease in student socialization, which may be associated with an increase in children's depressive symptoms.[25] Also, isolation from a peer group can have impacts on a child's ability to develop social competence and relationships, since children often learn through peer interaction.[26]

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[21] *PHO* Report, *supra* note 17 at p.1.

[22] *Ibid at* p.6.

[23] "Covid-19 Mental Health Impacts" (2020), online: *Children's Mental Health Ontario* <https://cmho.org/covid-19-mental-health-impacts/>.

[24] Leeb et al., "Mental Health-Related Emergency Departmet Visits Among Children Aged <18 Years During the COVID-19 Pandemic – United States, January 1- October 17, 2020" (2020) 69:45 MMWR Morb Mortal Wkly Rep 1675-1680 DOI:https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.

[25] *PHO* Report, *supra* note 17 at p.12.

[26] Katie Dangerfield, "Coronavirus: How a lack of socialization could impact a generation of kids" (19 July 2020), online: *Global News* <https://globalnews.ca/news/7156863/coronavirus-children-isolation-socialization/>.

Article 29 of the Convention notes that education should go to "the development of a child's personality, talents, and mental and physical abilities". During COVID-19, when some students are lacking access to adequate physical activity, experiencing difficulties with their mental health, and lacking socialization, it is likely that their ability to develop beyond academics will be impacted post-pandemic. Thus, suggestions moving forward should focus on helping students feel supported in their well-being as to allow them to develop the competencies outlined in Article 29.

b. *The effects of COVID-19 on equal access to education*

During the pandemic, schools experienced a decline in attendance, both virtually and online. For instance, in October of 2020, the Toronto District School Board reported that 5,500 fewer students than expected returned to school.[27] The board is not certain where the students have gone, and there is no data collected so far. Other students were found to be enrolled but completely 'checked out'.[28] While some absences are likely due to transfers to private or home-schooling, it is also possible that these absences and disengagements are due to barriers to access as families struggle with the economic and health impacts of the pandemic.[29]

While all children feel the impact of school closures and changes in learning format, children in difficult circumstances, such as those who face barriers due to disability, race, or

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[27] Chris Herhalt and Beth Macdonell, "TDSB says 5,500 kids enrolled last spring did not return to its schools" (2020), online: *CTV News* <https://toronto.ctvnews.ca/tdsb-says-5-500-kids-enrolled-last-spring-did-not-return-to-its-schools-1.5160717>.

[28] Jessica Wong, "Teachers warn that some students have 'checked out' of school, and it will be hard to get them back" (2021), online: *CBC News* <https://www.cbc.ca/news/canada/education-pandemic-missing-students-1.5971911>

[29] Dana Goldstein, Adam Popescu and Nikole Hannah-Jones, "As School Moves Online, Many Students Stay Logged Out" (2020), online: *New York Times* <https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html>.

socioeconomic background, suffer the effects disproportionately. Article 28 of the Convention notes that the right to education must be achieved based on equal opportunity and that primary, secondary, and higher education should be available to all children. Thus, addressing the differential effects of COVID-19 on different sub-populations is important to assessing the ways in which Ontario can best move forward out of COVID-19 to ensure all students can achieve a right to education.

For instance, the pandemic has also had a notably disproportionate impact on the health of students with disabilities and their families. Children with disabilities may require an individual education plan and many rely on school-based services, such as special education teachers and student learning environments, to achieve the education they require.[30] Further, parents of children with high learning needs may not be equipped with the resources to maintain a remote learning environment.[31] A survey conducted by Statistics Canada found that while many parents are concerned about their children during the pandemic, a higher percentage of parents of children with disabilities are very or extremely concerned about their child's ability to achieve academic success, the amount of screen time their children were getting, and about loneliness or isolation when compared to other parents.[32] Only half of children with disabilities were reading books and exercising daily. In comparison, just under two thirds of children without disabilities were reading books and six in ten children were exercising daily.

