



August 22, 2024

The Canadian Coalition for the Rights of Children (CCRC) submission to the Committee on the Rights of the Child for general comment No. 27 on children’s rights to access justice and effective remedies

CANADA is a State Party to the Convention on the Rights of the Child (“the Convention”).¹ Despite this, children in Canada face serious obstacles and struggles to access justice and effective remedies when their rights have been violated. These articulate the principles that need to be highlighted in general comment No. 27 to build greater understanding of what true access to justice ought to be for children. Without access to justice, children’s rights are “ideals” and not enforceable or meaningful to their lived experiences.

As a national umbrella group of organizations and individuals committed to the full implementation of the Convention in Canada and globally, the Canadian Coalition for the Rights of Children (CCRC)² hereby submits for the consideration of the Committee the following points with regard to Canada to supplement general comment No. 27.

1. Access to justice and effective remedies for children necessitates the Convention being incorporated into all domestic legislation.

Children in Canada do not have clear or consistent mechanisms to uphold their rights in the event that their rights under the Convention have been infringed. Despite ratifying the Convention three decades ago, Canada has failed to pass domestic legislation incorporating it consistently into all federal and provincial/territorial laws.

2. Domestic legislation and policy cannot comply with the Convention unless they are formed, reviewed, and evaluated using Children’s Rights Impact Assessments

In Canada, Child Rights Impact Assessments are not required for most policy and legislations. Child Rights Impact Assessments (CRIA) have been administratively adopted in just three Canadian jurisdictions: Yukon, New Brunswick, and Prince Edward Island.

In July 2023, Justice Canada launched the CRIA tool and e-learning course. The CRIA tool is designed to help users analyze how federal laws, programs, policies and initiatives impact children, through the framework of child rights recognized in the Convention. There is no legal

¹ Entered into force 2 September 1990, accession by Canada 12 December, 1991.

² [Canadian Coalition for the Rights of Children](#) (CCRC).

obligation to apply this tool, and it has not been applied to any federal legislation or in any child rights legal decisions since its introduction.

To better understand how laws may impact children, and to comply with the Convention, CRIA assessments should be mandatory to ensure a child focused analysis of all laws and policies that impact children. This analysis would enhance children's rights, access to justice and appropriate remedies in the event of rights based violations.

3. State Parties must comply with the Optional Protocol to the Convention on the Rights of the Child on a communications procedure to ensure international safeguards for effective remedies for children.

Canada has not ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and continues to refuse to do so under the erroneous assertion that sufficient remedy for child rights violations is provided under Canadian domestic law (see points 3 through 7, below).

However, there are insufficient remedies in domestic law and this is articulated by the limitations of children to challenge the climate change policies in Canada. Litigation guardians representing 15 youth filed a lawsuit against Canada to complain that federal climate change policies violated their equality rights as children and their right to "life, liberty and security of the person" under Canada's *Charter of Rights and Freedoms*.³ These youth were not otherwise empowered to affirm their rights through the democratic voting process, nor through filing a lawsuit on their own behalf, being below the age of majority they are not entitled to vote and cannot file a civil lawsuit without a litigation guardian.

4. State Parties require an independent office for children on Provincial/Territorial and Federal level where children can learn about their rights to access justice and effective remedies

There is no centralized mechanism or authority with regard to children's rights in Canada. Despite this shopping list of complaint and appeal mechanisms (see point 5), there is no one centralized authority that children can turn to when their rights are at stake. Each of the listed institutions are responsible for addressing complaints that fall solely within their specific mandate. The variation in these offices' mandates creates a disparity of services to children and families who experience rights violations.

Significant gaps remain in access to justice for the full range of child rights under the Convention; many more remain unaddressed due to the convoluted, frustrating, and fundamentally adult-focused legal systems in Canada.

³ *Canadian Charter of Rights and Freedoms*, ss 7, 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11; *La Rose v Canada*, 2023 FCA

Canada has failed to respond to repeated calls to establish an independent office for children at the federal level, including in the concluding observations of the combined 3rd/4th and combined 5th/6th reviews of Canada by the UN Committee on the Rights of the Child.

