

UNICEF
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Not There Yet

Canada's implementation of the general measures of the Convention on the Rights of the Child

A joint publication of the UNICEF Innocenti Research Centre
and UNICEF Canada

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CONTENTS

ACKNOWLEDGEMENTS	v
ABBREVIATIONS	vii
FOREWORD	ix
PREFACE	xi
1. LAW REFORM AND THE CONVENTION ON THE RIGHTS OF THE CHILD	1
Introduction	1
Canada's Constitution and the Convention	1
Status of the Convention in Canadian law	2
Canada's reservations to the Convention	2
Federal government and law reform	3
Federal law reform	4
Provincial law reform	7
Jurisprudence and the judiciary	9
General challenges to child rights in judicial interpretation and application	11
Contributions to law reform from civil society	12
Should the Convention be incorporated into domestic law?	12
Conclusion	14
2. BUDGETING AND CHILDREN	15
Introduction	15
Budget allocations	15
Benefits for children in the federal budget	16
Aboriginal children	17
Budgets for children in Canada's international development assistance	19
Provincial budgets	19
Expenditures and evaluation	20
Civil society and budgets for children	21
Conclusion	24
3. NATIONAL PLANS OF ACTION	25
Introduction	25
Federal and provincial efforts	25
Canada's national plan of action	26
Analysis	28
Conclusion	29

4. MONITORING MECHANISMS	31
Introduction	31
Federal government process of reporting to UN committees.....	31
Data collection	32
Provincial reporting process.....	33
Civil society efforts	34
Analysis and conclusion	36
5. CHILD RIGHTS EDUCATION, AWARENESS-RAISING AND TRAINING ACTIVITIES	37
Introduction	37
Government activities.....	37
Civil society efforts	42
Conclusion	43
6. INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN	45
Introduction	45
Federal level.....	45
Provincial level.....	48
Municipal level	50
Conclusion	50
7. COORDINATION EFFORTS AND MECHANISMS FOR CHILD RIGHTS.....	51
National-level coordination	51
Provincial and local efforts	52
Challenges to coordination	54
Weaknesses in federal leadership on child rights	55
Civil society capacity and resource constraints.....	55
Conclusion	55
8. FINAL SUMMARY, MAJOR CHALLENGES AND RECOMMENDATIONS	57
Challenges to implementation of the Convention.....	58
Assets	60
Recommendations	62
Endnotes	65

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The case study is intended for use by policymakers, United Nations organizations and non-governmental organizations. The information that it contains was current as of September 2008.

ABBREVIATIONS

CAPC	Community Action Program for Children
CAYAC	Child and Youth Action Committee (Nova Scotia)
CCRC	Canadian Coalition for the Rights of Children
CCTB	Canada Child Tax Benefit
CIDA	Canadian International Development Agency
CMAJ	<i>Canadian Medical Association Journal</i>
CPAC	Cable Public Affairs Channel
CPRN	Canadian Policy Research Networks
CPS	Canadian Paediatric Society
CST	Canada Social Transfer
DCI	Defence for Children International
ILO	International Labour Organization
IYC	International Year of the Child (1979)
NCB	National Child Benefit
NGO	non-governmental organization
NPA	national plan of action
OECD	Organisation for Economic Co-operation and Development
PREVNet	Promoting Relationships and Eliminating Violence Network (a Canadian anti-bullying network)
RCMP	Royal Canadian Mounted Police
SCY	Society for Children and Youth of British Columbia
SUFA	Social Union Framework Agreement
UEY	Understanding the Early Years (initiative)
VSI	Voluntary Sector Initiative
WHO	World Health Organization
YCJA	<i>Youth Criminal Justice Act</i>

All amounts are expressed in Canadian dollars (Can\$).

FOREWORD

The Convention on the Rights of the Child was adopted by the global community in 1989.¹ It came into force in Canada in 1991.²

This Convention has been ratified by almost every country in the world – an unprecedented acceptance of the accountability of governments to their most vulnerable citizens. Over the past 20 years, incredible progress for children has been achieved, even in countries stricken by poverty, conflict and disasters. Deaths among children under five have fallen dramatically, as have the numbers of children out of school across the developing world. In a country like Canada, with economic means, stable institutions and technical knowledge, a much more progressive realization of children's rights in laws, policies and services may be expected.

By and large, Canadian families provide for their children and protect them from harm. We know, however, that children also have a direct call on governments for the provision and protection of their rights. Children and families need policies, laws and investments that specifically consider the rights and well-being of the youngest citizens, and governments at all levels that are accountable for their responsibilities to children.

Canada has made progress on many fronts. Many children are doing well. Breastfeeding rates are increasing. Improved school nutrition policies and practices are proliferating. The government has made a recent commitment to improve the mental health of children and adults. Most provinces have independent advocates for children.

Compared to other affluent nations, however, Canada has a large proportion of children in care and in the justice system; high rates of childhood obesity and mental illness; fewer quality-assured childcare spaces relative to other countries of similar economic means;

insufficient legal protection of children from violence and exploitation; and disparities between the performance of Aboriginal children and other Canadian children on many measures of well-being.

Canada has the economic means to provide for and protect the rights of children to a higher standard – even in challenging times. UNICEF research in industrialized and developing countries alike suggests that progress for children can be built upon and stimulated by putting in place or strengthening the 'general measures' of the Convention³ – structures and processes that promote the best interests of children in public policy and make all sectors of society accountable.

This report reviews the implementation in Canada of the general measures of the Convention on the Rights of the Child. It recalls the recommendations made by the Committee on the Rights of the Child and by Canada's Senate Standing Committee on Human Rights to bolster Canada's legal and institutional arrangements to build a truly protective and rights-enabling framework for all children.

In light of this review, Canada can take four practical steps with substantive benefits for children across the country:

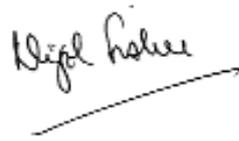
- 1. Pass enabling legislation** to make child rights a part of Canadian law and ensure that all legislation in Canada complies with the Convention on the Rights of the Child and other international normative standards for children. To complement such legislation, regular and systematic child-impact assessments of proposed legislation, policies, budgets and programmes, at both federal and provincial levels, can help prevent decisions that may have negative effects on children.

- 2. Establish a national children's commissioner** to place children high on the political agenda. An independent commissioner or ombudsperson for children can provide an important mechanism to promote and ensure that children's best interests are a priority in public policy.
- 3. Establish a children's budget** to identify the amount and proportion of resources spent on children at the federal, provincial and territorial levels. This will give children visibility in public accounts, as is done for other constituencies such as women, veterans and senior citizens. As the population most vulnerable to economic policy and yet with the least influence on it, children and young people's best interests should clearly guide the budgeting process.
- 4. Monitor the implementation of the Convention** by developing regular public reports on the status of children and their rights in Canada, facilitating participation by children in setting the national agenda and promoting a system of accountability for children's rights.

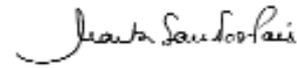
Putting in place these general measures will go a long way to ensuring sustainable attention to children's rights and well-being in Canada.

These measures embody a political commitment to children; the capacity to muster the nation's resources to respond to the needs of children; and the desire to use policies, laws and budgets to put an end to the factors that place children at risk.

With these mechanisms in place Canada will be able to do more for all children.



Nigel Fisher
President and CEO
UNICEF Canada



Marta Santos Pais
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PREFACE

Canada's long-standing parliamentary democracy system was founded in 1867 when the British colonies north of the American border – both English- and French-speaking – came together to create a confederation. Canada today comprises 10 provinces and 3 northern territories, and its borders extend from sea to sea. Canada has two official languages, English and French. One province, Quebec, has been recognized by the Parliament as a nation within a nation, a distinct society on account of its French-speaking majority, unique culture and civil law tradition. The peoples who have inhabited Canada for thousands of years, long before the arrival of the British and French, are known as Aboriginals. From a constitutional perspective, the Aboriginal people are described more specifically as Indian, Metis and Inuit; each group has its own heritage, language, cultural, political and spiritual beliefs. Their rights as Aboriginals are guaranteed by Canada's Charter of Rights and Freedoms (1982). The current population of Canada, approximately 32 million, also includes many people from all corners of the globe who have come as immigrants or refugees over the last two centuries and have added to Canada's diversity.

Canada was among the founders of the United Nations and has a long history of support for human rights. It has been continuously engaged in the negotiations of every human rights declaration and convention under the authority of the United Nations since the end of the Second World War. Canada is also a member of a large number of other international and regional organizations, and has earned respect for taking its human rights responsibilities seriously.

For many years, Canada has been perceived as an international leader with respect to children's rights. Canada played a significant role in drafting the Convention on the Rights of the Child between 1979 and 1989, co-chaired the World Summit for Children in 1990, hosted an important international conference on war-affected children in 2000, and was front and centre at the United Nations General Assembly Special Session on Children in 2002. This leadership role was non-partisan: it was embraced over the years by both Conservative and Liberal governments.

Canada signed the Convention on the Rights of the Child¹ on 28 May 1990 and ratified it on 13 December 1991; the Convention came into force in Canada in 1991.² The Optional Protocol on the involvement of children in armed conflict³ was ratified by Canada in 2000, and the Optional Protocol on the sale of children, child prostitution and child pornography⁴ in 2005, both of which Canada helped to draft.

However, when it comes to taking the necessary measures to implement the Convention, the country has faced enormous challenges. The two reports issued by the Senate Standing Committee on Human Rights on Canada's implementation of its international obligations with respect to children, entitled 'Who's in Charge Here?' (2005)⁵ and 'Children: The silenced citizens' (2007)⁶, have been particularly useful in documenting the issues confronting Canada as it seeks to fulfil its commitments.

This case study, *Not There Yet: Canada's implementation of the general measures of the Convention on the Rights of the Child*, was commissioned by the UNICEF Innocenti Research Centre (IRC) and complements a

report by IRC on implementation of the Convention in 62 countries. With so many countries under review, the space allotted to each one in that report was necessarily limited. An in-depth case study of countries in different regions of the world was thus deemed desirable to illustrate good practices, lessons learned and remaining challenges, using the general measures identified by the Committee on the Rights of the Child as a framework. Canada was chosen as a case study in part because it illustrates implementation of the Convention in a large federated State, with provincial governments and the national government responsible in various ways for the rights and protection of children.

It should be noted that the case study is exemplary rather than exhaustive. Chapter 1 is devoted to the impact of the Convention on law reform and jurisprudence. Chapter 2 examines budgeting and tracking expenditures, and

Chapter 3 discusses national plans of action. Monitoring processes and mechanisms, and the child's right to education, awareness and training are discussed, respectively, in Chapters 4 and 5. Chapter 6 analyses independent national human rights institutions for children, and Chapter 7 explores coordination efforts and mechanisms. The final chapter, Chapter 8, contains a summary of challenges, assets and recommendations for improved implementation. The challenges to implementation in a country like Canada, which has a relatively small population spread across a vast land mass, are unique to its history, geography, political structure and the many cultures that exist within its borders. Nevertheless, lessons learned from the implementation of the Convention on the Rights of the Child in Canada are universal and could apply to all States Parties to the Convention, who are united in their search for a better future for every child.

1

LAW REFORM AND THE CONVENTION ON THE RIGHTS OF THE CHILD

One critical approach to evaluating the implementation of the Convention on the Rights of the Child¹ by a State Party is to examine law reform and jurisprudence. This can be a relatively simple task in a unitary state with a civil law tradition, but is much more challenging in a federal State like Canada with a parliamentary system based on the Westminster model, and where the common law tradition predominates. Making law in Canada is a lengthy and sometimes cumbersome process, allowing for much debate and considerable public involvement. The Canadian Parliament is bicameral, with a House of Commons and a Senate. This structure, and the fact that the Senate is known as “the chamber of sober second thought,” can add to the length of time an Act, once drafted, actually takes to become law. The complexity of the law-making and juridical processes in Canada does not necessarily mean that the Convention is not being implemented, but it is a challenge to track law reform that is specifically informed by Canada’s obligations under the Convention.

Introduction

Ratification by a State of an international human rights treaty like the Convention on the Rights of the Child implies the State Party’s agreement to be bound by the legal instrument’s obligations. A fundamental principle of international law, *pacta sunt servanda*, states: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”² But as article 31 of the Vienna Convention on the Law of Treaties recognizes “as treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object

and purpose.” It is the domestic constitutional and legal system that determines the method by which the State internalizes international standards; whether an individual State has a monist or dualist system determines the status of international law within it.³ Monist systems allow incorporation of international human rights treaties into the domestic legal framework, thereby immediately establishing domestic legal obligations and legal protection for citizens. In contrast, in dualist legal systems such as Canada’s, international obligations have no effect on domestic law unless legislation is in force to incorporate a treaty’s obligations.⁴ This approach reflects both the constitutional authority of the executive to consent to a treaty without legislative approval, as well as the legislature’s constitutional supremacy to make laws.⁵

Dualist systems rely upon transformation, whereby the treaty in question inspires the adoption of relevant national laws. Unless the entire treaty is incorporated into domestic law, the influence of international law on the domestic regime takes time because legislators, policymakers and judges need to incorporate treaty standards into their day-to-day work. Hence, while ratification of, or accession to human rights instruments is necessary and valuable in itself, it is insufficient because various measures must precede any domestic implementation.

Canada’s Constitution and the Convention

Canada is a constitutional democracy in which legal systems derived from British common law and the French civil code coexist. Section 52

of the *Constitution Act of 1982* states: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect." Before adoption of the Canadian Charter of Rights and Freedoms in 1982, the principle of legislative supremacy applied, reflecting the division of powers between the federal and provincial levels of government. The Charter, however, circumscribed the power of the legislature so that now all statutes must comply with the Charter as judicially interpreted and applied.⁶ If necessary, laws must be changed to secure compliance.

Canada has two Constitution Acts: the *British North America Act of 1867* (renamed the *Constitution Act, 1867* in 1982); and the *Constitution Act, 1982*, when the Constitution was finally patriated from Great Britain.⁷ A division of powers between the federal government and the provinces is laid out under sections 91-93 of the first Act and confirmed by the second. The federal government has jurisdiction in the areas of foreign affairs, defence, citizenship and immigration, criminal law, divorce, and Aboriginal persons; and the provinces are responsible for health care, education, child welfare, most family law, including adoption, and the administration of justice. Hence, responsibility for implementation of the Convention, including law reform, has to be shared between both levels of government.

Status of the Convention in Canadian law

Due to the nature of treaty obligations and customary law, "there is a general duty to bring internal law into conformity with obligations under international law."⁸ However, in 1995, the Committee on the Rights of the Child expressed "its concern about the value of the Convention in [Canada's] domestic law. Certain basic provisions and principles of the Convention...have not always been adequately reflected in national legislation and policy-making."⁹ As the Convention on the Rights of the Child can be referred to only through judicial interpretation of domestic legislation, further effort is required to ensure effective implementation of the Convention.¹⁰ While human rights treaties enunciate the rights of individuals, they are interpreted or potentially restricted in implementation by States Parties.¹¹ For instance, claw-back and derogation provisions allow States to prioritize

national law, public safety and security (as with the International Covenant on Civil and Political Rights)¹² or justify inadequate national implementation.¹³ In this regard, in 2003 the Committee on the Rights of the Child again expressed its regret at Canada's lack of action.¹⁴ Various problems related to implementation of the Convention in Canada also led the Senate Standing Committee on Human Rights to recommend, *inter alia*, that with Convention signature and ratification, "the federal government immediately implement and comply with its obligations under that Convention."¹⁵

Canada's reservations to the Convention

Reservations are a challenge to human rights law because, by limiting or attaching conditions to implementation when ratifying or acceding to an international treaty, they provide an avenue for States to avoid violations. According to the Vienna Convention on the Law of Treaties, a reservation is:

*"A unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."*¹⁶

The fact that reservations are widely considered a necessary part of international law is reflected in the several different treaty provisions that require a reservation's compatibility "with the object and purpose of the present Convention."¹⁷ Although reservations can allow incomplete and fragmented implementation, the States that reserve are "not necessarily worse than States that ratify and fail to implement their obligations."¹⁸

The executive branch has the power to enter reservations. Despite Canada's willingness to restrict the number of reservations made to ratified treaties in order to protect the universal nature of rights,¹⁹ Canada made reservations to two provisions of the Convention. The reservation concerning article 21 was made in order to preserve customary care among Aboriginal peoples:

"With a view of ensuring full respect for the purposes and intent of article 20 (3) and article 30 of the Convention, the Government of Canada reserves the right

not to apply the provisions of article 21 to the extent that they may be inconsistent with customary forms of care among aboriginal peoples in Canada.”²⁰

Canada’s second reservation is to article 37 (c), which provides for separate facilities for detained young persons.²¹ The reservation states:

“The Government of Canada accepts the general principles of article 37 (c) of the Convention, but reserves the right not to detain children separately from adults where this is not appropriate or feasible.”²²

The Government has informed the Committee on the Rights of the Child that it does not intend to withdraw the first reservation, and has a “rather slow process” towards the removal of the second.²³ In spite of government justifications for these reservations, the Committee on the Rights of the Child and several experts have criticized Canada for its unwillingness to withdraw them.²⁴ Canada also placed a statement of understanding upon ratification that enunciated:

“It is the understanding of the Government of Canada that, in matters relating to aboriginal peoples of Canada, the fulfillment of its responsibilities under article 4 of the Convention must take into account the provisions of article 30. In particular, in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language.”²⁵

Federal government and law reform

Role of the executive branch

Canada’s government is based on the British Parliamentary system. The executive is the Canadian Prime Minister and his/her Cabinet is served by the government bureaucracy. In accordance with British tradition, the Canadian executive branch is subject to the legislative and judicial branches.²⁶ Yet, the executive branch has immense power in defining and leading political efforts, setting priorities according to perceived political will, even when the party in power is in a minority position.

In 2007, the federal Cabinet had no minister responsible for children and youth.²⁷ Without a minister, responsibility for children’s issues is divided among various federal departments and ministerial mandates, and lacks a coordinated focus. Even with a junior minister, as in the past, the post had limited influence. Nevertheless, under previous governments, both Conservative and Liberal, the concept of children’s rights had some traction, and indeed, champions, notably the Conservative Prime Minister Brian Mulroney who co-chaired the World Summit for Children in 1990, and the Liberal Foreign Minister Lloyd Axworthy, a major international supporter of the landmines treaty in 1997.²⁸

Role of the legislative branch

Historically, the legislative branch of the federal government, the Parliament of Canada, has neither been engaged in negotiations for human rights treaties nor in the processes of signature and ratification, since there is no constitutional requirement for parliamentary approval or study.²⁹ This is typical of dualist systems, but in Canada, treaties such as the Convention on the Rights of the Child in future will be tabled in Parliament, as announced by former Foreign Minister Maxime Bernier in January 2008.³⁰ There is no guarantee that this will be accompanied by enabling legislation as recommended by the Senate Standing Committee on Human Rights,³¹ but at least it paves the way to this being done. In the past, however, most parliamentary activity around the Convention has issued from the dedication of a small number of parliamentarians who have regularly introduced private members’ bills, primarily to raise awareness, or have insisted on bringing up child rights during the course of legislative hearings.³² Then, in 2004, the Senate Standing Committee on Human Rights began to examine the effective implementation of Canada’s international obligations with respect to the rights of children, and the whole Senate became involved. The Committee’s two reports since have made a major contribution to advancing parliamentary awareness of children’s rights.³³ The Committee’s interim and final reports (released in April 2007) were adopted by the full Senate on 6 June 2007, adding authority to the Committee’s recommendations. On 18 June, the Senate passed a resolution requesting the government to respond to the contents of the report.³⁴ No resource commitment was tabled in the Senate on 18 November 2007.

Federal law reform

Although Canada ratified the Convention on the Rights of the Child in 1991 on the basis of the Charter of Rights and Freedoms and the notion of the gradual realization of rights, the Convention has had a real impact on federal law reform, even in the absence of an act to implement the Convention in its entirety. These reforms are in the areas of federal jurisdiction cited above.

Criminal Code: Protection of children from sexual exploitation

Amendments to the Criminal Code of Canada over the past decade have improved the protection of children from sexual exploitation. Any sexual exploitation of a child under the age of 18 is a criminal offence; no consent can be assumed. These changes began with a bill on child sexual exploitation through tourism, criminal harassment and female genital mutilation/cutting in 1997, and continued with others related to child pornography and luring children on the Internet. Legislation in 2005 amended child pornography provisions with respect to written material; added a new category of sexual exploitation to better protect children between 14 and 18 years of age; increased the penalty for child sexual offences; improved the use of testimonial aids for children; created a voyeurism offence; and identified no lower age limit for child witnesses, recognizing their capacity to testify if those under the age of 14 can understand and respond to questions.³⁵ In addition, the law prohibited an accused from personally cross-examining a child in proceedings regarding a sexual offence or an offence in which violence was used, threatened or attempted.³⁶

However, implementation of these rights has been uneven. The Act cites the Convention in the preamble and refers to Canada's obligations under the Optional Protocol on the sale of children, child prostitution and child pornography.³⁷ The federal government ratified this Protocol on 14 October 2005, after some provinces made requisite changes to their laws and administrative practices. An omnibus Criminal Code bill adopted in 2008 raised the age of consent to sexual activity from 14 to 16 (with close-in-age exceptions) to better protect young people from predators. However, even though amendments increased penalties and imposed minimum penalties, sentences for sexual abuse or assault of a child under 14 years are 45 days to 10 years. Under the *Corrections and Conditional Release Act*,

federal offenders are eligible for full parole after serving one third of their sentence, or seven years, whichever is less.³⁸ Children's advocates have identified several means to further harmonize, strengthen and enforce various pieces of legislation to protect children from sexual exploitation, including laws dealing with privacy, criminal activity and witness protection.

Youth Criminal Justice Act (YCJA)

This Act, which came into force in 2003 and replaced the *Young Offenders Act*, provides principles, procedures and protections for young persons prosecuted under federal criminal law, and cites the Convention in its preamble.³⁹ It is intended to keep youth out of the criminal justice system entirely for minor offences, and has substantially reduced the number of youth held in custody throughout the country.⁴⁰ However, under this Act, children as young as 14 can be sentenced as adults and detained with adults in a provincial correctional facility for adults or in a penitentiary.⁴¹ While offenders as young as 14 years old can receive adult sentences once they have been convicted of very serious crimes such as murder or aggravated sexual assault, it is expected that they will serve their sentences in a youth facility until they turn 18. The imposition of an adult sentence on a child of 14 or 15 years old is at the discretion of the provinces, which are constitutionally responsible for the administration of justice under the Criminal Code. Quebec has chosen 16 as the minimum age for imposition of adult sentences.

Recent research has found that the number of youth in custody has dropped dramatically: 36 per cent since 2003, when the YCJA came into effect.⁴² Nonetheless, the Committee on the Rights of the Child has criticized the Act's provision regarding adult sentences, stating its concern about consequences for youth, including: "the expanded use of adult sentences for children as young as 14; that the number of youths in custody is among the highest in the industrialized world; [and] that keeping juvenile and adult offenders together in detention facilities continues to be legal."⁴³

In addition, the implementation of the YCJA – a provincial responsibility – has been uneven. The example of Quebec is cited below. In Nova Scotia, problems led to the creation of a commission of inquiry known as the Nunn Commission,⁴⁴ which addressed various aspects of the youth criminal justice legislative and policy framework, and included

recommendations to improve justice administration as well as accountability, strengthen the *YCJA* and prevent youth crime. All the recommendations were accepted by the provincial government. Most legislative acts are subject to periodic review and in view of the many issues that have arisen with respect to the *YCJA*, a focused analysis of the degree to which it should be changed is envisaged. This study will have to take into account the judgement of the Supreme Court in *R. v. D.B.* that has challenged presumptions in favour of the application of adult sentences to youth for very serious crimes.⁴⁵

*“The presumption in question is, firstly, a legal principle. The legislative history of the youth criminal justice system in Canada confirms that the presumption of diminished moral culpability for young persons is a long-standing legal principle that has consistently been acknowledged in all of the YCJA’s statutory predecessors. This principle also finds expression in Canada’s international commitments, in particular the UN Convention on the Rights of the Child.”*⁴⁶

However, the judgement does not deny the possibility of adult sentences after conviction:

*“This does not mean that an adult sentence cannot be imposed on a young person. It may well be that the seriousness of the offence and the circumstances of the offender justify it notwithstanding his or her age. The issue in this case, however, is who has the burden of proving that an adult sentence is justified. A young person who commits a presumptive offence should not automatically be presumed to attract an adult sentence.”*⁴⁷

Tobacco Control Act (1997) and Assisted Human Reproduction Act (2004)

The criminal law power of the *Constitution Act, 1867*, under section 91(27), has allowed federal legislation in a number of matters related to health.⁴⁸ The Supreme Court of Canada has broadly interpreted this criminal law power as J. La Forest articulated in a 1995 tobacco case:

*“The scope of the federal power to create criminal legislation with respect to health matters is broad, and is circumscribed only by the requirements that the legislation must contain a prohibition accompanied by a penal sanction and must be directed at a legitimate public health evil.”*⁴⁹

In order to protect the physical health and safety of the public, the criminal power provides the basis of controlling possible hazards from such products or matters as: controlled substances; drugs and food; medical devices; industrial and consumer products; cosmetics; tobacco; radiation-emitting devices such as microwave ovens, X-ray equipment, suntanning lamps, ultrasound equipment, laser devices and television; and pest-control products.⁵⁰ Both the *Tobacco Control Act*⁵¹ and the *Assisted Human Reproduction Act*⁵² fall into these categories.

The reforms contained in these two Acts raised considerable debate about children’s rights as they were passing through the legislative process. The *Tobacco Control Act* was designed to protect the health of children under the age of 18 by limiting their access to tobacco products and by eliminating the type of advertising that was specifically geared to attract new, young smokers. This Act, combined with a number of other social policies, has clearly been effective as the numbers of children in Canada who take up smoking has diminished in recent years.⁵³ As the *Assisted Human Reproduction Act* was being examined in both houses of Parliament over several years, many questions were posed about the children who would be born as a result of the new technologies and the importance of preserving their rights to identity and health, and especially their right to be considered persons, not ‘products.’⁵⁴ Before the Convention on the Rights of the Child, these issues would probably never have been accorded the importance they so clearly deserve.

