

**Implementation of Children’s Rights in Canada:
A Systems Approach**

Introduction

It has been 27 years since Canada ratified the Convention on the Rights of the Child, but implementation remains weak. Canada is submitting its 5th/6th report, but many recommendations from the first reports have been ignored without explanation. Children in Canada lose out as a consequence. Research shows that children in countries who take implementation seriously fare better on comparable measures of well-being than children in Canada do.

What are the barriers to implementation? What needs to change in Canada? For two decades, governments have defended the status quo as adequate while advocates focused on a call for a National Children’s Commissioner as the key to change the system. While the Coalition continues to support the call for a National Children’s Commission or Commissioner, it is equally important to advocate for other aspects of a systems approach, especially in the context of Canada’s federalist system of governance.

Experience at the provincial level shows that establishing an Office of a Children’s Advocate or Commissioner by itself is not adequate to achieve effective implementation. Strategically, the focus on a Commissioner as the first step meant that governments who were not ready to take that step made no other systemic changes. If the proposal for a National Commissioner is adopted, other changes will be necessary for that office to be effective. It makes sense to work for systemic change on several levels at once until all the pieces are established and working smoothly. System change is not a straight line process.

Closer analysis of the barriers and possible solutions suggest a systems approach is both necessary and more likely to see progress over time. Change is feasible to address four major barriers and raise the bar of good governance for all children in Canada.

Overview of Systems Approach to Implementation

As an overview, the Canadian Coalition for the Rights of Children recommends four elements for implementation:

1. Use of CRIA at federal and provincial levels for all legislative and program changes that have significant impact for children 0 – 18 in their jurisdiction.
2. Senior level coordination between federal departments through an inter-departmental body that provides direct input into decision-making by cabinet committees, with input from young people, civil society, and indigenous peoples through a children’s commission rooted in the Convention.
3. A senior level federal/provincial/first nations body responsible for coordinating implementation between jurisdictions and public reporting, with delegated decision-making authority, annual ministerial level meetings, and input from a children’s commission rooted in the Convention. Co-ordination would respect a nation-to-nation relationship between the federal government and first nations, while holding all duty-bearers accountable under the Convention.
4. Complaints mechanisms, established at federal/provincial/first-nations levels, based on recognition of the Convention in Canadian law as the guide for implementing the Charter of Rights and Freedoms for children.

Below is a brief explanation of the barriers and how these measures can address them.

Lack of coherence in policy for children:

At the federal level, Justice Canada says it does an assessment of major proposals to ensure compliance with children’s rights. It is a narrow, negative screening process to prevent the most egregious violations, and the track record includes policies later reversed because of successful rights claims. Designed to limit government liability as part of cabinet confidence, the process is not transparent and accountable to rights-holders. It does not include a positive assessment of how proposed measures might contribute to the progressive realization of children’s rights. It is totally inadequate to meet Canada’s obligations under the Convention as an interpretative guide to Charter rights for children in Canada.

At the provincial level, there is no clarity, consistency, or transparency in how the duties to realize the rights of children are implemented. Many provinces have a Minister for Children, but most mandates do not include children’s rights and essential areas that affect children’s rights.

Use of Children's Rights Impact Assessments at both federal and provincial levels is a feasible step toward greater coherence in public policy for children. Canada has repeatedly been asked to consider using a Children's Rights Impact Assessment (CRIA) at both federal and provincial levels to help ensure that all policies respect and contribute to realizing children's rights.

The province of New Brunswick has found the use of a CRIA process to be beneficial and feasible. It is designed to fit into its policy development process. There is also a growing awareness of the benefits of using gender impact analysis tools. At the federal level, a broad approach to Gender Based Analysis + may provide opportunities to include the components of a CRIA under the age element of the +, for all policies that impact persons under age 18. If this avenue is pursued, the Coalition emphasizes that the CRIA should include but also go beyond gender issues.

Champions for children have narrow mandates

At the federal level, the designation of a cabinet position as the Minister for Families, Children, and Social Development has been positive, e.g. the Canada Child Benefit, parental leave, and the Child Care Framework. However, the Minister has no mandate for matters that fall under other departments. One indicator of this is the fact that he does not chair the Interdepartmental Working Group on Children's Rights.

