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Lessons Learned:
Advocacy for Children's Rights in Canada
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Introduction

The recent government decision to bring 13 Canadian children and six mothers home from prison camps in northern Syria is welcome. Finally. Three years late. What can we learn from this case, as advocates for children's rights? That is my focus in the following reflection, not the substance of the case.

What it takes to get action

I actively engaged in advocacy for these children more than three years ago, as Chair of the CCRC, along with other human rights groups. We did everything good advocates do. We gathered evidence – that was not disputed. We presented a clear case, with feasible actions. As well as duties under international human rights law, we also drew on commitments that both Conservative and Liberal governments had made during the time Canada was an international leader on protecting children caught in armed conflicts.

We did public education to build support for the government to do the right thing. We helped remove obstacles to make it easier for the government to do the right thing. International alliances and actions by other governments prepared the way for Canada to follow. We then focused on one child and found a way to bring her home in spite of the government. Only when the government was going to be politically embarrassed did they support the return of one girl – but then left all the other children in similar life-threatening conditions.

What caused the change now? The government was going to lose a court case. Only then they did what should have been done three years ago. Three years is a long time in the lives of children.

Court judgments define human rights

For government officials, human rights are lofty words until there is a court ruling or very specific laws that compel compliance. My experience of this over many years was confirmed by the Honourable Jody Wilson-Raybould in her book, *Indian in Cabinet*. She recounts the first time she asked the Justice Department about indigenous rights as a new Minister of Justice. Indigenous rights, she reports, were treated as a bucket into which all previous court decisions were put. That's what matters. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), recommendations from reviews of international treaty obligations, decisions by

parliament, etc. are not taken seriously. Thankfully, UNDRIP has now become part of Canadian law. Hopefully, implementation will now be taken more seriously.

The same pattern has been true in my many years of advocacy for children's rights. An outdated 2004 court ruling still defines Canada's position on corporal punishment, in spite of overwhelming evidence since then about harm to children. "Evidence-based" decision-making does not apply. It is a "go to court and force the government to change" approach, which is harmful for children and wasteful of limited resources we need to create a better future for children. The same pattern happened with Jordan's Principle, a clear children's rights measure. In spite of unanimous parliamentary direction, it took court rulings to get serious implementation. Recall how many court rulings have been required to redress admitted wrongs in Indigenous child welfare.

Sometimes more than one court decision is needed to change policy. Central to the Supreme Court ruling on the Omar Khadr case was the government's violation of the Best Interests of the Child principle (BIC). Afterward I asked Justice department officials if they would now change the way the government implements BIC, also to comply with repeated recommendations in the regular reviews of Canada under the Convention on the Rights of the Child (CRC), and recommendations in a three-year Senate study on children's rights in Canada. The answer was that they would wait for another court ruling. Now Canada has received another recommendation to take BIC seriously in another review under the CRC. I am watching, but I doubt anything will be changed, until there is another court ruling.

A special insert on the anniversary of the Canadian Charter of Rights in the December issue of *Walrus* magazine, paid for by the government, reflects the same narrow approach to human rights. While it celebrates progress under the Charter, it states that positive rights, economic and social rights, and international human rights obligations are "great, unresolved questions." Why? Because there are not enough court cases to define the buckets.

Two Learnings for Children's Rights Advocates

1. More legal challenges to establish rights

It is sad and should not be true, but the reality is that children's rights advocates may need to spend more resources on test legal cases. Going to court is difficult for children and their supporters – it should not be necessary. Our reality is that research, facilitating children's voices, and solid policy advocacy are mostly ignored, no matter how compelling. Court rulings or a credible threat of losing in court seems to be the only prod that really works.

Children's rights advocates are known for playing "nice." After all, we set examples for children. I sometimes worry what young people are really learning when they try to exercise their rights in polite ways and see no return on their effort. Maybe it is time for more muscular strategies to assert and claim the rights of children in Canada.

2. Change the way human rights are treated in the machinery of government

Getting the CRC into Canadian law is one way to force officials to take it seriously. Until that happens, I fear that all the excellent advocacy work and even a Children's Commissioner will not lead to effective implementation. It is one of the basic steps that should have been taken 30 years ago when Canada ratified the CRC and bragged about being a leader in children's rights.

Another option is a law on implementation of all human rights, something many human rights groups have advocated for years. Meanwhile, we try to make a dent through the regular review processes, mentions in specific laws such as the right to housing in housing legislation, or the references to human rights in laws on poverty reduction in Canada and international development assistance. A lot of civil society energy goes into these minimal steps, with very limited results in the real lives of children.

A positive approach has potential

Seeing implementation of human rights as a positive tool for good governance and a way to make federalism work better is recognized by some officials as having potential in Canada. An asset-based approach would shift the focus to up-front, preventive actions instead of court battles. I have found recognition of the potential benefit, along with recognition that court battles are a costly waste of resources, but no willingness to make the systemic changes required to do that. Most senior officials are shuffled to other positions between the point they "get" it and the time it takes to make systemic changes. Perhaps appointment of a strong Minister for Human Rights in Canada and internationally could finally break through the systemic barriers, but I don't see that happening anytime soon.

Are we learning anything? Canada's response to recommendations in the latest review, already delayed after promises to do better this time, will be the next indicator of lessons learned. Maybe children in Canada will be surprised.