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[30] Abbey R. Masonbrink and Emily Hurley, "Advocating for Children During the COVID-19 School Closures" (2020) doi: 10.1542/peds.2020-1440 Pediatrics, online: <https://www.researchgate.net/profile/Emily-Hurley-3/publication/342248636_Advocating_for_Children_During_the_COVID-19_School_Closures/links/5ef0b5e8a6fdcc73be94514a/Advocating-for-Children-During-the-COVID-19-School-Closures.pdf>.

[31] *Ibid*.

[32] Rubab Arim, Leanne Findlay and Dafna Kohen, "The impact of the COVID-19 pandemic on Candian families of children with disabilities" (17 August 2020), online: *Statistics Canada* <https://www150.statcan.gc.ca/n1/pub/45-28-0001/2020001/article/00066-eng.htm>.

Socioeconomic status has also impacted the way families respond to school closures and changes in learning format. The quality of an at-home education can depend on several factors, such as access to technology, availability of parental supervision, and access to a safe space for learning. Many of the things needed to create a successful learning space are premised on the idea that parents can afford the time or money to create such a space for children. Families with resources also have access to better learning alternatives. For instance, some wealthier families have shifted from public learning to private, creating "pandemic pods". The idea of a pandemic pod is to have a small group of children learning together through either the parents themselves or a private teacher.[33] Further, low-income families may lack access to resources that impede not only availability of alternative education, but public education as well. For instance, as detailed by Pathways to Education in their report on COVID-19 and low-income communities, "students from low socioeconomic backgrounds are most impacted by COVID-19 school closures and summer learning loss due to lack of the internet or proper devices to connect to peers, teachers, class work, and online resources".[34] While Statistics Canada reported that in general, only 1.2% of households in 2018 lacked access to internet, 4.2% of the lowest quartile of household income lacked internet access.[35] These statistics also do not tell the whole story. In households within the lowest income quartile, 63% had less than one internet-enabled device for each household member.[36] Lower income households are also more likely to rely on mobile devices, like

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[33] Katie Dangerfield, "Canadian parents are setting up 'pandemic pods' during coronavirus: what are they?" (4 August 2020), online: *Global News* <https://globalnews.ca/news/7221624/coronavirus-education-learning-pandemic-pods-canada/>.

[34] "Impacts of the COVID-19 pandemic on low-income communities" (13 June 2020), online: *Pathways to Education* <https://www.pathwaystoeducation.ca/research/impacts-of-the-covid-19-pandemic-on-low-income-communities/>.

[35] *Ibid.*

[36] *Ibid.*

smartphones and tablets, which have far more technical limitations than personal computers.[37] Students who live in crowded homes or share small spaces may struggle to focus during distance learning with the additional noise and disruptions. Students may also be more likely to learn remotely, even if in-person options are available, if they live with elderly relatives or in high-rise buildings where constant travel is riskier.[38] Low-income children may also live in inadequately heated homes, in areas without access to outdoor leisure facilities, or lack books at an appropriate reading level, all of which create an inadequate learning environment. Even worse, job loss and income insecurity during the pandemic could lead to housing insecurity and homelessness, putting the education of students at further risk.[39]

School closures may also disproportionately impact low-income students because they rely more heavily on schools for necessary resources. For instance, school closures exacerbate food insecurity because students living in poverty may rely on school food programs for a balanced meal.[40] Breakfast Club Canada reports an 80% increase in food insecurity in Canada during the pandemic, which translates to more than 2 million students at risk of experiencing hunger daily.[41] In addition to sustenance, children may also rely on schools to keep them safe. COVID-19 has caused restrictions and cancellations of visits by child welfare services, which

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[37] *Ibid*.

[38] Dakshana Bascaramurty and Caroline Alphonso, "How race, income and 'opportunity hoarding' will shape Canada's back-to-school season" (5 September 2020), online: *The Globe and Mail* <https://www.theglobeandmail.com/canada/article-how-race-income-and-opportunity-hoarding-will-shape-canadas-back/>.

[39] Wim Van Lancker and Zachary Parolin, "COVID-19, school closures, and child poverty: a social crisis in the making" (2020) 5:5 The Lancet Public Health E243-E244, online: <https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30084-0/fulltext>.

