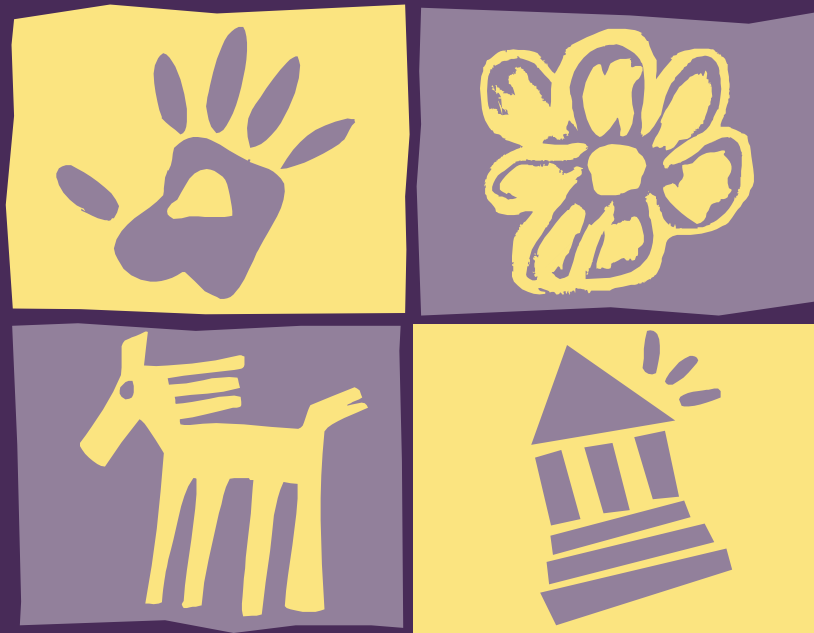


# THE UN CONVENTION ON THE RIGHTS OF THE CHILD



how does canada  
measure up?



November 1999

The Board of Directors of the Canadian Coalition for the Rights of Children is pleased to present **The UN Convention on the Rights of the Child: How Does Canada Measure Up?** This monitoring initiative is a highwater mark in the Coalition's 10-year history. In 1989, nine organizations committed to work with the Honourable Landon Pearson, the founding chairperson of the Coalition, to promote the ratification of the Convention and raise awareness of children's rights in Canada. Today, 34 organizations, in concert with many others, are presenting Canada's first five-year non-governmental progress report to the UN Committee.

Monitoring the implementation of the Convention is a massive undertaking in a country as diverse as Canada. Through the support of many non-governmental organizations, of experts in the areas under consideration, of students who gave so generously of their time, of the project team and of course of the funders who made it possible, this project is a testimony to the dedication of Canadians working in different ways to improve the outcomes for children in this country and abroad.

This is just a beginning. The Coalition has created the foundation for a uniquely Canadian monitoring process that can be built upon. It is now time for Canada to implement a permanent monitoring mechanism and through it, to work towards enhancing the health, happiness and well-being of children everywhere.

Board of Directors

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# introduction



The mission of the Canadian Coalition for the Rights of Children is to ensure a collective voice for Canadian organizations concerned with the rights of children\* as outlined in the United Nations *Convention on the Rights of the Child*. This year, Canada submits its first five-year progress report to the UN Committee on the Rights of the Child, as required by article 44 of the Convention. To complement the report submitted by the Government of Canada, the Canadian Coalition for the Rights of Children has developed this non-governmental report on how Canada measures up.

Monitoring the Convention is a complex and time-consuming undertaking that requires ongoing commitment. The UN Committee has recommended that Canada establish a permanent monitoring mechanism and the Coalition has used this project as an opportunity to develop and test the framework and components of a permanent monitoring mechanism for non-governmental organizations.

This report was developed through extensive consultation with organizations, experts and young people across the country.

## Methodology

### Limitations

This report does not evaluate Canada's implementation of every article of the Convention. Consequently, Canada's compliance has been evaluated in six general areas. The research focusses on selected jurisdictions over a particular period of time because it was not possible to research compliance in all 10 provinces and three territories with the available resources.

### Articles Researched

Since all articles could not be addressed, the Coalition's Board of Directors decided that:

- at least one article would be researched from the UN Committee's reporting categories four to eight; and
- selected articles should be able to be researched within the project's time frame.

In the end, all of the reporting categories were addressed to some extent.

### Research Period

The project was launched in April 1998 when 75 experts came together at a working forum to consider what should be monitored and what protocols and processes should be established to direct the monitoring. The articles to be monitored were subsequently identified and research was conducted until February 1999, when review and evaluation committees were formed. Most of the task groups completed their evaluations by the end of June 1999 and no further research was conducted.

### Reporting Categories and Articles Researched

#### 1. General Measures of Implementation

Article 4: Canada's international cooperation to promote and enhance children's rights

#### 2. Definition of the Child

Considered throughout

#### 3. General Principles

Considered throughout

#### 4. Civil Rights and Freedoms

Articles 13, 14 and 15: Freedom of expression, freedom of thought, conscience and religion, and freedom of association and peaceful assembly

#### 5. Family Environment and Alternative Care

Article 19: Abuse and Neglect

#### 6. Basic Health and Welfare

Article 23: Children with Disabilities

#### 7. Education, Leisure and Cultural Activities

Articles 28 and 29: The Right to and Aims of Education

#### 8. Special Protection Measures

Article 22: Refugee Children

\* "Children" has been used throughout to refer to people under 18 years of age.

# how does canada measure up?



The Canadian Coalition for the Rights of Children researched six areas related to Convention articles on education, fundamental freedoms, abuse and neglect, refugee children, children with disabilities and

Canada's international obligations. Following this one-year examination of children's rights in Canada, the Coalition concludes that Canada meets most of its obligations under the *UN Convention on the Rights of the Child*.

However, the Coalition's research also documents seven areas in which children's rights are being systemically violated and 26 situations where action is required before Canada's compliance with the Convention can be met in the articles examined. Several issues of concern affect all research areas.

Canada's *Charter of Rights and Freedoms* guarantees that everyone within Canada's borders is entitled to life, liberty and security. Human rights legislation generally prohibits discrimination based on race, colour, place of origin, family status, religion, political belief, physical or mental disability, gender and sexual orientation. Children's right to education is assured in Canadian legislation, which provides for primary and secondary schooling and obliges all children to attend. School children are given varying opportunities to develop their talents and abilities. Provincial and territorial governments have a duty to intervene to protect a

child at risk from abuse or neglect. Refugee children are eligible for health care, education and settlement services in Canada. The *Canada Health Act* ensures free, universal health care for all Canadians. Every province and territory has a stated commitment to integrated, inclusive education for children with disabilities. Children's rights are an explicit priority in Canadian foreign policy.

## Where are the Children?

Since the Convention is not part of domestic law, it is not legally enforceable. Canadian legislation rarely recognizes children specifically. While the *Charter of Rights and Freedoms* guarantees rights for everyone, children are often overlooked. Legislation can place unreasonable restrictions on children's human rights and fundamental freedoms.

Children are usually not recognized as subjects of human rights and adults can place arbitrary limits on children's fundamental freedoms. Teachers and principals, for example, have broad discretionary powers and can restrict students' freedoms with little, if any, accountability. There are few redress mechanisms available to children. Most of the restrictions that children face on a daily basis are not entrenched in law but are part of school policies or are rules of the family. In these situations, children's fundamental freedoms are very dependent on the good will of adults.

It is difficult to determine the extent to which children's fundamental freedoms are recognized and promoted in Canada, for there is a critical lack of accessible and reliable information. However, rights education is not part of most schools' core curricula and children's Convention rights have not been widely promoted in Canada.

To some extent, Canada upholds the Convention's general principles of non-discrimination, best interests of the child, maximum survival and development, and respect for the child's views. School boards across the country promote multiculturalism, diversity and anti-discrimination; however, widespread homophobia among students is a recognized problem. In child welfare cases, the child's best interests are weighed against parent's rights. In other areas, children's "best interests" are ignored or are interpreted without considering the views of the children at all. The general principle of maximum survival and development is not assured for our most vulnerable children, such as children with disabilities, Aboriginal children and children in the care of the state.

## Jurisdictions

Canada is a federation of 10 provinces and three territories. Where a child lives often determines the degree to which his or her rights are met. There can be significant differences in the programs and services children receive in different parts of the country. Home care services for families with children with disabilities vary widely and there is no effort to create standards or even to define basic services. Although

there are no national standards for settlement services for refugees, the federal government is transferring authority for these services to the provinces and territories. Child welfare services are often fragmented and uncoordinated within jurisdictions, with resources unevenly allocated across regions. For Aboriginal children living on reserves, the delivery of services is further complicated by jurisdictional disputes.

## Research and Data

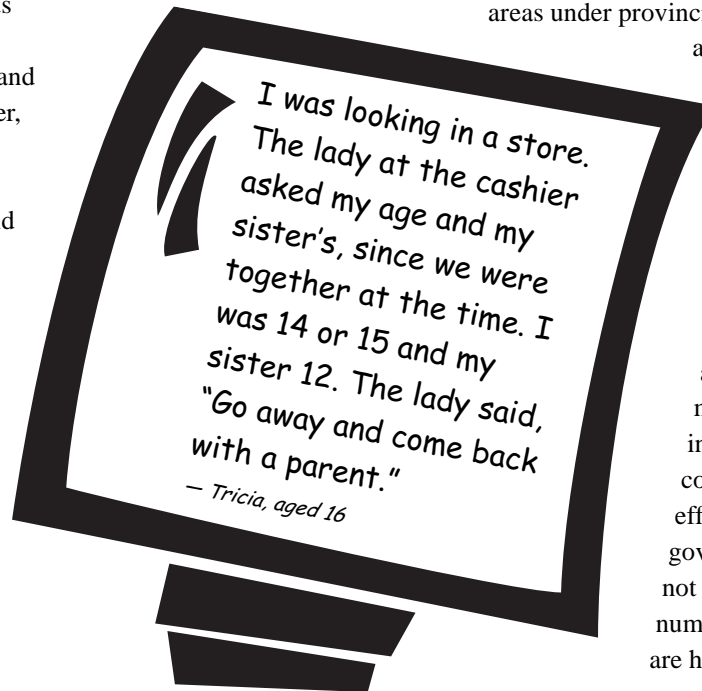
There is little national information about children in areas under provincial and territorial authority, as there are extensive

variations in the types of data collected and the manner in which they are reported. For example, there are no national statistics on child abuse and neglect in Canada and insufficient information about how to prevent maltreatment. This lack of information on children constrains the development of effective services. The federal government, for instance, does not collect statistics on the number of child refugees who are held in detention. The most recent national study on children with disabilities was conducted in 1991. Statistics and information on

Canadian foreign policy and programs for children are unclear and unreliable. There are no statistics on the number of children with disabilities who file complaints with human rights commissions.