Child-specific offices, such as Provincial/Territorial Child Advocate Offices, tend to be more responsive to the needs of children in the design and delivery of their services. Many will tailor their outreach to account for children's particular vulnerabilities, by providing mobile teams/home visits, gender-sensitive case assignment, and translation and accessibility services. Nevertheless, such accommodations remain unavailable to children who do not fall within these organizations' narrow mandates.

All provinces and territories in Canada currently have some form of independent office for children, except Nova Scotia.

Despite these provincial/territorial models, there remains a need at the federal level given the number of issues that fall within the federal purview, particularly for First Nations, Métis and Inuit children, families and communities, and to ensure a Canada-wide understanding and responsiveness to the issues occurring across the country.

5. Child friendly access to justice is multifactorial

Children in Canada have access to a wide array of mechanisms for complaint and redress where their rights have been violated, provided a legal adult files the complaints on the child's behalf. The necessity of a parent or legal guardian's consent or participation on behalf of a child as a litigation guardian limits their recourse and enhances their dependency rather than building their capacity and recognizing their autonomy. This fundamentally misunderstands the proper role and function of adult duty bearers and state actors and leaves children vulnerable to a paternalistic assessment of when their rights are "important" or "worthy" of recourse.

Canada has a robust legal system; these mechanisms include, but are not limited to:

- Criminal courts
- Civil proceedings
- Canadian Human Rights Commission and Tribunals
- Provincial/Territorial Human Rights Commissions and Tribunals
- Provincial/Territorial and Federal Courts of Appeal
- Supreme Court of Canada
- Provincial/Territorial Ombudspersons
- Provincial/Territorial Child Advocate Offices
- Local Boards of Education
- Patient Ombudspersons
- Information & Privacy Commissioner of Canada

These systems fail to adequately offer access to justice for children and effective remedies. The below three areas would aid in creating more accountability.

a. Child and youth focused/friendly courts

Existing mechanisms for children to access justice in Canada are not child-friendly. There are limited examples of child focused courts and tribunals in Canada. The sheer number of and complexity of institutions and mechanisms to which child rights violations can be addressed is inherently unfriendly to the successful utilization of these mechanisms by children themselves. The degree to which these institutions communicate their mandates effectively to children varies widely. The vast majority of existing mechanisms fail to take the opinions and experiences of children into account in the design of their administrative processes, including the model of service delivery. The lack of consistent standards as to what a child-friendly and rights-based approach looks like in Canada creates inequitable access for children to relevant mechanisms and information about their rights leaving them unable to effectively self-advocate and claim their rights.

b. Expedited timelines for proceedings in keeping with a child's concept of time and speed of development

Children's cases are rarely given priority or accelerated. For example, the Canadian Human Rights Tribunal (CHRT) found the Canadian government racially discriminated against 165,000 First Nations children in the inequitable provision of child welfare services.⁴ This was widely-lauded as a landmark decision for human rights. However, the case was originally filed in 2006, a full 10 years before the decision. The remedy for this discrimination remains unresolved (see point 6, below) as of 2024.

c. Specialized training for judges and lawyers in these courts

There is almost no mandatory training for judges, adjudicators, and lawyers dealing with matters that directly affect children.

6. Children require legal standing and free legal representation to guarantee their access to justice

There are limited circumstances where children have legal standing in Canadian courts and administrative tribunals. In many jurisdictions and areas of law, children have no legal standing; they need to rely on their guardians to pursue justice. In Ontario, for example, children can be expelled from school without having any opportunity to be heard, because they have no standing or right to appeal in disciplinary processes. These rights flow to the parent/legal guardian. This is a serious failure to implement basic principles of the Convention in processes that are critical for realizing a child's full potential.

⁴ Funding for capital assets: Jordan's Principle and First Nations child and family services (sac-isc.gc.ca)

Children in Canada have limited access to legal representation outside of the youth criminal justice system. There is limited, discretionary representation in a few areas, and none in many areas of law that affect children. Access to lawyers is limited and varies greatly, depending on location; there is only one full-service youth-specific legal clinic in Canada - Justice for Children and Youth. Some court-appointed lawyers advance the child's best interests, but they are not always required to act on the child's instructions, and, in some cases, they do not even meet with the child.