[40] *Ibid.*

[41] "Food Insecurity: The Impact of COVID-19 on Canadian Children" (2020) online: *Breakfast Club of Canada* <https://www.breakfastclubcanada.org/covid-impacts/ - :~:text=The latest indicators point to,3 children in the country>.

may add harm to at-risk families.[42] Further, studies have related deepening economic recessions with increased family violence (likely worsened by stay-at-home orders), which is associated with greater nonaccidental injury and mental trauma for children, who are now unable to go to school to seek the counselling and refuge they may need.[43]

Racialized communities have also been disproportionately impacted by the pandemic. While there are inextricable links between race and poverty, considerations of race as it stands alone is of particular importance because they emphasize unique problems faced by various racialized communities in Ontario. For example, surveillance data from Toronto and Ottawa found that COVID-19 cases are 1.5 to 5 times higher among racialized populations when compared to non-racialized populations.[44] Black people account for up to 21% of reported COVID-19 cases in Toronto while making up only 9% of the population. Similarly, Middle Eastern, West Asian, and Arabic communities represent 11% of Toronto's cases but only 4% of the total population.[45] Indigenous peoples living on reserve also have 69% higher rates of infection when compared to the general population.[46] Racialized communities are more likely to experience poor living and working conditions, such as lower incomes, precarious employment,

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[42] Neil Chanchlani, Francine Buchanan and Peter J. Gill, "Addressing the indirect effects of COVID-19 on the health of children and young people" (2020) 192:32 CMAJ E921-E927, online: <https://www.cmaj.ca/content/192/32/E921>.

[43] *Ibid.*

[44] Public Health Agency of Canada, "CPHO Sunday Edition: The Impact of COVID-19 on Racialized Communities" (2021) online: *Government of Canada* <https://www.canada.ca/en/public-health/news/2021/02/cpho-sunday-edition-the-impact-of-covid-19-on-racialized-communities.html> [*The Impact of COVID-19 on Racialized Communities*].

[45] Jessica Cheung, "Black people and other people of colour make up 93% of reported COVID-19 cases in Toronto" (30 July 2020), online: *CBC News* <https://www.cbc.ca/news/canada/toronto/toronto-covid-19-data-1.5669091>.

[46] *The Impact of COVID-19 on Racialized Communities*, *supra* note 42.

and housing issues.[47] Racialized communities also often must tackle issues of violence and feelings of a lack of safety that have been exacerbated by COVID-19.[48]

For racialized students, these inequities have consequences on their education. If parents are essential workers without paid leave, then they must forego the supervision of their children during remote learning. Communities living in overcrowded spaces risk more transmission of the virus and less availability of appropriate quarantine measures. Language barriers can also impair access to educational resources and understanding of material for both parents and students. All these factors can impact the mental health and focus of children in racialized communities, who by circumstance, will likely receive a lower quality of education when compared to other children.

Indigenous communities also struggle disproportionately with COVID-19. Some reserves are unable to fully implement public health behaviors like frequent hand washing due to concerns about the cleanliness of their water. Indigenous households are more likely to be overcrowded which impacts physical distancing. Indigenous communities also suffer disproportionately from poverty and disease, thus amplifying the deleterious effects of COVID-19.[49] For many remote and isolated Indigenous communities, students face difficulty accessing virtual classes due to inadequate internet infrastructure and language barriers.[50]

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[47] *Ibid*.

[48] Olivia Bowden, "COVID-19 and gun violence creating a two-front battle for Jane and Finch residents" (2020), online: *CBC News* <https://www.cbc.ca/news/canada/toronto/jane-finch-residents-covid-19-gun-violence-1.5794585>.