## Resources

Resources for children's programs and services are often stretched or unstable. Canada's financial commitment to international aid has been dwindling. Cutbacks to education funding and the closing of schools have undermined access to and quality of



education, especially in special education, citizenship, social studies and arts education. Child welfare services have taken a back seat to budget cuts in some provinces, despite growing caseloads, chronic waiting lists and worker burnout.

Public services do not sufficiently recognize the extra demands placed on the families of children with disabilities and many need better financial, social and emotional supports. Despite the high number of Aboriginal children affected by disability, the delivery of services in Aboriginal communities is generally poor or non-existent. Settlement support is offered to refugee families for only one year. Canada has had little success in reducing child poverty and 19.8 percent of children under the age of 18 live in low income families.

## Vulnerable Children

In Canada, as in all countries of the world, some children are particularly vulnerable. In this study, Aboriginal children, children with disabilities, abused and neglected children and refugee children were found to be particularly at risk.

### Aboriginal Children

Aboriginal Canadians have a disability rate that is more than twice the national average. Aboriginal children are at a greater risk of school failure than other Canadian children. A disproportionate number of Aboriginal children are victims of abuse and neglect in comparison to non-Aboriginal children. The suicide rate among Aboriginal youth is about five times the national rate. Many aboriginal children live in poverty.

### Children with Disabilities

An estimated 535,000 children and youth under age 20 have some form of disability. Children with disabilities have varying opportunities to live “full and decent lives” and the supports and services they need are not considered an entitlement but a privilege. Many families of children with disabilities do not receive adequate assistance.

Early identification and intervention services are not universally available and the right to appropriate education in the most enabling environment is not guaranteed.

### Abused and Neglected Children

Abused and neglected children continue to fall through the cracks in our child welfare systems. Inquests and inquiries into the deaths of children who were killed by their parents speak of inadequate risk assessments, insufficient training for social workers, a lack of service coordination and information sharing, a shortage of placement facilities, failed foster placements, a crisis orientation, and the lack of long-term planning for children who are in the care of the state.

### Refugee Children

Generally, Canada does not grant asylum to overseas refugees who might be expected to cause excessive demands on health or social services. Child refugees who arrive in Canada can be detained and there are no detention standards. The refugee determination system is slow and the long wait unduly prolongs uncertainty in the lives of children and their families. Family reunification is rarely dealt with in a positive and expeditious manner. The interests of children are not taken into account in decisions to deport their parents.

## Finding Solutions

Canada needs to develop a comprehensive strategy to increase awareness of children’s rights and to galvanize the energy and resources to ensure these rights. Many of the issues are complex, requiring a broad community response.

Canada needs a standardized and comprehensive data collection about children at all levels of government. Without data that is comparable across time and jurisdictions, it will remain difficult to monitor children’s rights and determine necessary interventions.

# report summaries & evaluations



Evaluations were based on the evaluation tool shown below. The criteria for “meets compliance” was applied first and where compliance was not reached, “rights alert,” “needs action” or “needs dialogue” was applied.

## EVALUATION TOOL

Convention Article:					
	What	Meets Compliance	Rights Alert	Needs Action	Needs Dialogue
<b>Legislation &amp; Case Law</b>	International				
	Federal				
	Provincial/Territorial				
<b>Policy</b>	Federal				
	Provincial/Territorial				
	Local				
<b>Practice</b>	Federal				
	Provincial/Territorial				
	Local				

## Evaluation Criteria

### MEETS COMPLIANCE

- Confident that children’s rights are systemically being respected.
- In a situation where legislation meets compliance but case law or practice does not, if there are adequate redress mechanisms in place then compliance can still be met.
- While individuals may, from time to time, disregard the rights of children, compliance can still be met if redress mechanisms are in place to correct this.

### RIGHTS ALERT

- Systemic violation of children’s rights.

### NEEDS ACTION

- Definable action is needed to improve children’s rights.
- Can include lack of statistics/research.

### NEEDS DIALOGUE

- Action required is unclear or undefinable, and situation requires (public) dialogue.



UN Reporting Category:  
General Measures of Implementation



## convention article 4

# International Cooperation to Promote and Enhance Children's Rights

Article 4 requires Convention signatories to take all necessary measures to implement Convention rights and to promote children's economic, social and cultural rights within the framework of international cooperation.

Over the years, Canada has played a significant role in promoting children's rights in the international sphere. For example, Canada helped draft the Convention and co-hosted the 1990 World Summit for Children, where governments of 71 countries agreed to a 10-year agenda for improving the well-being of children. The federal government has been active in a number of children's rights areas, such as preventing the commercial sexual exploitation of children, protecting children in armed conflicts and ending discrimination against girls.

Children's rights are an explicit priority in Canadian foreign policy. However, it is not clear how well this philosophical commitment is supported in practice. A major concern is Canada's dwindling financial commitment to international aid. In 1970, Canada and other industrialized countries agreed to target 0.7 percent of Gross National Product (GNP) for international development aid. Canada has never met that target and, as the Organization of Economic Cooperation and Development reports, the percentage of Canada's aid spending has actually declined an average of 3.3 percent per year from 1990-91 to 1995-96. In 1997, Canada's spending on overseas development assistance was 0.32 percent of GNP (or \$1.795 billion).

The amount of Official Development Assistance (ODA) that is directed towards children is difficult to determine. As part of the Plan of Action resulting from the 1990 World Summit for Children, the Canadian International Development Agency (CIDA) recently started publishing annual reports that detail disbursements with a perceived impact on children. "Direct" programming for children is when children are specifically included among the initiative's target groups. "Indirect" programming is when children are not targeted but are believed to benefit nonetheless. Programs in which women make up over 50 percent of the project target group, for example, are considered to indirectly benefit children. Of the \$580.98 million that CIDA estimates it spent on programs supporting children in 1996-97, less than half (\$238.4 million) was "direct" spending. Direct programming for children focused on basic human needs--particularly immunization and the elimination of iodine deficiencies. Indirect programming tended to focus on community development, poverty reduction and support for the role and status of women. Unless CIDA's assumptions about the direct and indirect benefits for children are backed by child-focused, results-based program assessments, it is very difficult to determine if and how children have actually benefited from CIDA's programs.

The 20:20 initiative of the United Nations Development Program (UNDP) is another area in which the government appears to be committed in principle but not in practice. The 20:20 initiative encourages donor countries to allocate at least 20 percent of foreign aid to human priority goals, such as primary education, primary health care, safe drinking water and sanitation. However, CIDA has no clear policy guidelines, implementation strategy or annual goals for 20:20.

The federal government ratified the UN *Convention on the Rights of the Child* and committed to recognizing children's rights and improving the quality of their lives, but CIDA does not have a clear strategy for incorporating the Convention's principles into its ODA initiatives. In June 1997, CIDA published a draft *Strategy for Children*, which proposed to improve children's health, knowledge and skills and to protect children's rights from abuse, exploitation and violence. This promising strategy has not been adopted as policy, however, and children's issues continue to be addressed peripherally, if at all. Beyond CIDA, other relevant federal policies, including trade, export and debt reduction, appear to be implemented without consideration of their impact on children in developing countries.

Although it is difficult to evaluate the impact of aid on children's development from the information available, it is

clear that children do benefit from a number of ongoing initiatives, including:

- programs to improve children's health and address HIV/AIDS, micronutrient deficiencies, female genital mutilation and immunization;
- efforts to facilitate respect for the views of the child through international meetings and conferences on land mines, gender issues, child labour, and sexual exploitation and abuse;
- the adoption by Canada of the *Hague Convention on the Civil Aspects of International Child Abduction* and the development of "Our Missing Children," a program to protect abducted children found crossing international borders;
- the ratification by Canada of the *Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption*; and
- cooperation with the International Labour Organization to eliminate the worst forms of child labour.

UN Reporting Category:  
Civil Rights and Freedoms



## convention articles 13, 14 and 15

### The Fundamental Freedoms

#### article 4



### how does canada measure up?

**RIGHTS ALERT:** Canada has not honoured its commitment to spend 0.7 percent of GNP on international aid.

**NEEDS ACTION:** Statistics and information on federal programs and policies for children are unclear and unreliable.

**NEEDS ACTION:** CIDA has no goal or strategy for adopting the principles of the Convention.

**NEEDS ACTION:** CIDA needs tools to evaluate the impact of its programs on children. Other federal departments, such as Foreign Affairs and International Trade, need to look at the effects of Canadian policies on children in developing countries.

Articles 13, 14 and 15 address a child's right to three fundamental freedoms:

- freedom of expression;
- freedom of thought, conscience and religion; and
- freedom of association and peaceful assembly.

(These articles should be interpreted in conjunction with article 5 of the Convention, which recognizes the responsibilities, rights and duties of parents to provide appropriate direction and guidance in a manner consistent with the evolving capacities of the child.)

Canada has adopted several international human rights instruments which make specific reference to the fundamental freedoms. Canada's *Charter of Rights and Freedoms* also guarantees these freedoms for everyone in Canada and allows for restrictions as determined within the context of a free and democratic society. Some provinces and territories have human rights commissions, ombudsmen and advocates to uphold fundamental rights.

In Canada, the issue of children's rights is rarely addressed by the media except for a few cases of flagrant violation or exceptional court cases. It is difficult to assess children's level of awareness of their fundamental freedoms. Many children learn about rights and responsibilities in their school's social studies classes.

The federal government offers teachers lesson plans on rights and freedoms through the Internet on the School Net web site but if or how the material is used is not known.

Special efforts are made to protect children's fundamental freedoms when they have been removed from their homes and live in the care of the state. Because the state has assumed the role of parent when a child is in care, the government is responsible for protecting the rights of these vulnerable children. Except for the Atlantic provinces, government-appointed advocates assist children in care in making their views heard.

Incidents concerning children's rights occasionally capture public attention, such as the recent court case involving a 13-year-old boy's refusal to undergo cancer treatments that were against his religious beliefs and the highschool teacher who strip-searched 19 students after \$90 was reported missing from a gym bag. But on the whole, children's rights have not been widely debated in Canada. This may be a result of complacency, ignorance or an indication that children's rights are generally protected. Like adults, children can challenge restrictions on their freedoms through the courts and human rights commissions, although very few have done so. Most restrictions on children's freedoms are dealt with privately and informally in the home or at school.

In the absence of widespread public discussion, there is little consensus about children's fundamental freedoms. Are these rights inherent or do they need to be earned? What are reasonable limits? What are unreasonable infringements? How can the tension between children's rights and parent's rights be resolved? How can rights in the private sphere be monitored? How are community and school standards determined in a pluralist society?

## articles 13, 14 and 15



### how does canada measure up?

**NEEDS ACTION:** Canadian legislation should specifically recognize children. Although the *Charter of Rights and Freedoms* guarantees rights for everyone, children are often overlooked. Age discrimination in human rights legislation does not address children.

**NEEDS ACTION:** Legislation, particularly municipal by-laws, should be reviewed to ensure that they do not place unreasonable restrictions on children's freedoms.