At the provincial level, many provinces have designated particular Ministers responsible for children's services, but their mandates are not specific on children's rights. The establishment of provincial advocates for children in almost all provinces has had positive impacts for specific cases of children in state care and some specific children's policies, but the mandates vary widely and many are not robust enough to implement the Convention across departments. Indigenous leaders, for example, have observed that their children have not necessarily fared better in child welfare systems in provinces with provincial advocates.

Lack of coordination between departments and levels of government

Falling through the cracks between the policies of different departments and different levels of government is a major factor for vulnerable children in Canada. In 2009 representatives from three major federal political parties responded to a major Senate study on children's rights with acknowledgement that our current system of governance does not work well for children, but no structural change has been made to improve the situation.

At the federal level, Canada continues to claim that the Interdepartmental Working Group on Children's Rights is adequate for implementing the Convention. The reality is that it is limited to information-exchange between mid-level officials. It has no direct connection to cabinet

decision-making processes and no access for children whose rights they are protecting or civil society groups who work with children.

For inter-governmental coordination, Canada's official reports continue to claim that the Federal-Provincial-Territorial Committee of Officials for Human Rights is adequate. In reality it is a clerical body to coordinate paper flows by well-meaning staff who have many other duties as well. It has no authority and weak access to decision-making processes. The number of meetings has increased, and the group now occasionally hears from some civil society groups, but there have been no substantive changes. In December, 2017, a Ministerial level meeting concluded with agreement on the need for major reform of this system, with specific mention of improvement in response to previous recommendations. The next report on children's rights is an opportunity and a test of the willingness to make much-needed structural changes.

Meanwhile, undisputed evidence from research fields such as the social indicators of health, children's health, and the prevention of bullying, show the benefits, including financial cost-savings, of using a more comprehensive and preventive approach to children's policy. Implementing the comprehensive framework in the Convention makes good economic sense as well as fulfilling duties.

To close the gaps, the Coalition recommends the establishment of senior level coordinating body that brings together federal, provincial, and First Nations representatives with a mandate rooted in children's rights and a focus on closing gaps, preventing discrimination, and positive realization of children's rights. At the federal level, the Coalition recommends that the Working Group be composed of more senior level officials or have a direct channel to senior levels of decision-making, such as a cabinet committee.

Both of these senior level bodies could be advised by a broad-based advisory group that brings together the voices of children, agencies who work with children, experts in children's rights, and officials from various levels of government, rooted in the Convention.

Weak foundation in law

Official reports continue to claim that the Canadian Charter of Human Rights and Freedoms is adequate to protect the rights of children. In reality, an increasing number of court judgments recognize that application for children should be guided by the Convention on the Rights of the Child because the Charter does not include specific provisions for childhood. Clear recognition of that principle in Canadian law is necessary to ensure its application in all cases.

Experience shows that children's rights will often lose out to other obligations that are enshrined in law until the Convention is given some status in Canadian law. The experience with implementing Jordan's Principle, a clear application of the Convention that had unanimous

support in a resolution of parliament, showed the importance of having equal or stronger legal status than other directions, in order to drive implementation. Judicial rulings that made a clear linkage between Jordan's Principle and the anti-discrimination provisions in the Charter of Rights and Freedoms have strengthened implementation and illustrate the benefits of bringing the Convention into domestic law in some way.

Canada has repeatedly been asked by the UN Committee on the Rights of the Child to:

find the appropriate constitutional path that will allow it to have in the whole territory of the State Party, including its provinces and territories, a comprehensive legal framework which fully incorporates the provisions of the Convention and its Optional Protocols and provides clear guidelines for consistent application. (Concluding Observations: Canada, CRC/C/CAN/CO/3-4, paragraph 11, p.3)

Given the Ministerial level commitment to respond to previous recommendations, the 5th/6th report needs to take this recommendation seriously and put forward a plan to bring the Convention into Canadian law.

A related recommendation is the establishment of appeal mechanisms that children can use, especially when their right to have their views considered are not respected. Establishment of such mechanisms within federal, provincial, and first nations bodies that govern children's policies would also allow Canada to ratify the third Optional Protocol. It would allow complaints to the UN Committee on the Rights of the Child after exhausting the available mechanisms in Canada.

Conclusion

A systems approach is essential to remove the barriers for effective implementation of the Convention in Canada. The four elements recommended by the Coalition for inclusion in the 5th/6th report would be a strong start to build on until children's rights are mainstreamed through both federal and provincial governance.