Corporal punishment

One reform that has consistently failed is the repeal of section 43 of the Criminal Code that creates a defence for parents and teachers who use physical force by means of correction when it does not exceed what is considered “reasonable under the circumstances.”⁵⁵ The reasons for this failure are discussed later in the chapter in the section on jurisprudence. The Criminal Code thus fails to extend to children the same protection from assault as that it affords adults. In this regard, the Committee on the Rights of the Child recommends that Canada “adopt legislation to remove the existing authorization of the use of ‘reasonable force’ in disciplining children and explicitly prohibit all forms of violence against children, however light, within the family, in schools and in other institutions where children may be placed.”⁵⁶

Citizenship and immigration

Respect for children's rights has also been embodied in legislation related to citizenship and immigration, another area of federal jurisdiction. For example, legislation that came into force on 23 December 2007 allows for the granting of citizenship to non-Canadian children adopted abroad by Canadian parents, without requiring that these children first become permanent residents.⁵⁷ This change was justified on the basis of section 15 of the Canadian Charter of Rights and Freedoms (equality rights) and Canada's obligations under the 1993 Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the 'Hague Convention'),⁵⁸ which Canada ratified in 1996. The 1993 Hague Convention was developed partly in order to implement article 21(e) of the Convention on the Rights of the Child, which encourages the conclusion of bilateral or multilateral agreements or arrangements concerning international adoption.⁵⁹

Divorce Act

Federal responsibility for the *Divorce Act*⁶⁰ has led to a number of positive legislative changes in conformity with children's rights. In 1997, amendments to the Act established a framework for child support guidelines to set fair and consistent awards in response to the child's right to economic security. In 2005, the *Civil Marriage Act* extended civil marriage to same-sex couples, changing the definition of marriage to "the lawful union of two persons" eliminating the reference to persons of the opposite sex.⁶¹ A religious body supported the legislation⁶² and identified for the Senate Standing Committee on Legal and Constitutional Affairs the issues of: discrimination against children of same-sex parents; and homophobic bullying against children who are exploring their sexuality. The Convention was frequently mentioned during Committee hearings, although interpretations of children's rights varied. The Act eventually passed on the basis of non-discrimination, which is essentially a civil rights issue.

Finally, even where federal legislation with a child rights focus has not yet made it through the legislative process, positive changes have occurred 'in the shadow of the law'. One of the authors of this case study was the co-chair of the Special Joint Parliamentary Committee on Child Custody and Access, which issued the report, 'For the Sake of the Children', in 1998.⁶³ The recommended amendments to the *Divorce Act* have not yet been made, but in

2002, the Minister of Justice announced a child-centred family justice strategy to help parents focus on the needs and rights of their children following separation and divorce.

National Defence Act

A brief mention needs to be made of the minor change to the *National Defence Act*⁶⁴ that would allow Canada to become the first country to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. An amendment was made in 2000 to articulate in law the existing policy of not sending youth under the age of 18 into theatres of hostilities. A limited number of 16- and 17-year-olds continued to be recruited into the armed forces with parental permission. Young people who were consulted as the amendment was being passed reported that they had joined the armed forces for two reasons.⁶⁵ One was practical: They wanted to take advantage of opportunities for education and training they might not otherwise have been able to afford. The other reason was more idealistic: a desire to serve their country.

Aboriginal peoples

The federal government's responsibility for and to Aboriginal peoples is framed by the Constitution, the Canadian Charter of Rights and Freedoms, numerous treaties and the *Indian Act*.⁶⁶ Unfortunately, the rights of Aboriginal children, as defined by the Convention on the Rights of the Child, have yet to be articulated in any legislation related to Aboriginal peoples and, as numerous references throughout this case study demonstrate, the federal government has failed to fully execute its fiduciary responsibility to provide them with adequate education, the best possible health care and non-discriminatory child welfare services. A designated commissioner for Aboriginal children attached to the office of a federal children's commissioner, which has been called for by witnesses to the Senate Standing Committee on Human Rights,⁶⁷ would go a long way towards remedying this situation.

The transformation of Canadian federal law to date has been due to the work of committed individuals within government and Parliament, and the advocacy efforts of Canadian civil society organizations, researchers and others to reflect the Convention and its principles in different areas of the federal legislative framework. A strong and sustained commitment of political will be necessary to continue this process.

Provincial law reform

Law reform within the provinces to reflect the Convention has also been progressing. Major areas of success relate to child advocate legislation and reforms in child protection laws although there are some concerns that need to be raised with respect to child work and labour legislation.

Child advocate legislation

There were two elements that sparked Ontario's legislative review of the province's child advocate legislation: a third-party independent review of the Child Advocate's Office, which involved academics, service providers and children; and a non-governmental organization, Defence for Children International (DCI) and its reports, including 'Breaking the Silence'.⁶⁸ Civil society mobilized for an independent child advocate, and its efforts ensured that the public was consulted and listened to during the drafting of the bill. The Child Advocate's Office was funded to engage children and young people from across the province and from different populations in consultations about the bill. In spite of some bureaucratic concerns, there are important advantages to the new legislation. The advocate is now an independent officer of the Ontario legislature, and the Convention on the Rights of the Child, along with the specific reference to child participation, are included as principles of the new Act. Both the Convention and the Principles relating to the Status of National Institutions ('The Paris Principles')⁶⁹ informed the process and are woven throughout the result.⁷⁰ Under s. 15(f) of the Act, the advocate can add items to and remove items from the mandate through regulations, if necessary, to increase the level of his/her authority.

In British Columbia, the 2006 bill establishing the Office of the Representative for Children and Youth was greatly improved by the efforts of Mary Ellen Turpel-Lafond, who was appointed to the position for a five-year term in December 2006 as an independent officer of the legislature.⁷¹ The timing of her appointment meant that she informed the process and made substantive changes to strengthen the bill including, for example, ensuring a committee of politicians was involved to push the agenda forward.⁷² On 1 March 2007, the Legislative Assembly decided to appoint a Select Standing Committee on Children and Youth "to foster greater awareness and understanding among legislators and the public of the

BC [British Columbia] child welfare system" as well as act as the committee to which the Representative reports.⁷³ The legislature's commitment to children is a positive, focused effort by legislators to advance awareness and understanding of children. The Representative will respect child rights as well as focus on Aboriginal children; and the mandate includes "a strong system of accountability to the public through independent auditing, monitoring and reviewing of government services."⁷⁴

There were also significant amendments to the *Child and Youth Advocate Act* of New Brunswick proclaimed in late June 2007 that "have greatly improved the independence, authority and effectiveness of the Office."⁷⁵ Consequently, "In many respects the Act now provides an enviable model for other Canadian Advocate's Offices."⁷⁶ Eight of the nine child advocates are now independent officers of the legislature as called for by the Committee on the Rights of the Child.⁷⁷

Child welfare and youth protection Acts

Quebec has a different legal system from the other provinces; it has a Civil Code and its own Human Rights Charter, which is considered quasi-constitutional. Even before the United Nations adopted the Convention on the Rights in 1989, the province showed a significant commitment to child rights. The Commission des droits de la personne et des droits de la jeunesse acts as a strong advocate for children in the province. The Civil Code is unique to Quebec but criminal matters are dealt with under the Criminal Code that applies to the entire country. This includes the *YCJA*, which Quebec challenged in 2003 due to concerns about the presumption that adult sentences be imposed for very serious crimes on children as young as 14 years old.⁷⁸

The Court of Quebec, Youth Division, established in 1979 along with the *Quebec Youth Protection Act*, has a significant role in relation to child rights in the areas of child protection, adoption and even criminal justice.⁷⁹ In the Montreal region, the Youth Court has heard 12,000 child protection cases.⁸⁰ The work of the court is specialized and its decisions are "increasingly viewed as being beyond reproach" as appeal courts are "very reluctant to intervene in any of the decisions handed down."⁸¹ In addition to resolving individual cases, the court recognizes that it has an educational purpose in society in relation to its areas of decision-making.⁸² Accordingly, the province consistently pays specific attention to child rights in law reform

and other measures. It adopted its original *Youth Protection Act*⁸³ in 1977 and implemented it on 15 January 1979.

Significant legislative reform has recently modified both clinical and legal practices related to the implementation of the *Youth Protection Act*. The legislative process led by the Health and Social Services Minister took several years and involved social and clinical experts as well as those familiar with the relevant legal and judicial processes. Over 1,000 people from various groups provided their perspectives and suggested modifications, which were transmitted to the Ministers of Justice and of Health.⁸⁴ Subsequently a legislative commission ensured public consultation in every region of the province, open to any group comprised of 80 people or more. Specific places were made for contributions to the process from youth, including students, groups from youth centres, and those at risk.⁸⁵ Some of the feedback from young people had an impact, since their descriptions influenced the government ministers and led to modifications related to receipt of in-care services and intensive supervision (*encadrement intensif*) of youth.⁸⁶

The new Act attempts to improve the situation for the child, stressing permanency and improving adoption rates. The reform also addresses the problem of the large number of children who are repeatedly taken into care over several years, and who experience multiple placements after repeated (failed) attempts to return them to parents.⁸⁷ Indeed, even when biological parents had lost the physical custody of the child, notably in cases of sexual and physical abuse, they retained the legal custody of the child, therefore preventing other families from adopting the child. The protection system must now develop a permanent plan for the child either within the biological family if the situation improves or within a foster family through adoption, to ensure stability and continuity for the child.⁸⁸ Moreover, the law now requires the Youth Protection Director to maintain links with significant people in the child's life, which may include a grandparent or best friend, if the child was adopted, so that relationships are maintained over time.⁸⁹ The reform signals the province's commitment to respect child rights and to make the principles of the Act with respect to 'best interests' and 'parental rights' clearer for the courts.⁹⁰

In the eastern provinces, too, there are several positive developments. In 2000, Newfoundland and Labrador replaced its *Child Welfare Act* with

the child-focused *Child, Youth and Family Services Act*.⁹¹ Some of the principles and provisions outlined in the new Act directly reflect child rights.⁹² New Brunswick's *Family Services Act*⁹³ acknowledges in its preface the basic rights and fundamental freedoms of children.⁹⁴

An alternative approach to protection is reflected in Alberta's *Protection of Children Involved in Prostitution Act*,⁹⁵ which came into effect on 1 February 1999, and is proudly proclaimed as "the first of its kind worldwide" in that it recognizes that these children are victims of sexual abuse.⁹⁶ While the legislation introduced programmes and services to help children and young people move away from prostitution, it also authorized police or child protection workers to apprehend young person even against their will for confinement for up to five days in a "protective safe house," defined as "a secured facility with restricted access," where the young person was to receive emergency care and assessment begun to develop a long-term plan to support the child to leave prostitution.⁹⁷ The lack of respect for the child's choices and wishes is problematic and the forced confinement does not necessarily promote the objective of supporting the child to leave prostitution. On the contrary, it sometimes encourages young people to do anything to avoid the authorities. Amendments to the *Protection of Children Involved in Prostitution Act*, 2007⁹⁸ extended programming for young people until the age of 22 and addressed the stigma associated with prostitution by changing the name of the Act to the *Protection of Sexually Exploited Children Act*.⁹⁹ Similar child protection legislation in Alberta, known as the *Protection of Children Abusing Drugs Act*,¹⁰⁰ came into force in 2007. However well intended, it raises some of the same issues of concern.

The Saskatchewan Provincial Child Advocate regularly relies upon the Convention on the Rights of the Child. The Office has highlighted systemic problems with respect to the child's right to independent legal representation in child welfare proceedings by citing individual cases of young people who feel their perspectives are not appropriately considered during the court process.¹⁰¹ The Saskatchewan *Child and Family Services Act*¹⁰² makes no provision for independent child representation.¹⁰³ The advocate has recommended in writing to the Ministers of Community Resources and Justice that there be legislative reform to provide for this right, with clear criteria specified.¹⁰⁴ He has since been informed that the issue will be part of a broad review of the *Child and Family*

Services Act to conclude in 2009, and will also be considered by the Family and Youth Access to Justice Committee.¹⁰⁵

The Manitoba Child Advocate is concerned about the Child Abuse Registry in that province because courts have occasionally either not placed offenders on the Registry, or placed young people aged 12 and over on it, often those with much history of victimization before committing an offence.¹⁰⁶ According to the advocate, these offenders do not understand their right to appeal or the implications of their placement on the Registry, and they rarely have access to mental health and therapeutic services once the justice system is involved. Consequently, there needs to be a full assessment of offenders before their placement, and they need to be assigned a lawyer and an advocate.¹⁰⁷

The New Brunswick Child Advocate has identified two major concerns in his province: the gap in services for youth aged 16 to 19; and the lack of access to legal representation for children.¹⁰⁸ He has also identified a deplorable lack of mental health services for young people, leading to tragic results when the youth justice system is used instead of treatment centres for the placement of children who are 'acting out'.

Child work and labour

The federal government has the responsibility to report to the Committee on the Rights of the Child on child labour, and to the International Labour Organization (ILO) with respect to Convention No. 182 on the worst forms of child labour. However, most labour legislation affecting children is provincial. Statistics Canada reports that over 2.5 million young people aged 15 to 24 work part- or full-time across the country.¹⁰⁹ There are concerns that their rights are not always respected, in part because Canada has not yet ratified ILO Convention No. 138 on the minimum age for youth employment. If ratification occurred, several provinces whose laws permit children under the age of 14 to work would be in violation.¹¹⁰

In 2001, British Columbia introduced a two-tier minimum wage structure. Those who work less than 500 paid hours can be paid 25 per cent less than the minimum wage. This is known as the 'training' wage, but is more accurately described as 'first job/entry level wage'. In 2003, the British Columbia government modified regulations related to hiring of very young workers and enforcement of

employment standards, thereby creating a new policy regime.¹¹¹ Authors of a recent report conclude that the province:

*"Provides significantly less protection to child workers than other jurisdictions in Canada, the United States and the European Union. In particular, permitting children as young as 12 to work with the permission of only one parent is unusual and seems to contravene the International Labour Organization's Convention on Minimum Age [for Admission to Employment]."*¹¹²

A 2005 British Columbia survey of 624 children aged 12 to 18 found that more than one in five reported injuring themselves on the job.¹¹³ Alberta recently changed its accepted working age to 12 years as well, albeit with some employment restrictions, in contravention of international labour agreements and in conflict with social policy concerns about reducing child poverty, increasing school completion rates, and supporting youth transitions.¹¹⁴ From 2000 to 2004, twelve workers with ages ranging from 15 to 19 years were killed while working in Alberta.¹¹⁵ The Alberta government acknowledges that workers between the ages of 15 to 24 are more likely to be injured on the job, due to lack of experience and skills in operating machinery.¹¹⁶

Jurisprudence and the judiciary

Three Supreme Court decisions: the *Baker* case; the Criminal Code section 43 challenge, and the *Syl Apps* case, highlight successes and challenges for child rights in the Canadian judiciary.

Baker v. Canada

The 1999 decision of the Supreme Court of Canada in *Baker v. Canada*¹¹⁷ is often cited as an outstanding example of the influence of the Convention on the Rights of the Child upon the Canadian judiciary; it is one of first Supreme Court cases to refer to the Convention. At issue was a deportation order for the appellant who had Canadian-born children. A disposition had been requested, on humanitarian and compassionate grounds, from the requirement of the *Immigration Act*¹¹⁸ (s. 114(2)) that applications for permanent residence be made outside the country.

The Court majority found bias in the deportation decision, and opined that the dismissal of the interests of the appellant's children by the

immigration officer constituted “an unreasonable exercise of the discretion [conferred on the immigration officer].”¹¹⁹ For the majority, J. L’Heureux-Dubé declared: “Children’s rights, and attention to their interests, are central humanitarian and compassionate values in Canadian society.”¹²⁰ The Court referred to Canada’s ratification of the Convention on the Rights of the Child as an “indicator” of the significance of considering children, recognized child rights and best interests in other ratified international legal instruments, and wrote: “the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review,” similar to other common-law countries.¹²¹ The two justices in the minority (Cory and Iacobucci) disputed the influence of international law that has not been incorporated into domestic law. Nevertheless, references to the Convention, and the fact that both children’s rights and their best interests must be taken into account in making judgments on issues that affect them, are now firmly imbedded in Canadian jurisprudence. Since that landmark decision, a more recent decision on appeal found that children’s rights were not properly explored and given due consideration in the determination of a case before an immigration tribunal.

Criminal Code, section 43 challenge

The Canadian Foundation for Children, Youth and the Law challenged the constitutionality of the Criminal Code section 43,¹²² which provides a defence to parents or caregivers to use force “by way of correction...if the force does not exceed what is reasonable in the circumstances.”¹²³ The organization also sought a declaration to strike down any common law parental right to use corporal punishment.

A Supreme Court majority decided that the impugned provision did not violate sections 7, 12 and 15 of the Charter of Rights and Freedoms. For the majority, C. J. McLachlin stated, in relation to section 7, that while children’s security of the person is affected, this does not contravene a principle of fundamental justice; that best interests is not a principle of fundamental justice; and that the Criminal Code provision is not overly vague, and does contain adequate limitations to prevent harm. In addition, corporal punishment does not constitute section 12’s prohibition on “cruel and unusual” treatment. The majority also stated that section 15’s equality rights do not require equal treatment, and the denial of some legal protection does not discriminate against the child.

Furthermore, the provision was deemed in conformity with Canada’s international legal obligations because: “Neither the *Convention on the Rights of the Child* nor the *International Covenant on Civil and Political Rights* explicitly require States Parties to ban all corporal punishment of children.”¹²⁴ The Foundation’s appeal was dismissed.

However, the majority did note the areas of agreement among experts on both sides of the argument that limited the right of parents to use corporal punishment; state that corporal punishment of children under two years old is harmful and has no corrective value, given the cognitive limitations of children of this age; that corporal punishment of teenagers is harmful because it can induce aggressive and antisocial behaviour; that corporal punishment using objects, such as rulers or belts, is physically and emotionally harmful; and that corporal punishment that involves slaps or blows to the head is harmful.¹²⁵ In addition, the majority recognized that “substantial societal consensus, supported by expert evidence and Canada’s treaty obligations, indicates that corporal punishment by teachers is unreasonable.”¹²⁶ The court specified that section 43 would protect a teacher who uses reasonable, corrective force to restrain or remove a child in appropriate circumstances.

J. Binnie dissented in part from the majority to acknowledge infringement of the child’s equality rights, and although he decided the violation was justified under the Charter’s section 1 due to its objective and the rational provision, he struck out the provision’s references to “schoolteacher” and “pupil.”¹²⁷

The dissenting opinions argued that the child’s right to equality had been infringed (J. Deschamps) and the child’s safety and security of the person had been violated (J. Arbour). J. Arbour argued that the Criminal Code provision is vague, violating the Charter’s section 7 (protecting rights to safety and security) due to inconsistent judicial interpretation and application.¹²⁸

The three levels of courts that adjudicated this challenge were largely influenced by concerns about the expansion of criminal law if section 43 was struck out, thereby overwhelming law enforcement and the judiciary with trivial matters. The courts relied on the existence of federal educational programmes to promote disciplinary alternatives. But the minority opinions offered defences and strong rebuttals, including the opinion of J. Deschamps that maintaining the current legislative arrangement does not justify rights violations.¹²⁹

The majority's decision focuses on adults without serious consideration of the rights of children. It does not discuss the actual or potential harm of assault and dismisses much case law that reveals section 43's insufficient limitations and inconsistent enforcement.¹³⁰

The interventions by the Ontario Association of Children's Aid Societies (responsible for implementing and monitoring child protection legislation), and by the Commission des droits de la personne et des droits de la jeunesse (on its own behalf and on behalf of the Canadian Council of Provincial Child and Youth Advocates), in support of the challenge, uncover the uneasy relationship between 'correction', corporal punishment and abuse.¹³¹

Furthermore, the majority dismissed the child's perspective in deciding whether the law marginalizes the child, because, "applied to a child claimant, this test may well confront us with the fiction of the reasonable, fully apprised preschool-aged child."¹³² This position reveals that the Court, despite confirming that section 43 should only apply to cases involving children older than 2 and under 12 years of age and not to teachers, still sees the child as incompetent and incapable of informing decision-making,¹³³ contrary to article 12 of the Convention on the Rights of the Child.

Syl Apps

In 2007, however, the Supreme Court of Canada supported child rights in the *Syl Apps Secure Treatment Centre* decision.¹³⁴ R.D., a 14-year-old girl, was found to be in need of protection in 1995. After foster care, she was placed in mental health facilities and then in a treatment centre. With her consent, she was made a permanent ward of the Crown. Her family pursued legal action and financial compensation, alleging the State's negligent conduct and that the family had been deprived of a relationship with her. At issue was whether the court-ordered care for a child at a treatment centre, and the social workers, owe a duty of care to family members of the child.

The Supreme Court recognized the potential for conflicting duties between the relationship of the child to the family and the child's court-ordered service providers to promote the child's best interests and protection. For the Court, J. Abella wrote: "to recognize such a legal duty to the family of a child in their care, would pose a real risk that a secure treatment centre and its employees would have to compromise their overriding duty to the child."¹³⁵ Hence, the family's action was dismissed. Many supporters of child rights, such as the province of

Saskatchewan's Children's Advocate, feel that this decision "is to be applauded" because it recognizes that while "families are the core social unit," family rights do not supersede "the State's overriding duty to ensure that children are protected" because the child, not the family, is the client of child welfare services.¹³⁶ This is an important conclusion as much provincial legislation is family focused, sometimes compromising the protection of child rights.¹³⁷ Regrettably, the decision does not refer directly to the Convention on the Rights of the Child in its reasoning.

General challenges to child rights in judicial interpretation and application

As the above cases demonstrate, many standing judicial approaches and principles tend to constrain and proscribe child rights in Canada. The distinction between public and private spheres of action has traditionally sanctioned rights abuses and continues to do so with respect to children.¹³⁸ In the Criminal Code, section 43 challenge, for example, the Supreme Court majority determined that the constitutional prohibition against "cruel and unusual" treatment concerns the State. The Court concluded accordingly: "Corrective force by parents in the family setting is not treatment by the State"¹³⁹ and thus dismissed the cruel and unusual treatment argument. While the State criminalizes assault between adults, it still provides a defence for adults to use violence against children, employing the distinction between the public and the private to excuse it from providing full legal protection to children.¹⁴⁰

In dissenting remarks in the section 43 case, J. Arbour remarked that the law was likely to evolve in response to changing societal attitudes, just as it had moved away from tolerating or encouraging the corporal punishment of women (and apprentices, employees, passengers on ships and prisoners) but noted: (as against) "Children remain the only group of citizens who are deprived of the protection of the criminal law in relation to the use of force."¹⁴¹ In the dissenting words of J. Deschamps in the same case, section 43 reinforces and compounds children's vulnerability and disadvantage by withdrawing the protection of the criminal law;¹⁴² in fact, the provision not only perpetuates discriminatory treatment but also "encourages a view of children as less worthy of protection and respect for their bodily integrity based on outdated notions of their inferior personhood."¹⁴³

It is fair to conclude with Professor Anne McGillivray from the University of Manitoba: “We have created a dangerously private childhood.”¹⁴⁴ Professor McGillivray reminds the reader of the enduring legal principle of *parens patriae*, found in British common law, where the State is the father of the people, and which understands children as property.¹⁴⁵ This principle can lead to questionable adjudication with respect to child rights. Clearly, continued reliance upon privacy distinctions and *parens patriae* do not serve implementation of the Convention in Canada.

Another challenge is the fact that Canadian courts consider the ‘best interests of the child’ principle as only one of various considerations, rather than ‘the primary’ consideration.¹⁴⁶ While the child’s right to be heard has made some progress in family law,¹⁴⁷ children do not, for example, have standing in proceedings under the *Immigration and Refugee Protection Act*.¹⁴⁸ In provincial and territorial judicial and administrative hearings, the child’s right to participate is inconsistently protected.¹⁴⁹

According to the Canadian Foundation for Children, Youth and the Law:

“Children have not been very well served by the courts in Canada. The decisions of our highest court on Charter rights for children suggest that the Charter rights are of little value in the issues that matter most to the daily lives of children, such as education, parental discipline and access to health care and resources. The Foundation would go so far as to say that children’s rights have been eroded or diminished through the courts.”¹⁵⁰

The Foundation argues that children’s rights must be strengthened through the political and legislative process as the judicial avenue has “limited utility, even in the most sympathetic of cases.”¹⁵¹ Clearly, there is a need for improved judicial training to support child rights understanding and awareness.

Contributions to law reform from civil society

Over the years since the ratification of the Convention on the Rights of the Child, civil society has frequently invoked the rights of children to bring about changes in legislation, as demonstrated by its support for an independent child advocate in Ontario. For example, the civil society group Mothers Against Drunk Driving was able to change

federal law by focusing on child deaths. A civil society lobby also brought about the legislation that removed lead from gasoline.¹⁵² However, there are worrying signals that the language of advocacy and lobbying has created resistance. In Alberta, legislation has narrowed possibilities for the voluntary sector by redefining activists as lobbyists and threatening to remove their charitable status.¹⁵³ At the federal level, legislation has been introduced in relation to lobbying (although regulations are not yet in force) in order to restrict communications with government.¹⁵⁴ This raises significant concerns about how the voluntary sector can achieve its objectives.¹⁵⁵ The federal *Lobbying Act* will also increase reporting requirements for non-profit organizations. However, it applies to fewer organizations than Alberta’s Act and is less restrictive.¹⁵⁶ Nonetheless, these legislative reforms signal a new government approach to regulate civil society, minimize advocacy and impose an unwanted burden on an already overextended sector. (See Chapters 2 and 8 for discussions about the state of civil society in Canada.)