- There is concern that some restrictions in municipal by-laws may be contrary to the *Charter of Rights and Freedoms* and the Convention.

**NEEDS ACTION:** Children's fundamental freedoms should be recognized in education legislation. These rights should be consistently respected in schools across the country.

- Teachers and principals have broad discretionary powers to restrict the freedom of students.
- These rights restrictions are applied arbitrarily with little, if any, accountability or recourse.

**NEEDS ACTION:** Accessible redress mechanisms that are meaningful to children should be in place.

- Challenging a restriction on the freedoms through the courts or human rights commissions is a lengthy, usually expensive and often intimidating process.
- There appears to be considerable variation across the country in access to redress mechanisms.
- There are no federal redress mechanisms such as a federal ombudsman or commissioner for children.

**NEEDS ACTION:** Children in care should have their fundamental freedoms explained to them systematically and in a way they can understand. Children in care should have swift, effective and equal access to redress mechanisms.

**articles 13, 14 and 15 (cont'd)**

- Children in care may be unaware of their rights and many report that their views are often not heard.
- The state has assumed the role of parent for children in care and is directly responsible for the protection of their rights.
- Some provinces and territories do not have an independent advocate to hear complaints of children in care.

**NEEDS ACTION:** All children should be aware of their fundamental freedoms, the rights of others and the responsibilities that accompany freedom. Children’s rights education should be a mandatory part of school curricula.

- It appears that many children are not taught about rights and freedoms in Canada.

**NEEDS DISCUSSION:** There is little consensus and awareness about children’s fundamental freedoms. Some areas requiring discussion include:

- What constitutes unreasonable infringement on fundamental freedoms?
- How should environments in which children develop, such as schools, regulate freedom of expression?
- How should these environments respect freedom of religion?

UN Reporting Category:  
Family Environment and Alternative Care



**convention article 19**  
**Abuse and Neglect**

Article 19 requires countries to take broad measures to protect children from maltreatment, including violence, abuse and neglect. In Canada, provincial and territorial child welfare systems are responsible for child protection.

Child welfare legislation recognizes that families are primarily responsible for the care, supervision and protection of their children but when a child is at risk, the government has the duty to intervene to protect the child. Child protection services investigate cases of suspected abuse and neglect and, depending on the circumstances, can elect to provide support services to a family or remove the child from the family home. Removing a child from the family home is referred to as “taking a child into care.”

Canadian legislation allows parents, teachers and persons “standing in the place of a parent” to use corporal punishment against children, even though physical punishment has been strongly linked to physical abuse. In fact, one Ontario study found problems with punishment or discipline to be a factor in 72 percent of substantiated physical abuse cases. Section 43 of the *Criminal Code* allows “reasonable force” to be used against children and this provision has been used to justify a child being punched in the face or pushed down a flight of stairs. In Canada, children are the only category of persons who can be subject to physical assault without due process.

Canada has no national statistics on the number of children who are reported to child protection authorities because provincial and territorial child welfare systems collect and report data in different ways. The federal government is working with the provinces and territories to begin collecting and analyzing data on reported cases of child abuse and neglect.

Recent inquests and child death reviews have publicized tragic failures of child welfare systems and hundreds of recommendations for improvement have been made over the past few years. As a result, some Canadian child protection systems are broadening the grounds for finding a child in need of protection and developing tools to systematically assess levels of risk. Systems are also trying to improve case management and information sharing within and across jurisdictions. Other ongoing child welfare reforms include workload standards and better training for child protection workers and the education of professionals and the public about the obligation to report suspected child maltreatment.

Most of these reforms require increased funding and there are indications that some jurisdictions are starting to restore budgets so that child welfare systems can better deal with their ever-increasing caseloads. But investigating, treating and preventing child abuse and neglect are complex social issues requiring a broad community response. It remains to be seen whether the current round of child welfare reforms will result in better protection for children, real help for families in crisis and effective treatment for the victims of violence, abuse and neglect.

There has long been a link of abuse and neglect with poverty, especially in cases involving neglect. Available data indicates that child neglect cases account for a significant majority of child welfare caseloads and research suggests that the effects of neglect can be more damaging and long-lasting than abuse. Canada has had little success in reducing child poverty and child welfare workers have few, if any, tools to help families deal with this serious and persistent problem.

Poverty and despair provide a fertile soil for child abuse and neglect and the social problems suffered by families across the country tend to be even more concentrated in Aboriginal communities. The destruction of native social systems by the mainstream society has left many Aboriginal children vulnerable and many Aboriginal communities mistrustful of child welfare interventions. Canada has made little progress in improving the outcomes for Aboriginal children. For example, an Ontario review found that Aboriginal children receive the lowest level of child welfare services. In Manitoba, Aboriginal children represent 10 percent of the province's child population but 67 percent of children in care. Canadian jurisdictions are working towards the transfer of child welfare services to Aboriginal agencies. However, these Aboriginal agencies and communities are struggling with overwhelming demand and a limited supply of culturally appropriate early intervention and treatment services.

## article 19



### how does canada measure up?

**RIGHTS ALERT:** A disproportionate number of Aboriginal children are victims of abuse and neglect in comparison to non-Aboriginal children. Little, if any, progress has been made in this regard.

**RIGHTS ALERT:** In some jurisdictions, children over the age of 16 are not eligible for child protection services.

**RIGHTS ALERT:** Section 43 of the *Criminal Code* should be repealed to prohibit corporal punishment.

**NEEDS ACTION:** The reform of child welfare systems must continue across the country and Canadians must develop effective community responses to families at risk.

**NEEDS ACTION:** Increased resources should be dedicated to identifying, understanding and preventing child maltreatment, particularly neglect.

**NEEDS ACTION:** Public education is needed about alternatives to physical punishment.

**NEEDS ACTION:** Child welfare research and data are seriously lacking.

- There are no national statistics on child abuse and neglect in Canada.
- There is insufficient information about how to prevent and treat child abuse and neglect. There is little information about the outcomes of existing services.
- Child welfare systems need better integration with mental health, education, justice and other community services.

**NEEDS DIALOGUE:** Canadians need a public dialogue about a commitment to and accountability for children who need protection.

- Children in care may not have access to the services and resources they need and their views may not be heard.

UN Reporting Category:  
Basic Health and Welfare



## convention article 23

# Children with Disabilities

Article 23 recognizes that children with disabilities have the right to enjoy full and decent lives. They are entitled to special care, assistance and effective services, including education, training, health care, rehabilitation, preparation for employment and recreation opportunities. This assistance is to be provided free of charge, whenever possible, considering the financial resources of the parents or others caring for the child.

In Canada, an estimated 535,000 children and youth under age 20 have some form of disability. Aboriginal Canadians have a disability rate that is more than twice the national average. Surveys indicate that learning disabilities are the most common long-term condition. Almost 46 percent of children younger than 15 years of age with a disability have a disability that limits or prevents participation in school, play or other pursuits; almost 18 percent use a technical aid, such as a hearing aid, medically prescribed footwear or a brace. The number of children with disabilities continues to increase as medical advances significantly improve survival rates.

There is insufficient funding for the early diagnosis of children with disabilities and appropriate programs and services, such as child care, early education and early intervention. These services are often treated as discretionary expenditures, rather than as rights, and are subject to elimination or cutbacks during times of fiscal restraint.

While the *Canada Health Act* ensures free, universal health care, related expenses such as prescription drugs are not covered under the Act. Rehabilitation supports and specialized equipment such as leg braces and hearing aids are only partially covered, if at all. There are often long waiting lists for health services that can lead to early diagnoses and appropriate therapeutic interventions. There are wide variations in the provision of services across Canada, often within provinces, and services may be subject to a means test.

There has been a shift in recent years away from institutional care to providing services in the community. This has led to a growing number of children with disabilities living at home with their families. These families may require professional home care, respite care, income supports, child care and enhanced parental leave. Often, families do not receive adequate assistance and frequently find themselves financially, physically and emotionally exhausted by efforts to care for their children.

All children in Canada aged five, six or seven (depending on the jurisdiction) to age 16 are required to attend school. For children with disabilities, however, the right to appropriate education in the most enabling environment is not guaranteed. Children in Canada, including those with disabilities, do not have a right to early education (preschool). Although every province and territory has a stated commitment to integrated, inclusive education, this commitment is not clearly operationalized in most jurisdictions. Inclusion in regular classes appears to be more successful for students with physical disabilities than for those with multiple, developmental or emotional disabilities. Although early education can enhance the physical, emotional and cognitive development of children, few preschool children with disabilities have access to free, suitable early education.

Increased demand coupled with cutbacks to education budgets have resulted in inappropriate educational services for students with special needs. There are variations in the services available in communities and provinces, due to variations in regulations and budgets. Particularly limited are support services (such as teaching assistants and consultative supports), training in inclusionary educational strategies and rehabilitation services (such as physiotherapy, occupational therapy and speech therapy).

Public recreation and play activities are usually delivered by municipal governments and these programs are often inaccessible to children with special needs. There are no accessibility standards for children's play spaces in Canada. A survey of youth with disabilities indicated that cost and lack of opportunities were the most common obstacles to their participation in leisure activities.

Governments fund occupational training opportunities for youth with disabilities, but only 48 percent of working-age Canadians with disabilities are in the paid labour force, compared with 73 percent of persons without disabilities.

Discrimination against persons on the basis of disability is prohibited by federal and provincial legislation but people with disabilities, and children in particular, still experience prejudice. Young people with disabilities experience more abuse and violence than the non-disabled. In addition, many disability issues are examined from the adult perspective and the special needs of children are often overlooked. For example, provincial building codes include accessibility standards but are not designed with children in mind. The few complaint mechanisms that are available to children and youth tend to be difficult to access.

Negative assumptions about the quality of life enjoyed by persons with disabilities undermine respect for their fundamental rights. Recent examples include Robert Latimer's two-year sentence for the second-degree murder of his daughter Tracy, who had cerebral palsy. The judge in this case reduced the mandatory life sentence because the suffering experienced by Tracy was seen to justify the "mercy killing." (The decision is being appealed by the Crown.) In another example, a 17-year-old boy with Down syndrome was denied a place on a waiting list for a lung transplant until public pressure led the Alberta hospital to revise its policy on transplants for people with disabilities.

## article 23



### how does canada measure up?

**RIGHTS ALERT:** The federal *Immigration Act* discriminates on the basis of disability because s. 19(1)(a)(ii) allows a family's application to immigrate to Canada to be rejected if a child would place excessive demands on health or social services.

**NEEDS ACTION:** Children with disabilities are not guaranteed free and appropriate early diagnosis, early intervention and early childhood education in Canada.

**NEEDS ACTION:** Current and reliable national data should be collected about children with disabilities in Canada.

- The most recent national study on children with disabilities was the *Health and Activity Limitation (HAL) Survey*, conducted by Statistics Canada in 1991.
- Up-to-date data about the situation of children with disabilities are needed to develop effective public policy, international comparisons and information exchange.