[49] *Public Health Agency of Canada*, "What we heard: Indigenous Peoples and COVID-19: Public Health Agency of Canada's companion report" (2021), online: *Government of Canada* <https://www.canada.ca/en/public-health/corporate/publications/chief-public-health-officer-reports-state-public-health-canada/from-risk-resilience-equity-approach-covid-19/indigenous-peoples-covid-19-report.html>

[50] *Ibid.*

Community members may also not have access to cellphones or internet ready services. In Kenora, Ontario (home of the first Anishinaabe immersion school, Gaagagekiizhik) educators report students learning from a McDonald's or Tim Hortons parking lot for Wi-Fi connection. Other students must rely on offline independent learning packages delivered by teachers or a bus driver.[51] Indigenous schools on reserve have also had difficulty accessing funding, which is particularly challenging during a pandemic, when students cannot afford to wait for the necessary resources. The Gaagagekiizhik school, for example, has had to search for money for personal protective equipment and cleaning, looking for companies accepting small orders. The school also does not have any funding to secure a library, librarians, computer labs, or iPads.[52]

The experiences of students in vulnerable communities have exposed violations of Article 28. For some of these students, it is evident that the right to education has not been achieved based on equal opportunity. While students in wealthier families have access to internet, parental supervision, outdoor facilities, and other supports, students with disabilities, in impoverished and/or racialized communities often lack many components of this support. The contrast between a wealthy student accessing private tutoring and learning and a child forced to sit in a McDonald's parking lot to access school is immense and illustrates the deep inequities exacerbated by COVID-19.

c. *A student-focused perspective on COVID-19 and schooling*[53]

[51] Ryan Moore, "'Our people have seen plagues before.' An Indigenous school in northern Ontario is facing the challenge of COVID" (2020), online: *The Toronto Star* <https://www.thestar.com/news/canada/2020/11/29/our-people-have-seen-plagues-before-an-indigenous-school-in-northern-ontario-is-facing-the-challenge-of-covid.html>.

[52] *Ibid*.

[53] **A note that this is a small sample size, and not representative of children across Canada. Furthermore, additional qualitative research would illustrate how children in different jurisdictions are doing during the pandemic.**

To complement existing studies, I conducted a small online survey with 7 students (5 Ontario-based, 2 out-of-province but with similar online educational experiences during COVID-19) to get their perspective on the pandemic. As part of the survey, I asked students about the impact of the pandemic on their learning (both positive and negative), the impact of online schooling (experienced by all surveyed) on their well-being, whether they preferred online or in-person schooling, how their classmates felt about pandemic learning, and whether they knew about their right to education and how to seek help if they were not learning properly. The results of this survey indicate that the effects of the changes in schooling caused by the pandemic are highly individualized—while some students mentioned benefits of pandemic learning, others expressed an intense dislike of online school and changes in learning format. These results emphasize the idea that students learn in a highly individualized manner and all respond differently to changes in education. However, certain negative impacts of COVID-19 were felt among all students.

All surveyed students indicated that they would prefer in-person over online learning, despite a few students stating that they enjoyed some components of online learning better than the in-person schooling counterparts. This preference corroborates the findings by SickKids hospital that suggest the necessity of prioritizing in-person learning.[54] Furthermore, all students noted some impact of online learning on their well-being and the well-being of their peers. For example, students noted that missed social interactions impacted their mental health, that their friends were struggling to focus in class, and constantly being inside impacted their physical health and made them feel lethargic. Most students also mentioned that online learning has

[54] "Full document: COVID-19: Guidance for School Operation during the Pandemic" (2021), online: *SickKids* <https://www.sickkids.ca/en/news/archive/2021/covid19-updated-guidance-school-operation-during-pandemic/#executivesummary>.

negatively impacted their attention span and information retention, even if teachers were adapting testing to prevent changes in grades. A few students also mentioned that, while teachers were doing their best to adapt, online learning was inherently more difficult and required a change in skillset that was hard. For instance, some students reported difficulties because they had to teach themselves concepts and others felt that the online learning environment made them more nervous to actively participate compared to in-person.

However, a few students reported on some positive outcomes of the pandemic and online learning. For instance, students commented on the benefits of having more free time, such as improved sleep and more time for activities. Other students reported that they really appreciated the effort of their teachers to ensure student well-being and provide teacher-led Q&A sessions. One student reported that they enjoyed having "quadmesters" as it helped improve their focus. Another reported that they enjoyed the asynchronous learning components that their school implemented (i.e., recording lectures that were available at all times) as it allowed them to work on their own schedules, which they could not previously do during in-person learning. The differences in student experience emphasize the idea that education is not one-size-fits-all and that the diversity of the student body should be considered moving forward.