Of course, not all civil society organizations support a child rights basis in legislation that affects children. The Canadian Paediatric Society, which is rights-based, has pointed out the difficulty of changing provincial laws in many areas related to child safety, including all-terrain vehicles, the use of bicycle helmets and booster seats, in order to provide increased safety and protection to children and youth. The Society notes the obstacles posed by counter-lobbying and the belief that ‘parents know best’.¹⁵⁷ In another example, a rural lobby caused the governments in New Brunswick and Nova Scotia to back away from draft legislation related to off-road vehicles that would have provided greater protection to children and youth.¹⁵⁸

The many inconsistencies in provincial laws with respect to preventing injuries in children¹⁵⁹ highlight the need for better coordinated law reform. In fact, when one or two provinces agree to changes, reform is more likely to spread to the others.¹⁶⁰

Should the Convention be incorporated into domestic law?

In order to advance the status and implementation of the Convention on the Rights of the Child, a proposal with significant currency among scholars, academics and advocates is the

incorporation of the Convention into domestic law. Canada's federal nature is the government's justification for the lack of incorporation of the Convention. As the core document submitted to UN treaty bodies explains:

*"It is not the practice in any jurisdiction in Canada for one single piece of legislation to be enacted incorporating a particular international human rights convention into domestic law (except, in some cases, regarding treaties dealing with specific human rights issues, such as the 1949 Geneva Conventions for the protection of war victims). Rather, many laws and policies, adopted by federal, provincial and territorial governments, assist in the implementation of Canada's international human rights obligations."*¹⁶¹

Consequently, "international human rights treaties are rarely incorporated directly into Canadian law, but are indirectly implemented by ensuring that pre-existing legislation is in conformity with the obligations accepted in a particular convention."¹⁶² The 1937 *Labour Conventions* case confirms that international treaty commitments cannot justify encroachment into areas of provincial jurisdiction.¹⁶³ Hence, legal experts Jeffery Wilson and Maryellen Symons affirm that "the Convention is, as a law, of no legal force or effect whatsoever."¹⁶⁴ In fact, the Supreme Court of Canada has accepted that "an international convention, like this *Convention*, that has been ratified for international treaty law but not incorporated into our domestic law, creates no binding legal effect."¹⁶⁵

However, lack of federal legislation cannot excuse the violation of international obligations. In the Vienna Convention on the Law of Treaties,¹⁶⁶ articles 26 and 27, enunciating *pacta sunt servanda*, affirm that internal law cannot justify a State's failure to implement a treaty.¹⁶⁷ In its concluding observations about Canada's first report on the Convention, the Committee on the Rights of the Child stressed that, despite the complications of federalism and the resulting uncertainty of some areas of responsibility, "Canada is bound to fully observe the obligations entered upon by ratifying the Convention."¹⁶⁸ Furthermore, problems in implementation related to Canada's federal structure led the Committee to urge the federal government to ensure awareness of the Convention among the provinces and territories and implementation through various measures.¹⁶⁹

Despite the fact that so many issues relating to children fall under provincial jurisdiction, various advocates favour incorporation of the Convention at the federal level. This is a high priority for the Canadian Coalition for the Rights of Children,¹⁷⁰ which also supports the proposal for a children's commissioner in response to article 4 of the Convention.¹⁷¹ World Vision states that incorporation would give the Convention "the force of law" and not only effectively demonstrate commitment to children but also ensure consistent implementation across the country.¹⁷² While the International Bureau for Children's Rights believes that incorporation as an Act of Parliament would respect article 4 of the Convention, it instead argues for entrenching the Convention into the Constitution, as was done with the Canadian Charter of Rights and Freedoms in 1982, because of the wide range of areas covered in the Convention and the shared federal/provincial responsibilities.¹⁷³ In this regard, the Commission des droits de la personne et des droits de la jeunesse of Quebec proposes to incorporate the Convention into the Charte des droits et libertés de la personne du Québec (Quebec Charter of Human Rights and Freedoms).¹⁷⁴ The Canadian Foundation for Children, Youth and the Law advocates incorporation of the Convention into every piece of legislation relevant to children as well as enactment as separate legislation or enactment upon the appointment of a children's commissioner who can specifically monitor it.¹⁷⁵ The Saskatchewan Children's Advocate argues that the Convention should be binding upon provinces and territories through incorporation into all federal and provincial legislation affecting children.¹⁷⁶ Others are also supportive but acknowledge the challenges. The Canadian Council of Provincial Child and Youth Advocates recognizes it would be "a bold step."¹⁷⁷ Wilson and Symons appreciate that some will allege the proposal is "a childhood fantasy."¹⁷⁸

Instead of incorporation, the Senate Standing Committee on Human Rights recommends that ratification be accompanied by "enabling legislation in which the federal government considers itself legally bound by its international human rights commitments."¹⁷⁹ This proposal would advance greater respect for Canada's international obligations and lead to "consciousness-raising among all jurisdictions and stakeholders" in order to "to ensure cooperation, coordination, and compliance with Canada's international obligations at all levels of government."¹⁸⁰

Federalism should not be the deciding issue. Other federal countries have incorporated child rights into their constitutions and legislation, including Argentina and South Africa.¹⁸¹ And Canada has already referenced the Convention on the Rights of the Child in legislation that affects the provinces such as the *Youth Criminal Justice Act*. It is also incorporated by means of the general reference to all international treaties in the *Immigration and Refugee Protection Act*.¹⁸² Moreover, Canada has already adopted enabling legislation on such international instruments as: the Rome Statute of the International Criminal Court, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, and the Geneva Conventions for the Protection of War Victims.¹⁸³

Incorporation would hold important symbolic value and, as well as giving the Convention teeth, would indicate state commitment to child rights. For instance, in the early 2000s, Norway (also a dualist system) incorporated the Convention into domestic law, describing it as a symbolic act. It stated “such incorporation is assumed to give the strongest signal that the Norwegian authorities take the Convention seriously”; hence, in Norway the Convention would take precedence if there was a conflict between the Convention and domestic

legislation.¹⁸⁴ However, effective implementation in Norway as in Canada will, in the end, depend upon public and political will. The Senate Standing Committee noted that the ratification of an international instrument such as the Convention is presumed to have been done in good faith and so it “means that States must intend the treaties they ratify to be effective – notably, through implementation.”¹⁸⁵ It is likely that were the Convention to be more deeply imbedded in domestic law, it would have more weight upon the executive branch, legislators, the judiciary and others in society.

Conclusion

It has been more than 17 years since Canada ratified the Convention on the Rights of the Child. Embodying its principles into both federal and provincial legislation has been a slow process. This is unfortunate because, as Anne McGillivray points out, “It is the status of children and not their vulnerability which promotes exploitation. Children’s rights are both fact and universal symbol. Rights are about autonomy, an autonomy based not on unbridled individualism but on relationship and dependence.”¹⁸⁶ The truth is that if it is the law that defines the status of the child, Canada is on the way, but is not there yet.

2

BUDGETING AND CHILDREN

Introduction

Article 4 of the Convention on the Rights of the Child provides that States Parties “shall undertake all appropriate” measures for implementation, which shall be done “to the maximum extent of their available resources.”¹ Consequently, a commitment to budgeting for children’s rights is essential in order to clearly designate resources for children and, once that is done, to monitor expenditures and evaluate their impact on children.

Experts on mobilizing resources for realizing children’s rights have noted: “In most countries a wide gap is evident between the existing commitments of resources and the levels and types of expenditures that are needed for an adequate implementation of the provisions of the Convention.”² Furthermore, the majority of countries fail to adequately consider resource issues in their reporting to the Committee on the Rights of the Child.³ As a result, the Committee decided to highlight the importance of the issue, and promote better understanding of the Convention’s obligations and their implications in relation to resources, by dedicating its Day of General Discussion in 2007 to the topic of state responsibility for providing and maintaining resources for the rights of the child.⁴

In Canada, children and youth have often been identified as a primary concern when a government announces its forthcoming agenda at the beginning of a parliamentary (or legislative as in the provinces) session in what is known as ‘The Speech from the Throne’, delivered by the Governor-General, who represents the Queen.⁵ This chapter will first

look at budgetary allocations for children at both federal and provincial levels and then examine expenditures as well as evaluation measures. Child impact assessments, where they exist, will be noted, as well as the negative impact budget cuts in recent years have had on civil society’s capacity to advocate for children.

Budget allocations

The Committee on the Rights of the Child recommended to Canada that budgetary allocations be made a priority to ensure that children’s economic, social and cultural rights are implemented. Indeed the Committee encouraged Canada to “state clearly every year its priorities with respect to child rights issues and to identify the amount and proportion of the budget spent on children, especially on marginalized groups...in order to be able to evaluate the impact of the expenditures on children and their effective utilization.”⁶ There is, however, no lasting tradition at the federal level of government for a children’s budget. As the Child Welfare League of Canada puts it, the “economics of childhood is very weak.”⁷ UNICEF Canada notes that, as children and young people are the population most vulnerable to economic policy and yet with the least influence upon it, their interests must be explicitly included in budgeting.⁸ Children themselves tend to be invisible in public accounts. Money to benefit children and young people is usually geared towards families, who are then defined as being ‘single-parent’, ‘at risk’, or classified in other ways.⁹ In order to address child poverty, for example, funds are allocated to families, not directly to children. To streamline the intent and process of protecting children’s rights, Canada

should develop a mechanism to assess allocations and spending for children that would parallel the volume of data available for other constituencies (such as women, veterans and senior citizens), to provide an evidence base in support of public accounts.¹⁰

As 17-year-old Chelsea Howard, a member of Newfoundland and Labrador's Provincial Youth Council, pointed out to the Senate Standing Committee on Human Rights in reference to the Convention on the Rights of the Child and Canada's national plan of action, "without a funded implementation plan they are only goals and ideals. The vision exists and what Canada needs to do is to take action."¹¹

Benefits for children in the federal budget

A closer look at federal budgets in recent years does, however, reveal a number of budgeting measures that directly or indirectly support children's economic and social rights. The Canada Child Tax Benefit (CCTB) is the main federal instrument for the provision of income assistance to families¹² with children. It is a non-taxable, income-tested benefit based on family income and has three components: the base benefit, which provides assistance to low- and moderate-income families; the National Child Benefit supplement, a federal-provincial-territorial initiative, which provides additional assistance to low-income families; and the Child Disability Benefit, which provides a supplement to virtually all families with a child who has a severe and prolonged disability. The CCTB has been growing steadily since it was introduced following Canada's ratification of the Convention on the Rights of the Child, but critics still do not consider it sufficiently substantive to reduce child poverty to levels matching most other countries of the Organisation for Economic Co-operation and Development (OECD).¹³

In addition, Canada Social Transfer (CST) funds are transferred annually (Can\$850 million in 2007/8) to the provinces and territories to ensure equal treatment for children throughout the country.¹⁴ These transfers are assured under the Early Childhood Development Agreement between the federal government and the provinces and territories (2000) and the Multilateral Framework on Early Learning and Child Care (2003). There was a separate announcement in 2002 allocating \$320 million

over five years to improve and expand early childhood development programmes for First Nations and other Aboriginal children, complementing the federal-provincial-territorial agreement on early childhood development.¹⁵ The accountability mechanism associated with these transfers is increasingly visible.¹⁶ Furthermore, as the process continues, the reports are becoming accessible to the general public. (*Also see Chapter 4.*)

Another area of the federal budget that is important for children and supportive of their rights to a family are the maternity benefits available to mothers in the 15 weeks surrounding childbirth; and parental benefits that enable working parents to stay home for 35 weeks during the first year of life of a baby (biological or adopted).¹⁷ This is paid out through employment insurance everywhere in Canada except Quebec. Since 2006, Quebec has a separate regime for parental leave that is more generous than that available in the rest of the country. Unfortunately, this benefit is not yet available for the self-employed, an economic category that includes a growing number of Canadian women.

A substantial amount of money is also transferred to parents under the 2006 Universal Child Care Plan. This replaced the earlier agreements negotiated by the previous federal government with the provinces regarding a national childcare system characterized by quality, universality, affordability and designed to be developmentally appropriate. These agreements had allowed for considerable variety in the programmes that would respond to children's developmental needs as well as to the needs of working parents, including childcare centres, regulated family day care and parent resource centres. The plan was to develop a universal system that could be accessed as needed without discrimination, similar to Canada's health-care system. Five billion dollars over five years had been committed by the previous federal government to build the system, along with matching funds from the provinces. The Universal Child Care Plan that replaced it is a taxable family allowance of \$100 a month for each child under six, a welcome addition to family finances, but with few new childcare facilities being built, it has provided little help for the families that are still desperately seeking developmentally appropriate spaces for early learning and childcare¹⁸ as called for by article 18 of the Convention.

Among other child-related budget allocations are funds for a number of programmes, such as the Community Action Program for Children (CAPC), Aboriginal Head Start programmes on and off reserve, the Canada Prenatal Nutrition Program, four Centres of Excellence for Children's Well-Being, as well as a number of targeted tax credits. Taken together with the benefits listed above, this represents a total expenditure of over \$17 billion a year within Canada.¹⁹

Aboriginal children

The federal government has also identified categories of social spending and grants and contributions for specific sectors of society, although the numbers are not especially meaningful in terms of the impact on children. For instance, in 2004/5 First Nations communities received \$4,901.9 billion and other Aboriginal recipients, including organizations, received \$982.9 million in grants and contributions to support essential services.²⁰ According to the *Constitution Act, 1867*, the federal government has a fiduciary obligation to First Nations peoples.²¹ Yet despite these allocations, problems are particularly acute for Aboriginal children. In 2004, (then) Prime Minister Paul Martin acknowledged that the federal government was not meeting the standard of comparable service provision against the aid non-Aboriginal Canadians were receiving from federal, provincial and municipal governments; in fact, "the standard on many reserves across Canada is substantially lower than that found anywhere else in the country."²² Sixty per cent of Aboriginal children under the age of six live in poverty, compared with 25 per cent of non-Aboriginal children.²³ Funding is failing to meet the needs of First Nations peoples and yet, as the Assembly of First Nations pointed out in 2004, funding levels are declining, rather than increasing, in relation to population growth and inflation.²⁴

Although provinces have jurisdiction for child welfare services on reserves, funding for such services is the responsibility of the federal government. The Joint National Policy Review on First Nations Child and Family Services found that the Department of Indian Affairs and Northern Development "provides 22 per cent less funding per child to First Nations child and family service agencies on reserve than the average province (MacDonald and Ladd, 2000)."²⁵ As a result, disproportionate numbers of First Nations children on reserve enter into child welfare care.²⁶ The federal government

agrees, according to the First Nations Child and Family Caring Society, that "the level of funding it provides to First Nations agencies does not allow them to meet statutory obligations in child welfare."²⁷

A recent review of the grants and contributions regime in Canada concluded that problems plague the complex transfers to First Nations, Inuit, Metis and Aboriginal organizations and place "costly and often unnecessary reporting burdens on recipients."²⁸ Aboriginal respondents to the review identified the need to have sustained and more appropriate arrangements for federal funding.²⁹ The review concluded that alternative mechanisms for the funding of such essential services as health, education and social assistance to 630 First Nations governments on reserves should be provided.³⁰ These conclusions confirm the challenges of reporting, as identified by the auditor general in her 2002 and 2003 reports on First Nations communities.³¹

It is worth noting that federal health funding and programme provision to First Nations in the Northwest Territories, Nunavut and Yukon Territory are different from that provided to First Nations in the provinces. Health funding and programme provision may be lower, or non-existent, due to a variety of factors, including the federal government's prior role in providing health services and the transfer of this responsibility to territorial governments, different funding mechanisms and federal funding frameworks.³²

Unfortunately, jurisdictional issues with respect to Aboriginal children surface with regularity. The failure to resolve conflicts over jurisdictional responsibility to provide payment can lead to real tragedy, as in the case of a young Aboriginal boy named Jordan. Jordan was from the Norway House Cree Nation reserve in northern Manitoba. Due to his special needs from a rare neuromuscular disorder, he was born in a hospital in Winnipeg and spent his entire life there.³³

As already noted, while health care and child and family services are provincial concerns, Aboriginal people fall under federal jurisdiction; it is a federal fiduciary responsibility to fund services to First Nations children on reserve. However, for the past 10 years, there have been ongoing disputes between the province of Manitoba and the federal government over authority to pay costs for First Nations children on reserve in the care of child welfare services, alongside ongoing federal efforts to reduce the

federal government's authority and ability to fund costs for on-reserve First Nations children.³⁴ Caught in the middle of the federal-provincial jurisdictional dispute over payment of the costs of his care, Jordan spent his entire life in an institutional hospital setting. He died in hospital at age five, without ever having known a family environment.

"The tragedy is that he did not have to stay in hospital for medical reasons: he remained there for [a further] two years because the government departments could not settle on which one would pay for his foster home care," wrote a policy analyst for the Assembly of Manitoba Chiefs.³⁵ Numerous organizations came together to issue a Joint Declaration to enunciate 'Jordan's Principle'. The principle states that the jurisdiction in which a First Nations child is treated is the jurisdiction that will pay; disputes over funding are to be settled only after the child's needs have been fully met. An editorial in the *Canadian Medical Association Journal (CMAJ)* endorsed 'Jordan's Principle' and referred to the Convention on the Rights of the Child and "the best interests of the child" to conclude that Canada was in contravention of the Convention. As the editorial's authors noted:

*"Canada's Charter of Rights and Freedoms forbids discrimination. Many of the services Jordan needed would be paid for without question for a white Manitoban, or off-reserve Aboriginal resident. It was Jordan's living on-reserve that caused the bureaucracy to choke. That is discrimination pure and simple."*³⁶

The editorial recommended that governments ignoring 'Jordan's Principle' and engaging in "financial or jurisdictional battles first...deserve to be sued, in the most winnable test case that First Nations' advocates can manage," and declared: "Let the courts decide, if the bureaucrats and politicians continue to refuse to find a timely resolution."³⁷

Despite the profile of 'Jordan's Principle', other First Nations children continue to suffer due to bureaucratic disputes. For example, 37 families from Jordan's reserve were informed in March 2007 that their children with disabilities would no longer receive funds for professional and support services in their community. Thus, these First Nations families were in effect forced to send their children away for health care.³⁸ While there are some excellent services available to non-Aboriginal children across the

country,³⁹ many Aboriginal children are placed into child welfare care in order to obtain necessary medical support and services.⁴⁰ As the *CMAJ* editorial asserted, "Geography is no excuse for the pusillanimous, inequitable distribution of wealth, such that advanced care exists only in the south and First Nations children, parents and communities endure psychological and cultural stress to access it."⁴¹

On 12 December 2007 the House of Commons responded to the calls of over 1,400 registered supporters of 'Jordan's Principle' by unanimously passing a private member's motion in support of the principle tabled by Member of Parliament Jean Crowder. In January 2008, British Columbia became the first province to sign on.

The Assembly of First Nations has established a First Nations Special Needs Working Group to advance the issues, and in 2006 conducted a literature review. The Working Group found a major need to research the issues around children with special needs in First Nations settings.⁴² It has proposed a substantial research project, framed by the Convention on the Rights of the Child, to improve children's conditions; gather data about community programmes for children with special needs; develop a framework to address the major gaps in service provision in relation to such areas as jurisdiction, capacity development, management and resourcing; address the barriers; and develop recommendations for future action regarding First Nations children with special needs.⁴³

There is, however, substantial funding in the 2007/8 budget to redress, at long last, the terrible wrongs Canada inflicted on Aboriginal children and their families during the many years the young people were taken away from their communities and placed in residential schools. The sum of \$1,922,900,000 was set aside for lump-sum payments in recognition of the reality that the experience of residing at an Indian residential school was devastating to Aboriginal children's right to culture, language, family and protection.⁴⁴ An additional amount was made available to settle individual claims of sexual and physical abuse (\$160 million), for the Aboriginal Healing Foundation (\$125 million), and for a truth and reconciliation commission (\$58 million).⁴⁵ These allocations are a long overdue recognition of the fact that when children's rights are denied, the negative consequences carry over to the following generations.

Budgets for children in Canada's international development assistance

While this case study is focused primarily on domestic implementation of the Convention on the Rights of the Child, the Canadian International Development Agency (CIDA) deserves much credit as a major player on the international stage. Child rights have been a priority for CIDA since the adoption of the Convention. CIDA was involved with the 1990 World Summit for Children and the 2002 United Nations General Assembly Special Session on Children. It has made substantive financial and policy contributions to all the other major international events related to children, and has played a role in follow-up exercises. In the 1990s, CIDA invested in two funds: a fund for children in especially difficult circumstances and a partners for children fund, both related to the World Summit Goals and the Convention. Then the organization's Five-Year Action Plan on Child Protection (2000–2005) invested \$171 million to support research, policy dialogue and programming in children's rights and protection. CIDA has also substantially funded child and youth participation in a variety of ways – the International Youth Internship Program alone sent over 5,000 youth interns to numerous developing countries to apply their knowledge, obtain international work experience and develop skills (although this programme was subsequently cut).⁴⁶ Several international development non-governmental organizations (NGOs) in Canada also receive support for their youth participation efforts.⁴⁷

Provincial budgets

The provinces allocate significant funds for children as a result of their greater responsibility for children's programmes and services. A number of them make particular efforts to identify allocations for children. For example, in its presentation to the Senate Standing Committee on Human Rights, New Brunswick specifically recognized the importance of budgetary information related to children, and detailed increases for education, childcare workers, early intervention and integrated childcare services and funds to promote healthy living for children and youth. An increase for Family and Community Services focused on five main areas: low-income families and individuals, children, seniors, community partners and persons with disabilities.⁴⁸

The provincial government of Newfoundland and Labrador breaks down allocations for children in its budget.⁴⁹ Several government departments in the province have confirmed that recommendations in the annual report from the Office of the Child and Youth Advocate of Newfoundland and Labrador about service delivery, programmes, policy and legislation have been considered by the provincial government during the budget process.⁵⁰

In Nova Scotia, the Nunn Commission of Inquiry⁵¹ raised some public spending issues related to children to the Nova Scotia government.⁵² (*Also see Chapter 1.*) As a result, the government committed \$3 million in increased funding for 2007/8 to support preliminary implementation of some of the commission's recommendations, with plans to consider additional future funding for justice, education, health and social services.⁵³

Quebec, with its focus on family policy and its positive regard for the Convention on the Rights of the Child, has a number of important budgetary measures to promote children's rights,⁵⁴ such as the \$7-a-day childcare policy, which includes both preschool and school-aged children. While this policy does not yet reach all the families who could benefit from it, it is far better than related policies in other provinces. Quebec's direct financial supports for families with children are also greater than in other provinces (Quebec has its own regime for the CCTB), including support for children with special needs. All this has resulted in a steady reduction in child poverty rates in Quebec since 2000.⁵⁵

Ontario is helping almost 1.3 million children and low-income families through the Ontario Child Benefit (an additional \$2.1 billion over the first five years, 2007–2011), raising the minimum wage and making it easier for families to find decent homes by investing in affordable housing.⁵⁶ The current provincial government has also committed to increase funding for schools by \$781 million in the 2007/8 school year, up to a total of \$18.3 billion to schools.⁵⁷

Healthy Child Manitoba reports on public spending on children through its annual report (*see Chapter 7 for further details*). It does not, however, break down costs on specific efforts but rather collates them under the 'Financial Assistance and Grants' category.⁵⁸ For example, in 2005/6, when the total budget was \$24.2 million, Healthy Child spent \$22.49 million on programmes and projects⁵⁹ in such areas as:

parent-child centred approach, foetal alcohol spectrum disorder prevention and support, healthy baby, positive parenting, healthy schools, and healthy adolescent development.⁶⁰ It appears that annual reports for the other provincial departments involved with Healthy Child Manitoba generally do not identify specific expenditures on children, other than Family Services and Housing.⁶¹ However, the Healthy Child Manitoba initiative appears to have spurred increased expenditures for children from the provincial government.⁶² Moreover, Manitoba has several examples of efforts by the Auditor General, Ombudsman and the Child Advocate to assess public spending for children in areas such as child welfare and youth development.⁶³

The rest of the Western provinces (Alberta, British Columbia and Saskatchewan) are also in the process of developing long-term plans for investments in children. How much these plans will be influenced by the Convention remains to be seen, but the active presence of child advocates committed to the Convention in each province is a promising sign, as is the fact that the British Columbia Ministry for Child and Family Development has made its commitment to the Convention explicit.

Expenditures and evaluation

It is one thing to allocate funds for children in the budget; it is quite another to track expenditures and evaluate outcomes. Finance Committees in both houses of Parliament that track funding rarely focus on child-related expenditures, but some government ministries do record their child-related spending. In 1999 CIDA released its first (and only) 'annual' report on the funds actually spent on programming in support of children.⁶⁴ CIDA's research showed that the reports associated with the National Child Benefit (NCB) stand out because they collect information from the provinces as well as the federal government, focusing one year on expenditures and the next on indicators.

Exactly how much the federal government actually spends on children is not an easy question to answer. However, the development process for Canada's national plan of action (NPA), in response to the Special Session on Children, continues to encourage the federal government to identify its various investments for children.⁶⁵ This has provided a helpful template for subsequent reporting, but because some programmes are not renewed as priorities shift, continual monitoring is essential.

Around the world, difficulties persist in tracking public spending for specific groups to determine the benefit of either general or specific spending.⁶⁶ International organizations traditionally approach the issue through comparison of levels of allocation in support of social services.⁶⁷ One approach is to assess whether legislation for a specific group is adequately resourced and whether administrative systems allow funds to reach all the intended beneficiaries.⁶⁸

In the Canadian federal government's Main Estimates for 2007/8, social programmes (including major transfers) increased from the previous budget period from \$90,357,135,000 to \$97,352,711,000, for 46.3 per cent of total programme spending.⁶⁹ Except for the Child Tax Benefit and the Child Care Allowance and a few smaller items, this impressive spending is not specifically directed at children's needs. The government-identified major transfers for social programmes include: Employment Insurance, Elderly Benefits, the Canada Health Transfer and the Canada Social Transfer.⁷⁰ The last two items are transfers to the provinces for the programmes that fall under provincial jurisdiction. Provinces are accountable to the federal government for their health expenditures under the *Canada Health Act*, but there is much less accountability for the Canada Social Transfer as well as a lack of national standards.