**NEEDS ACTION:** Families of children with disabilities need increased public support.

- Additional assistance and financial help are needed to meet the extra needs of children with disabilities and to support their families, regardless of family income. This may include augmented maternity and parental leave policies, income support, respite care, child care options or training.

**article 23 (cont'd)****NEEDS DIALOGUE  
AND/OR RESEARCH:**

- Programs for children with disabilities need to equalize opportunities with non-disabled children and maximize development. Participation of persons with disabilities is still considered a privilege rather than an entitlement.
- Bio-ethics and advanced technology in health care can negatively affect the right to life. Genetic testing and diagnosis may lead to negative ethical judgments, reinforcing stereotypes about the undesirability of people with disabilities.
- There is a lack of information about children with disabilities who are in conflict with the law and about children with disabilities living in the care of the state. Attention must be paid to these groups in the next monitoring exercise.
- Use of the term “best interests” as a decision-making rationale by courts and schools can be detrimental to children. Its interpretation can vary according to different perspectives, not always serving children as intended. Further, the concept can be used to provide a simple or quick solution to address a problem rather than exploring other options for the child in question.

UN Reporting Category:  
Education, Leisure and Cultural Activities



## convention articles 28 and 29

### The Right to and Aims of Education

Articles 28 and 29 of the Convention address children’s right to education and the goals of education, which include the development of each child’s full potential, preparation for a responsible life and respect for other people and the environment.

Provincial and territorial governments are responsible for education in Canada. Community school boards usually implement curriculum and administer school policies. Private schools may operate in any province or territory if they meet general standards. Home schooling and independent schooling are generally permitted, subject to certain regulations.

Children from age five, six or seven (depending on the jurisdiction) to age 16 are obligated to attend school. All children are entitled to remain in school until at least the age of 18.

The majority of Canadian students take their school courses in English or French, Canada’s two official languages. The federal government promotes and funds instruction of French and English as second languages. Publicly-funded schooling in either language is guaranteed “where numbers warrant” and this is decided on a case-by-case basis. In Quebec, only children with a parent who was educated in English in the province can attend English-language public school.

It is estimated that 86 percent of students in Canada eventually obtain their high school diploma but early school leaving is a persistent problem. In 1992-93, for example, about 44 percent of 17-year-olds and 65 percent of 18-year-olds were not enrolled in school. The country’s highest school-leaving rates are in the Atlantic provinces and Quebec, while Saskatchewan, Alberta and British Columbia have the lowest.

Aboriginal children are at a greater risk of school failure than other Canadian children, although the overall trend appears to be improving. Some jurisdictions’ efforts to improve educational outcomes for Aboriginal students include the development of culturally-appropriate curricula and the transfer of education authority to Aboriginal communities. Information about the benefits of these changes are currently being documented.



In jurisdictions across the country, the stated goal of education is to develop citizens with healthy, well-rounded personalities. All curricula are designed to further develop and enhance children's existing mental abilities. Efforts are made to assist children with special needs. However, the delivery of education is through local school boards and children do not have equal access to programs, books, equipment and extra-curricular activities. There is also growing concern about children's school-readiness.

Canadian schools have participated in international initiatives to test students' mathematics and science knowledge and recent results indicate that Canadian students are doing well in these areas. However, no tests have been conducted to assess achievement in the arts, social sciences or civics. Education policies across the country acknowledge the importance of human rights, environmental studies and global education but there is little information on how these subjects are taught. There is some promising work in children's rights and citizenship education but this is mostly based on pilot programs and not integrated into the curriculum of most Canadian schools.

Children across the country are offered varying opportunities to develop their talents and abilities through music, dance and drama. Student participation in education is encouraged through student governments, clubs, sports, committees, the selection of courses and leadership classes. While healthy living and physical education are generally part of the curriculum, two national studies found that the health of 63 percent of Canadian children is at risk due to high levels of physical inactivity.

Efforts have been made across jurisdictions to eliminate racial, ethnic, cultural, gender and socio-economic biases in curriculum and learning resources, and to promote multiculturalism, diversity and anti-discrimination in schools. However, the Canadian Council of Ministers of Education has recommended that increased emphasis be placed on promoting tolerance and understanding. It should also be noted that visible minorities and people of Aboriginal heritage are under-represented as teachers and administrators in Canadian schools.

Violence and homophobia among students are recognized problems in Canadian schools. Although youth crime is decreasing, research suggests that up to 25 percent of students suffer violence at the hands of other students. Some schools have adopted a "zero-tolerance" response to youth violence and suspend students involved in violent acts from school. Zero-tolerance, however, can

further marginalize students who are already at risk of school failure. There are few initiatives that specifically address homophobic violence in schools.

Computers and information technology appear to be priorities in Canadian public education and 85 percent of schools are now connected to the Internet. However, questions have been raised about the impact of spending in this area and the cost to other courses and programs. Internet and media literacy courses, which encourage students to think critically and question exploitative material, are available in several provinces but are not compulsory in most of the country.

Of all Organization of Economic and Cultural Development (OECD) member countries, Canada's per capita education spending is among the highest. Since the early 1990s, however, significant cutbacks in education funding have had an adverse effect on transportation, student:teacher ratios, junior kindergarten, special education, staff development, language training for immigrants and fine art courses. Parents and communities are increasingly expected to pay for field trips and extracurricular expenses, resulting in unequal access to educational opportunities for children.

## articles 28 and 29



### how does canada measure up?

**NEEDS ACTION:** Initiatives are needed to effectively address early school leaving, particularly among Aboriginal students.

**NEEDS ACTION:** Cutbacks in education funding and the closing of schools need to be addressed as they have undermined access to and quality of education in Canada, especially in special education, citizenship, social studies and arts education.

**article 28 and 29 (cont'd)**

**NEEDS ACTION:** The development of respect for equality, human rights, cultural diversity and the environment are recognized in policy, but not necessarily reflected in practice.

**NEEDS ACTION:** A comprehensive approach is needed to address violence and homophobia in schools.

**NEEDS ACTION:** Increased access through the Internet to exploitative, racist and sexist information requires the development of critical thinking skills and anti-racist and media literacy courses for the core curriculum.

**NEEDS ACTION:** Staffing in education systems should reflect community diversity and the principles of equity.

**NEEDS ACTION:** Children's rights education needs to be part of core curricula.

**NEEDS DIALOGUE:**

- A discussion is needed on perceived threats to the public school system in Canada and school governance, including the role of parents and the community in education.
- Public funding for charter and denominational schools requires broader public debate. Access to instruction in Canada's two official languages needs to be resolved.
- The purpose of student testing and use of test results need to be rethought and evaluated.
- More information is needed about the impact of information technology in education.
- School discipline and international cooperation in the field of education should be researched and reported in the next monitoring exercise.

UN Reporting Category:  
Special Protection Measures



## convention article 22

### Refugee Children

Article 22 requires countries to take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee under international or domestic law, whether unaccompanied or accompanied by an adult, receives appropriate protection and humanitarian assistance as determined by international human rights instruments, including the *Convention on the Rights of the Child*. Appropriate measures include tracing family members and family reunification.

Canada selects large numbers of refugees from overseas for resettlement in Canada, compared with other countries. Canadian authorities occasionally select unaccompanied children for resettlement. (Quebec, which has assumed federal responsibilities for immigration, does not accept unaccompanied minors.) Refugees selected from overseas are judged according to estimations of their ability to be financially self-sufficient within a year and whether they would make excessive demands on health or social services. When a child is accepted as an unaccompanied refugee, however, there is no expectation that the child will be self-supporting.

Refugee status can be claimed in Canada at the border or from within the country. Children can also make their own claims in this way. Unlike overseas applicants, a refugee claimant within Canada does not need to be medically admissible, establish an ability to be self-supporting or have any settlement arrangements. Any claim with a minimum credible basis for refugee status must be heard by the Immigration and Refugee Board. The *Immigration Act* does not detail specific procedures for dealing with the claims of children, except to designate an adult to represent the child in hearings. There are federal guidelines, however, for processing the claims of unaccompanied children and for eliciting evidence from all child claimants. The guidelines' general principle is the best interests of the child. Best interests are defined broadly and can vary according to the circumstances of each case and the child's age, gender, cultural background and past experiences.

It takes an average of 13 months to determine an inland refugee claim. This is an extraordinarily long period of time from a child's perspective. Canada has one of the highest acceptance rates for refugee claimants among

industrialized countries, but this rate has decreased from 62 percent in 1994-95 to 41 percent in 1996-97. If the Refugee Board determines that the claimant is a Convention refugee (as determined by the *Geneva Convention Relating to the Status of Refugees* and its 1967 Protocol), then the claimant may apply to become a permanent resident of Canada. The Auditor General has found major variations in the acceptance rates of claimants from the same country. If the Refugee Board denies a claim, there is no appeal. When a decision is made to deport a parent, the best interests of their children do not have to be considered, even if the children were born in Canada or have lived in Canada for a long period of time. However, the Supreme Court of Canada recently questioned that practice.

It is believed that few children are detained by immigration officials but no information is available. Children can stay with a detained parent if the family wishes to stay together. However, there are no standards for the conditions in which children are held.

The *Canadian Charter of Rights and Freedoms* applies to refugee claimants. Claimants are eligible for health care under provincial or territorial plans or through the federal interim program. All children from age five, six or seven (depending on the jurisdiction) to age 16 are obligated to attend school although immigration lawyers have reported delays in the issuing of student authorization papers.

Settlement services are primarily delivered by non-profit, non-governmental organizations in communities across the country. Many of these organizations receive federal funding. National standards for the quality and quantity of settlement services are needed. Government-sponsored refugees are eligible for financial assistance to cover accommodation, clothing, household effects and living expenses for up to one year. Un-sponsored refugees are eligible for assistance through provincial and territorial social assistance programs.

Families cannot come to Canada and refugees cannot travel out of Canada until their claims have been accepted. This includes parents who left young children behind. For refugees who arrive in Canada without identity papers (approximately 13,000 in 1998), family reunification can take longer than seven years. Family reunification can also be delayed by the inability to pay the \$975 charged for every adult refugee applying for permanent residence.

## article 22



### how does canada measure up?

**RIGHTS ALERT:** It takes too long for refugee families to be reunited in Canada since families cannot join inland refugees until they have been accepted for landing.

- The average length of time it takes to determine a refugee claim is 13 months.
- Refugees without identity documents can wait for more than seven years before their families can join them in Canada.
- A \$975 right-of-landing fee is charged for every adult refugee applying for permanent residence.

**RIGHTS ALERT:** Refugees who might be expected to cause excessive demands on health or social services are usually not selected to come to Canada from overseas.

**RIGHTS ALERT:** Children, even if born in Canada, do not have to be considered in deportation hearings of their parents.