Children with intersectional needs based on such grounds as their cultural identities, disabilities and geographic locations face additional barriers to accessing legal representation and remedies, should their rights be violated or limited.

7. Principles of Art.3 (Best Interests) and Art.12 (Right to be Heard) are fundamental legal principles to rights based remedies for children inconsistently applied.

The concept of the 'Best Interest of the Child' has been adopted into Canadian law through Supreme Court and appellate established jurisprudence. However, Canada's courts do not recognize the 'best interest of the child' as a fundamental right with constitutional protection under the *Canadian Charter of Rights and Freedoms*. More concerning, the determination of a child's best interest is not subject to a systemic approach, and is often open to a paternalistic interpretation. Engaging the child and considering their views are not requirements in determining their best interests.

That both 'the best interests of the child' and 'the right to be heard' are consistently referenced but inconsistently applied by Canadian courts which contributes to a general softening or 'watering down' of these fundamental rights.

8. Access to justice for children necessitates added protections that are culturally specific/sensitive and resources for Indigenous children and religious/cultural/linguistic minorities children.

First Nations children in Canada continue to face discriminatory shortfalls in funding and access across a wide range of government services despite multiple CHRT rulings. Canada's inadequate responses to children's rights are highlighted by the CHRT ruling that Canada funded First Nation health and welfare services far below levels provided for other children. First Nations child advocates advanced Jordan's Principle⁵ in a 2006 human rights complaint to address discriminatory shortcomings in funding for health and welfare services.

Though Canada has agreed to apply Jordan's Principle in making funding decisions on a case-by-case basis, the federal government limits the scope of its application. This has resulted in multiple CHRT rulings against the government's obligation to fund First Nations children's health

⁵ [Jordan's Principle | First Nations Child & Family Caring Society \(fncaringsociety.com\)](https://www.fncaringsociety.com/)

and welfare services. Despite numerous CHRT orders, First Nations children continue to face discriminatory shortfalls in funding across a wide range of services, including healthcare and access to clean drinking water.

9. Substantive content on children's rights must be included in school curriculum and school policies must be rights-based.

Canadian education systems do not include substantive content on children's rights in their curricula and many school policies are not rights-based. As a result, there is low awareness of children's rights among adults and children in Canada.

An integral part for children's access to justice and effective remedies is knowing their rights and where to go when these rights are violated. Due to the lack of formal child rights education in Canada, most children are not aware of their rights under the Convention, the *Canadian Charter of Rights and Freedoms*, or under domestic laws related to education, employment, youth criminal justice, family, housing, etc.

A 2017 CCRC survey⁶ of provincial education curricula showed that no Canadian province or territory systematically teaches children's rights. Where children's rights education may occur, there is a lack of monitoring of the quality of instruction, training for teachers in children's rights, and measures to ensure that all teachers and officials in the school are knowledgeable about the meaning of children's rights. The fundamental principles of the Convention and the provisions of Articles 28 and 29 are not recognized in most provincial and territorial education legislation and policy documents, despite Canada having ratified the Convention in 1991 and has the responsibilities to respect the Convention.

Many school policies are not rights-based; those who work with children in schools are not trained in children's rights; there are often no systems of reporting and accountability for violating child rights, and few (if any) identified avenues for children and parents to address concerns about children's rights violations within Canada's education systems.

Advancing child rights awareness must encompass education and awareness among adults with legal responsibilities to children, including parents and legal guardians. In Canada, adults are the only people empowered with legal standing; children have no legal venue in which to claim a remedy to their child rights, should they be violated. Currently, adults have no positive obligation to affirm and protect child rights, nor to ensure children can access those rights.

10. Data collection, monitoring, and reporting obligations can hold State Parties Accountable

⁶ Canadian Coalition for the Rights of Children. (2017). Children's Rights and Education. <http://rightsofchildren.ca/wp-content/uploads/2017/10/Discussion-Paper-on-Childrens-Rights-and-Education-2017.pdf>

Canada does not monitor children's access to justice and their right to remedies. Data on children's access to justice is not collected at the national level. Based on the available evidence, disaggregated data on children's access to justice can be presumed to show significant variance in access to justice for children across race, gender, age, location, disability, and immigration status.