It is commendable that fiscal accountability has become increasingly important in recent years. However, a focus on this kind of accountability has not helped answer the more fundamental question: Has expenditure made a real difference in the lives of the children it was intended to benefit? Often, when decisions are made to either reduce or change funding priorities, it is difficult to find evidence that a child-impact assessment has been part of the decision-making process. The shift to the universal childcare allowance, for example, is clearly having an adverse effect on the provision of affordable quality early-childhood care and education⁷¹ as called for by article 18 of the Convention. In British Columbia, for example, the shift led to a loss of \$455 million to the province's Service Plan (an integrated system of services for children and youth, including prevention initiatives, early intervention and child and family development, and child protection services) for fiscal years 2007/8 to 2009/10 for the provincial Ministry of Children and Family Development.⁷² The rights of children will suffer as a result, but it is unlikely this was taken into account when the decision was made.

Another example of the impact of reductions in social service spending is the case of young refugees seeking asylum in Quebec. Among the difficulties faced by the social services, "Growing caseloads, lack of placement and other resources, limits in the help given to the host families of the youth...compromise their capacity to intervene in the best interests of these youth."⁷³ Cutbacks have also influenced other sectors, including education, which heightens the difficulties faced by young refugees and furthers their marginalization from society.⁷⁴

When evaluations that include child impact assessments do take place, they can lead to positive results. The Public Health Agency of Canada, for example, recently evaluated the national impact of its Aboriginal Head Start programme in 10 urban and northern communities. The programme supports locally developed and managed early intervention plans to promote the positive, healthy development of approximately 4,500 Inuit, Metis and First Nations children. It received \$37.5 million in 2006/7 for 131 sites in 120 communities across the country.⁷⁵ The participatory evaluation in 10 communities found that the programme is accomplishing its objectives and "contributing to the health and social development of Aboriginal children and their families."⁷⁶ However, despite its success, its reach is extremely limited since less than 10 per cent of eligible four- to five-year-olds are enrolled in the programme, and almost all the sites are full to capacity with waiting lists.⁷⁷

In another example, the federal government renewed funding for the Centres of Excellence for Children's Well-Being Program following the 2005 evaluation by Consulting and Audit Canada, which concluded that "the Program has been very successful and cost effective in increasing knowledge and public understanding of the key determinants of children's well-being."⁷⁸ It also "addressed the gap in life chances between Aboriginal and non-Aboriginal children."⁷⁹ The programme predates the adoption of Canada's NPA, but, according to the Public Health Agency of Canada, it "aligns closely with the commitments in *A Canada Fit for Children*".⁸⁰

At the provincial level, too, there are positive examples. The Auditor General in Newfoundland and Labrador audits all public spending and conducts compliance audits so that government departments follow policies, procedures and legislation.⁸¹ The New Brunswick Child Advocate is a relatively new, small

independent office in comparison to the offices in provinces with comparable populations. It intends to track per capita spending on child advocacy elsewhere in order to seek budgetary increases to support promotion and advocacy work, outreach and universal parenting programmes.⁸² The office is also actively considering convening an annual press conference to issue a report card entitled the 'State of the Children in New Brunswick', which would include assessments of public spending.⁸³

No doubt there are other examples, but it remains a fact that there is no overall commitment to tracking or evaluating expenditures concerning child rights in a consistent and coherent fashion. This was noted by the Committee on the Rights of the Child in 2003. While complimenting Canada on its various measures to allocate resources to support child rights, including the NCB, the Committee reiterated "concerns expressed by the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.31, para. 22) and the Human Rights Committee (CCPR/C/79/Add.105, paras. 18, 20) relating to modalities of implementing NCB in some provinces."⁸⁴ It encouraged Canada to include consideration of the elimination of "any negative or discriminatory effects it may have on certain groups of children"⁸⁵ in its regular evaluation of the NCB's impact and implementation. However, while the federal government's fiscal transfers to provincial and territorial governments to support various social measures require public reporting in accordance with the federal-provincial agreements, the provinces are also given "the right and authority to decide" how to allocate the money.⁸⁶ Without national standards, it is not always easy for provinces to be consistent in their approaches.

Civil society and budgets for children

The role of civil society in bringing about equality and social justice across the country cannot be underestimated because, over the years, national organizations, coalitions and policy institutes have best been able to track and analyse budgets and expenditures at both national and provincial levels. Notable among these organizations are the Canadian Council on Social Development, the Canadian Policy Research Networks (CPRN), the Caledon Institute of Social Policy and Campaign 2000.

Non-profit organizations (other than universities and research institutions) received almost \$3 billion in grants and contributions from the federal government in 2004/5.⁸⁷ All levels of government depend on the significant role in Canadian society played by the community non-profit sector from small, local organizations to national-level agencies.⁸⁸ This sector depends for its income on contributions from a range of donors: government, private businesses and individuals.⁸⁹ As most organizations focus on programming, they are:

“...heavily dependent on transfers from government and are strongly affected by shifts in government policy. Because of this high level of dependency on transfers, the community non-profit sector, like First Nations, has been severely affected by the current shortcomings of the federal grants and contributions regime and certainly has much to gain by its reform. Approximately one third of funding for the community non-profit sector involves amounts under \$100,000.”⁹⁰

However, the community non-profit sector is currently facing serious problems in this essential relationship with the federal government. In spite of many consultations, “the sector today suffers from more uncertainty and instability than ever before. A simplified application, reporting and auditing process, predictable funding, and speedy decisions would address many of the sector’s concerns.”⁹¹

Serious financial cuts in federal government funding during recent years have created major problems for the non-profit sector. Yet 79 per cent of Canadians believe that non-profits understand their needs better than the government, and 72 per cent feel these organizations are better than the government in meeting these needs.⁹² The role of this sector is fundamental to the country:

“The programs funded by federal grants and contributions to this sector fulfil essential public policy purposes in every field of human and social development... A successful and enduring partnership between the federal government and the community non-profit sector is essential to the delivery of many vital services for Canadians.”⁹³

Yet, non-profit and voluntary organizations are under stress, warning that, despite the fact that there is now a better understanding of the

sector’s contributions, “their capacity and essential character are at risk.”⁹⁴ Consultations with the non-profit sector revealed its “fragile state,” and suggested that it is “hostage to costly funding delays and to reporting requirements that many are ill-equipped to meet.”⁹⁵ The lack of core funding to support the day-to-day operations of these organizations impedes their capacity to meet accountability requirements of the government.⁹⁶

While this sector is supportive of donors’ stated awareness of the need to improve accountability in funding reforms, the consequences of funding cutbacks for the sector seem inadequately appreciated, according to one study.⁹⁷ Katherine Scott of the Canadian Council on Social Development explains: “Many organizations that survived government funding cutbacks of the 1990s are financially fragile because they are now dependent on a complex web of unpredictable, short-term, targeted project funding that may unravel at any time.”⁹⁸ Due to short-term funding, the sector’s capacity to develop relevant programmes to address community needs, and plan for emerging needs, is declining.⁹⁹ This, combined with a drop in civic participation and an increase in demand for services, have exaggerated the sector’s problems.¹⁰⁰ Furthermore, changes in funding arrangements and demands have undermined the sector, which is unable to accomplish its objectives as it once did.¹⁰¹ For example, there have been continual cutbacks to funds for urban Aboriginal peoples.¹⁰² The constant work needed to obtain core funding leaves no room for initiatives that are not part of the main mandate of the Friendship Centres, negatively affecting efforts to secure funding for Aboriginal youth leadership development.¹⁰³

“Nonprofit and voluntary organizations now operate under intense financial pressures and they face significant operational challenges, the consequences of which are influencing their direction and challenging their legitimacy,” writes Katherine Scott.¹⁰⁴ Organizations hesitate to refer to child rights in funding proposals due to the government’s lack of explicit support¹⁰⁵ as well as concern that it will impede resource generation.¹⁰⁶ Organizations are being directed not by their missions but by the drive to take on projects or activities with potential or available funding, causing ‘mission drift’, for one third of organizations surveyed in Canada.¹⁰⁷ The changes and loss of contributions to the sector are important, particularly given the significance of the sector

for implementation of the Convention on the Rights of the Child. The sector's contributions as "advocates, representatives and community-builders" are unique.¹⁰⁸ The current state of non-profit and voluntary groups means that "the loss of the public spiritedness and the public goods that have traditionally characterized the activities [of the non-profit and voluntary sector] is in danger of going unnoticed."¹⁰⁹ The Government of Canada has a critical leadership role to sustain the sector. Recommendations made to the government to redress the situation include: the development of a collaborative mechanism and process to reform government funding; tailoring funding approaches and tools to reflect various needs and improve flexibility; and acknowledging the administrative costs of funding agreements.¹¹⁰

The elimination of \$1 billion in federal programme funding, announced in autumn 2006, has had a further significant impact upon the non-profit sector. For example, despite positive federal government evaluations of its work, the Canadian Policy Research Networks, which has produced valuable independent research on a range of areas including children's policy, had \$3 million cut from its funding because it was viewed as a failure under the government category, 'Value for Money'.¹¹¹ This raises the question: Who decides what is 'good value' in accordance with what criteria? The Community Social Planning Council of Toronto identifies this cut as reflecting a trend: "Many of the federal government's cuts focus on programs and agencies engaged in research and policy analysis, work that informs how policymakers and the community understand and approach social issues and issues of equity."¹¹² The 2006 cuts also eliminated the Court Challenges Program that contributed to the cost of test-case litigation making Charter rights accessible; and the Law Commission of Canada, an independent agency advising Parliament on improving legislation, including a report on institutional child abuse in 2000 that encouraged community involvement in law reform.¹¹³ A Toronto forum identified three main concerns: poor communication from the government about cuts to the non-profit sector, particularly marginalized groups, without concern about the impact and lacking a rationale; the cuts exacerbating the 'democratic deficit' by eliminating programmes and research efforts and, in effect, silencing voices; and fear that cutbacks will only worsen in the future.¹¹⁴

One of the roles of civil society is to increase understanding of the importance of the relationship between children and budgets. UNICEF Canada made a valuable submission to the House of Commons Standing Committee on Finance urging the adoption of a national budget and tax system that highlights children's best interests, due to Canada's legal obligations under the Convention on the Rights of the Child to allocate maximum resources; and the need for a systematic process to avoid discriminatory decisions that do not meet children's needs.¹¹⁵ The organization showcased the valuable experiences of such initiatives in Brazil, Norway, South Africa and Sweden in relation to their national budgets and their efforts to allocate revenues to children.¹¹⁶ It identified useful tools to measure the impact on children of both expenditures and revenues, the first through policy assessment, public expenditure incidence analysis and beneficiary assessments; the second by looking at personal income taxes, indirect taxes and user fees.¹¹⁷ In addition, UNICEF Canada and the Child Welfare League of Canada also wrote to the federal Minister of Finance in 2006 to urge creation of Canada's first children's budget in order to measure the allocation of resources to children – both intended and indirect – as well as inclusion of such accounting in federal transfers to the provinces.¹¹⁸

Campaign 2000 is a particularly vocal actor with respect to budgetary measures to reduce the numbers of children living in poverty. Initiated in 1991, this cross-country campaign takes its name from the 1989 all-party motion in the House of Commons to bring about an end to child poverty in Canada by the year 2000. Even though 2000 has come and gone, the many organizations that contribute to Campaign 2000 continue their efforts, issue annual report cards and make regular well-researched submissions to both federal and provincial governments as they conduct their budget processes.

It is telling, however, that there were no submissions from Canadian NGOs or individuals to the Day of General Discussion on resources for the rights of the child held in September 2007 by the Committee on the Rights of the Child.¹¹⁹ It must also be noted that the federal budget process no longer encourages presentations from child-focused organizations. Hence, fewer members of Canadian civil society are involved in the federal budget development process.¹²⁰

Conclusion

There are many areas for progress in Canada in relation to children and budgets across jurisdictions, including mandatory consideration of children's rights in the budgeting process, child-impact assessments and the costing of legislation. As UNICEF Canada and the Child Welfare League of Canada highlight, there are substantial benefits to including the child rights perspective in budgeting: better coordination between economic and social policies; reduction of discrimination between regions and groups of children in service provision; protection from adverse economic policies; and promoting children as a population deserving of respect.¹²¹ (For the time being, however, it appears that the relationship between children's rights and their need for resources is separated from the budgeting process partly because, as the Senate Standing Committee on Human Rights has pointed out, children are "silenced" and do not have a vote.¹²²

Legislation is rarely costed to ensure adequate implementation in terms of the focus populations. In South Africa, costing of the

Child Justice Bill ensured that it could be effectively implemented, and resulted in the understanding that the new legislation would save the government money.¹²³ The Committee on the Rights of the Child welcomed this approach.¹²⁴ Civil society could do more in this area. Although there are examples in Campaign 2000 and the Canadian Council on Social Development's *The Progress of Canada's Children and Youth* report,¹²⁵ there is generally insufficient attention to budgeting for children's rights. In particular, discrepancies related to First Nations children in terms of allocations and expenditures need to be addressed as a matter of urgency.

As young Chelsea Howard contended:

"We say we value children – but what do our actions and decisions reflect? Everyday decisions are made to allocate resources, but when it comes to living up to our obligations to children under the Convention, I have to question if we truly value children as we say we do?"¹²⁶

3

NATIONAL PLANS OF ACTION

Introduction

Most United Nations-related international agreements on human rights and social development call for each participating country to develop a national plan of action (NPA) for implementation. The Convention on the Rights of the Child is no exception.¹ While NPAs may be relatively easy to design in unitary states with a tradition of central planning, they are considerably more problematic in a confederation like Canada, where the very term ‘national’ in conjunction with ‘plan’ is likely to face challenges from provincial actors.

Nevertheless, over the years Canada has developed a variety of national plans and strategies related to particular aspects of children’s health and well-being through federal–provincial negotiation and agreement. Still, the Committee on the Rights of the Child has not judged these measures to be adequate for the full scope of implementation of the Convention and, as recently as 2003, identified in its Concluding Observations on Canada’s second report that the Government of Canada needs to develop “a unifying, comprehensive and rights-based strategy, rooted in the Convention.”² A year later, in 2004, Canada released a national plan of action guided by child rights entitled *A Canada Fit for Children*, to fulfil the commitment it made at the conclusion of the United Nations General Assembly Special Session on Children.³ The plan was presented to UNICEF in New York in April 2004 in conjunction with Quebec’s plan, *Un Québec digne des enfants (A Quebec Fit for Children)*.⁴

Federal and provincial efforts

The first major NPA for children developed in Canada was inspired by the UN-designated International Year of the Child (IYC) in 1979. The Canadian Commission for IYC, established by the government, and comprising over 40 government and non-governmental representatives, developed the document, *For Canada’s Children: National Agenda for Action* in 1980,⁵ to ensure that IYC left a legacy for Canadian children. The Agenda was framed by the Declaration of the Rights of the Child.⁶ After parliamentary hearings, the federal government responded to the Agenda with a neutral document that justified existing measures and made no new commitments.⁷ There was no provincial response.

A decade later, Canada was one of six initiating countries for the 1990 World Summit for Children.⁸ The Summit itself was co-chaired by the then Prime Minister Brian Mulroney of the Conservative Party. In response to the World Summit Declaration and Plan of Action, Canada prepared and submitted to the United Nations a five-year national plan of action entitled *Brighter Futures*.⁹ While this NPA deserves credit for having inspired considerable progress on World Summit goals, even though it has been described as “largely a catalogue of existing programmes,” it did not directly address the issue of implementation of the Convention.¹⁰ However, even the Committee on the Rights of the Child acknowledges the limitations of NPAs related to the World Summit goals since they “related to the particular commitments set by nations attending the Summit.”¹¹

Following the World Summit, Prime Minister Mulroney named Benoît Bouchard, (then) Minister of Health and Welfare, as minister responsible for children's issues. Mr. Bouchard created a Children's Bureau within his ministry that served as a federal focal point on children and guided the development of the NPA, *Brighter Futures*, and many of the child-related programmes that issued from it, such as the Community Action Program for Children (CAPC) aimed at rallying disadvantaged communities around their children's needs.

In preparation for Canada's ratification of the Convention on the Rights of the Child, the provinces were asked to adjust legislation and policies if necessary and to signal their assent. They were also requested to develop plans of action to fulfil World Summit goals. Ratification of the Convention after the World Summit did not, however, result in either a federal or provincial plan for implementation.

In 1996, federal, provincial and territorial First Ministers established the well-being of children and families as a priority for joint action, and the *National Children's Agenda* was subsequently developed cooperatively, in consultation with the public. There was no reference to the Convention in this shared vision. The *National Children's Agenda* identified four main goals for children: to be healthy; safe and secure; successful at learning; and socially engaged and responsible.¹² The first item on the agenda was the Early Childhood Development Agreement to invest in children less than six years of age. This led to ongoing federal-provincial monitoring efforts to assess the well-being of young children as part of the Social Union Framework Agreement (SUFA).¹³

Canada's national plan of action

In 2004 Canada launched a national plan of action to follow up on its United Nations General Assembly Special Session on Children commitments. Senator Landon Pearson, the primary author of this study, was the personal representative of Prime Minister Jean Chrétien to the Special Session. Senator Pearson was deeply involved in both the domestic and international preparations for the event well before her actual participation in the landmark event. Subsequently, she worked with the federal ministers of Health and of Human Resource Development who had been assigned joint responsibility for follow-up, and was asked by them to guide the government's

efforts to develop an NPA.¹⁴ After a year of consultation with government officials, parliamentarians, national aboriginal organizations, civil society organizations and individuals, and numerous children and youth, a draft was released for comment from all those consulted.¹⁵

In March 2004, the NPA, entitled *A Canada Fit for Children*, was signed off by the federal government and adopted as a Cabinet document. It was launched on Canada's Parliament Hill in May, exactly two years after the Special Session on Children.¹⁶ The NPA contains a declaration of Canada's commitment to children, a vision statement and a plan of action that reflects both domestic and international priorities. It is designed to guide Canada's efforts for and with children, calling for strategies that are child-centred, multi-sectoral, forward-looking and collaborative, and identifies certain benchmarks to highlight progress.¹⁷ To parallel the categories established in the outcome document of the Special Session, 'A World Fit for Children', the Canadian NPA elaborates the country's goals and strategies in four main areas of action: promoting healthy lives; protecting from harm; promoting education and learning; and supporting families and strengthening communities.¹⁸ Although the previous NPA, *Brighter Futures*, had not affirmed in its opening paragraphs the "obligation to promote and protect the human rights of all children", *A Canada Fit for Children* is intentionally framed by the Convention on the Rights of the Child.¹⁹ This difference is not so much a reflection of the quality of the documents as it is of the 10 years between them, years that had brought about a much greater awareness of the Convention.

A Canada Fit for Children was generally well received, particularly in the community of non-governmental organizations (NGOs), but its impact on federal policies and practices related to children has been minimal. This is perhaps the moment to analyse why national plans of action, with time-bound and measurable targets and goals, have such difficulty gaining traction in Canada.

Suppose, for example, that among the goals of an NPA would be Canada's ratification of International Labour Organization (ILO) Convention No. 138²⁰ on the Minimum Age for Admission to Employment, as the Committee on the Rights of the Child has recommended. All the provinces and territories would have to adjust their labour codes, because these fall within provincial jurisdiction. This would require

a concerted campaign orchestrated by the federal government for an uncertain result because the provinces are not always convinced that change is necessary (see Chapter 1).

On the other hand, ratification of ILO Convention No. 182²¹ presented no problem because the worst forms of child labour are already addressed by the Criminal Code of Canada and the Convention on the Rights of the Child and its Optional Protocols, to which the provinces are already committed. A national strategy, however, is seen as less prescriptive and more open-ended than an NPA. It lays out constructive ways in which to approach a problem rather than demanding predetermined outcomes.

Canada's national strategy against the commercial sexual exploitation of children (CSEC) is a good example. This strategy was shaped by the framework articulated at the First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in 1996, and has been guided ever since by an inter-ministerial and inter-sectoral committee based on the make-up of the Canadian delegation to that groundbreaking meeting. Canada's CSEC committee is not a decision-making body; its functions include the issuance of reports detailing government measures as well as provincial and territorial responses to address child exploitation²² and it facilitates such events as the 1998 summit of sexually exploited young people that brought together 54 young people from the Americas to formulate and issue their own declaration and agenda for action.²³

Other effective national strategies related to children at the federal level include: the Anti-Tobacco Strategy, the Healthy Active Living Strategy and the National Immunization Strategy. While these approaches make no specific reference to the Convention, the Anti-Tobacco Strategy in particular has made youth participation a key component.

All this is not to say that the NPA has had no effect. The process of creating the document, *A Canada Fit for Children*, involved a number of provincial government officials and led to some provincial follow-up. The province of Newfoundland and Labrador has advanced the NPA through various measures that support children, including the provincial Child Tax Benefit, the Poverty Reduction Strategy and a mother-baby nutrition supplement.²⁴ Various departments in the province have action plans that concern children, including the Safe and Caring Schools Initiative and the Recreation and Sports Strategy Plan.²⁵

But generally, at the provincial level, it appears that while governments refer to *A Canada Fit for Children*, they do not specifically use it. In Nova Scotia, for example, the NPA is not considered relevant to the departments serving children and youth.²⁶ However, various civil society organizations have specifically recognized the NPA. For example, the United Nations Association in Canada has developed its Healthy Children, Healthy Communities Project (which promotes the healthy development of 9- to 12-year-olds) in direct response to the NPA's call for action. And the UNICEF Canada-sponsored project Half-Way There (see Chapter 5) makes direct reference to the plan.

Nor does it mean that the provinces do not have action plans for children. Following the Special Session on Children in 2002, Quebec developed *Un Québec digne des enfants*, a plan stating that international conventions, especially the Convention on the Rights of the Child and its two Optional Protocols, have a direct relationship to the province's priorities.²⁷ However, when Quebec refers to 'national' as in l'Assemblée Nationale de Québec (the provincial legislature) it refers to Quebec, not to all of Canada. In fact, all national agreements on social policy contain a disclaimer from the province of Quebec, stating that it will establish and manage its own programme similar (if not superior) to the national programme the other provinces have signed on to, with its share of the federal funding provided.

As a result of the Manitoba Healthy Kids, Healthy Futures Task Force, Manitoba has developed a plan that includes advice on health from young Manitobans.²⁸ Particularly valuable is Healthy Child Manitoba, created in March 2000, which is the provincial government's "long-term, cross-departmental prevention strategy for putting children and families first."²⁹ Led by the Healthy Child Committee of Cabinet, it coordinates the government's programmes and supports for children focussing on community development and has an action plan on early learning and childcare.³⁰

The Ontario government developed its Best Start plan to advance childcare, early learning and healthy development of children. It supports preschool children by introducing various programmes, including: blind/low-vision interventions, speech and language programmes, and healthy babies, healthy children programmes.³¹

In Prince Edward Island, an advisory committee produced a strategy for the provincial government's consideration to advance healthy child development.³² The strategy identifies the National Children's Agenda, vision, values and positive child outcomes along with enabling conditions, policy implications and key areas for action.

Some municipalities have also developed plans of action. 'Success By 6' action plans to support successful early childhood development exist in several communities throughout British Columbia: in the Lower Mainland and Fraser Valley, Interior, Northern British Columbia and Vancouver Island. Calgary, Edmonton, Ottawa and the Peel Region of Ontario also have 'Success By 6' action plans.³³ This initiative is a good example of coordination between the private and public sectors. The City of Toronto developed a plan in response to report cards about the situation of children in the city issued by the Children and Youth Action Committee, composed of city councillors, trustees, representatives from community organizations, advocates and city residents.³⁴ The first action plan directed \$3 million from the city budget to realize its objectives.³⁵ When the 2002 Report Card on Children identified the "significant" needs of the city's children,³⁶ the 2003 action plan identified necessary investments with specific dollar amounts, costed for the city, in order to reach specific populations.

Analysis

While Canada's national plan of action links the Convention on the Rights of the Child and the Special Session on Children outcome document, its results to date are less than impressive. It is a comprehensive document, reflective of a range of Convention standards, and was developed following extensive and widespread consultation. It is a proper response to the commitments that Canada made at the Special Session on Children. This is recognized both by the Senate Standing Committee on Human Rights and Canada's response to the Special Session on Children five-year review.³⁷ However, the significance of the NPA for implementation of the Convention on the Rights of the Child has been undercut by a number of factors, some internal to the document itself and some external.

For instance, the relationship between the NPA and implementation of the Convention is more implicit than explicit. The document does not

reduce the need for a comprehensive implementation strategy for the Convention.³⁸ Nor, in spite of the recommendation made by the Committee on the Rights of the Child to do so, does it address in any meaningful way the Committee's Concluding Observations on Canada's last report.³⁹ Another problem is that the NPA's adoption by the Cabinet in 2004 was not accompanied by allocation of resources. While there are efforts on the part of some officials to make it relevant, it is clear that the NPA is not a driver of rights-based action for children.

The Committee on the Rights of the Child has recognized that the development of a national strategy or plan of action "is not a one-off task."⁴⁰ At the same time, it has stressed the strong relationship between coordination mechanisms and the development and implementation of NPAs.⁴¹ The limitations of Canadian coordination (*also discussed in Chapter 7*) and other factors are likely largely responsible for the limited relevance of the NPA to date in planning and policy at various levels. Another difficulty is that the NPA has not been integrated with budgetary decisions. Although Canada is expected to include a section on its NPA implementation in its next report to the Committee, monitoring is always a challenge. In 2003, the Committee outlined various concerns that should be a part of any NPA, including: "clear priorities, a timetable and a preliminary allocation of necessary resources in conformity with the Convention at the federal, provincial, territorial and local levels in cooperation with civil society" and the designation of a "systematic monitoring mechanism for the implementation".⁴² These concerns remain relevant and accurately describe some of the ongoing barriers to implementation listed in Chapter 8.