**NEEDS ACTION:** There are no standards for the detention of children.

**NEEDS ACTION:** Quebec does not sponsor unaccompanied refugee children from overseas.

**NEEDS ACTION:** The *Immigration Act* does not set out specific procedures or criteria for dealing with the claims of children, other than the designation of an adult to represent them in hearings.

**NEEDS ACTION:** The period that refugees are eligible to receive services should be extended beyond a year to more realistically reflect the length of time required to become self-supporting.

## article 4



# International Cooperation



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Interpretation:<sup>1</sup> The UN Committee on the Rights of the Child has promoted incorporation of the Convention into domestic law and has stressed the importance of ensuring that the Convention's general principles (articles 2, 3, 6 and 12) are incorporated into law. For federal states such as Canada, the Committee has emphasized the importance of appropriate coordination of policy affecting children within and between national and provincial governments.

Economic, social and cultural rights have not been defined, but States are expected to take appropriate measures to implement all rights, including these, and use all available human, economic and organizational resources of the State and civil society.

## Article 4

### Canada's International Cooperation to Promote and Enhance Children's Rights

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

With respect to international cooperation, under the United Nations Development Program's 20/20 initiative, donor countries (e.g., Canada) are encouraged to allocate at least 20 percent of foreign aid to human priority goals such as primary education, primary health care, safe drinking water and sanitation for all.

## Introduction

Historically, Canada has played a significant role in promoting children's rights internationally. Canada

co-hosted the 1990 World Summit for Children and participated in the Working Group that drafted the UN *Convention on the Rights of the Child*. The Minister of Foreign Affairs has appointed Senator Landon Pearson to advise him on how Canada can effectively implement its international commitments to children. Children's rights are a stated foreign policy priority and Canada has taken leadership on such issues as landmines, the commercial sexual exploitation of children and discrimination against girls. The government and non-governmental organizations (NGOs) have also worked to foster greater participation by young people in addressing rights issues.

## Canada's Official Development Assistance

### Priorities

In 1995, the federal government published *Canada in the World*, detailing the purpose of Canada's Official Development Assistance (ODA) and its key foreign policy objectives. This document states that Canada's development assistance is intended "to support sustainable development in developing countries, in order to reduce poverty and to contribute to a more secure and prosperous world."<sup>2</sup> Of the six program priorities listed for available ODA resources, three have a potential impact on children:<sup>3</sup>

- basic human needs, including primary health care, basic education, family planning, nutrition, water and sanitation, shelter and humanitarian assistance in response to emergencies;
- women in development; and
- human rights, democracy and good governance to increase respect for human rights, including children's rights.

These priorities are seen to support the child's right to survival and development (UNCRC article 6) and the United Nation's 20/20 initiative, which calls on donor countries to allocate 20 percent of their aid budgets to eight world-wide human development targets, including universal primary education, primary health care and immunization, and the reduction of malnutrition.<sup>4</sup>

### ODA Expenditure Targets and Trends

Almost 30 years ago, Canada and other industrialized countries agreed to target 0.7 percent of gross domestic

product (GNP) for international development. Nevertheless, despite repeated government promises to increase foreign aid spending, Canada has never met that target. The Organization of Economic Cooperation and Development reports that the percentage of Canada's aid spending has actually declined an average of 3.3 percent per year from 1990-91 to 1995-96.<sup>5</sup>

The International Assistance Envelope of ODA (cash component basis) has decreased by 12.3 percent in the last five years.<sup>6</sup>

1995/96	\$2.169 billion
1996/97	\$2.160 billion
1997/98	\$1.196 billion
1998/99 (budget)	\$2.088 billion
1999/2000 (budget)	\$1.901 billion

### Basic Human Needs

In 1995, the federal government committed 25 percent of ODA to basic human needs, such as primary health care, basic education, family planning, nutrition, water and sanitation, shelter, food aid and emergency humanitarian assistance.<sup>7</sup> In fact, for each of the next two years, approximately 38.5 percent of ODA program expenditures went to basic human needs, food aid and emergency humanitarian assistance.<sup>8</sup> The extent to which these expenditures benefited children is unknown, because there have not been any results-based evaluations focused on outcomes for children.

## Canada's Strategy for Children

In June 1997, the Canadian International Development Agency (CIDA) developed a draft Strategy for Children, which has not been adopted as official policy. The 1997 draft stated that "children must be the subject of rights and not just objects of compassion."<sup>9</sup> The strategy proposed to:

- protect the rights of children;
- improve children's health;
- improve the knowledge and skills of children; and
- protect children from abuse, exploitation and violence.<sup>10</sup>

Although the federal government is committed in principle to recognizing children's rights and improving their lives, CIDA has not articulated if or how it intends to use the UNCRC as a framework for international

cooperation, as was recommended to Canada by the UN Committee on the Rights of the Child in 1995. There is no clear relationship between CIDA's strategy for children and the general principles of the Convention, nor are there specific development objectives related to the promotion and protection of children's rights and the participation of children in development programs.

Canadian NGOs have expressed concern about a lack of awareness by CIDA staff of the Convention and the central role of children in sustainable development. At annual meetings of representatives of CIDA and NGOs, children's issues are addressed only in peripheral ways.

This concern has been echoed in an independent consultant's report recently commissioned by CIDA.

*...children [should] be brought into the centre of development planning, implementation, monitoring and evaluation. Children have the right to participate in development; in fact they are already participating in many unrecognized ways. Without children's needs, interests and rights being taken into consideration in development thinking and practices and without children's involvement in the development process, sustainable development is not possible.<sup>11</sup>*

CIDA hopes to work with NGOs to document program examples of children's direct participation in development planning, implementation and evaluation.<sup>12</sup> This could be a first step towards developing a comprehensive strategy to bring children to the centre of Canada's development programs.

## CIDA Programming in Support of Children

As part of Canada's commitment to implement the Plan of Action resulting from the World Summit for Children, CIDA recently began publishing annual reports of disbursements to programs and projects with a perceived impact on children. This is defined as:

- Programming with a *direct* impact on children occurs when children are directly included in the target group.
- Programming with an *indirect* impact occurs when children, though not targeted directly, receive a

significant benefit; programs in which women constitute over 50 percent of the target group are considered as having an *indirect* impact on children.<sup>13</sup>

CIDA annual reports for 1995-96 and 1996-97 indicate that *direct* programming for children was strongest in the area of basic human needs, particularly immunization and the elimination of iodine deficiency. Programs and projects with *indirect* impacts on children tended to be directed towards poverty reduction, community and capacity development and support for the role and status of women.<sup>14</sup>

In 1996-97, CIDA estimates it spent \$580.98 million in support of children, including program disbursements by all CIDA branches and Canada Funds for Local Initiatives.<sup>15</sup>

Branch spending for children can be summarized as follows:

Bilateral (country-to-country) Aid:

- \$159.98 million (27.5 percent of bilateral program spending);
- programs include child and maternal health, immunization, basic education, micronutrient deficiencies, institutional capacity-building in favour of the UNCRC and special protection for children.<sup>16</sup>

Multilateral Programs:

- \$368.1 million (estimated as 25 percent of total branch spending, except for International Humanitarian Assistance, the Food Aid Centre and UNICEF spending, which are calculated as 100 percent);
- CIDA estimates that 58 percent of Multilateral Branch spending affecting children was spent through the Food Aid Centre.<sup>17</sup>

Canadian Partnership Branch:<sup>18</sup>

- \$52.8 million (or 18.8 percent of total branch spending);
- projects relate to child labour, street children, primary health care, water and sanitation, community development and strengthening the role of women.<sup>19</sup>

While CIDA estimates that it spent \$580.98 million on programs in support of children in 1996-97, less than half (\$238.4 million) was actually allocated to programs that were specifically targeted to children. The remaining \$342.58 million went to programs perceived to have an indirect but significant benefit for children.

These estimates assume that programs specifically targeted to children will have a direct impact on them and that children benefit from programs in which women form over 50 percent of the target group. Coalition member organizations have questioned these assumptions. Unless CIDA's assumptions about the direct and indirect benefits for children are backed up by child-focused, results-based program assessments, it is very difficult to determine if and how children have actually benefited from CIDA's programs. For example, few of the targeted children may actually participate in the program and the program may not achieve its desired outcomes for those who do participate. Second, research suggests that the "trickle-down" theory of benefits for secondary target groups is problematic and may have negative impacts. Income generation programs for women, for example, have sometimes resulted in children, especially girls, having to drop out of school to care for siblings.

Many programs for children are implemented by Canadian NGOs specializing in children's programming. A number of these NGOs are learning to use "results-based" management as a tool to monitor and measure the impacts of their international programs. While it is difficult and time-consuming to assess program results and measure benefits to children, Coalition members are hopeful that NGOs can work collaboratively with CIDA to develop effective research methodologies to measure the impacts on children. Only then can Canada judge the extent to which its development assistance is helping to improve children's lives and realize their rights.

## Action on Specific Children's Rights

In recent years, Canada's foreign policy has emphasized human security issues. Action taken with respect to the security of children are detailed below.

### Article 2: Non-discrimination

To follow up on the Beijing Platform for Action to promote the advancement of women, CIDA funded four Canadian NGOs to bring together 31 girls from around the world to share their stories in March 1998. This week-long conference allowed girls to talk about gender barriers and develop an action statement, outlining

positive, concrete steps for governments, organizations and individuals. The girls identified five major and interconnected issues for immediate action:

- gender equity;
- education;
- health;
- violence; and
- labour exploitation.

This project produced a manual of best practices for girl-related interventions and a video of the conference.<sup>20</sup>

### Article 11: Illicit transfer and Article 35: Prevention of abduction, sale and trafficking

Canada has adopted the *Hague Convention on the Civil Aspects of International Child Abduction* and developed the "Our Missing Children Program," which is a federal initiative to protect abducted children and runaways found crossing international borders. The program has set up a network of more than 40 national and international law enforcement agencies, immigration officials and governments to issue border alerts and work to recover missing or abducted children.<sup>21</sup> Canada is also exploring bilateral and other tools to supplement the Hague Convention and recently signed an agreement with Egypt for dealing with abductions. This agreement may serve as a model for other agreements.<sup>22</sup>

In April 1998, the House of Commons Sub-Committee on Human Rights and International Development made 14 recommendations on a spectrum of issues related to child abductions, including border controls, restriction of international travel, expense money for parents whose children have been parentally abducted from Canada and the sharing of information and expertise.<sup>23</sup> To date, no action has been taken to implement these recommendations.

### Article 12: Respect for the views of the child

Recognizing the importance of hearing directly from children on issues that affect them, Canada has spearheaded several efforts to bring international groups of young people together to explore issues affecting their survival and development. Meetings have been held to address gender issues, child labour, sexual exploitation and abuse.