None of the surveyed students were aware of the particulars of the Convention on the Rights of a Child—four students reported they did not know that there was a Convention at all, and three reported that they knew about a Convention but not the details. This fact suggests that students may not be learning about their rights at school, a finding already noted by the CCRC. Students also reported that they did not feel that they were able to seek help to improve their quality of education. For instance, a student mentioned that they felt they just had to deal with

whatever changes were handed to them. Other students mentioned that requests for help were being heard, but one student noted that despite feeling heard, they did not see any implemented changes. Another student noted that feeling heard was largely teacher dependent; while some teachers were supportive and extremely caring regarding mental health, others were unhelpful.

Overall, the data collected, while very small-scale, provides the insight that each student's experience with COVID-19 is unique. It also provides some insight on some over-arching themes, like a preference for in-person learning and a lack of knowledge on rights. More data should be collected from a student perspective to confirm these findings and better suggest student-focused solutions.

IV. Suggestions for schools for fall of 2021 and beyond

In the previous sections of this report, I described some of the effects of COVID-19 on students in Ontario and how those effects may have impacted students' right to education. Ultimately, during the pandemic, Ontario was unable to handle such an emergency without some children slipping through the cracks.

On May 4th, the Ontario government announced access to an additional $1.6 billion in funding to continue to provide safe learning in the 2021 fall school year.[55] This funding includes money committed to staffing, re-engagement for students, and mental health supports.[56] In this section, I will propose some recommendations for the fall 2021 school year and beyond that may help guide some of the education funding. Please note that the recommendations are merely

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[55] Katherine DeClerq and Colin D'Mello, "Ontario will continue to offer option for virtual learning next year" (2021), online: *CTV News* <https://toronto.ctvnews.ca/ontario-will-continue-to-offer-option-for-virtual-learning-next-year-1.5413126>

[56] *Ibid*.

suggestions, as the pandemic is ongoing and new findings on the impact of COVID-19 on students are constantly being made. The intention of these suggestions is to help envision changes that schools should make for the fall of 2021 and beyond to better help students achieve their right to education.

a. Prioritization of equal access to school

As discussed, equal access to learning has not been achieved for all students in Ontario during COVID-19. Furthermore, the experiences of students have been highly individual, with some students enjoying aspects of online learning and others not enjoying online learning at all. Providing the right to equal access to education should thus seek to respect the choice of students to learn either online or in-person come fall 2021. Thus, school boards should aim to make accessible both in-person and online options for the coming school year. By providing both options, school boards can empower students to make the best choice in learning for themselves and their families.

For many students, online learning has impacted their mental and physical health, focus, motivation, and socialization. These impacts can impair a student's ability to effectively learn and retain information. As mentioned, the negative impacts of online learning have also been disproportionately felt by children with disabilities, racialized children, and children from lower-income families, as children in those groups often rely on schools for additional care and supervision. Furthermore, some students have also expressed preference for in-person learning, a perspective that should be accounted for when considering schooling options for children. Overall, though some students have enjoyed online learning, others are not able to access their

right to education equally because they are unable to get the full benefits of learning when they are at home.

> As stated by reporter Andre Picard,
>
> > Education is not just a debate between book-based and digital learning. What you learn in the classroom, the schoolyard, or the lunchroom is how to navigate life, how to be independent, how to compete and cooperate, how to make friends and resolve conflict, how to adapt (or resist) rules and societal norms…This crucial interactive learning can't be done at a distance. Children and youth of all ages still need to get back to the classroom.[57]

From a rights-based perspective, this interactive learning done within the classroom contributes to the development of the aims of education under Article 29 of the Convention. When children can go to school, they may be better able to access the resources they need to develop their personalities, understand different cultures and communities, and learn how to socialize and function well in society. Thus, in considering the student perspective and in ensuring that all students can equally access their rights, offering in-person schooling as an option is imperative to maximizing student mental and physical health. As noted by SickKids hospital, education is critical for the development of children and current evidence can support the concept that children can attend school in a way that minimizes risks to public health.[58]

