Canadian Coalition for the Rights of Children
Coalition canadienne pour les droits des enfants

# Children's Rights and Bill C-78:
## Submission to the House of Commons Standing Committee on Justice and Human Rights

### Introduction

The Canadian Coalition for the Rights of Children (CCRC) appreciates the introduction of reforms to family law that advance realization of the rights of children in Canada. Passage of the proposed reforms will significantly benefit many children in Canada and should be given high priority. The CCRC would like to draw the attention of committee members to provisions in Bill C-78 that contribute to fulfilling Canada's duties under the Convention on the Rights of the Child. We also want to highlight some areas for additional attention to ensure effective implementation of the proposed focus on the best interests of children and other rights under the Convention.

Before addressing specific provisions, the CCRC would like to highlight the high priority of family law reform. Advocates for children's rights have recommended reform for many years. Repeated delays, for other reasons, have had high costs for a generation of children in a context where over 40% of families experience divorce and family court proceedings. While the committee needs to give careful consideration to all the details, we urge you to ensure timely passage of these reforms to prevent more children from harm because of failure to adequately protect their rights in circumstances beyond their control.

### Best Interests of the Child as the Paramount Consideration

Making the best interests of the child the paramount consideration is consistent with the Convention on the Rights of the Child. Providing guidelines for determining the best interests of a child has been a recommendation to Canada from the Committee on the Rights of the Child in three previous reviews.

In keeping with the paramountcy of the best interests of the child, the CCRC supports the change in language from custody and access to the language of parenting arrangements and decision-making responsibility and the use of parenting plans. Given that the best interests of the child requires considering the specific circumstances in each case, it is wise not to include a presumption in favour of any particular parenting arrangement.

The criteria and process for determining best interests needs to be based on a recognition of a child's rights and take account of the full range of those rights.

### Recommendations:

1. **To ensure that the process for determining the best interests of the children respects children's rights, the CCRC recommends that section 16 of Bill C-78 include reference to the Convention on the Rights of the Rights, either as a separate article or adding to article 16.1, "as in the Convention on the Rights of the Child."**

2. **The CCRC recommends that public education and legal training on the process for determining the best interests of the child be based on the Convention and draw on General Comment No. 14 by the Committee on the Rights of the Child, which provides additional guidance for implementation of this principle.**

**Giving Due Weight to the Views of the Child**

The CCRC strongly supports making consideration of the views of the child mandatory. We note that this is the first time that this basic principle of children's rights is explicitly incorporated into federal legislation. It begins to fulfill the duties of Canada under Article 12 of the Convention. Research also shows that it leads to better outcomes for children in family law matters and other judicial and administrative processes. It is effective as well as the right thing to do.

The CCRC is aware of good practices in use in specific places across the country, also for younger children; expanding good practices in hearing and giving due weight to the views of children, based on respect for the "evolving capacity of the child," is essential. It will require both broad-based public legal education for all parties involved with the child and training for lawyers, judges, and other officials in family courts.

**Recommendations:**

1. **The CCRC supports making consideration of the views of the child mandatory in legislation and recommends that public education and legal training on how to include and give due weight to the views of the child in family court matters be based on the Convention and best practices in Canada and internationally.**

2. **The CCRC recommends that provinces and territories administering family law ensure adequate support for the child throughout the process, including separate legal counsel for the child in cases where it is needed to ensure child's views are heard, such as high conflict cases.**

**Child's Right to be Protected from Violence**

Children in Canada continue to experience high rates of violence against children, including domestic violence, and exposure to violence within the home. The extra vulnerability during family separation justifies the specific focus on family violence and making the best interests of the child the paramount consideration.

The CCRC draws the attention of the committee to the fact that the safety of children being returned into the custody of a parent with a history of violence received specific attention in the last review of children's rights in Canada (2012). We regret that there have been additional tragic cases since Canada was specifically asked to:

*"establish mechanisms for ensuring effective follow-up support for all child victims of domestic violence upon their family reintegration*." (Committee on the Rights of the Child, Concluding Observations: Canada, paragraph 47d. CRC/C/CAN/CO, 3-4, p.10)

**Recommendation: The CCRC supports requiring court orders and all actors in the family court system to make preventing all forms of violence against children the top priority.**

**Children's Rights and Child Support Payments**

Approaching child support payments as a matter of the rights of the child instead of negotiations between opposing adults in dispute is consistent with the Convention. In Article 27, the Convention explicitly requires states to *"take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child."*

Canada has an unacceptably high level of arrears in parental support orders, and Canada has received recommendations to address this matter in previous reviews of how Canada implements the rights of children, without improvement.

**Recommendation: The CCRC supports the proposed strengthening of the law with regard to child support payments and encourages both federal and provincial governments to take the necessary actions to ensure enforcement so that children's rights to such payments are fulfilled.**

**Conclusion**

Passing legislation that puts the best interests of children at the center of family law is urgent as well as important. It will also be important to pursue a program of public legal education for all parties involved with children going through family separation and legal training for lawyers, judges, and other personnel involved in family law cases. The Convention on the Rights of the Child provides a useful comprehensive foundation for both the law and its implementation.

For more information, please contact:

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