Canadian and overseas program partners, with support from CIDA and other funding partners, have developed Children of the Wind, an international exhibit of children's art. The exhibit's pictures were created as part of the "Mapping Our World" project, in which children in Uganda, Zambia, Colombia, Dominican Republic, Nicaragua, India, Bangladesh, the Philippines and Canada "mapped" their world by drawing, painting, writing, taking photographs and making videos.<sup>24</sup>

### **Article 21: Adoption**

In 1997, Canada ratified the *Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption*. Federal immigration regulations have been amended to bring domestic legislation in line with the Hague Convention and ensure that international adoptions are carried out in the best interests of children.<sup>25</sup> Ontario has also introduced legislation to give effect to the Convention on Intercountry Adoption.<sup>26</sup>

### **Article 24: Child's right to health and health services**

#### **Immunization**

One of the objectives of CIDA's health strategy is full immunization for every child and the ultimate eradication of polio and measles, in accordance with targets set at the 1990 World Summit for Children. Despite this, Canada cut its international immunization program for a period of about 12 months and re-established it in 1998 after much public outcry. CIDA's current budget commits \$10 million a year for the next five years to combat polio, measles and other deadly diseases in countries of greatest need. CIDA will also contribute \$7 million over the next several years to NGOs and the World Health Organization for polio eradication in Africa.<sup>27</sup>

#### **HIV/AIDS**

For the past 10 years, CIDA has made HIV/AIDS a program priority and contributed over \$120 million to various initiatives in Africa, Latin America and Asia. In June 1997, Canada and the other seven major industrialized countries affirmed that preventing the spread of HIV/AIDS is an urgent global public health imperative and called for governments to work together to address HIV/AIDS at the community level, raise public awareness, and identify and implement effective preventative health strategies.<sup>28</sup>

In March 1998, CIDA announced \$1 million to improve child health and welfare in Romania. The Canadian Public Health Association is working with UNICEF and Romanian public health officials to develop and implement a national AIDS strategy and improve HIV/AIDS awareness, prevention and social services to families with AIDS-affected children.<sup>29</sup>

#### **Micronutrient deficiencies**

From 1994 to 1997, CIDA provided \$12 million to support the sustainable elimination of iodine deficiency in 13 Asian countries. Canada also supported a UNICEF initiative in Bolivia to eliminate iodine deficiency disorders by 1997.<sup>30</sup> Canada's contribution and leadership in eliminating micronutrient deficiencies was recognized in UNICEF's 1998 *State of the World's Children* Report.

#### **Female genital mutilation (FGM)**

Canada supports the United Nations Population Fund assistance to various countries to eradicate FGM, which is a violation of Article 37's provision that no child be subjected to torture or other cruel, inhuman or degrading treatment. CIDA also supports Canadian NGOs focusing on the public health dangers of female genital mutilation.<sup>31</sup>

### **Article 30: Indigenous children**

In September 1998, "The Future of Children and Youth" initiative was endorsed by the eight members of the circumpolar Arctic Council. This Canadian-led project contributes to sustainable development in the Arctic and is in keeping with the 1998 Iqaluit Declaration and the Circumpolar Conference recommendations. The goals for the first two years are to improve the health and well-being of children and youth in the Arctic and to improve the basis for sound decision-making by increasing the knowledge and understanding of sustainable development among Arctic children and youth. The long-term objective of engaging and empowering youth in the circumpolar region will be supported by an internship program and by information sharing.<sup>32</sup>

### **Article 32: Child labour**

Canada has been active in building world consensus on an effective action plan on behalf of the world's estimated 250 million child workers aged 5 to 14.<sup>33</sup> Free the Children has been a catalyst for Canadian efforts



regarding child labour problems worldwide. This organization, founded by Canadian youth Craig Keilburger, has helped raise national and international awareness of harmful child labour practices.

Canada actively supported the 1997 Conference on Child Labour and Parallel Children's Forum in Oslo. Twenty-two working boys and girls from Africa, Asia and Latin America spoke about their experiences and reported their proceedings to the main conference.<sup>34</sup> Canada hosted a preparatory meeting prior to the conferences, which was attended by young people from Brazil, Mexico and Canada.

According to CIDA's 1997 report, *Approaches to Child Labour*:

*The government is fully committed to action in order to end the worst forms of child labour and all forms of commercial sexual abuse as quickly and effectively as possible and to working cooperatively with partners at all levels to ensure the elimination of all conditions which limit the chance of children to achieve full and healthy development.*<sup>35</sup>

However, the 1997 Foreign Affairs Sub-Committee on Sustainable Human Development recommendations to address the worst forms of child labour<sup>36</sup> have not been adopted by the government for the most part. In April 1997, the Foreign Affairs Minister announced a Child Labour Challenge Fund for Canada's private sector to develop codes of conduct and voluntary guidelines but the response to date has been limited. As a result of UNICEF Canada concerns about children being forced into more abusive and hidden labour sectors, the government shelved a proposed carpet labelling scheme in Canada.<sup>37</sup> Subsequently, however, the government provided \$50,000 for the initial start-up and promotion of the private sector "Rugmark Canada" initiative.<sup>38</sup>

Canada continues to work with the International Labour Organization to develop effective policy and program guidelines to eliminate child labour<sup>39</sup> and to draft and ratify a new convention to eliminate the worst forms of child labour.<sup>40</sup>

### **Article 34: Sexual exploitation and abuse of children**

Canada attended the World Congress Against Commercial Sexual Exploitation of Children in Stockholm in 1996<sup>41</sup> and, in 1998, hosted Out from the Shadows: An International Youth Summit of Sexually Exploited Youth.

Youth from South and Central America, the Caribbean and Canada attended this summit in Victoria, British Columbia. A Youth Declaration and Agenda for Action was developed to address the commercial sexual exploitation of young people.<sup>42</sup> As a result of this conference, Canadian NGOs have undertaken projects for sexually exploited youth in Brazil, the Dominican Republic, Honduras, Bolivia, Peru and Chile.<sup>43</sup>

Canada has also been working with the UN to develop a UNCRC protocol requiring countries to criminalize activities associated with the sale of children, child prostitution and child pornography. The protocol would also urge countries to extend their jurisdiction on such matters to acts by their citizens in other countries, as Canada has done.<sup>44</sup> (A 1997 amendment to Canada's *Criminal Code* dealt with child prostitution, child sex tourism, criminal harassment and female genital mutilation.)

In co-operation with the World Customs Organization and others, Revenue Canada has assisted in the international tracking of child pornography and pedophiles and in the training of Interpol officers and law and customs officers in Central and South America.<sup>45</sup>

### **Article 38: Children affected by armed conflict**

Canada has taken a leadership role in pressing the world community to ban the use of anti-personnel landmines, which kill or maim thousands of children around the world each year. Over 35 NGOs are members of Mines Action Canada. In December 1997, representatives of over 100 governments came to Ottawa to sign the *Convention on the Prohibition of the Use, Stockpiling, Production, Sale and Transfer of Anti-Personnel Mines and their Destruction*. Foreign Affairs and CIDA also helped produce a UNICEF video, *The Silent Shout: helping children learn about landmines*, which is being distributed to all Canadian elementary schools and used worldwide to teach children how to protect themselves from landmines.<sup>46</sup>

Canada has committed a further \$100 million over five years to meet the goals of the landmine treaty and to provide assistance for victims.<sup>47</sup> Canada is also contributing to the Landmine Monitoring Initiative and funding the promotion of the landmine convention in regions where support remains low.<sup>48</sup> A \$200,000 fund will provide art therapy to war-affected children and raise awareness of children's rights in situations of armed conflict through pilot cultural projects and international partnerships.<sup>49</sup>

The current age for voluntary recruitment into the Canadian armed forces is 16, but the federal government is reviewing defence legislation in order to be able to ratify a proposed

Optional Protocol, which has not yet been adopted by the United Nations. This protocol proposes to raise the age for voluntary military recruitment. Meanwhile, Canada has codified its practice of not deploying persons under the age of 18 in hostilities. Canada hosted an international round table on child soldiers in 1998 and has scheduled an international meeting on the proposed Optional Protocol for 2000.<sup>50</sup>

### **Article 39: Physical and psychological recovery and social reintegration of child victims of armed conflict, etc.**

In recent years, CIDA has supported a number of initiatives to aid the recovery and reintegration of child victims of armed conflict. Projects include:

- reintegration of demobilized child soldiers in Sierra Leone, Angola and Rwanda;
- emergency relief and health care to young children forced to flee their homes in Southern Lebanon;
- registration, reunification with families and rehabilitation of unaccompanied Rwandan and Burundi children;
- health services, education and protection to children in Haiti;
- counselling and shelter for physically or sexually abused girls and provision of prostheses for handicapped children in Liberia.<sup>51</sup>

## **Conclusion**

Despite Canada's significant efforts over the last five years to improve children's lives and promote respect for children's rights internationally, three overriding concerns have been identified about international development assistance for children.

### **Political will without administrative action**

The Canadian government has made a substantial commitment in principle to the recognition of children's rights around the world. Practical demonstrations of this commitment, however, tend not to be substantially or enduringly supported at the administrative and operational levels of government. For example, much more is said about the needs and rights of the world's children by the Minister of Foreign Affairs and his Advisor for Children than by senior government officials mandated to do this work internationally.

In the 1990s, the two substantial funds dedicated to international assistance for marginalized children (CIDA's Children in Difficult Circumstances Fund and Health Canada's Partners for Children Fund) appear to have

emerged from political initiatives and not from strategic and policy-making deliberations within departments. These two short-term programs ended, with no follow-through or plans to build upon the work already accomplished.

### **A human development aid strategy focused on children**

There is an urgent need for CIDA to develop a comprehensive policy and strategy for development assistance to children. The framework for this strategy should be the principles and provisions of the UN *Convention on the Rights of the Child*. Also needed is a multi-year implementation plan, with specific and appropriate child-focused human development objectives, and outcome indicators. Ideally, CIDA would develop these objectives, outcomes and assessment measures in cooperation with its NGO and other implementing partners.

### **Funding for sustainable child development and protection of children's rights**

A healthy and motivated population of children and youth is essential to the sustainable development of vibrant societies (and economies) worldwide. In many developing countries, almost half the population is under 18 years of age. Children's well-being is dependent on their care and development in families, schools, workplaces and streets and on the protection and recognition of their rights. Canadian ODA is less than 0.3 percent of GNP and only about 11 percent of CIDA's development assistance funds are specifically targeted towards children.