Notably, in August 2006 the Government of Canada was asked to report to UNICEF on its follow-up to the Special Session on Children commitments in time for the start of the United Nations General Assembly's five-year review process. The government delayed submitting its report until August 2007,⁴³ although it was due at the end of December 2006. The report was developed following UNICEF's outline and expanded to reflect the NPA; public officials liaised with members of civil society; and provinces were shown a draft on a no-objection basis because of what was described as a tight timeline. The release of the report was delayed due to a variety of reasons, including other priorities, a late start to the

process and the time required for approval from the different levels of the bureaucracy. Some ministers also got involved and their review and comment process added to the delay. In contrast to Canada's contributions to earlier international review processes, such as 'Copenhagen +5' and, indeed, for Canada's report to the United Nations Secretary-General for the Special Session on Children, the 2007 report was sent to the Office of the Prime Minister for final approval. The resulting document is primarily a list of various existing measures for children and was already out of date when it was finally delivered.⁴⁴

To make the current NPA relevant for the future, the Government of Canada would need to distil it into a short, action-oriented document that does not focus on previous or existing measures, but identifies essential and fully scoped rights-based priorities for future action to improve the situation of children in Canada and abroad. Moreover, this document would have to be regularly updated and highlight comprehensive, reasonable and disaggregated targets that reflect all child rights. Regular monitoring is also required to determine progress or identify necessary areas of improvement in reports to Parliament and to the public.⁴⁵ (*Also see discussion of monitoring in Chapter 4.*) It is important to note that various submissions to the Senate Standing Committee on Human Rights highlighted the necessity of specific time-limited targets and goals and monitoring of government efforts to achieve the NPA.⁴⁶

Conclusion

The report *A Canada Fit for Children* has inspired a number of pockets of activity in support of child rights across the country. With any national action plan, there must be institutional mechanisms in place at the federal level to keep either the federal government or civil society, or both where needed, focused on children's rights. It is important to keep in mind that Canada is a confederation and central planning is not part of its political culture. Over the years, progress on social issues in Canada has been the result of long discussion and negotiation. This has been accompanied by legislative reforms at all levels of government, and jurisprudence, particularly from the Supreme Court. In that sense, perhaps the best that can be said of the report *A Canada Fit for Children* and the other NPAs for children, is that they are significant parts of a necessary discussion. Implementing the Convention on the Rights of the Child in Canada is more likely to advance by focusing on the variety of measures that have been identified by the Committee on the Rights of the Child and the Senate Standing Committee on Human Rights.⁴⁷

4

MONITORING MECHANISMS

Introduction

Monitoring is a critically important process for implementation of the Convention on the Rights of the Child.¹ Ideally, it examines both the state of the children in the country and the state of the laws, policies, budgets and other measures in place to secure children's rights. Monitoring assesses the well-being of children and the impact of policies, programmes and budgets on children. If done regularly, it acts as an early-warning system for emerging challenges. For example, a regular and comprehensive system of monitoring could have identified rising obesity rates among children in Canada well before the trend became an epidemic, thereby prompting the establishment of preventive policies and programmes.

Expressing the views of children themselves, two 13-year-old boys explain why monitoring is important:

"To get accurate information from the parties involved and to have proof that directives [of the Convention] are being followed. If those involved are saying something, in this case the children, they might have a different opinion.... Monitoring is important, to show that they do think otherwise than what they are being told.... To get many diverse opinions."²

The weaknesses of monitoring in Canada, and especially the lack of a permanent monitoring mechanism, evokes continuing criticisms from the Committee on the Rights of the Child. The Committee noted its concern in 1995 that "sufficient attention has not been paid to the

establishment of a permanent monitoring mechanism that will enable an effective system of implementation of the Convention in all parts of the country."³ In 2003, the Committee again encouraged the Government of Canada to strengthen monitoring.⁴

Federal government process of reporting to UN committees

Canadian federal bureaucrats rely on the support of the Continuing Committee of Officials on Human Rights while preparing reports to United Nations treaty bodies. This committee, coordinated by the Human Rights Program of the Department of Canadian Heritage, was created to interact with provinces and territories with respect to the ratification and implementation of international human rights instruments. It comprises representatives from each jurisdiction and meets twice a year.⁵ At the federal level, broad interdepartmental committees supervise the actual writing of government reports. In the past, with respect to its report to the Committee on the Rights of the Child, the federal government has supported alternative monitoring efforts by the non-governmental organizations (NGOs) such as the Canadian Coalition for the Rights of Children and the Society for Children and Youth of British Columbia (*see discussion on civil society below*).

There is a new federal government process to make reports to international treaty bodies more succinct.⁶ The process begins 12 to 18 months before the due date at the United Nations, and

involves the development of a list of key focus issues and the identification of relevant indicators and data sources. Concerned NGOs are to be informed about the key issues by letter and invited to indicate their priorities or put forward other major areas of concern. A questionnaire is developed and sent to provincial and territorial governments and federal departments for their response. The federal coordinating department receives responses and prepares a draft report that is circulated to contributing departments. The updated draft is then submitted to the Human Rights Program at Canadian Heritage. Following review of all the submissions and the negotiation of changes with the submitting body, the reports are translated (so as to be submitted in both official languages, English and French), edited and formatted. Approvals are sought from the federal, provincial and territorial governments. Once the final changes have been incorporated, the reports are transmitted to the Department of Foreign Affairs, which submits them to the relevant United Nations committee by the due date.

This process raises certain questions. Would the collation of federal–provincial–territorial information be improved if it were complemented by a synthesis that could provide a broader understanding of the rights situation? Is there any further role for civil society, particularly NGOs, in the process? And perhaps the most important question: Where, in the report on the Convention on the Rights of the Child, is there space for children’s voices?

Other interesting initiatives by the federal government to monitor child-focused policies do exist, although their implementation has been uneven. For example, federal–provincial efforts, as part of the Federal/Provincial/Territorial Early Childhood Development Agreement under the Social Union Framework Agreement (SUFA)⁷ to monitor the well-being of young children, have been carried out since 2002.⁸ These reports are directed to the public and are increasingly useful for advocates and others concerned with children’s well-being. The recent report reflects Canada’s concern for young children, and there is reference to the Convention in the section on National Child Day.⁹

The eighth report to monitor the National Child Benefit (NCB) under a national governance and accountability framework was released in 2006. It examines societal level indicators and direct outcome indicators to identify the direct impact of the NCB on families with children.¹⁰

Data collection

The collection of data is essential to monitoring. National data is available from the National Longitudinal Survey of Children and Youth,¹¹ as well as several other sources such as the Canadian Incidence Study on Reported Child Abuse and Neglect, which surveys every five years the nature and extent of child maltreatment in the country.¹² In relation to child and youth protection, however, it is difficult to ascertain the national situation due to the differences between child welfare systems across the provinces and territories. Each jurisdiction has different concepts, definitions, clinical approaches and structures. For example, in Quebec, for welfare and protection services, the child is defined as a person below the age of 18; in other provinces, including Ontario, a person below 16; and in British Columbia, a person up to 19 years of age.¹³ The federal government itself has no mechanisms to collect data related to child rights, and therefore cannot provide leadership and expertise on children to the other levels of government.¹⁴

Canada collects data in a number of different ways, but these data are not necessarily helpful for monitoring child rights. Despite the volume of statistical data submitted in 2003, the Committee on the Rights of the Child expressed concern about Canada’s insufficient development of data collection and disaggregation, failure to synthesize the data, and lack of systematic inclusion of data about all persons under 18 years of age.¹⁵ As a result, the Committee recommends strengthening and centralizing data collection and analysis for systematic disaggregation and emphasis upon the most vulnerable groups. This should in turn influence the development and evaluation of various measures, and implementation and monitoring of the Convention.¹⁶ The Senate Standing Committee on Human Rights does recognize the need for data collection by both the recommended children’s commissioner and the recommended federal interdepartmental implementation working group on children’s rights.¹⁷

These challenges related to data collection result in many gaps “in our knowledge [about children, which represent major obstacles to ensuring that children’s rights are respected and that our laws, policies and practices increasingly are gaining consistency with the Convention standards.”¹⁸ For example, when information about the impact of government

spending on children is requested, only a catalogue of public money spent is supplied, without any assessment of the impact on children.¹⁹ Such approaches to monitoring led the Committee on the Rights of the Child to enunciate, in its revised reporting guidelines, the importance of not simply listing measures in State Party reports but also the need to “provide clear information on the goals and timetables of those measures and how they have had an impact on the actual economic, political and social realities and general conditions existing in the country.”²⁰ In response, academics and others in civil society widely advocate the use of child-impact assessments, programme evaluations and comprehensive disaggregated data for use in the development and implementation of programmes and policies affecting children.²¹

The lack of sufficient or accurate reporting on the status of Indigenous children around the world, for example, is partly due to limited comprehensive, disaggregated data and a lack of responsibility on the part of States, researchers and others, as various international organizations including the World Bank, the World Health Organization (WHO) and UNICEF note.²² The information that does exist tends to ignore differences between and among indigenous peoples and uses “simplistic, unreliable or inconsistent markers of who is ‘Indigenous.’”²³ “Most studies explore the experiences of all Indigenous peoples and fail to account for the significant differences among different cultural groups. Studies that do disaggregate the experiences of Indigenous people suggest important differences in experience are evident.”²⁴ With the reporting obligation to the Committee, States also have the “responsibility to collect accurate, disaggregated, ethical data to the best of their abilities so that they can report fully on the Convention’s progress and implementation with respect to Indigenous children.”²⁵ One young person remarked: “There is such ignorance about the issues that Aboriginal youth face.”²⁶ Monitoring efforts to date are not ringing true to some Aboriginal children (as indigenous children in Canada are called) and youth; one remarked: “It seems that we are repeating history and saying how well we’ve done but it’s not working.”²⁷

To overcome this gap, there have been recent attempts to collect and analyse data about Aboriginal children in Canada. For example, in September 2007, the National Council of Welfare released a report detailing the situation of First Nations, Metis and Inuit children and

youth. Through the use of statistics, the report describes the economic context, health and child welfare issues and poverty status of this group. It includes the words of Aboriginal peoples themselves. The report concludes with recommendations to address the issues, including advancing understanding and support for Aboriginal peoples, challenging racism, adopting a national anti-poverty strategy and investing in various measures.²⁸

International actors also contribute to monitoring of the Canadian situation. The Committee on the Rights of the Child plays a critical role in assessing progress on implementation of the Convention. The United States Department of State develops an annual brief report on Canada’s human rights performance: the 2008 report, for example, included details about “children’s rights and welfare” in relation to education, medical care, incidence of violence [and] sexual exploitation.²⁹ More important, the efforts of international organizations, including UNICEF, play a significant role. For instance, the release of the UNICEF Innocenti Research Centre’s *Report Card No. 7* that detailed child well-being in rich countries ranked Canada in the bottom third of all countries surveyed in three areas: subjective well-being; behaviours and risks; and family and peer relationships.³⁰ This report provided an excellent advocacy opportunity for civil society, including the Child Welfare League of Canada.³¹

Provincial reporting process

Provincial governments tend to take a reactive approach to reporting on Canada’s implementation of the Convention; they develop their monitoring reports to be included with Canada’s report to the Committee on the Rights of the Child, generally without consultation, following receipt of the request from the federal government.³² There are, however, some other efforts made by provincial governments to monitor the situation of children within their own jurisdiction. For example, the New Brunswick Department of Education commissioned a review of inclusive education in the province to analyse legal and human rights frameworks within which public education must be delivered.³³

Provincial child advocates play a significant child rights monitoring role in relation to provincial law. All but one advocate (Alberta’s) is independent of the government. The former Child Advocate in Ontario, Judy Finlay,

explains that “everything is tied to rights” in the work of the Ontario Child Advocate, who consistently references the Convention.³⁴ Nova Scotia’s ombudsman’s office regularly visits youth in care or in custody,³⁵ and reports about the visits, identifying issues to be brought to the attention of the relevant government department.³⁶ It is exploring potential involvement in the establishment of a provincial paediatric death review committee.³⁷ New Brunswick recognizes the importance of monitoring its government services to children within its jurisdiction and passed legislation in 2004 to establish a child and youth advocate.³⁸ The advocate finalized a report in September 2007 examining numerous complaints from parents of youth with complex needs, which included a review of gaps in service provision to youth.³⁹ In Newfoundland and Labrador, the Provincial Human Rights Commission and the Human Rights Association monitor rights in addition to the provincial Child Advocate.⁴⁰ In Manitoba, the Child Advocate’s Office, the Office of the Auditor General and the Manitoba Ombudsman play monitoring roles.⁴¹

The advocates are vital to monitoring. However, provincial governments should not abandon all monitoring responsibilities to them. Monitoring is a participatory process: All relevant actors should monitor the child rights situation to compile a comprehensive picture that will lead to positive change.⁴²

Civil society efforts

Canadian NGOs have developed techniques and processes for monitoring implementation of the Convention on the Rights of the Child. The Society for Children and Youth of British Columbia (SCY) developed and tested a star rating system for every provincial statute, including regulations and relevant federal legislation. The number of stars correlated with the degree of overall compliance with the Convention, and specifically article 12.⁴³ SCY has also identified foster-care regulations for analysis, developed a step-by-step guide for policy analysis and guidelines for developing policy.⁴⁴

The Canadian Coalition for the Rights of Children (CCRC) developed a monitoring framework in 1999 to assess Canada’s implementation of the Convention based on the categories of: legislation and regulations, case law, policy, practice, statistics and research, public opinion, other relevant sources and the voices of children.⁴⁵ Its participatory

process engaged NGOs, experts and children. In addition to a 2003 update for the Committee on the Rights of the Child,⁴⁶ CCRC developed a community-based monitoring tool kit involving 10 communities across the country to raise awareness and train actors about child rights for accessible monitoring.⁴⁷ These efforts of CCRC and SCY were the result of short-term exercises that were dependent on available government funding.

Other organizations engage in various monitoring efforts. For example, the Canadian Council on Social Development produces an annual report entitled *The Progress of Canada’s Children and Youth*, which contains useful information about the status of children, although it does not encompass a comprehensive rights-based approach.⁴⁸ Campaign 2000 releases an annual report card on child poverty in Canada.

The Ontario-based North-South Partnership for Children in Northern and Remote Communities undertook a useful monitoring exercise with two First Nations communities, namely, Mishkeegogamang and Webequie, using assessment methodologies similar to those utilized in international crisis zones. This exercise used First Nations and NGO resources to describe the issues affecting communities, raise awareness, develop a response plan and prepare advocacy to secure additional resources to address the needs of the remote communities.⁴⁹ One of the assessments, for example, concluded that while community members desired to regain control of their communities with additional necessary supports and resources, it was important to acknowledge that “the negative impact of past and present traumas that First Nations communities have experienced cannot be over emphasized and the complexity of the ill effects cannot be easily explained.”⁵⁰ The report concluded with numerous recommendations to stress the responsibilities of various stakeholders, while recognizing that they sometimes overlap, namely: civil society, governments, First Nations communities, the private sector, parents and families, children and youth, religious/spiritual leaders and elders, academics, the media and community professionals.⁵¹ Indeed, the significance of monitoring lies not simply in obtaining accurate results about the rights situation, but also in the follow-up steps taken by all relevant actors.

Child health receives considerable monitoring attention from various civil society actors in Canada. The Canadian Paediatric Society (CPS) produces valuable reports that monitor public

policy by comparing federal, provincial and territorial laws and policies. In its 2007 report, CPS examined efforts in relation to disease prevention, health promotion and injury prevention, and highlighted major discrepancies in the promotion and protection of child rights to health across the country.⁵² CPS intends to include a measure on child poverty in its 2009 report.⁵³ It also cites the Convention on the Rights of the Child in noting Canada's failure to advance the child's best interests in relation to 'Jordan's Principle'⁵⁴ (also see Chapter 2), and criticizes the inadequate efforts by all the provinces and territories to introduce a child-first policy to resolve jurisdictional disputes involving First Nations children and their care. (This excludes Nova Scotia, which has a tripartite agreement for dispute resolution, and Nunavut, where the issue is not applicable.)⁵⁵ Moreover, CPS identifies the importance of child advocates at the provincial and federal levels, and suggests that the scope of all provincial advocates should extend beyond children in the welfare system to include all children and youth within their jurisdictions.⁵⁶

The Canadian Institute of Child Health has produced three editions of a report about the status of child health in the country.⁵⁷ The joint Children in North America Project considers emerging problems related to child health and safety in Canada, Mexico and the United States.⁵⁸ The Assembly of First Nations co-produced with the government a report on the well-being of First Nations children.⁵⁹ It has also developed a First Nations Health Reporting Framework, which focuses on the community and is unique in acknowledging the role of self-government in First Nations' well-being.⁶⁰

On 20 November 2007, eighteen years after the adoption of the Convention, UNICEF Canada produced its own monitoring report on the status of children and of children's rights, entitled *What's Rights for Some – 18 @ 18: A portrait of Canada's first generation growing up under the UN Convention on the Rights of the Child*.⁶¹ The report expresses many of the same concerns about Canada's implementation of the Convention that are raised in this study. In particular, the report focuses on the disparities in rights realization among various groups of children, notably children living in poverty and Aboriginal children. The voices of youth highlighted within the report are eloquent and articulate and give it special meaning.

In addition to NGOs and professional organizations, academic researchers and the media play important monitoring roles in

Canadian society. Individual academic professionals like Katherine Covell and Brian Howe at Cape Breton University, Nova Scotia, regularly assess the status of children's issues, including child rights education and child welfare.⁶² Others have been directly involved in NGO monitoring.⁶³ Their efforts are supported by a growing number of centres and programmes that advance child rights in post-secondary institutions through coursework, conferences and other events. These institutions include: Cape Breton University (Nova Scotia); the Universities of Northern British Columbia and Victoria (British Columbia); Mount Royal College (Alberta); University of Manitoba; McGill University (Montreal); and the Universities of Brock, Carleton, Lakehead, Nipissing, Ottawa, Ryerson and King's University College at the University of Western Ontario (all in Ontario).⁶⁴ While some Canadian academic researchers in all provinces contribute to the National Longitudinal Survey of Children and Youth and conduct other monitoring activities,⁶⁵ they do not always rely on a child rights framework in their research.⁶⁶

The news media (whether public or private, national or local, television, print or Internet-based), can act as important and powerful monitors, but their potential is weakened by inconsistent coverage, sensationalistic approaches and lack of adequate understanding of child rights.⁶⁷ Also not enough young people are involved in the media, although there have been sporadic efforts such as Young People's Press, based in North Bay, Ontario, which has published articles written by youth in approximately 220 Canadian newspapers and 300 newspapers in the United States of America.⁶⁸

Nevertheless, young people clearly want their voices heard in the monitoring process. As one young person consulted in 2006 observed: "Asking kids what they think is so important. It makes kids feel good and it tells people what we think."⁶⁹ Another young person remarked: "Nobody ever thinks to ask the kids how we feel. Things that might not seem very important to you are very important to us. We should be allowed to express ourselves."⁷⁰ The lack of child rights awareness and education is problematic for monitoring,⁷¹ which, if it is to include children and young people, must inform them about their rights under the Convention.⁷² As one young person noted, "After you're aware you can evaluate the status of your rights."⁷³ Young people themselves know that, once made aware of their rights,

children and young people can provide feedback on their rights and help monitor the fulfilment of other children's rights.⁷⁴

Analysis and conclusion

Improved government reports on children's rights would greatly benefit the analysis of the state of children in Canada undertaken by international monitors. The Committee on the Rights of the Child noted in its Concluding Observations on Canada's second report that a synthesis report of the federal and provincial reports "would have provided the Committee with a comparative analysis of the implementation of the Convention and a more coordinated and comprehensive picture of the valuable measures adopted by Canada to implement the Convention."⁷⁵ In this regard, a follow-up to the new federal process for international human rights reporting will be essential to analyse improved outcomes.

The provincial child and youth advocates are generally in agreement about the obstacles to effective monitoring. The Manitoba Child Advocate identifies the most significant problems as the absence of a centralized body to comprehensively monitor child rights and the lack of a children's commissioner for Canada.⁷⁶ The New Brunswick Child Advocate has identified the same gap.⁷⁷ For the Nova Scotia Office of the Ombudsman, the lack of a federal

independent oversight body, either an ombudsman for children and youth or a children's commissioner, is the primary obstacle. In order to be successful, the office reports it would require independence, public awareness and accessibility.⁷⁸ Limited provincial and community monitoring is also problematic for a comprehensive picture.⁷⁹ The Child Advocate's Office of Newfoundland and Labrador, which is well supported by the provincial government, identifies the key problems at the federal level as a lack of political will and dedicated funding to develop mechanisms for monitoring, namely a children's commissioner; and the absence of awareness and acceptance about the Convention among public officials, professionals and the general public.⁸⁰ Clearly, the concept of rights is not inspiring or guiding monitoring processes to an effective result, and as a consequence creating an emphasis on very selective, sporadic and needs-based monitoring.⁸¹

For child rights monitoring processes in Canada to be successful, there is an urgent need for additional and adequate resources and agreed-upon indicators.⁸² It would be helpful if the country paid more attention to child-impact assessments, for example,⁸³ in order to consider the implications for children's rights of proposed measures. Greater and more comprehensive monitoring is essential for the full implementation of the Convention on the Rights of the Child in Canada.

5

CHILD RIGHTS EDUCATION, AWARENESS-RAISING AND TRAINING ACTIVITIES

Introduction

The Convention on the Rights of the Child highlights the importance of education, awareness-raising and training in order to support and realize its implementation. Despite efforts in Canada to fulfil the obligation under article 42 to make the Convention's principles and provisions "widely known, by appropriate and active means, to adults and children alike," considerable concern has been expressed about the lack of awareness of the Convention among the government, Parliament and the public.¹

The public, and particularly children, have little knowledge of the Convention due to, as one author puts it, "sporadic initiatives and a seeming reluctance to act in more than a symbolic manner."² The lack of familiarity with the Convention among children and youth in Canada is exemplified by the comment made by Megan Fitzgerald, a student in St. John's, Newfoundland and Labrador, to the Senate Standing Committee on Human Rights:

"Someone like me who knows so much about what is going on, at least in my community, knew nothing about my rights, as set out in the Convention on the Rights of the Child.... How can we feel motivated and empowered to implement our rights into our own lives if we do not even know them?"³

Although Canada's reports to the Committee on the Rights of the Child and the Committee's Concluding Observations are publicly available as required by article 44(6) of the Convention, and are posted on a government website, there have been no comprehensive government

campaigns to raise awareness of the Convention or to ensure that these reports find a place on the public agenda. Furthermore, the funds available for child rights training for professionals working with children or interested in children's issues are minimal.

This chapter will address the following aspects of this gap: the education of children, raising public awareness, and the training of professionals about child rights and the Convention.

Government activities

Raising awareness of the Convention

Canadian Heritage promotes human rights in the country on behalf of the federal government through the government's Human Rights Program. In addition to coordinating with provincial and territorial governments the implementation of international human rights commitments and the preparation of reports to the United Nations, the programme carries out its mandate through the provision of grants and contributions to organizations, as well as the distribution of publications upon request.⁴ The programme's priorities are to improve the awareness, knowledge and enjoyment of human rights. The focus in 2006–2007 was to increase public awareness of the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.⁵ Accordingly, the programme has supported activities such as two university-organized conferences at Brock University, Ontario, and the University of Ottawa, which engaged a broad range of actors across sectors; and UNICEF Canada's child rights

speaking series⁶ entitled 'Halfway There: *A Canada Fit for Children* in a world fit for children', hosted by universities across the country. However, the Human Rights Program's efforts are generally not aimed at children and, despite their best intentions, are limited due to lack of resources. According to Canadian Government estimates for 2006/7, the amount available for grants and contributions for the entire department of Canadian Heritage totalled \$1,104,612,000, and yet grants in support of the Human Rights Program, one of many programmes and bodies supported by Heritage Canada, totalled only \$392,280.⁷ This amount has remained fairly stable in recent years, even though these dedicated resources are insufficient for educating all Canadians, especially children, across the country.

The federal government also offers limited support to other national efforts to spread awareness of the Convention, including National Child Day on 20 November annually, a day established by an Act of Parliament in 1994 to mark the adoption of the Convention at the United Nations and to celebrate Canada's children. This support, however, appears to consist solely of online presentation of material.⁸ Nevertheless, National Child Day is a significant and ongoing opportunity to raise awareness about the Convention. For the past five years, the Senate of Canada has sponsored a major celebration in Ottawa with national coverage. Provincial and local efforts to mark National Child Day are also carried out across the country to promote and explore child rights. At the request of the Office of the Child Advocate, for example, Newfoundland and Labrador proclaims Child and Youth Advocacy Week to coincide with National Child Day, and carries out activities and events throughout the province to promote and support child rights.⁹ Each year the Canadian Child Care Federation plays a major role in promoting National Child Day among childcare workers and other people who work with and for children.¹⁰ Using their own resources, many schools and municipalities commit to National Child Day celebrations that engage children and youth.

A number of individual parliamentarians at the federal level have carried out child rights awareness-raising. During the 11 years that Landon Pearson was a member of the Senate of Canada (1994 to 2005), she became known as 'the Children's Senator' and used every opportunity to talk about child rights. As a Member of Parliament, Mac Harb (who is a Senator at the time of writing) established National Child Day and introduced a number of

private member's bills referencing the Convention. Other parliamentarians also submitted private members' bills, which cited the Convention as the guiding instrument in their drafting. Even when they fail to become law, bills related to the abolition of corporal punishment, and to the protection of children from other forms of violence and exploitation, provide an opportunity for public debate and awareness-raising.