However, for some students, it is possible that currently, online learning is the best option for the well-being and safety of them and their family. Online learning could also be the preferred option for students who previously had a long commute to school or other barriers to access their physical classroom. Further, some students may prefer learning in a quieter

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[57]Andre Picard, "Getting children back to school has to be our top priority" (2020), online: *The Globe and Mail* <https://www.theglobeandmail.com/opinion/article-getting-children-back-to-school-has-to-be-our-top-priority/>

[58] "Full document: COVID-19: Guidance for School Operation during the Pandemic" (2021), online: *SickKids* <https://www.sickkids.ca/en/news/archive/2021/covid19-updated-guidance-school-operation-during-pandemic/#executivesummary>.

environment or on their own. For these students, the continuation of online learning options may make it easier for them to access their right to education.

In providing an online learning option, school boards should ensure equal access to virtual school for all students. Since online learning is premised on access to technology and the internet, this access is crucial to accessing instructional hours, online resources, and social activities with peers. The lack of technology and connectivity is particularly apparent amongst low-income and racialized communities, who will not be able to derive the full benefit of online education, or who may elect to go in-person if offered, even if it is at a detriment to their well-being, because they do not have the resources to learn at home. Without access to technology and the associated internet connectivity, it is difficult for the right to education to be realized in an equitable way if at all. Thus, the right to education cannot be achieved without access to connectivity and technology.

Issues of connectivity also extend beyond COVID-19 and online learning. Children who lack access to online resources in general may have difficulty accessing their rights, even if they are able to attend school in-person. For example, students who do not have access to a laptop or internet may have difficulty completing homework assignments after school, particularly those that require group work or research. They may also have difficulty keeping up with course work and assignments that are communicated online by teachers. Also, students without access to laptops and mobile devices may be at a disadvantage simply because they must manually undertake tasks, which can be time consuming. If a student must write all notes and complete all written work by hand, it may take the student much longer than their peers with mobile devices. If a student must go to the library to conduct research or must do so without the help of online

resources, it may take much longer to find what they are looking for when compared to a student with connectivity at home.

Thus, it is imperative that school boards look to improving connectivity for students, during and after the pandemic. Logistically, improvements could happen through funding Chromebooks or other laptops or providing options for internet connectivity, such as mobile internet hubs or portable wi-fi sticks. By doing so, school boards can ensure at the very least that students are able to access classes and online resources without struggle. Furthermore, even beyond the pandemic, there may be situations where a student is unable to physically attend school. For instance, students who are housing insecure and must move often, or students with mental or physical health issues who prefer to be at home may benefit from the availability of technology and connectivity so that they can access resources online.

b. A rights-based approach to staff hiring and training

As noted by the online surveys I conducted and as corroborated by existing research on children's rights noted by the Canadian Coalition for the Rights of Children ("CCRC"), students are not always aware of their rights and entitlements related to the Convention and *Education Act*.[59] Furthermore, some students I surveyed who sought (perhaps unknowingly) to achieve their rights by speaking to teachers or other support staff noted that during the pandemic they were not having their voices heard and not being supported at school. This information indicates that at the very least some students are not being taught about their right to education and further, that some educators are not helping students realize it. Post-pandemic, many students will be

[59] Daniella Bendo, "May 2021 Right to Education Commentary" (2021), online: *Canadian Coalation for the Rights of Children* <https://rightsofchildren.ca/childrens-rights-in-canada/may-2021-right-to-education-commentary/>.

returning to school after experiencing varied learning outcomes during online and cohort learning. Thus, it will be important for those students to be aware of their right to education, what it entails, and feel supported enough to seek help when they feel their right is not being achieved.

To help raise awareness on the right to education, Ontario should provide mandatory teacher training on the right to education and how to integrate rights-based learning more generally learning into their curricula. To teach student rights, it is suggested that Ontario should use the CCRC's recommendations provided in their rights and curriculum review.[60] If teachers are aware of student rights and are mandated to teach them, then students can take the first step in realizing their full right to education by better understanding it. Ontario should also expand this training to guidance counsellors and support educators (i.e., teaching assistants, etc.) so they are able to better understand the purpose and aims of education and how to better ensure children achieve them. As a suggestion, for example, guidance counsellors could be trained on how to counsel students from a rights-based perspective. This counselling could look like explaining to students who may seek help that they are entitled to a certain standard of education and support and working collaboratively with the student to understand how the right can be achieved.