## **Endnotes**

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4. Cited in Hodgkin and Newell, p. 72 and UNICEF, [www.unicef.org/2020/20right.htm](http://www.unicef.org/2020/20right.htm)
5. Organization of Economic Cooperation and Development
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7. CIDA, April 1997, p. 6
8. Ibid, p.1; CIDA, September 1998, p. 1
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11. Denise Conway, p. 164
12. Martha Nelems
13. CIDA, December 1998, p. iii
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15. CIDA, December 1998, p. iii
16. Ibid
17. Ibid, pp. 17-18
18. Canadian Partnership Branch supports a wide range of Canadian organizations including national and international NGOs, universities, unions, professional organizations and private companies
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20. Ellen Ericson Kupp, pp. 8-9
21. Landon Pearson, "International Child Abductions: A Manual for Parents" in *Children & the Hill*, Winter 1998
22. Department of Foreign Affairs and International Trade, November 6, 1998, p. 2
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25. Landon Pearson, "Canada Ratifies the *Hague Convention on International Adoption*" in *Children & the Hill*, Winter 1998
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34. Landon Pearson, "Oslo Conference on Child Labour" in *Children & the Hill*, Winter 1998
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38. Marthe St. Louis
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40. Department of Foreign Affairs and International Trade, October 21, 1998
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43. Department of Foreign Affairs and International Trade, November 6, 1998, p. 3
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# articles 13, 14 and 15



## The Fundamental Freedoms



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### Article 13

#### The Right to Freedom of Expression

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others; or
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

### Article 14

#### The Right to Freedom of Thought, Conscience and Religion

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

## Voices

### Coalition Questionnaire:

*If a youth from another country asked you to describe the many things you are free to do in Canada, what would you say?*

Canada is a country of freedom; you have the right to speak your mind; to equality; to choose your own religion; freedom of expression and a whole lot more. It is almost limitless--your freedom. It is the best country to live in!

— Nhan, aged 16, Ontario

We're free to express our views to a certain extent (that's pretty much all we're free to do as kids). As kids/teenagers we don't have many freedoms, it's a stereotype we're irresponsible, trouble making kids! To us we don't have a voice and we sure as hell can't use it. It's the adult world, we usually don't have an opinion and if we ever do get to use our voices we're pretty damn lucky to have the chance.

— Meaghan, aged 15, Ontario

We are unable to appreciate what we have here in Canada. (translated)

— Cynthia, aged 14, Quebec

Free to wear our own clothes, listen to music, read literature, write, communicate via the Internet, have associations with friends, have a job. Free to enjoy many things such as natural wonders, sports. Free to learn/speak/communicate in other languages, practise religion. Free from discrimination and prejudice. Free to travel, see new things, try new things, be who we are.

— Brian, aged 17, British Columbia

## Article 15

### The Right to Freedom of Association and Peaceful Assembly

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

## Introduction

Articles 13, 14 and 15 of the *UN Convention on the Rights of the Child* address a child's right to three fundamental freedoms:

- freedom of expression;
- freedom of thought, conscience and religion; and
- freedom of association and peaceful assembly.

Interpretation: The UN Committee on the Rights of the Child says that the fundamental freedoms, along with a child's right to be heard (article 12), recognize children as active subjects of rights. These articles "underline children's status as individuals with fundamental human rights, and views and feelings of their own."<sup>1</sup>

Article 5 of the Convention recognizes the responsibilities, rights and duties of parents to provide appropriate direction and guidance in a manner consistent with the evolving capacities of the child. Some Canadians, however, are concerned that recognizing children's fundamental freedoms could undermine the role of parents. The Premier of Alberta recently said that Albertans are concerned about possible implications of article 13 (freedom of expression) and article 15 (freedom of association and peaceful assembly). "Albertans have expressed the view that while these sections may be well intended, they may in fact negatively affect the ability of parents and care givers to provide a healthy, nurturing, and stable environment in which to raise their children."<sup>2</sup>

The lack of consensus on the issue of the evolving capacity of the child and freedom of religious expression was recently evident in Canada by the case of Tyrell Dueck. Tyrell was 13 years old and had cancer. His parents wanted to take Tyrell to an institute outside of Canada that would treat his cancer with diet, herbs and multi-vitamins. Tyrell's doctors gave him a 65 percent chance of recovery with chemotherapy and surgery. Although Tyrell asked that the chemotherapy be stopped, the Saskatchewan Court of Queen's Bench made Tyrell a ward of the state so that his medical treatment could be continued. The court said that since

Tyrell's father was screening medical information, Tyrell was not a mature minor. That ruling was contentious, particularly since the treatment Tyrell was to receive was very aggressive.<sup>3</sup>

There are many unresolved issues in Canada around the fundamental freedoms. Are these rights inherent or do they need to be earned? What are reasonable limits? How can rights in the private sphere be monitored? How are community/school standards determined? Is the right to have blue hair trivial? Is a child's right to fundamental freedoms really important as compared to other issues, such as poverty?

There has been little discussion of children's fundamental freedoms in Canada. The freedoms are enshrined in the Canadian constitution for "everyone," but not specifically for children. It is difficult to know what emphasis is placed on teaching children about their fundamental freedoms in the schools as information is scarce and difficult to compare. Few concrete examples of initiatives expressly designed to promote freedoms for children have been identified.

Most infringements on children's freedoms are dealt with informally at school or in the home. Few children have the resources to challenge infringements on their rights. John Drapper, an Ontario high school student with a physical disability that, in his words, makes him "totally dependent on others for all aspects of my care," says that:

*As a young person I usually have little or no opportunity to address discrimination. Most of the time, adults don't respond well to a kid questioning their decisions. If you approach the Human Rights Commission in Ontario, they're swamped and usually don't get to your concern for years. So I don't bother. If you really want to pursue discrimination, you need to go to court and that costs money (my allowance is \$11 per week).<sup>4</sup>*

## Defining The Freedoms

### Freedom of expression

The *Canadian Charter of Rights and Freedoms* does not explain freedom of expression in as detailed a manner as the Convention. In 1989, however, the Supreme Court of Canada (*Irwin Toy v. Quebec*)<sup>5</sup> held that "any activity is expressive if it attempts to convey a meaning." This definition is so broad that it would appear to include the right to seek and receive information. One clear restriction to this right is expressive activity that takes the form of criminal activity.<sup>6</sup>

### Freedom of thought, conscience and religion

Neither the Convention nor the Charter defines freedom of religion. The Supreme Court of Canada, in *R. v. Big M Drug Mart* (1985),<sup>7</sup> defined it as follows:

## Voices

### Coalition Questionnaire:

*If a youth from another country asked you to describe the many things you are free to do in Canada, what would you say?*

I would tell them we have a Charter of Rights that secures the many things I am free to do here in Canada. I am free to say what I want about anything. About the government, my school, my parents or anywhere else I know. I am also free to do what I want and think the way I want. But I would also tell him some of the limits. Such as hate. I am free to say what I want, do what I want and think the way I want as long as I do not promote hate to others or hurt others. My other limit is the law. If what I say, do or think violates the law, I am not allowed by the country to do so but most of the time I won't get killed for it like some people in other countries.  
— Medin, aged 16, Ontario

We all have the right to speak and express ourselves but we must respect the opinion of others. (translated)  
— Normand, aged 16, Quebec

You are free to express yourself without offending someone else. You are free to dress and act the way you want without being offensive. You are free to have a different mixture of friends. You are free to believe in what you want without inflicting your beliefs on someone else.  
— Madelena, aged 16, Ontario

# Voices

## Coalition Questionnaire:

### *Freedom of expression is...*

Being able to speak one's mind and thoughts, being free to be oneself through art, clothing, music, writing and so on.

— Brian, aged 17, British Columbia

You should be able to do stuff within reason.

— Ryan, aged 12, Nova Scotia

It means that you should be able to believe in what you want to believe and follow it, you know.

— Marie-Josée, aged 15, Ontario

### *Freedom of thought, conscience and religion is...*

To be able to have your own beliefs and thoughts on religion. To be able to have your own thoughts on a particular subject.

— Madelena, aged 16, Ontario

### *Freedom of association and peaceful assembly is...*

Freedom to be affiliated with groups, without discrimination or prejudices. Basic rights of one's credo.

— Brian, aged 17, British Columbia

To be able to have your own friends and not be teased for hanging out with certain people.

— Madelena, aged 16, Ontario

*Fight for ourselves. Fight for a cause.* (translation)

— Cynthia, aged 14, Quebec

*The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.*

Freedom of religion includes the right not to profess any religion or belief.

## Freedom of association and peaceful assembly

The Supreme Court of Canada considered this freedom in the labour context and a clear distinction was made between the rights of the individual and the rights of the association (*Labour Trilogy*, 1987).<sup>8</sup> The court also ruled that freedom of association did not include the right to strike. Although there are no court cases involving youth associations, this decision means that children have the right to form and be a member of an association without their association necessarily having the right to pursue specific activities.

## The Fundamental Freedoms and Legislation

Canada has adopted international human rights instruments which make specific reference to the three fundamental freedoms: the *Convention on the Rights of the Child*<sup>9</sup> (the “Convention”), the Universal Declaration of Human Rights<sup>10</sup> (the “Declaration”), and the International Covenant on Civil and Political Rights<sup>11</sup> (the “Covenant”). The Covenant and the Declaration apply to everyone, including children. However, the Convention is the only international human rights treaty that specifically recognizes children as having rights.

While these Conventions are not part of domestic law, Canada has agreed, in principle, that its statutes and regulations should be interpreted in a manner consistent with its international obligations.

The *Canadian Charter of Rights and Freedoms*<sup>12</sup> (the “Charter”) is part of the constitution of Canada, which is the supreme law of the country. The Charter applies to Parliament and to the federal government as well as to the legislature and government of each province. The Charter specifies human rights standards to which federal, provincial and territorial governments must adhere. In principle, the Charter guarantees fundamental freedoms for everyone in Canada.

The Charter says that everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

- (c) freedom of peaceful assembly; and
- (d) freedom of association.

The fundamental freedoms recognized in the Charter are not absolute. Article 1 of the Charter states that the rights and freedoms are “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” Convention articles 13, 14 and 15 may be subject to certain restrictions but these restrictions must be prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The Convention allows no limitation on freedom of thought and conscience.

The Charter does not explicitly recognize these rights for children. The UN Committee on the Rights of the Child has stated, however, that “it is not enough that these principles be reflected in constitutions as applying to “everyone” but should specifically recognize the rights of children.”<sup>13</sup>

Canada and every province and territory have human rights legislation that generally prohibits discrimination based on race, colour, place of origin, family status, religion, political belief, physical or mental disability, gender, and sexual orientation. The *Canadian Human Rights Act* does not mention the three fundamental freedoms.<sup>22</sup> A review of provincial and territorial human rights legislation found that the Yukon,<sup>23</sup> Saskatchewan<sup>24</sup> and Quebec<sup>25</sup> are the only jurisdictions that provide specific protection of the fundamental freedoms. While children are included in these protections, they are not explicitly mentioned.

The Yukon *Human Rights Act* states that every individual has the right to enjoy fundamental freedoms in accordance with the law. The *Quebec Charter of Human Rights and Freedoms* (article 9.1) states that every person shall maintain proper regard for democratic values, public order and the general well-being of the citizens of Quebec in exercising their fundamental rights and freedoms. It makes clear, however, that the scope of the

Federal, provincial, territorial and municipal legislation can place limits on fundamental freedoms. Some examples follow.