The public, however, remains indifferent to Canada's obligation to report on its implementation of the Convention to the international community. UNICEF Canada testified to the Senate Standing Committee on Human Rights that United Nations reporting holds Canada accountable to the international community but not to Canadians; and consequently, "UNICEF will know more about what Canada has said about Canada's children's right[s] than our own populous [sic] will."¹¹ In conformity with article 44(6) of the Convention, the Committee on the Rights of the Child recommended in 1995 that Canada's initial report be made available to the public along with the Committee's Concluding Observations.¹²

As noted above, Canadian Heritage does provide free copies of the government report and makes it available electronically on their website, but its distribution has limited effect. This is partly because the onus is placed upon the public to request a copy. This assumes the public's prior awareness of the existence of the Convention as well as of the Government of Canada's obligation to monitor its implementation. Article 42 of the Convention, demands more than simply making the information available; it requires appropriate and active means for dissemination of the Convention.¹³ The Committee on the Rights of the Child reiterated its recommendation with respect to dissemination following consideration of Canada's second report "in order to generate debate and awareness of the Convention and its implementation and monitoring within all levels of administration of the State party and the general public, including concerned non-governmental organizations."¹⁴

At the provincial level, initiatives vary across the country and are largely the result of the efforts of provincial child advocates rather than those of governments. In Newfoundland and Labrador, for example, the Convention is available at the Human Rights Commission, Public Legal Information Association of Newfoundland and Labrador, and at the Office of the Child and Youth Advocate – including on

its website.¹⁵ Furthermore, the advocate's office carries out several child rights education and awareness-raising activities throughout the province.¹⁶ In addition to media interviews and public presentations to advance public education, the office holds advocacy clinics regularly throughout the province to provide information about the Convention to youth-serving agencies, meets with children and youth in care or custody, visits and makes presentations to schools, group homes and government and community service providers.¹⁷ The office also organizes a successful annual calendar project, distributing rights information packages to schools across the province and inviting students to submit artwork on rights-based themes. This not only reaches many students and informs them of their rights, but also provides them the opportunity to reflect and express their views on child rights.¹⁸

The Ontario Child Advocate and the Nova Scotia Office of the Ombudsman, Youth Services, have supported awareness-raising through efforts such as delivering Save the Children Canada's 'Right Way' programme, as well as training children and service providers about child rights.¹⁹ The Nova Scotia Office produces youth-friendly information materials, including brochures, posters and plaques in three languages (English, French and Mi'kmaq), which are visibly displayed in all youth residential and custodial centres.²⁰ The Ombudsman Office has also worked with the Children's Rights Centre at Cape Breton University to support rights awareness.²¹ The Commission des droits de la personne et des droits de la jeunesse in Quebec has legislative authority to prepare and carry out information and education programmes about child rights for the public, and particularly for children, under the *Loi sur la protection de la jeunesse (Youth Protection Act)*.²²

In British Columbia, there is a deep and long-standing commitment to the Convention, which will only grow under the new children's representative. For example, the representative has, with other partners, already supported several valuable focus groups in the province in 2007 to ascertain the most influential media campaign to support behavioural or attitudinal change and determine the best means for information delivery in order to advance public awareness of child rights.²³ Furthermore, a position has been created under the supervision of the Assistant Deputy Minister responsible for Integrated Quality Assurance in the Ministry

of Children and Family Development, Sandra Griffin, to advocate for the Convention both within the ministry and with the public.

Despite these advances, further efforts to improve child rights awareness are needed throughout Canada. Cross-national surveys repeatedly reveal a lack of knowledge about the Convention.²⁴ A 2005 survey, for example, found that a majority of Canadians (61 per cent) believed that children's rights are being fully realized in the country, but only 46 per cent of those surveyed were even aware of the Convention.²⁵

In another survey of some 800 British Columbians over the age of 18 from across the province, it was revealed that 52 per cent of the population knows very little or nothing at all about children's rights; and 86 per cent "strongly or moderately agreed that the public needs more information about child rights in BC."²⁶ This lack of awareness means that few individuals in society are able to appreciate the significance of child rights or of issues concerning children in various contexts. One young person noted, "Parents need to be informed of children's rights as well, this will help kids rights to be respected and met in daily life."²⁷ Children and youth know that parents and other adults fear giving children too many rights. In response, children assert that one person's right is not more important than another's right.²⁸ This fear was clearly evident in some reactions to the national election for the rights of children conducted in 1999 by UNICEF Canada and Elections Canada. The election provided an excellent opportunity for those under 18 years old to vote for what they considered to be their most important rights, and to also learn how real elections are held. Yet, critics considered the exercise to be "anti-parent" and vigorously opposed the vote due to its implicit endorsement of the Convention.²⁹ The sad irony is that the most popular right among those children who had voted was the right to a family.

A June 2007 consultation with young people identified involvement in the community as a means to enhance awareness of children's issues.³⁰ The children and youth had many suggestions about disseminating information and enhancing rights awareness, including: go into schools; make information easily accessible and child-friendly; get children involved in organizing events; involve young children; create pamphlets and posters; teach human rights as a mandatory part of the school curriculum; use television, new technology and pop media; utilize art and media; include the

business community in the effort; and make the Convention part of domestic law.³¹ Eighty-seven per cent of people consulted in a 2006 survey in British Columbia confirmed that they were most influenced by television advertising or campaigns.³²

Education on the Convention

There is not enough child rights education in Canada's schools. As one young person observed: "Children in other countries know what their rights are.... Most kids here don't know about the Convention."³³ Another added, "If you don't know what they [child rights] are, how do you know what you're not getting?"³⁴ Young people consulted in June 2007 indicated that children should know about their rights at a much younger age, and that education about the Convention is needed in elementary school.³⁵ The Committee on the Rights of the Child recommended that the State Party ensure that human rights education, including child rights, is incorporated into school curricula in accordance with article 29 of the Convention, and that teachers are appropriately trained.³⁶ The same survey of people in British Columbia in 2006 (*noted above*), revealed that 67 per cent of the population agreed that the school curriculum would be the best avenue to provide information about child rights to children and youth.³⁷ Despite this kind of support, the Convention is only slowly finding its way into school curricula across the country.

Nova Scotia has expressly incorporated child rights education into schools. It did this in 2003, for kindergarten up to grade 6, but only as a requirement in the health and social studies curriculum.³⁸ A grade 8 children's rights curriculum was developed in 1999 which, along with a grade 12 curriculum to examine Canada's child rights obligations internationally in global citizenship classes, can be used optionally by teachers in the province.³⁹ Copies of this curriculum have been widely distributed in both official languages. In 2007, Professors Katherine Covell and Brian Howe at the Children's Rights Centre at Cape Breton University developed, with support from the federal government, a curriculum aimed at promoting rights through art for children in grades 3 to 12.⁴⁰ All these curricula, available in both official languages, have achieved considerable success across the province.⁴¹

This model has also inspired an advanced child rights education initiative in Hampshire County,⁴² with 200,000 students the largest school district in the United Kingdom of Great Britain and Northern Ireland, following

visits by teachers in 2002 and 2003 to the Children's Rights Centre at Cape Breton University.⁴³ The *Rights Respect and Responsibility* curriculum is an important example of child rights education that benefits students, teachers and the school at infant, primary and junior levels throughout the Hampshire education authority. In 2007, the initiative was being expanded to include secondary schools.⁴⁴

Early findings concluded that child rights education has numerous benefits, namely: children who learn about their rights outlined in the Convention "in a rights-consistent classroom, show increased levels of self-esteem, increased perceived peer and teacher support, a more adult-like understanding of rights and responsibilities, more supportive attitudes toward children of minority status, and more rights-respecting behaviours."⁴⁵ The Hampshire effort has also had positive effects on child engagement.⁴⁶ A 2007 evaluation of the initiative found that when it has full support and incorporation, "there are improvements in pupils' social, behaviour and cognitive domains."⁴⁷ Consequently, it is no surprise that the initiative is being promoted by advocates for New Zealand schools,⁴⁸ and that there has been interest from Australia, Belfast, (Northern Ireland), Devonshire, (United Kingdom) and from Amnesty International, UK.⁴⁹ It is to be hoped that the model will expand across Canada as well.

In Quebec, the Commission des droits de la personne et des droits de la jeunesse, where the province's child advocate is situated, is deeply committed to the Convention. It has been continuously involved in education, training and awareness-raising activities related to the Convention for many years through, among other initiatives, developing materials, conducting workshops and engaging with children and youth. The substantial reform of public education that was launched in the province in 2000 has introduced a variety of programmes related to the Convention at every level: preschool, primary and secondary. The greater sensitivity to children's rights in Quebec that has been shown by both the legal challenge to the *Youth Criminal Justice Act* and *Un Québec Digne des Enfants* (*see Chapters 1 and 6, respectively*) is surely partly as a result of the increased awareness of the Convention brought about by these educational efforts.

Newfoundland and Labrador⁵⁰ and New Brunswick,⁵¹ in addition to other provinces, have indicated that the Convention is referred

to in social studies curricula. Additional programmes that advance rights in Canadian schools include researcher Ellen Murray's work on a thematic primary-level curriculum for children's rights education that has been implemented in Victoria, British Columbia and Calgary, Alberta.⁵² This effort supports students' exploration of "themes, concepts, and issues relating to respect as well as children's rights and responsibilities."⁵³ A human rights and responsibilities module, which emphasizes holistic teaching and cooperative group learning, has been developed for grade 9 students in Nunavut.⁵⁴ Canadian Heritage has sponsored the development of materials, which it will provide to schools to support rights education at their request.⁵⁵ The Canadian International Development Agency (CIDA) has also supported the development of educational resources that focus on Canada's obligations to children around the world.

However, given the widespread lack of awareness about child rights among Canadian children and the public, the scale and reach of these efforts is not sufficient to fulfil articles 29 and 42 of the Convention. Also problematic is the general misunderstanding among many parents and educators that children already have too many rights, or that teaching young people about their rights leads to less respect for authority. Better training and education could correct this misapprehension.

The Hampshire Initiative in the United Kingdom demonstrates that, in addition to curriculum content, rights-consistent schooling across the entire education system is necessary to make an impact on children. Indeed, unless they live in a rights-respecting environment, children can learn about the Convention without understanding it.⁵⁶ In order to change the culture of the classroom, child rights must be included as an integral part of teacher education so that both the content and the pedagogy improve.⁵⁷ It is clear that a more comprehensive strategy is required to reach out to all professionals engaged in education systems across the country, including teachers, principals, educational administrators and bureaucrats, school board trustees and ministers of education.

Training

Training is needed for those who work with children or whose work influences them. The division between domestic and international law means that parliamentarians, policymakers and professionals working with children often

remain unaware of the Convention. Government efforts to date have had limited impact. That a proportion of the government bureaucracy remains uninformed and not sufficiently committed to child rights is evidenced by the resistance of officials to invoke the Convention in their efforts or proposals.⁵⁸ One of the reasons may be that mid-level civil servants are moved frequently and so continuity with respect to subject matter is broken.⁵⁹

Consistent, effective training within the government is needed. Both the Canadian Centre for Management Development, which trains the executive level of government, and the National Judicial Institute, responsible for judicial training, could play a valuable role to advance awareness of child rights.⁶⁰

Changes in teacher training and in the orientation of education officials would also reflect a commitment to child rights education in schools.⁶¹ A study of university teacher training courses in 2005 revealed that there were no courses – compulsory or elective – on child rights.⁶² Teacher training should not simply include attention to the content of child rights, but also a focus on democratic pedagogy to promote child participation rights in the process of learning.⁶³ The same study found that some education officials were concerned about insufficient attention to children's responsibilities or considered the Convention as not important due to the existence of Canada's Charter of Rights, or both.⁶⁴

To address this lack of awareness, the Nova Scotia Office of the Ombudsman partnered with community and private colleges that have as part of their curricula child and youth care studies and police or correctional study programmes. Since these students will provide services to children in future, the office gives annual presentations to raise awareness and understanding of its role and to support the role of the independent accountability mechanism.⁶⁵ At Mount Royal College in Calgary, Alberta, researcher Ellen Murray is implementing a child and youth human rights certificate programme for the Continuing Education Department aimed specifically at professionals who are already working with children.⁶⁶ The faculty of medicine at the University of Victoria, British Columbia, is developing a child rights programme based on the Convention, to be included in the education of all health professionals in the province.⁶⁷

Civil society efforts

There are many actors within civil society who are making efforts to support child rights awareness, education and training. However, two national surveys to ascertain awareness of the Convention, undertaken by the Canadian Coalition for the Rights of Children (CCRC) and Save the Children Canada, revealed uneven levels of understanding.⁶⁸ In response, a number of non-governmental organizations (NGOs) have carried out Convention awareness and education efforts.

In the past, Save the Children Canada made a major contribution to rights awareness in the country by training children and service providers through its Right Way programme. The programme was implemented across the country including in British Columbia, Nova Scotia and Ontario. It was based on research done by the Office of the Ontario Child Advocate that found children in care had limited knowledge of their rights and how they work, and how to advocate for themselves.⁶⁹ The programme model and materials have inspired further work, including the community-based Rights 2 Success project in British Columbia that advances the rights of children and youth as stipulated in both the Convention and the *BC Child and Family Community Services Act*. The project has conducted several youth-facilitated workshops for youth in care and at risk, as well as for adults in the province.⁷⁰ Following a successful evaluation in autumn 2006, it was envisaged that the project would likely be expanded.⁷¹ The elimination of Save the Children's domestic programming, however, has brought its valuable efforts to an end. It retains on its website a teacher's guide developed by Save the Children UK to support the introduction of child rights into the classroom.⁷²

Non-governmental organizations associated with the United Nations are particularly important in the effort to advance child rights awareness and training. UNICEF Canada has been steadily working with school boards and educators across the country to include child rights education and pedagogy through curriculum resource development, teacher in-service education and youth engagement activities. It has developed and disseminated Convention curriculum resources to educators and provided in-service education for teachers across the country for more than 15 years.⁷³ More recently, with support from CIDA, it has substantially expanded its resources, making

posters, guides, videos and other resources available on its website, in addition to presentation tools. It supports partnerships for curriculum development and teacher training, and engages with numerous educational institutions and thousands of Canadian teachers.⁷⁴ For example, a February 2007 workshop advanced education on the Convention by addressing problems of educational jurisdictions and resistance. The workshop was designed to encourage cooperation with administrators, teachers and parents to consider pedagogical considerations and to support sustainability.⁷⁵ UNICEF Canada also created a youth engagement programme in 2006–2007 through a Junior 8 Summit for youth contact with G8 leaders, and through the establishment of six additional UNICEF Clubs at universities throughout Canada.⁷⁶ The United Nations Association in Canada developed lesson plans for teachers and students entitled *What Kind of World...*, to help them learn about the United Nations and consider global issues from a Canadian perspective.⁷⁷

International development organizations in Canada, including World Vision and Plan, also have awareness-raising programmes for a range of professionals, and for children themselves, both in-country and overseas.⁷⁸ CCRC is developing documentation to popularize the Concluding Observations of the Committee on the Rights of the Child as part of preparations for Canada's third report to the Committee.⁷⁹

Professional organizations are also involved and are supportive. The Canadian Paediatric Society (CPS) promotes child rights training through didactic lectures and experiential learning.⁸⁰ From the organization's point of view, "if paediatricians can find the time, there is no excuse from any other profession not to do so." Law schools, teachers and social workers can and should do more to advance child rights understanding and approaches.⁸¹

Individual children are also raising awareness through a variety of efforts. Aboriginal children and youth are addressing educational needs; in the Arctic, for example, Inuit youth are creating educational and counselling programmes within their communities to support youth to develop their cultural identity and overcome depression,⁸² efforts that are consistent with articles 29(1) and 30 of the Convention. However, children's efforts are not always accepted by adults. In Nova Scotia, the 'Sex Book', written by and for students, had much difficulty finding distribution across the

province due to adult resistance. Nevertheless, some public officials stood by the results of the exercise and showed respect by supporting access to the book.⁸³ Other notable efforts to support child and youth rights training for engagement include the development of a manual by the International Institute for Child Rights and Development at the University of Victoria, British Columbia. Created in 2006, the manual includes youth-friendly tools to support youth participation in municipal governance, including tools that help ascertain youth understanding of the situation in the communities and develop action plans.⁸⁴

The commitment of civil society organizations concerned with children to the Convention is positive news for its long-term implementation. However, many funders still see the Convention as irrelevant and unimportant. In their calls for proposals, governments and foundations rarely ask for implementation of the Convention by civil society.⁸⁵ Civil society is seriously hampered in its promotional role by inadequate resources (*also see discussion in Chapter 2*). Recognizing this, the Canadian Foundation for Children, Youth and the Law recommends ongoing core funding from the Government of Canada to support the work of CCRC, which is the only coalition that monitors the Convention and educates its membership and the public about it.⁸⁶ Indeed, according to the organization's president, the primary challenge for CCRC is capacity-building in order to accomplish its mandate.⁸⁷ The Canadian Foundation for Children, Youth and the Law also recommends education and awareness-raising about the Convention,

arguing that the federal government should take the lead with respect to education on children's international rights. In addition, it suggests that the government educate members of Parliament, the judiciary and lawyers about the Convention, and provide training for politicians in the provinces and territories.⁸⁸

Conclusion

The Committee on the Rights of the Child has consistently highlighted its concern about the limited efforts of the Government of Canada to support education and awareness about child rights. In 1995, it recommended that a nationwide education campaign be undertaken to inform everyone, including children, through use of school curricula, and that training programmes integrating the Convention be established for professional groups concerned with children.⁸⁹ The Senate Standing Committee on Human Rights, recognizing the lack of awareness of the Convention in Parliament and society, including among children, recommended a well-resourced communications strategy including incorporation of the Convention into school curricula.⁹⁰ The Senate Committee itself did a great deal to raise awareness through its many televised hearings, each of which was broadcast several times on the parliamentary television channel. The Committee has also promised to return to the issue on a regular basis. This, together with all the other activities described in this chapter, is noteworthy. However, much more effort is needed.

6

INDEPENDENT HUMAN RIGHTS INSTITUTIONS FOR CHILDREN

“There needs to be a way for young people to know their rights, to know what to do, and to know what process is in place to help if your rights are not being met.”

–Young person consulted in June 2007¹

“Young people need to know their rights but more than that they need someone to tell and that person has to be willing to do something.”²

–Young person consulted in June 2007

Introduction

Although national institutions have been shown to be vital to the promotion and advancement of human rights, there is no independent federal human rights institution for children in Canada. The United Nations General Assembly for example, is “convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms.”³

Since the United Nations General Assembly adopted the Principles relating to the Status of National Institutions (‘The Paris Principles’)⁴ in December 1993 to encourage States to establish or strengthen national human rights institutions according to certain criteria, the number of human rights institutions focused on child rights has multiplied.⁵ The Committee on the Rights of the Child regularly recommends, to those countries that do not yet have them, effective independent institutions at the national level, to monitor, promote and protect the specific rights of children (as distinct from adults).⁶ The Committee recognizes that an

institution independent from government is essential to provide a distinct perspective on issues related to children.

In reality, children are not always a priority for governments, especially if the electorate wants other issues addressed. Without the vote, it is difficult for children to make themselves heard. As a result, children are not considered a priority in policy development and analysis; any assessment of how government policy might impact on children happens more by chance than by design. For these and other reasons, the absence of an independent institution for children’s rights at the national level remains a serious obstacle to implementation of the Convention on the Rights of the Child⁷ in Canada. Fortunately, 9 out of 10 provinces have child and youth advocates, although their mandates vary and they cannot intervene on children’s issues that come under federal jurisdiction, such as those related to Aboriginal children or to immigration. The fact that neither Prince Edward Island nor the three Northern territories have child advocates is in itself a strong argument for a federal-level child rights institution.

Federal level

“Protection and championing of child and youth rights has not yet garnered the attention that it deserves.... We have no national office in Canada with the specific remit of ensuring that the United Nations Convention on the Rights of the Child is adhered to. The idea of an independent national office focusing on children and youth is neither radical nor new.”

– Dr. Noni E. MacDonald⁸

The Canadian Human Rights Commission has limited capacity to pay attention to the protection and promotion of child rights in Canada because its mandate is restricted to the *Canadian Human Rights Act* and the *Employment Equity Act*. The former legislation is concerned with allegations of discrimination in employment, and the latter relates to federally regulated employers who must provide equal opportunities to four designated groups of employees (women, persons with disabilities, Aboriginal peoples and members of visible minorities).⁹

Nevertheless, the First Nations Child and Family Caring Society is pursuing a case with the Commission about the inequitable federal funding for child welfare services on reserves and other policy mechanisms that result in the unequal benefit for First Nations children under Canadian law. (See discussion of 'Jordan's Principle' in Chapter 2.) This complaint is being pursued under the broad umbrella of Canada's responsibilities pursuant to the Charter of Rights and Freedoms rather than under the *Indian Act*, which is not covered by the Commission's mandate.¹⁰ This case, which has been pursued using multiple strategies, has inspired three international indigenous groups as well as local groups to challenge governments about similar situations.¹¹ The Convention on the Rights of the Child is being referenced at every step.¹²

This case is particularly important because the Government of Canada has acknowledged that current federal funding is inadequate and is contributing to record numbers of First Nations Children in the care of child welfare services. Research has indicated that Jordan's experience, as discussed earlier in this study, is not an isolated one where a child falls victim to jurisdictional disputes between and among federal and provincial governments. From 2004 to 2005, 393 children experienced jurisdictional disputes in a sample of 12 of the more than 100 First Nations Child and Family Service Agencies across the country, resulting in denial or delay of services available to other Canadian children.¹³ First Nations children receive unequal advocacy services on reserve, as the federal government has no process for them that parallels those available to children under provincial jurisdiction. The only recourse is to go to the courts to challenge the government, which is problematic due to limited legal resources available for children and youth.¹⁴ Consequently, the 'Jordan's Principle' case, pursued at the Canadian Human Rights Commission, offers a new avenue for recourse. In addition to other efforts, an independent

federal institution to speak on behalf of children, with a specific senior officer assigned to issues related to Aboriginal children, is clearly needed.¹⁵ It follows that any such officer and his or her work mandate, would have to be culturally based.¹⁶

In its Concluding Observations after the discussion of Canada's second report on the Convention in 2003, the Committee on the Rights of the Child noted the absence of such institutional mechanisms for children. The Committee recommended the establishment of a federal-level ombudsman responsible for child rights, with appropriate funding allocated in accordance with 'The Paris Principles'.¹⁷ This was the Committee's second Concluding Observation on the matter; the Committee's Concluding Observations in 1995 had expressed similar concerns.¹⁸

To many researchers, the issue is critical. "No one is charged with ensuring that our federal government legislation, regulations and programmes are viewed through the lens of child and youth needs, and that negative and positive impacts are considered before enactment," says Dr. Noni MacDonald.¹⁹ She goes on to offer numerous examples of activities or measures that lack a child focus. She notes that the national influenza pandemic plan does not directly address the potential needs of older youth (18 to 24 years of age), although this group was hardest hit in the 1918 pandemic. She further states that no one holds the federal government accountable for funding and programming reductions that adversely affect children and youth.²⁰ In this context, one of the primary recommendations of the Senate Standing Committee on Human Rights is: "Parliament [should] enact legislation to establish an independent Children's Commissioner to monitor implementation of the Convention on the Rights of the Child, and protection of children's rights in Canada. The Children's Commissioner should report annually to Parliament."²¹

The Canadian Council of Provincial Child and Youth Advocates stresses the "urgent need to create a national body, such as a Commissioner, Ombudsman, or Advocate for Canada's children who would be responsible to promote and protect the rights of Canadian children." It must be an independent office, reporting to Parliament, with legislative authority to monitor Canada's NPA for children and implementation of the Convention.²² It should increase awareness of the Convention, and could enforce national standards and usefully consider federal-provincial matters concerning

children.²³ There is no provincial legal obligation to implement the Convention and the lack of enforcement weakens service provision to children.²⁴ The Council feels that it is doing a lot of work at the national level by default. Because of the absence of a federal commissioner, it has taken on a certain amount of responsibility for national issues although it lacks the authority, resources and time to have a significant impact.²⁵

The Canadian Coalition for the Rights of Children (CCRC) also strongly advocates for a federal children's commissioner. The president notes that, in the past two years, the federal government has established one ombudsman for veterans and another for taxpayers, which is an indication that such offices are obviously within their range of acceptance.²⁶ Yet the creation of a commissioner for children continues to lack adequate support. The question has been posed: If Canada can afford and support the former two positions, why shouldn't there be one for members of a vulnerable population that is unrepresented and more numerous than veterans?²⁷ The Coalition also notes that the Senate Standing Committee on Human Rights does not identify a complaints mechanism as part of its recommendation for a federal children's commissioner.²⁸ Such a mechanism is gaining increasing support among non-governmental advocates and academics.²⁹ The president of the CCRC argues that the only valid objection to the proposal is concern about the potential volume of cases. This is a concern that could be addressed through limiting the scope of the complaints accepted for consideration to the most egregious cases of rights violations, which would serve as examples to advance compliance.³⁰ If and when the proposal gains greater prominence in the political discourse, attention will need to be directed to the development of the most effective mandate.