While training education staff is important, it is also important to provide the right assistance to student's post-pandemic. Thus, it is suggested that some hiring resources be directed at providing avenues for targeted counselling services for students and at providing a children's advocate at the school board level. Regarding counselling services, it is suggested that resources should be directed at hiring both mental health counsellors as well as attendance

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[60] "Children's Rights and Curriculum Review in Ontario", online: *Canadian Coalition for the Rights of Children* <http://rightsofchildren.ca/wp-content/uploads/2018/12/Childrens-Rights-and-Curriculum-Reform-in-Ontario.pdf>.

counsellors. Attendance counsellors, who are already used by some school boards, act "as an intermediary between home and school" for children who have been absent for over 16 days.[61] Further, an attendance counsellor could also monitor students who were absent the school year from fall 2020-spring 2021, as those students could experience gaps in knowledge and skills that will carry over into the next school year and may require extra assistance.

Students may also benefit from stronger children's advocacy in the schooling system. Specifically, children may benefit from the provision of an advocate in their school board that acts as an ombudsperson. The appointment of an ombudsperson can provide a safe space for students to discuss their issues and receive impartial, confidential advice without fear of judgement or prejudice at schools. It is suggested that each school board have its own ombudsperson, rather than one ombudsperson at the provincial level, so that students can more easily access advocacy. It is further suggested that these advocates can also travel from school to school and speak personally to students to get a sense of their perspective.

c. Prioritization of data collection on student performance

Currently, human rights-based data (i.e., data on socioeconomic status, race, mental and physical well-being, students with disabilities, etc.) collected by Ontario school boards is patchwork at best, and post-pandemic, the need for school boards to collect high-quality data should be more pressing than ever. To do so, school boards should consider student perspectives on the impact of COVID-19 and use existing data collecting methods, such as student and parent

[61] Caroline Alphonso, "The kids are not all right: Educators worry about absences as COVID-19 challenges continue for parents, students" (3 May 2021), online: *The Globe and Mail* https://www.theglobeandmail.com/canada/article-the-kids-are-not-all-right-educators-worry-about-absences-as-covid-19/.

census' and collection of academic test results, to determine the impact of COVID-19 on student learning.

Foremost, a rights-based perspective should consider the viewpoints of children and gather data from children in their own words. This data collection would involve collecting first-hand student opinions on how they feel they learn best and how they can best achieve their right to education. As shown preliminarily by my small, online survey, students may feel the effects of the pandemic differently and enjoy different aspects of learning. The pandemic has provided a unique opportunity for students to experience several types of learning both online and in-person, both in smaller class sizes and in larger. They have experienced various methods of evaluation, like periodic assignments, quizzes, and final exams. Now that many students have experienced first-hand so many learning methods, they should be empowered to reflect on their own experiences and make suggestions for the future school years. For instance, students may prefer periodic evaluations over final exams, or take-home exams over timed ones. Students may also have discovered essential aspects of education for them, such as socialization or group work, that they feel are integral to achieving their rights. The experiences of students may be so diverse as to suggest the need for more personalized education plans. Furthermore, it is possible that students have learned in non-academic capacities (i.e., life skills from being at home, etc.) that they may potentially want to further develop in school. A student-led approach to education can perhaps also make suggestions that are not currently reported by parents or educational experts and giving students the opportunity to voice their concerns over their education can lead to changes made that are better catered to student needs.

