

We Still Have Far to Go

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I began my child rights focused legal practice the year that Canada ratified the UN Convention on the Rights of the Child. I was a young lawyer at the legal clinic Justice for Children and Youth. It remains a unique organization in Canada that represents and advocates for the rights of young people in Ontario and conducts strategic litigation across Canada. The five lawyers who worked there at that time were often viewed as curiosities. Sometimes the reaction we got was well-meaning condescension other times hostility for daring to argue for the views and wishes of our young clients before courts and with other lawyers. It was often much worse for our clients.

The UNCRC was also viewed that way in the beginning – a well-meaning document that had no influence or alternatively, something to be looked at with suspicion and deliberately interpreted in such a way as to have no affect on the legal decisions that impacted children. You see this dual tendency in the first Supreme Court of Canada case to mention the UNCRC, *Baker v Canada*. Ms. Baker was facing deportation from Canada and a key argument on her behalf was that the government had to consider the impact of this on the best interests of her children who were Canadian citizens entitled to stay in Canada. Justice L'Heureux-Dubé spoke quite eloquently about the importance of children's rights in Canada, but she did not speak for the majority of the Court and the children themselves were denied standing in the case. The majority of the judges of the Court instead stated that the UNCRC is not binding law despite being ratified by Canada. However, the Court did overturn the deportation decision and sent it back for reconsideration of the impact on the best interests of her children.

Justice L'Heureux-Dubé's words resonated beyond that particular case and the importance of the UNCRC began to take hold in the minds of judges and legislators. While governments have been slow to bring the UNCRC into law, it is referenced in the preamble to the Youth Criminal Justice Act and its principles are found in the new Ontario Child, Youth and Family Services Act. Major court cases involving the rights and interests of children now routinely use the UNCRC as a key interpretive tool.

While there has been steady progress, there have been major set-backs along the way. Fifteen years ago, the Supreme Court's denial of the rights of children in the constitutional challenge to the defence for corporal punishment in the Criminal Code, was a particularly disappointing loss. But I truly believe that if that case were brought today, we would be successful, such is the progress that has been made.

As a child rights advocate, I no longer feel that I am part of a small marginalized group. Lawyers across the country have come together through the Canadian Bar Association to participate in a Child and Youth Law Section which published an online toolkit for

children's rights on how to use the UNCRC in legal advocacy. And leading constitutional lawyers, such as Joseph Arvai in British Columbia, are taking on strategic litigation on behalf of child and youth challenging climate change policies from a child rights perspective. While it would be an overstatement to say that "everyone wants to be a child rights lawyer," certainly more and more advocates are becoming comfortable taking on that role.

But while I see progress in the legal profession, as a country there remains much work to be done if the UNCRC and the voice of children and youth are to be fully respected. The elimination of the independent Advocate for Children and Youth in Ontario was a major set-back and something that should engender shame. The steady opposition by the federal government to the discrimination claims of First Nations children in respect of child welfare and health care services on reserves throughout Canada is baffling. And Canada has been a laggard on such important child rights issues as the establishment of a Children's Commissioner and the elimination of the defence for physical punishment despite it being a recommendation of the Truth and Reconciliation Commission's Calls to Action.

On the 30th birthday of the Convention on the Rights of the Child I remain hopeful that the foundational work that has been done will lead to greater awareness and realization of child rights. While it is frustrating that we still have far to go, I am heartened by the fact that there are more advocates and young people taking up the charge.