In fact, for some time there has been widespread support in civil society for a children's commissioner at the federal level. When Senator Landon Pearson and Member of Parliament Karen Kraft Sloan first circulated a model in 2001³¹ (there were two subsequent iterations), they solicited and received support from a broad range of NGOs and individuals. Several of these supporters spoke to the Senate Standing Committee on Human Rights. The International Bureau of Children's Rights argued that the children's commissioner should be an independent and effective institution with the power to hear individual complaints and undertake systematic inquiries; and with

the authority to refer to the courts regarding ongoing problems and to produce independent reports for the Committee on the Rights of the Child.³² The Canadian Foundation for Children, Youth and the Law recommended the appointment of a permanent actor to ensure children's rights are protected in all government efforts. This officer should continually monitor Convention successes and failures as well as advocate in specific cases, and report annually to the House of Commons.³³

World Vision supported the Senate Committee's call in its interim report entitled 'Who's in Charge Here?' for the enactment of legislation to establish an independent institution for children.³⁴ It noted that a federal independent actor "is imperative to coordinate and establish standards for effective independent offices for children across the provinces and territories, and to address systemic issues arising at a national level."³⁵ This body would be required to address child rights violations within areas of federal responsibility and outside of the jurisdiction of provincial and territorial governments, including criminal justice, immigration and refugee issues, Aboriginal children, and disputes about parental responsibilities related to divorce.³⁶ To complement and strengthen the Senate Committee's recommendation, the organization stressed the importance of a legislation-based guarantee; independence; dedication to Aboriginal affairs; child participation; monitoring responsibility; investigation of systemic issues; awareness-raising; liaison role with the provincial advocates; pluralistic representation; accessibility and confidentiality; complaint resolution; right of refusal and referral mechanism; and report to Parliament and the Committee on the Rights of the Child.³⁷

Young people consulted in June 2007 stressed the need for a children's commissioner to provide adequate support to children and youth.³⁸ Their ideas for the role of the commissioner included: to provide follow-up on the Concluding Observations from the Committee on the Rights of the Child before Canada's next report is due to serve as the contact point for youth to government; and to link youth to their members of Parliament.³⁹ In addition, they recommended a youth ombudsman in every city who would be available to young people if they feel their rights are being violated. As one young person remarked, "Somebody has to believe you."⁴⁰

Provincial level

As noted at the start of this chapter, human rights commissions exist in the provinces but they have demonstrated limited relevance to children.⁴¹ Instead, nine provinces have child and youth advocates who are able to make a positive impact on the rights of children within their jurisdictions. Prince Edward Island and the three territories (Northwest Territories, Nunavut and Yukon Territory) with their very small populations, have not yet been able to free up the necessary resources, even when they see the need. Other than Alberta, all of the advocates are independent, although improvements can be made to several of their mandates to address their effectiveness and the scope of their work.

In 2003, the Committee on the Rights of the Child expressed its concern that the provincial advocates are not all “adequately empowered to exercise their tasks as fully independent national human rights institutions in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (‘The Paris Principles’).”⁴² The Committee also recommended establishing offices in the provinces that do not yet have the position in place and the territories where a high proportion of vulnerable children live.⁴³

Since the Committee on the Rights of the Child made that observation, there have been some improvements. Almost all the provincial child advocates are now independent. British Columbia has created an independent Representative for Children and Youth as an officer of the legislature, and the Act established (*also see discussion in Chapter 1*). The Ontario legislature adopted new legislation for the Provincial Advocate for Children and Youth, which came into force on 15 August 2007, to provide an independent advocate for children and youth, including First Nations children and those with special needs; to facilitate communication; and to educate others about child rights.⁴⁴ Previously, the advocate’s office had been part of a government ministry. Moreover, in accordance with s.15 (f) of the Act, the Advocate can provide any other advocacy that is permitted under the regulations or any other Act.⁴⁵ Both the Convention and ‘The Paris Principles’ influenced the Act and all the principles are present.⁴⁶ The Advocate reports to the legislature; it can also go to the public in order to secure a government response to an unresolved issue when it becomes apparent that only public pressure will bring about change.⁴⁷

The New Brunswick Legislature passed the *New Brunswick Child and Youth Advocate Act*, 2004, in order to monitor government services to children in the province.⁴⁸ The Act was implemented with the appointment of the child advocate in November 2006 and significant amendments were made in the spring of 2007⁴⁹ (*also see Chapter 1*). The New Brunswick Child Advocate notes the challenge “in balancing our Child and Youth Advocate caseload and other mandates along with these public advocacy and oversight functions.”⁵⁰ According to the advocate, most complaints come from parents, rather than children, and it has been difficult to reach children directly. However, an officer was appointed in May 2007 to meet on a biweekly basis with individual youth in drug addiction treatment facilities and in youth criminal justice and other secure custody arrangements.⁵¹

The visibility and impact of Nova Scotia’s Office of the Ombudsman, Youth Services is impressive. Established 10 years ago,⁵² it has a proactive outreach process for children and youth in care and custody and is “instrumental in effective systematic changes.”⁵³ According to the office, it is likely that close to 100 per cent of children in custody or care are aware of the role and mandate of the Office.⁵⁴ The office provides an “independent, objective, review mechanism” for concerned citizens, including youth in care and custody, of municipal and provincial public services.⁵⁵ In addition, the office tracks a wide range of complaints based on the Convention.⁵⁶ According to the supervisor of youth services, “it is a priority to ensure all complaints are resolved within that time frame [of the youths’ release dates from care or custody] so that follow-up with the youth is possible.”⁵⁷ Facility staff understand the “importance of an independent accountability mechanism for their own protection as well as that of the youth and therefore the Ombudsman’s Office enjoys a high degree of deference and respect.”⁵⁸

In addition to meeting with all new admissions to provide information about the Office, and being accessible to youth through a toll-free telephone number, the Office of the Ombudsman also has direct and regular contact with children through: monthly visits to youth-custody facilities; biweekly visits in secure care; visits undertaken four times each fiscal year in residential care facilities; and visits made quarterly in the temporary holding facility.⁵⁹ During 2007, the Office worked with the Department of Justice to develop and implement a pilot youth evaluation interview tool, consistent with article 12 of the

Convention.⁶⁰ The Office concluded that the initiative was valuable for understanding youth experiences of care or custody, and significant because experiential youth supported the development of questions.⁶¹

When examining individual or systemic matters, the independent Children's Advocate in Manitoba always first considers whether rights have been violated.⁶² Through its various recent reports about child welfare service provision, the Office has influenced a number of social services.⁶³ However, its mandate only covers advocacy related to child welfare services. It can make recommendations in its reports, but lacks the legislative authority to ensure adherence. The Office is in the process of developing its own separate legislative mandate outside of the *Child and Family Services Act*, and it is hoped that the mandate will expand to advocacy for youth in areas of justice, education and health.⁶⁴ Such a separate legislative mandate exists for Saskatchewan's independent Children's Advocate, which was established in 1994.⁶⁵

Opened in November 2002, the Office of the Child and Youth Advocate of Newfoundland and Labrador is mandated to ensure that children and youth have access to services, and that their complaints about service provision are considered.⁶⁶ It has had a significant impact on child rights in the province as evidenced by: frequent requests to provide recommendations about child rights; government consideration of its recommendations in the annual report; and confirmation by caregivers and young people that the advocate's involvement has improved service provision.⁶⁷ As most referrals to the Office are made on behalf of children, the staff always attempt to connect with the children to hear their voices and obtain their consent to the Office's involvement. Direct work with children is also facilitated through convening youth focus groups, conducting advocacy clinics with young people, and maintaining contact with youth service providers.⁶⁸

Alberta's Child and Youth Advocate is not independent, but has the task of advising the Minister of Children's Services on matters within the ministry's mandate, and reporting to the minister every three months about activities and observations.⁶⁹ The Office provides advocacy for individuals under 18 years of age who receive services under the *Child, Youth and Family Enhancement Act* or the *Protection of Children Involved in Prostitution Act*.⁷⁰

In Quebec, the Commission des droits de la personne et des droits de la jeunesse has legislative authority to promote and protect child rights, including through investigations, education and awareness-raising in the general public, particularly in children; to make recommendations to the provincial Ministers of Health and Social Services, of Education, of Recreation and Sports, and of Justice; and to conduct research and studies.⁷¹ It also has unique legislative authority to order change. The *Youth Protection Act* allows the Commission to consider and use legal means to remedy any situation violating child rights, including referring an issue to youth court when its recommendation has not been complied with within a reasonable time frame.⁷² According to a former provincial advocate, this authority is not used very often since the Commission is well respected by government and most of its recommendations are followed; however, it is occasionally used to very helpful ends.⁷³

Although the other provincial advocates lack this authority, if they are independent and the government does not follow their recommendations, they can exert the weight of their legislative authority to raise the issue with the Premier or legislature or, as a last resort, go to the public with their concerns to obtain results.⁷⁴ However, the absence of subpoena powers for the Advocate's Office in Newfoundland and Labrador means that it often has difficulty obtaining information in a timely fashion as the service provider may choose to ignore or refuse the Office's request to participate in a discussion, interview or service review.⁷⁵ This absence of authority is particularly problematic in relation to conducting reviews and investigations, which are part of the mandate but are not feasible without the power; the Department of Justice is currently reviewing the request for this authority.⁷⁶

Depending upon their resources, child advocates are effective in connecting with children and supporting their right to participate. For example, the Office of the Saskatchewan Child Advocate supports the child's right to express him or herself in relation to all new policies, programmes and legislation to serve them, guided by the expression 'Say Nothing About Me Without Me'.⁷⁷ The Office works with various youth networks, including the Provincial Youth Delegation, the Saskatchewan Youth in Care and Custody Network and the National Youth in Care Network. There are two young people on staff who are accessible and who regularly challenge the office with respect to consultation.⁷⁸

Provincial advocates have continuously called for a federal commissioner due to the existing gap at that level of government.⁷⁹ For instance, the Saskatchewan Children's Advocate urges the appointment of a commissioner or an advocate, arguing:

*"Until there is a Federal Commissioner or Advocate for children First Nations and Métis children will continue to be denied the same level of service, as those children who live off reserve or are provided services under provincial jurisdiction. The provision of subsistence and differential services is not acceptable; all Canadian children have a right to the same level of service, regardless of racial or cultural origin – or where they live."*⁸⁰

The Government of Canada has a responsibility to *all* children in Canada, even though some child rights issues fall within provincial jurisdiction. In particular, the government has a fiduciary relationship to the Office of the Saskatchewan Children's Advocate; and yet there is no independent advocate to advance and protect the rights of these children.⁸¹ In Manitoba, the Child Advocate argues that a mechanism is needed for the implementation of the Convention on the Rights of the Child, because the federal government has shown "no solid commitment or action" since ratification; and that a commissioner would be a unified voice for provincial advocates who lack federal jurisdiction, particularly in Saskatchewan and Manitoba where so many First Nations children are in care.⁸² According to the Newfoundland and Labrador Child Advocate's Office, an independent federal commissioner is necessary for two important reasons: the provinces lack jurisdiction to access information and effectively intervene in federal matters; and the federal influence in terms of legislation and policy upon children's rights nationwide is significant.⁸³

Municipal level

It might seem obvious that an ombudsman for children at municipal level would be desirable, because city or town organization and municipal by-laws can have a major impact on children's lives. Indeed, a number of countries around the world do maintain independent offices for children at the city level. To the authors' knowledge, however, only one city in Canada – Vancouver – has ever had such an office, and that was abolished by the city council in 2006.⁸⁴ Canada's Constitution mandates that cities fall under the jurisdiction of the provinces, a relationship that becomes increasingly uneasy as cities grow. This, along with other factors, militates against the creation of independent human rights institutions for children at the municipal level. Youth advisory groups will therefore have to fill the gap.

Conclusion

The federal government acknowledged the work of the Senate Standing Committee on Human Rights in its report to UNICEF for the five-year review of the UN General Assembly Special Session on Children, and noted that it "provided a forum for open dialogue and continuing discussion on children's rights in Canada."⁸⁵ However, the government of the day did not address the issue of a children's commissioner in its November 2007 response to the Senate Report, 'Children: The silenced citizens'.⁸⁶ In light of the call of the Convention, the many positive examples of national human rights institutions for children globally, and the success of Canada's provincial commissioners and advocates, the establishment of federal human rights institutions for children is clearly a matter of the utmost priority.

7

COORDINATION EFFORTS AND MECHANISMS FOR CHILD RIGHTS

Coordination should involve several actors who are promoting the rights of children. It entails communication and information-sharing, and may – and should – also involve people who provide different perspectives on the issue and areas of expertise. This produces better results and avoids duplication of effort. Effective coordination requires consistent efforts. This chapter discusses several examples of coordination in Canada at all levels, and reflects on their successes and the challenges they face regarding the promotion of child rights.

National-level coordination

At the federal level of government, there are several coordination mechanisms related to children's issues. The Continuing Committee of Officials on Human Rights carries out federal–provincial–territorial coordination with respect to processes related to Canada's reporting obligations under the Convention on the Rights of the Child.¹ However, various witnesses to the Senate Standing Committee on Human Rights have expressed frustration and concern with respect to the work of the Continuing Committee.² Two issues stand out: the complexity of the processes of reporting to the Committee on the Rights of the Child and following up on its Concluding Observations; and the fact that the Continuing Committee acts somewhat in isolation, with minimal political, parliamentary or public engagement.³ The Senate Standing Committee on Human Rights has recommended ensuring more coordinated and comprehensive reporting and follow-up efforts.⁴ In 2007, it also recommended that responsibility for the Continuing Committee of Officials on Human Rights be

“transferred immediately from the Department of Canadian Heritage to the Department of Justice”⁵ in order to make it clear that the protection and promotion of children's human rights is an issue of fundamental justice.

At the highest level of the federal bureaucracy, a committee of deputy ministers from various departments meets twice a year to provide guidance on general issues related to human rights. In September 2007, it met to consider the government's response to the report of the Senate Standing Committee on Human Rights. At the working level of government, an interdepartmental committee meets regularly on issues related to children. It is made up of officials who are knowledgeable, committed and responsive. Also at the federal level, there is an intersectoral committee on the commercial sexual exploitation of children; its members include parliamentarians and officials as well as participants from civil society. Its quarterly meetings have sparked and improved governmental and non-governmental measures against sexual exploitation.⁶

A different example of political coordination at the national level is the Health Council of Canada, an independent agency composed of Ministers of Health of all the jurisdictions in the country (except Alberta and Quebec). In 2004, it developed a 10-year plan to strengthen health care. The plan included nine national health goals for Canada, the first of which is to have “children reach their full potential, growing up happy, healthy, confident and secure.”⁷ The Health Council is an example of best practices of coordination and agreements outside the federal government, demonstrating how to reinforce existing mechanisms to enhance effectiveness on specific issues.

By their structure and composition, multi-disciplinary networks, including government officials, experts, and, in this case, municipal actors, provide flexibility.

Also at the national level, the Mental Health Commission of Canada, established in 2007⁸ with one third of its members from government (both federal and provincial) and two thirds from civil society, may prove to be a promising approach to coordination challenges posed by different jurisdictions in a federal state.⁹ Children's mental health is a priority, as there is an advisory committee on children and youth to support the Commission's key initiatives for young people. This is not a new model; the similarly constructed Canadian Commission for the International Year of the Child was effective in bringing together federal and provincial representatives with members of civil society to address countrywide issues related to children. At that time, it took the almost unprecedented step of actually consulting with children about their experiences.

Other examples of coordination at the federal level involving a number of actors, including academics and young people, are the four Centres of Excellence for Children's Well-Being funded by the Public Health Agency of Canada,¹⁰ as well as PREVNet, Canada's strategy to stop bullying, promote positive relationships and eliminate violence against all children and youth.¹¹ PREVNet is one of the networks of Centres of Excellence funded by three federal research granting agencies and Industry Canada.¹² It is based on partnerships between and among Canada's leading researchers and national organizations, governments and communities.

A number of national non-governmental organizations (NGOs), including the Canadian Council of Provincial Child and Youth Advocates, the Canadian Coalition for the Rights of Children, and the National Alliance for Children and Youth and several professional bodies, such as the Canadian Paediatric Society, the Child Welfare League of Canada, the First Nations Child and Family Caring Society and the Canadian Child Care Federation, play coordinating roles across the country. However, they are all challenged by a dearth of funding. The Child Welfare League of Canada has access to the provinces and territories through its comprehensive membership, and has organized two international forums.¹³ The League provides an example of how civil society can assume the responsibility for coordination even in the

absence of government funding.¹⁴ The Canadian Child Care Federation also has provincial membership but is heavily reliant on federal funding. As a result of funding cuts, the Federation can no longer play as strong a role as it once did in promoting children's rights in early childhood.

Another national organization, the First Nations Child and Family Caring Society, has a protocol agreement with the national First Nations political organization, the Assembly of First Nations, to work with First Nations child and family service agencies across Canada. It has made a particular effort to establish coordination to benefit Aboriginal children. Through a significant ongoing project, entitled Caring across Boundaries, the society has created 'Touchstones of Hope',¹⁵ guidelines that identify key values for reconciliation in child welfare. Effective coordination should not only determine who should be present, but also require people to offer something to the process.¹⁶ It is believed that through the coordination experience, simply designed yet deep principles can become entrenched in people to the extent that every person feels obligated to act in accordance with, and be judged by, these principles.¹⁷

It is clear that a healthy national voluntary sector, which is able to reach across jurisdictional lines, is critical to the implementation and monitoring of the Convention on the Rights of the Child in Canada. However, despite its importance, this sector is both "significantly underfunded and seldom acting as a cohesive body towards the same goals," impeding coordination efforts for effective monitoring.¹⁸ The Senate Standing Committee on Human Rights has underlined the need for better coordination, capacity and funding.¹⁹

Provincial and local efforts

Provincial governments recognize that they have considerable responsibilities towards children, and thus employ various coordination mechanisms to promote their efforts. One of the most significant efforts can be found in Manitoba where, in 2000, the government established the Healthy Child Committee of Cabinet.²⁰ The Committee, which is unique in Canada, "develops and leads child-centered public policy across government and ensures interdepartmental cooperation and coordination with respect to programs and services."²¹ The government of Manitoba has only a few cabinet committees, so the

existence of this Committee, which meets bimonthly, demonstrates a strong commitment.²² Although focused on child development, the Committee provides valuable political leadership in bringing ministers together to address children's issues. It is a model that could be implemented in other contexts. Under the auspices of the Healthy Child Manitoba Department, officials work with the community to focus on "child-centered public policy through the integration of financial and community-based family supports."²³

In Newfoundland and Labrador, useful coordination is provided by a Youth Advisory Committee, made up of 15- to 29-year-old representatives. The committee offers advice and recommendations to ministers and government departments on youth policies and programmes, and produces an annual report to which the government responds.²⁴ The Committee, comprising 13 youth elected from across the province, has been in existence since 1996.²⁵ The Office of the Child Advocate in Newfoundland and Labrador is also responsible for coordinating the protection and promotion of child rights.²⁶

On the other side of the country, the Ministry of Children and Family Development in British Columbia launched a Youth Advisory Council in February 2007, comprising 30 young people aged 16 to 24 from across the province, who lend their knowledge, skills and experiences to inform the ministry and make recommendations for policy and programming.²⁷

Various provincial departments of Nova Scotia coordinate 'in partnership' service delivery to children and youth.²⁸ The province has established a Child and Youth Action Committee (CAYAC), which is made up of senior officials from these departments, and reports to the deputy ministers.²⁹ Nova Scotia also hears the youth perspective on child welfare by funding *The Voice*, a newspaper written and produced by youth in care.³⁰ While maintaining its independence, the Nova Scotia Office of the Ombudsman, Youth Services, collaborates with various actors in the province, including municipal and provincial government departments and agencies, private and community colleges and non-governmental organizations (NGOs), in order to inform others about its role and work, and educate them about child rights.³¹

Soon after its inception in 2007, the Office of the New Brunswick Child Advocate collaborated with the Public Legal Education and Information Service to develop a brochure to inform the public about its work.³² The Office has a

coordinator to conduct promotion and outreach with community partners, and has joined various networks, including the Child Welfare League of Canada.³³ The advocate favours the establishment of a Ministry for Children and Youth to coordinate services to children, which officials acknowledge is a problem in need of redress. A centralized agency to approve and manage spending and hear appeals on service denials could report through this department, and ensure a consistent focus on service integration to meet the needs of children.³⁴

In Quebec, the Conseil de la famille et de l'enfance, which falls under the Ministry of the Family and Seniors, plays an important role in the development of public policy and programmes related to children and families, and reports on its progress each year.³⁵ There also exists, since 1987, a permanent youth council (Conseil permanent de la jeunesse), which consults regularly with youth and youth-serving organizations to inform government policy.³⁶ However, there is no minister specifically responsible for children in Quebec.³⁷

Ontario has a minister responsible for children and families, as do most other provinces. British Columbia has a standing committee of the legislature on children and youth, which encourages coordination among political actors.³⁸ In addition, British Columbia has a number of long-standing civil society organizations that facilitate coordination on children's issues, such as the Society for Children and Youth of BC, First Call: BC Child and Youth Advocacy Coalition³⁹ and the Caring for First Nations Children Society. In Ontario, organizations such as Voices for Children, the Association for Native Child and Family Service Agencies and the Sparrow Lake Alliance, among others, have performed this role.⁴⁰ Another example of collaboration for children's rights in Ontario is the recently formed North-South Partnership for Children. This is a partnership between civil society in southern Ontario and the remote reserves in northern Ontario, where many Aboriginal children need support.⁴¹

A growing number of significant efforts are being made at the municipal level to promote coordination among children, youth and other actors. Four UNICEF child-friendly cities sponsor this coordination: Calgary, Edmonton, Sudbury and West Vancouver. Ottawa is well on its way to becoming child friendly, having established a youth commission in 2006 with the help of Child and Youth Friendly Ottawa.⁴² Toronto has had a youth Cabinet for 10 years and several other cities, including Gatineau,

have experimented with this model. However, given the temporary nature of childhood and other factors, a 'best practice' model is hard to achieve. A promising recent project involves five municipalities across the country: YouthScape: Community Based Youth Paced is focused on building resilient communities by empowering youth.⁴³ This project features both developmental and results-based evaluation, and is only one example of an emerging trend towards comprehensive community development focused on children and youth. Much of this trend is community-initiated, but some initiatives have been government-sponsored, such as the Understanding the Early Years (UEY) initiative where "parents, community organizations, educators and other concerned community members learn the value of working together and of community research" as well as acquire the capability to make evidence-based decisions.⁴⁴

Challenges to coordination

In spite of all the positive examples listed above, there are a number of significant challenges to bringing coordination around children's rights to the scale that would enable Canada to declare successful implementation of the Convention.

In 1995, the Committee on the Rights of the Child noted in its response to Canada's first report on implementation of the Convention that "Disparities between provincial or territorial legislation and practices which affect the implementation of the Convention are a matter of concern to the Committee."⁴⁵ Further, it recommended the strengthening of coordination to reduce regional disparities or discrimination for full respect and implementation of the Convention.⁴⁶ After the presentation of Canada's second report in 2003, the Committee once again raised its concern about the absence of designated responsibility to coordinate and monitor implementation of the Convention despite the existence of the Continuing Committee of Officials on Human Rights and the (then) Secretary of State for Children and Youth.⁴⁷ Consequently, the Committee urged Canada "to strengthen effective coordination and monitoring, in particular between the federal, provincial and territorial authorities, in the implementation of policies for the promotion and protection of the child, as it previously recommended...with a view to decreasing and eliminating any possibility of disparity or discrimination in the implementation of the Convention."⁴⁸

A number of mechanisms are already in place. In addition to the federal-provincial-territorial Continuing Committee on Human Rights described above, there are many other groups of officials working across jurisdictions in areas such as health, social services and justice, all of which impact on children. There are also regular meetings of relevant ministers and deputy ministers. The Canadian Foundation for Children, Youth and the Law argued before the Senate Committee that the Government of Canada has a responsibility to "find ways to engage the provinces and territories in meaningful co-operation to ensure adherence to our international treaty obligations"⁴⁹ in order to ensure that all children in Canada have equal rights. One of the ways that the absence of coordination among various jurisdictions has played out is in the wide variations to be found in such areas as child welfare, which is a provincial responsibility, and where related legislation, policy, spending and service delivery are different in every jurisdiction.⁵⁰

The gathering of national statistics is deeply affected by this situation, as each province has a different way of collecting data on the numbers of children in child welfare care. The result is a lack of reliable national data on the numbers or experiences of children in state care. The Canadian Outcome Project has been mobilized by researcher Nico Trocme and others for the past 10 years to improve national child welfare data collection, but only modest progress has been made to date.⁵¹ Moreover, provinces do not agree on the upper age limit for children's receipt of child welfare services. In addition, according to the Canadian Paediatric Society, inconsistencies in provincial laws for injury prevention highlight the need for better coordination related to health and safety.⁵²

These are not insurmountable problems but they demand much greater focus, coordination and resources than they are currently receiving if the rights of all Canadian children are to be respected. As a result, the Senate Standing Committee on Human Rights has recommended that "an interdepartmental implementation working group for children's rights be established in order to coordinate activities, policies, and laws for children's rights issues."⁵³

One of the results of the fragmentation discussed above is that civil society has been placed, in the eyes of some, in a defensive position. In contrast to the coordination that is becoming apparent in Europe among politicians, NGOs, academics and children and youth, and notably expressed in the White

Paper issued by the Government of the United Kingdom,⁵⁴ some critics in Canada have designated civil society activists as ‘special interest groups’. In fact, advocacy and lobbying efforts are sometimes cast in a negative light, as evidenced by the attempts by Alberta and the federal government to restrict “communications with government” (*also see legislative discussion in Chapter 1*). This has been particularly hard for groups who want to advocate on behalf of children.

Weaknesses in federal leadership on child rights

Peter Dudding, Executive Director of the Child Welfare League of Canada, noted the importance of two avenues for the federal government: first, the provision of political leadership, and second, the guarantee of appropriate financing and effective management of social programmes.⁵⁵ In civil society there is continuing concern about the frequency of Cabinet shuffles that change ministerial portfolios just as the politicians are gaining an understanding of their responsibilities and the issues. This is particularly true of the Department of Indian and Northern Affairs, to the detriment of Aboriginal children.⁵⁶ Mr. Dudding also identified that the Canada Social Transfer of funds from the federal government to the provinces had inadequate provision for goals, monitoring and outcomes, thus inhibiting accountability and effective social development efforts.⁵⁷ While the current federal government is characterized by strong authority within the Office of the Prime Minister,⁵⁸ political leadership in support of child rights is notably absent. The Senate Standing Committee also stressed the importance of ministerial responsibility with respect to Canada’s international human rights obligations; ministers responsible for human rights across different levels of government should “meet immediately, with renewed vigour.”⁵⁹

Civil society capacity and resource constraints

Both the size and structure of various civil society organizations have been dramatically affected by repeated budget cuts, reducing the number and quality of their coordination efforts. Some organizations, like the Canadian Child Care Federation, have had to reduce staff; others, like Family Service Canada, have become virtual organizations that exist on the Internet without offices (and often staff) due to funding cuts; and still others, such as International Social Services, operate only with volunteers. The Canadian Institute of Child Health, the National Children’s Alliance and Volunteer Canada are all much reduced due to cutbacks. There is no core funding from government for these voluntary organizations despite the important national function they perform. Furthermore, project funding, which is very difficult to access, is often not available in a timely manner. The constant search for project funding depoliticizes and disempowers civil society, and severely curtails its capacity to speak out on behalf of children.⁶⁰ Therefore, some organizations have either given up on government money or closed their doors.⁶¹ The restricted capacity of civil society means that there are few resources remaining for coordination, and the competitive struggle for funding serves to put organizations at odds with each other rather than bring them together.