The right to education also entails making education available based on equal opportunity. As discussed, existing issues of systemic discrimination and lack of access to adequate education have been aggravated by the pandemic, impairing the rights of some children to properly access learning. Consequently, it is possible that some students will experience education gaps and face long-term repercussions to frequent and difficult changes to learning environments. For instance, younger students may experience issues in their reading comprehension or math skills. Older students may have experienced gaps in knowledge in subjects they require for post-secondary education. These effects may be felt by students everywhere, or, may be concentrated more heavily in certain communities or in certain populations. Thus, it is important to continue to continuing measure student academic progress by gathering standardized testing results, grades, and graduation rates, and to compare the changes in scores before and after the pandemic.[62] Further, school boards should take care to look at community and population-specific data to identify communities in most need of intervention and perhaps allow prioritization for resource allocation to certain schools for re-opening. An example of a method of data collection are the Census Portraits done by the Toronto District School Board, which disaggregates census data by race, gender, sexual orientation, socio-economic status, and special education needs.[63]

While I acknowledge that the administration of standardized testing itself may be criticized as inequitable or not reflective of a student's true capabilities. However, so long as these tests continue and so long as testing on students, from primary to post-graduate education,

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[62] "Census Publications", online: *Toronti District School Board* <https://www.tdsb.on.ca/research/Research/Parent-and-Student-Census/Census-Publications.>.

is conducted, it is necessary to understand the impact of the pandemic on the test results of students. The ability to test take is a skill that is, for better or worse, required in schooling. Thus, lowered test scores for certain schools or communities during the pandemic are important to consider when assessing the pandemic's impacts.

Article 28 also recognizes that Ontario should "take measures to encourage regular attendance at schools and the reduction of drop-out rates". Moreover, the Ontario *Education Act* states that every child has a right to attend school. One measure that Ontario school boards should consider is to track down and collect data on students who have "disappeared" from school boards. To do so, school boards could require individual schools to reach out to students who are not present at school in the coming school year to ensure their well-being and document reasons for absences. While some students may have left public school but continue to learn through home-schooling or private education, others may not be learning at all, and thus are not achieving any semblance of their right to education.

Data collection may lead to some privacy concerns from parents and students. To mitigate some of these concerns, Ontario should seek to be minimally intrusive by seeking first to maximize analysis on existing data, and second to ensure that when data collected from students is done so voluntarily in a safe space. On the first point, data is already collected through academic course testing, standardized tests, recorded absences, and graduation rates. School boards also already have data on student grades and course averages. Therefore, these existing data points can be used and compared (i.e., comparisons of test results for a certain grade before COVID-19, during COVID-19, and after COVID-19) to get a sense of any changes in student progress. On the second point, data collected from students can be done so on a

voluntary basis from students who wish to have their voices heard and are comfortable doing so. For instance, the CCRC Commentary on the Rights to Education written during COVID-19 by Dr. Danielle Bendo notes that the use of youth advisory groups could be expanded to give youth a space to express their opinions.[64] Alternatively, tools like the student census already conducted by school boards can be utilized to ask COVID-19 specific questions to students on a voluntary basis.

Conclusion

Regarding Article 28 of the Convention, children during the pandemic are not accessing education equally. Basic education needs to be accessible for all students before the quality or substance of education can even be considered. If students are not able to access their online classroom because they do not have a Wi-Fi, then it does not matter to them what is being taught, since they cannot learn anything at all. At the bare minimum, all children should be able to access a classroom.

To provide equal access, I think it is also important to understand which students are struggling to achieve their right to education and are falling behind in school. Thus, disaggregated data by race, gender, sexual orientation, socio-economic status, and special education needs is needed to pinpoint where and what resources are needed. Further, empowering students to speak up about their rights, by providing a school board ombudsperson and additional counselling staff, should be considered to help students who are struggling.

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[64] Daniella Bendo, "May 2021 Right to Education Commentary" (2021), online: *Canadian Coalition for the Rights of Children* <https://rightsofchildren.ca/childrens-rights-in-canada/may-2021-right-to-education-commentary/>.

Finally, prioritization of access, through attendance counsellors and resources to improve connectivity and technology, should be considered.

Regarding Article 29 of the Convention, the pandemic has emphasized that children need to know about their rights. If children know about their rights, they are better able to understand what they are entitled to, and accordingly, can be empowered to speak up for the education they deserve. Thus, teachers and support staff at schools should be trained to understand the right to education and to teach it in their curriculum.

COVID-19 has had many detrimental impacts on the right to education, but it has also emphasized the ways in which schools can move forward in a better way. With the implementation of new resources, I hope that schools can continually improve the quality of education for children.