Conclusion

Recognition of the need for centralized focal points within government, as well as independent institutions (such as a federal children’s commissioner in Canada) to coordinate implementation of the Convention, is widely shared among individuals and organizations fully committed to promoting and protecting the rights of all children. Where coordination is working well, the favourable outcomes for children are evident. On the basis of those positive experiences, we can clearly identify the critical areas in which further developments can and should be funded and advanced.

8

FINAL SUMMARY, MAJOR CHALLENGES AND RECOMMENDATIONS

“The way a child is treated by a society is an indication of what that society is all about.”
— Young person consulted in June 2007¹

“The children of today have rights, the adults of today have rights...shouldn’t our rights be noticed as much as yours.”
— 16-year-old boy from Sydney, Nova Scotia²

“We’re free to express our views to a certain extent (that’s pretty much all we’re free to do as kids). As kids/teenagers we don’t have many freedoms, it’s a stereotype we’re irresponsible, trouble-making kids! To us we don’t have a voice and we sure as hell can’t use it. It’s the adult world, we usually don’t have an opinion and if we ever do get to use our voices we’re pretty damn lucky to have the chance.”
— Meaghan, aged 15, Ontario³

“I would tell them [the people from abroad who asked] we have a Charter of Rights that secures the many things I am free to do here in Canada. I am free to say what I want about anything. About the government, my school, my parents or anywhere else I know. I am also free to do what I want and think the way I want. But I would also tell them some of the limits. Such as hate. I am free to say what I want, do what I want and think the way I want as long as I do not promote hate to others or hurt others. My other limit is the law. If what I say, do or think violates the law, I am not allowed by the country to do so but most of the time I won’t get killed for it like some people in other countries.”
— Medin, aged 16, Ontario⁴

When Canada ratified the Convention on the Rights of the Child⁵ in 1991, the country undertook fundamental obligations with respect to protecting and promoting the rights of children throughout the country. Canada also committed to the 1990 World Summit for Children goals and to the Declaration and Action Plan of the 2002 United Nations General Assembly Special Session on Children, entitled ‘A World Fit for Children’ (see Chapter 3). Progress on these commitments has been uneven. While some children in Canada are doing well, others are not. If one believes with UNICEF in “all rights for all children” then there is room for improvement. Further progress in Canada, as elsewhere, will depend to a considerable extent on the full implementation of the general measures of the Convention.

Analysis of implementation of the Convention in Canada has made it abundantly clear that while there have been positive developments, much more needs to be done to improve the political, economic, social and educational structures that have an impact on children’s lives. It is also clear that, in order to ensure full implementation of the Convention in Canada, public attitudes towards children will have to evolve. More people will have to “recognize children as rights-bearers” and to “respect and value them in the present” and not only for what they will be in the future.⁶ As attitudes shift, so will the relationships between children and young people, and the overlapping institutional settings in which they are growing up, including the family.

Challenges to implementation of the Convention

Federal level

Many serious challenges exist at the federal level of government, where the ultimate responsibility for implementation of the Convention rests. First of all, there is no dedicated political mechanism for the promotion of child rights.⁷ There is no minister at the Cabinet table with even nominal responsibility and, with the exception of the Senate Standing Committee on Human Rights, there is no parliamentary reference point from which to discuss the rights of children.

While within the bureaucracy there are a number of coordinating mechanisms on children's issues, without political leadership their effectiveness is threatened. The lack of federal coordination with respect to Aboriginal children can result in routine denials of government services to First Nations children, even when the same services are available to other children, as demonstrated by 'Jordan's Principle'. Furthermore, the one directorate within Canadian Heritage that does have a designated responsibility for educating the public about children's rights has experienced funding cuts (*see Chapter 2*). For a few years even Canada's international assistance programmes with respect to child rights promotion and protection were subsumed under other priorities, raising concerns that the international leadership Canada has long demonstrated in support of human rights in general, and child rights in particular, was at risk.⁸

Federal–provincial–territorial relations

A second challenge to implementation of the Convention is Canada's federal nature. This is not to say that federalism itself is the problem, because other federal states have found ways to implement the Convention through such means as national and local children's commissioners or ombudspersons. In Canada, however, federalism is often cited as a reason for the inequities that confront children across the country. Most issues relating to children fall under provincial jurisdiction, so there is a concern that the federal government may not fulfil its responsibility to protect and promote children's rights under the guise of respecting provincial powers. However, provincial governments – once they have signalled their assent to ratification, and in spite of the fact that they continue to prepare regular reports that are

included in the federal government's periodic reports to the Committee on the Rights of the Child – tend to see the Convention as a federal, rather than a provincial responsibility, and as an international, rather than a domestic obligation.

Public awareness

The perception of the Convention as an instrument that is applicable only to other countries is fairly widespread among the general population as well. This view will only change when, among other things, the government ensures that the Convention is made "widely known, by appropriate and active means, to adults and children alike" (article 42 of the Convention). Since ratification, the federal government has focused more on the production of materials and the preparation of reports rather than on a proactive, comprehensive strategy for dissemination. There has never been either enough money or enough human resources to do an adequate job. Once again, the fact that education is under provincial jurisdiction is cited as a reason for the gaps in this area.

Relations between civil society and the federal government

Another challenge for implementation of the Convention lies in the degree to which the government has diminished funding for public consultation on children's issues, or disabled and fragmented it by denying funding to coalitions or national organizations that advocate for children (*also see Chapter 2*). Indeed, national coalitions should not have to compete with their member organizations for core funding.⁹ To run a national network, alliance or coalition and ensure that voices from every part of the country are heard is an expensive process in the best of times, yet should be supported for the sake of the public interest. The risk is that voices may be unheard or silenced, thereby permitting the unequal treatment of children across the country to go unchallenged.

The Voluntary Sector Initiative (VSI), which operated between 2000 and 2005 with substantial federal funding (\$94.6 million)¹⁰ had little impact on the voluntary sector's capacity for monitoring children's rights. This activity was not a priority. Even though one of VSIs stated goals was to improve the relationship between the sector and the federal government, the modest improvements it brought about face an uncertain future now that the organization is no longer in existence. The federal government

should enhance funding for citizen-based advocacy and for voluntary groups that undertake non-partisan advocacy related to children's rights. With this critical function restored, robust attention and progress towards implementation of the Convention in Canada will be significantly enabled.

A lack of awareness and attention is particularly acute in discussions at the federal level about Aboriginal children. In addition to the jurisdictional impediments cited above (see Chapter 2) Canada continues to have the only race-based piece of legislation in the Western industrialized world, the *Indian Act*, which affects almost every aspect of the lives of First Nations children. The *Indian Act* persists despite repeated calls by the Assembly of First Nations of Canada to fully implement the recommendations of the Royal Commission on Aboriginal Peoples in its 1996 report, which provided a path away from the *Indian Act* towards the full restoration of Aboriginal rights and title. Another concern is that the rights of children are not referenced in land claims settlements or in the hearings with respect to legislation establishing First Nations governance, both of which have to be done by an Act of Parliament.¹⁰ Women's rights are sometimes raised and Aboriginal rights always considered, but not those of children, even though the First Nations Child and Family Caring Society cites the Convention in its work.¹²

Role of the media

The national media has an important role to play in raising awareness of and promoting implementation of the Convention – especially the print media. It is obvious that much more could be done by the media than is currently the case. A notable exception, and active actor, is the National Film Board of Canada. Shortly after ratification of the Convention, the board produced an excellent series of animated films entitled *Rights from the Heart*, designed for different age groups and still in wide distribution.¹³ Other filmmakers have made thoughtful documentaries on issues such as child labour and sexual exploitation that appear on Canada's television networks. A commercial television station in Ottawa has a 'children first' news policy, with a commitment to focus on and explore children's issues and to celebrate young people regularly.¹⁴ However, a direct connection between these efforts and the Convention is tenuous, and the media almost never covers processes specifically related to the Convention for the public. Furthermore, the media is probably more successful at perpetuating the

stereotypes of children – usually small children – as victims in need of protection or as threats – usually adolescents – in need of punishment, than they are at conveying children's essential humanity as persons who have rights. Only when this latter status is firmly fixed in the public mind will children become less vulnerable to abuse and exploitation.

Another issue related to the media deserves comment because of the extent of its impact on children's lives. This is the use of the media by commercial interests to attract children's attention to their offerings. Advertisers invest in research on children so as to determine the best means of selling to them and the products that attract their attention.¹⁵ The responsibility of the media is clearly addressed in article 17 of the Convention, but could be further improved in Canada. This is an area requiring considerable further research.

Support for youth participation

An important area for implementation of the Convention is the encouragement of coherent and consistent youth participation in serious policy issues. Although the provinces appear to be more progressive than the federal government on this issue, with a number of provincial ministries reaching out to youth, it is still unusual for children and young people to be called as witnesses when bills that affect them directly are discussed in Parliament or in a legislature. There is no policy promoting such participation, in spite of article 12 of the Convention, and thus individual parliamentarians must ask for children to appear.¹⁶ When this does happen, as with the hearings that accompanied the passage of the legislation establishing the office of Ontario's Child Advocate, the effect is powerful (also see Chapter 1). While Canada had considerable success in promoting youth participation at the United Nations General Assembly Special Session on Children,¹⁷ the organization of engaged young Canadians that was subsequently formed to assist in the preparation of the report *A Canada Fit for Children*¹⁸ did not survive beyond its launch in May 2004. Article 12 of the Convention is respected in the child welfare and justice systems, which are legally bound to adhere to its provisions, but is only slowly being recognized in most other settings in which children are active and where decisions that have a profound effect on their lives are made. The problem is that in order to fully listen to children and young people, adults have to change. However, change can be very threatening, particularly when it involves a shift in power.

Assets

After outlining the challenges and barriers to full implementation of the Convention in Canada, it is now time to turn to the assets that can be used to overcome them for the benefit of children everywhere. Some of these assets are available to all countries, some could be made available, and some are more specific to Canada.

Convention on the Rights of the Child

The *first* and most important asset for implementation of the Convention is the Convention itself. It is an international human rights treaty outlining legal obligations to the child in light of the main goal of human rights: to recognize the inherent dignity and equal and inalienable rights of every member of the human family.¹⁹ The Convention is usually understood to affirm that the human family includes children, and that children are related to adults and to one another as human beings, not as human ‘becomings’. The Convention concerns relationships. Its overall intent and meaning is to establish the fundamental relationship between children as rights-bearers and the State (and, by extension, society) as duty-holders. Individual articles speak to all the different relationships children and young people are engaged in: with one another, within their families, their schools, their communities, and with the organs of the State such as the justice, health, and child welfare and educational systems. Article 12 of the Convention gives them the right to be heard in any judicial or administrative proceedings affecting them and “affirms recognition of children as active agents, entitled to participate.”²⁰ This list of relationships identified by the Convention is not exhaustive but indicative of the shifts that would occur and, indeed, are occurring in the culture of childhood as implementation expands. Growing respect for the child as a person is a benefit for all, moving us toward the world envisaged by the children who stated at the United Nations General Assembly Special Session on Children, “We want a world fit for children, because a world fit for us is a world fit for everyone.”²¹

The *second* asset is the degree to which the Convention promotes a human rights-based approach. This approach aims to implement rights as provided for in international law by empowering people, including children, as Professor Tara Collins puts it, “to make due claims from others in support of their rights.”²² As she notes: “Accordingly, rights demand and inspire approaches, which are neither reflections of generosity, nor vagaries of political

whims, resource constraints or other excuses. Rights should involve responses to established legal obligations and duties to human beings.”²³

The *third* asset related to the Convention is created by the processes it has set in motion. All countries can benefit from the protocols, declarations, resolutions, advisory opinions (as in the Committee on the Rights of the Child’s regularly issued General Comments on various aspects of children’s rights), standards and guidelines that have emerged over the past several years. Because so many of these instruments are the product of negotiations and consultations among States and stakeholders, their tone, while unequivocally in support of children’s rights and well-being, is usually moderate and realistic.

A *fourth* asset related to the Convention is that once a State becomes a party to the Convention, it is obligated to produce periodic reports on how it is implementing the Convention through processes that should engage actors at many levels of society. While the reports themselves may not be fully comprehensive or entirely accurate, preparing them can be a consciousness-raising activity. After a State Party has presented its report, the Committee on the Rights of the Child makes concluding observations. These are generally thoughtful and well considered, and provide the State Party with additional building blocks for implementation of the Convention.

A *final* asset at the international level is the fact that childhood is universal. Everyone alive today is or has been a child. The capacity to relate to children lies within all of us, including children themselves, who can connect across national barriers with ease if the facilities exist. This is an asset that has been used to great advantage by UNICEF as well as many international development organizations, such as the Save the Children Alliance, World Vision and Plan. The relationships built through student exchanges, school twinning and judiciously-developed Internet sites such as TakingITGlobal²⁴ are invaluable for implementation of the Convention.

National assets

Canada has a number of specific assets to build on that could be considered as promising practices or models for other countries. First, Canada is a prosperous country with a long history of involvement with human rights. Furthermore, the country is securely governed by the rule of law. At both federal and provincial levels of jurisdiction, albeit with some notable

exceptions, laws that relate to children promote the child's best interests as a primary concern. This is as true for the *Divorce Act* (which, as discussed in Chapter 1, is a federal Act) as it is for child welfare legislation at the provincial level. Pending amendments to the *Divorce Act*, the Family, Children and Youth section of the Department of Justice, for example, has devoted considerable resources to reducing the adversarial nature of family break-up, working to change the nature of relationships affected by separation and divorce so that children can continue to thrive in spite of the difficulties experienced by their parents.²⁵ Provincially, the recent legislation establishing the independence of the Office of the Child Advocate in Ontario specifically references the Convention as does the legal activity of the Quebec Commission des droits de la personne et des droits de la jeunesse (also see Chapter 1). Also, while it is true that the Convention has not been implemented into domestic law, it can – and does – guide the courts in interpreting domestic legislation. This means that an expanding number of lawyers and jurists are becoming familiar with the Convention. Training programmes for judges on the Convention and other international human rights instruments exist and should be sustained and strengthened.

Another asset that Canada can build on for implementation of the Convention is the growing number of legal scholars, academics, health experts and social innovators who understand the implications of implementation for children. Many of them have already been cited in this case study and their significance lies in their ability to shift the current of ideas around children and childhood in a positive direction. One person who has been particularly effective in this respect is Dr. Fraser Mustard, founder of the Canadian Institute for Advanced Research, who has been able to convey knowledge about brain development in early childhood to the general public, thus highlighting the importance of stimulating and nurturing conditions for early learning and care.²⁶ One of Dr. Mustard's associates, Dr. Clyde Hertzman at the University of British Columbia, has taken this body of research to the World Health Organization's Commission on the Social Determinants of Health, citing in his report the Committee on the Rights of the Child's General Comment on rights in early childhood.²⁷ A former federal Health Minister, Monique Bégin, has been a particularly active member of this Commission, and has a wide understanding of the rights-based approach and of the ecological model of child development the Convention supports.

A particular mention should also be made of Canada's leadership in social innovation, supported by several Canadian philanthropic foundations and exemplified by a book published in 2006 entitled *Getting to Maybe: How the world is changed*.²⁸ The thinking behind this book could be a real asset for improving implementation of the Convention. *Getting to Maybe* is informed by the insights of complexity theory, suggesting one should stop looking at the discrete elements of a problem and focus instead on understanding the complex relations among them. This conforms, of course, to the Declaration from the Vienna Conference on Human Rights that all human rights (and therefore, by implication, the rights of the child), are "universal, indivisible...interdependent and interrelated."²⁹

Other assets that can be built upon to ensure implementation of the Convention in Canada include the capacity of the child advocates in the provinces to operate both provincially and nationally at regular meetings of the Canadian Council of Provincial Child and Youth Advocates. Their collective experience of child rights is substantial, and their shared concern for abuses in the systems under their responsibility has brought about much-needed change.

Civil society groups focused on children and youth can also be effective in establishing national standards framed on child rights. Coalitions and organizations related to children, such as Canadian Coalition for the Rights of Children and the National Alliance for Children and Youth, add great strength to the movement. Canadian civil society is willing and interested, and its potential for furthering implementation of the Convention is substantial if adequately supported to partner with government, as envisioned in the Voluntary Sector Accord signed in 2001.³⁰ The non-profit community is full of dedicated and committed staffers and volunteers who are prepared to give time and energy to further the rights and well-being of children. In 2003, there were over 160,000 non-profit and voluntary sector organizations, of which some 81,000 were registered charities; the same year, Canadians took out 139 million memberships in non-profit and voluntary organizations, an average of four per person.³¹

Among these are a number of influential organizations that can be tapped for implementation once the individuals that comprise them give their support to the Convention. Many churches and other religious institutions, for example, have strong social

justice agendas, as do national and local Aboriginal organizations. Social justice, by definition, implies a right-based approach. These groups also understand the importance of culture and identity and value their children, as do grandparents and elders, who have wisdom to share and recognize the significance of loving and respectful relationships for children and young people.

Finally, children and young people are the best asset of all. There are growing numbers of active, interested and engaged youth concerned about children's rights who are forming networks across the country and, indeed, across the world. The more opportunities they find to speak out, the more impact they can make. Supporting a child's right to be heard in the early years is integral to nurturing citizenship over the long term. In this way, the values of democracy are embedded in the child's approach to life. And, as the Committee on the Rights of the Child notes: "Participation also offers opportunities for children from diverse backgrounds to build a sense of belonging, solidarity, justice, responsibility, caring and sensitivity."³²

Recommendations

While the challenges to implementation of the Convention on the Rights of the Child in Canada are substantial and are no doubt replicated in other countries, so are the assets that can be used to overcome them. The first responsibility for the care and nurture of children lies with parents and families, who also bear the duty to protect and promote the rights of their children. This is clearly recognized by the Convention. However, the Convention also acknowledges the essential roles governments and civil society play in providing "the legislative and policy framework, the institutional and organizational structures, the fiscal and other supports and services to enable families" to do what families do best.³³ And when families fail, as they sometimes do, then State and society have the duty to be there for the children. The following recommendations for improved implementation of the Convention are directed not only to governments at all levels of Canada's complex federal structure but also to civil society organizations in all their variety. Most of these recommendations are sufficiently general to also serve as models for other countries.

1. Promote the political will necessary to implement the spirit and intent of the Convention within federal, provincial and territorial governments, at the municipal level, in the corporate sector and the voluntary sector. This is a task for all interested parties. In Canada's open and democratic society, legislators mostly reflect what the public appears to demand. Strategic campaigns, like the one that brought about the signature in Ottawa of the international Mine Ban Treaty in 1997, or the one that resulted in the unanimous approval of 'Jordan's Principle' in the House of Commons in 2007 by highlighting how innocent children suffer, can be very effective.
2. Use political will to establish an independent children's commissioner at the federal level of government, with a specific focus on children experiencing persistent and disproportionate rights violations. This office should be responsible for ensuring that Canada meets its commitments under the Convention, as well as insisting on the full and proper implementation of the Canadian Charter of Rights and Freedoms as it relates to children. It was a combination of civil society advocacy and political will that made this possible in many countries of the world.³⁴ The growing success of the provincial child advocates in Canada in promoting children's rights proves that this is an essential measure for implementation of the Convention.
3. Budget for adequate financial, human and technical resources for child protection and for the promotion of children's rights at both the federal and provincial levels, and use existing federal-provincial agreements, such as the National Children's Agenda (*see Chapter 3*), to deploy these resources. Any such agreements must include meaningful consultations with and involvement by Aboriginal peoples.
4. Build more constructive working partnerships among sectors. One example of joint funding and joint operation is the national telephone tipline, Cybertip, which is a highly effective mechanism for rescuing young people from sexual exploitation. The initiative involves an NGO (Child Find Manitoba) to take the calls; the Royal Canadian Mounted Police (RCMP) to investigate and charge perpetrators; and several telecommunications companies.³⁵ Another example is the Many Hands, One Dream coalition that brings together 14 national NGOs active in Aboriginal child health to implement shared principles for the benefit of Aboriginal children.
5. Steadily raise awareness of the Convention among children and adults alike by embedding the Convention throughout the

school curriculum – at primary and secondary levels, as is slowly happening in Nova Scotia and Quebec. It is to be hoped that this development will effectively and comprehensively expand across the country. This is known as teaching ‘the new three Rs’: *Rights Respect and Responsibility* (also see Chapter 5).

6. Increase the number of professionals from all disciplines related to children, including government officials who have been trained in the Convention. Once the Convention has been internalized through experiential education, individuals recognize the need to make child-impact assessments of everything they do. Fortunately, there is a growing body of academic researchers with expertise in child rights, as well as professional organizations such as the Canadian Child Care Federation, the Canadian Paediatric Society, the Child Welfare League of Canada and the First Nations Child and Family Caring Society of Canada. These specialists and organizations have already developed educational tools and are making them widely available to their colleagues. The large child-focused international development NGOs in Canada with worldwide connections, such as the Canadian Red Cross, Plan, Save the Children Canada, UNICEF Canada and World Vision, are invaluable sources of knowledge and experience, and make excellent partners for training programmes and other initiatives related to implementation of the Convention.
7. Ensure the existence of monitoring mechanisms at all levels of government and society – less to be critical than to uncover problems and shortcomings in a timely manner, so that decision makers can make course corrections. A dissertation on the subject points out, “In the context of social planning and programming, monitoring has a precise function related to the collection of data and its analysis: admonition plays little or no part.”³⁶ Provincial child advocates already provide this service for status Indian children living off Aboriginal reserves as do provincial and national coalitions, but a significant gap exists for children living on reserves as the provincial advocates do not have jurisdiction over the federal government and no parallel federal office exists.
8. Promote collaboration with faith communities like Kairos and the Salvation Army that are already predisposed towards social justice issues and are open to working with the most disadvantaged children and young people in a generous, holistic and non-judgemental manner. Many children already understand that the Convention, which is essentially about how we treat one another with respect in society, is very similar to the ‘golden rule’ embraced by most societies.³⁷
9. Engage the media in all its forms as an ally. Lively Canadian-based Internet connectors (such as TakingITGlobal discussed earlier), can link youth around the world under the guidance of knowledgeable adult mentors. The media can also lower the barriers of discrimination and ignorance. The many Canadian journalists who have been sensitized to the suffering of children in the course of their investigative work could and should be encouraged to make explicit reference to the Convention in their reports in order to raise awareness among their audiences.
10. Empower children and youth. They are the experts on their own lives, and the mechanisms that enable them to be heard are increasingly more sophisticated, thanks to the efforts of everyone working with the Convention over the past 18 years. If more support and funding could be made available for youth-run organizations focused on the development of national and regional youth-related policy, the results would be remarkable.

Persons between 10 and 19 years of age today form the largest generation the world has ever known. Standing at 1.2 billion strong, they are at the very epicentre of change. Young people know the world has changed in ways unimaginable even 20 years ago when the Convention on the Rights of the Child was being drafted. They also know that they have access to new tools that many adults can barely comprehend. They are, in fact, already becoming empowered by factors that are outside of adult control and the results are not always predictable. One thing, however, is certain: Without the partnership of responsible adults with children and youth, as called for by the Convention on the Rights of the Child, neither a Canada nor indeed a world fit for children will ever be built.

ENDNOTES

FOREWORD

- 1 United Nations, Convention on the Rights of the Child, A/RES/44/25, United Nations, New York, 20 November 1989.
- 2 The instrument of ratification was deposited at the United Nations on 12 January 1992.
- 3 The general measures of implementation are the measures that the Committee on the Rights of the Child considers to form part of the general obligations of States Parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention on the Rights of the Child.

PREFACE

- 1 United Nations, Convention on the Rights of the Child, A/RES/44/25, United Nations, New York, 20 November 1989.
- 2 The instrument of ratification was deposited at the UN on 12 January 1992. See United Nations, Office of the High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, as of 14 July 2006, <www2.ohchr.org/English/bodies/docs/status.pdf> accessed on 23 August 2009.
- 3 United Nations, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, A/RES/54/263, United Nations, New York, 25 May 2000.
- 4 United Nations, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, A/RES/54/263, United Nations, New York, 25 May 2000.
- 5 Senate of Canada, Senate Standing Committee on Human Rights, ‘Who’s in Charge Here?: Effective implementation of Canada’s international obligations with respect to the rights of children – Interim Report’, Senate of Canada, Ottawa, November 2005.
- 6 Senate of Canada, Senate Standing Committee on Human Rights, ‘Children: The silenced citizens: Effective implementation of Canada’s international obligations with respect to the rights of children – Final Report’, Senate of Canada, Ottawa, April 2007.

CHAPTER 1

- 1 United Nations, Convention on the Rights of the Child, A/RES/44/25, United Nations, New York, 20 November 1989.
- 2 United Nations, Vienna Convention on the Law of Treaties, A/CONF.39/27, United Nations, Vienna, 23 May 1969, article 26.
- 3 See Aust, Anthony, *Modern Treaty Law and Practice*, Cambridge University Press, Cambridge, 2000, pp. 146–156.
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CHAPTER 2

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CHAPTER 5

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