- Sections 318 and 319 of the *Criminal Code*<sup>14</sup> prevent the publication of statements that advocate genocide or wilfully promote hatred against an identifiable group. The constitutionality of section 319 was upheld by the Supreme Court in *R. v. Keegstra*.<sup>15</sup>
- Section 163 of the *Criminal Code*<sup>16</sup> restricts the publication and circulation or possession of obscene material. A publication is considered obscene if it has as its dominant characteristic the undue exploitation of sex or sex in combination with crime, violence, cruelty and horror.<sup>17</sup>
- Section 13 of the *Canadian Human Rights Act* prohibits communication by telephone of any matter likely to expose persons to hatred or contempt on the basis of a prohibited ground of discrimination.<sup>18</sup>
- Most human rights laws in Canada prohibit notices, signs and symbols that convey an intention to discriminate.<sup>19</sup>
- In *Irwin Toy v. Quebec*,<sup>20</sup> legislation prohibiting advertising aimed at children under the age of 13 was upheld by the Supreme Court of Canada. The court concluded that the provision violates section 2(b) of the Charter but that it is a reasonable limit, which protects a vulnerable group.
- As an example of municipal limits, a Nepean, Ontario city by-law bans swearing, spitting and other disruptive behaviour at city parks and community centres.<sup>21</sup>



rights and freedoms, and limits to their exercise, may be fixed by law. These limitations appear to conform to those permitted in the Convention. *The Saskatchewan Human Rights Act* gives everyone these fundamental rights without specific limitations.

## Practising the Freedoms

### In the Private Sphere

It is very difficult to document children's rights in the private sphere because little information exists. Child welfare legislation recognizes that children have certain basic rights, including the right to be protected from abuse and neglect, and that governments have the responsibility to protect children from harm. (See the chapter on child abuse and neglect.) However, beyond the protection of children considered to be at risk, there is little state intervention.

### In the Schools

In the publication, *School Law under the Charter of Rights and Freedoms*, the authors suggest that educators are functioning in a very uncertain environment regarding the *Canadian Charter of Rights and Freedoms*. For example, what is meant by expression and what type of expression can be regulated by school authorities? Does the expression include the length of one's hair? A shirt advertising the local brewer?<sup>26</sup> Will the right to peaceful assembly mean that students can have "a sit-in on the front lawn of the school in order to protest a fellow student's suspension"?<sup>27</sup>

In Canada, school teachers are given special authority over students in their role as a "person standing in the place of a parent."<sup>28</sup> A recent Supreme Court of Canada ruling said that: "In order to teach, school officials must

provide an atmosphere that encourages learning. During the school day, they must protect and teach our children."<sup>29</sup> The court gave schools wide power to conduct spot searches of students even though section 8 of the *Charter of Rights and Freedoms* says that everyone has the right to be secure against unreasonable search or seizure. "A reasonable expectation of privacy," Mr. Justice Peter Cory wrote in the decision, "is lower for a student attending school than it would be in other circumstances, because students know that teachers and school authorities are responsible for maintaining order and discipline in the school." The key word here is "reasonable." School officials, according to the judge, "must carry out the fundamentally important task of teaching children so that they can function in our society and fulfill their potential."<sup>30</sup>

According to author, barrister and child advocate Jeffery Wilson, "the [Ontario] Minister of Education, with the approval of the Cabinet and the Boards of Education, and down the ladder to the principal and the teacher, all carry the remarkably broad and undefined authority to censor or curtail that which the child *qua* pupil may read or learn about, or to whom she may listen, or how she may express herself."<sup>31</sup>

Education in Canada is a provincial/territorial responsibility and legislation, policy and practice varies widely across the country. A few examples follow.

The Northwest Territories *Education Act* prohibits individual religious instruction in public schools, although a District Education Authority may "provide for instruction and discussion in spiritual values or beliefs in a manner that is respectful of the spiritual values of all the students."<sup>32</sup>

The British Columbia *School Act* says that "all schools and Provincial schools must be conducted on strictly secular and non-sectarian principles;" and that "the highest morality must be inculcated, but no religious dogma or creed is to be taught in a school or Provincial school."

In contrast, the Alberta *School Act* "gives school boards the right to provide religious instruction and prayers. Parents decide if their child will participate in these religious activities."<sup>33</sup>

Newfoundland's Department of Education "encourages all school boards to develop policies for the full expression of our multicultural character. Dress codes

## Voices

I was looking in a store. The lady at the cashier asked my age and my sister's, since we were together at the time. I was 14 or 15 and my sister 12. The lady said, "Go away and come back with a parent." I left and did nothing about it.

— Tricia, aged 16, Ontario

must be flexible. Students and staff members should be allowed to wear symbols, clothing, head coverings, or hairstyles dictated by religious affiliation or cultural background. Attention should also be given to such things as non-Christian religious holidays and the inability of some students to participate in non-academic events, such as certain physical activities, because of religious or cultural taboos.”<sup>34</sup>

This contrasts with two cases in Quebec in 1994 in which Muslim students were told to remove their hijab (Islamic veil) while in school. The classmates of one of the students lodged a complaint with the Quebec Human Rights Commission. The Commission stated that public schools cannot forbid students to wear the hijab because that violates the student’s right to public education and to freedom of religion.<sup>35</sup> As a result of this ruling, the Quebec Human and Youth Rights Commission (Commission des droits de la personne et des droits de la jeunesse) released a 52-page report, entitled *Religious Pluralism in Quebec: A Social and Ethical Challenge*. It concluded that although the validity of dress codes is not called into question by this opinion, schools “must seek reasonable accommodations with Muslim students who are discriminated against by the application of such codes.”<sup>36</sup>

Often school officials are confused about how to apply the fundamental freedoms. For instance, in 1995, a Muslim high school student in Manitoba asked for a quiet place where he and a few other students could pray at lunch hour. Although he was told that he could pray in the school hallway, he felt awkward: “A few people walked by and they were bowing and looking at me thinking I’m nuts.” He filed a complaint with the Manitoba Human Rights Commission. The school principal said she denied the request for a prayer room “because she was simply enforcing the division’s policy prohibiting prayer in schools without a supporting petition from at least 60 parents.”<sup>37</sup>

Many decisions are left to the discretion of the board or the school principal. For instance, two Ottawa students were suspended in 1997 for wearing T-shirts to school bearing the phrase “Beware of God.” A parent at the school called the suspensions “a clear violation” of the *Canadian Charter of Rights and Freedoms*. The vice-principal, however, said the school dress code disallowed “clothing that might be deemed offensive to other people in our community—T-shirts with inappropriate logos, swearing on them or messages that might be misinterpreted.”<sup>38</sup>

## Voices

### Coalition Questionnaire:

Camisoles are allowed at school. I’m frustrated they won’t let us wear miniskirts. (translation)

— *Stéphanie, aged 15, Quebec*

At our school kids are allowed to speak freely to a point.

— *Ryan, aged 12, Nova Scotia*

I am free to express myself, my opinions and my ideas at school. If I wanted to speak my mind, all I would have to do is join a group like student council.

— *Nhan, aged 16, Ontario*

Several years earlier, General Counsel of the Canadian Civil Liberties Association, Alan Borovoy, wrote to the Scarborough, Ontario, Board of Education stating that “authorized officials... misdirected themselves when they removed [a student] from class for wearing a pro-Palestinian T-shirt.”<sup>39</sup>

A 16-year-old student from Montreal recently captured media attention when she was given an indefinite suspension for going to school with dyed blue hair. The colour of her hair was against her school’s code of conduct, which is revised yearly and agreed upon by parents. “If they don’t agree with the rules,” said the board spokesperson, “they shouldn’t enrol their child in that school.”<sup>40</sup> The principal at a neighbouring school, however, said that “we certainly wouldn’t expel anyone for that... We don’t care if someone has three earrings as long as it doesn’t interfere with anyone else.”<sup>41</sup>

Sometimes school boards may seem to be permissive. In October 1997, in what was called the “largest mass student action in recent history,” hundreds of Ontario students walked out of classes to protest education changes in Bill 160 and a possible teachers’ strike. Many school administrators were lenient about disciplining these students. One principal looked at the walkout as an “unusual circumstance.” Another said that it had been “a catalyst for a discussion about the issues.”<sup>42</sup>

## Voices<sup>46</sup>

My worker told me my rights. But once she leaves, you got no more rights.

— *child in care*

It's too late for rights.

— *child in care*

No one listens to it [rights] cause it's just garbage.

— *child in mental health clinic*

I told them they can't read it. They cross out bad words, they censor our mail.

— *young offender in custody*

### While in the Care of the State

A brochure for children in care, distributed by the child advocate's office of British Columbia, says: "Your rights are owned, not earned."<sup>43</sup> Children in care are children in the care of the state (typically living in foster homes, group homes or residential institutions) because their parents have been judged unable or unwilling to adequately care for them. According to the advocate's office, at any given time in 1997, there were over 9,000 children and youth in British Columbia living in government care.<sup>44</sup>

The brochure further tells young people: "You have the right to say what you think and be listened to when a decision is being made about you."

A project of the child advocate's office in Ontario, however, revealed that children in care often are unfamiliar with their rights or are cynical about them. Children "in foster care were particularly unfamiliar with their rights."<sup>45</sup>

### Redress Mechanisms

Freedoms enshrined in Canada's constitution are subject to reasonable limits. In the event of a perceived violation, redress mechanisms are in place, though very few cases go to court. As such, case law is limited. In theory, children are free to use the redress mechanisms; in

practice, very few do. Most of the restrictions that children face on a daily basis are not entrenched in law but are part of school policies or of rules in the home.

Courts, human rights commissions, advocates and ombudsmen are the chief redress mechanisms available to children who believe that their freedoms have been unreasonably restricted. However, the process can be forbidding and sometimes restrictive. Most children lack the awareness of their rights and the redress mechanisms and the skills and confidence to access them.

Alan Borovoy, general counsel of the Canadian Civil Liberties Association, writes that:

*...the legal enshrinement of the fundamental freedoms cannot adequately guarantee their observance. Often, the victims of civil liberties violations simply don't know of their legal rights to redress. Often, even if they do know their rights, they lack the resources to exercise them effectively. Legal action and court cases can be costly, time consuming, nerve-racking, and exhausting. Frequently, it is only the very rich who have the resources to spend the money and withstand the pressures which successful legal action requires. In the case of groups like Canada's Aboriginal people--Indians, Inuit, and Métis--financial destitution is compounded by cultural estrangement and sheer physical distance... Extreme poverty inhibits travel and even telephone communication.<sup>47</sup>*

### The Courts

The *Canadian Charter of Rights and Freedoms* (section 24(1)) states that:

*Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court of competent jurisdiction considers appropriate and just in the circumstances.<sup>48</sup>*

In reality, there are very few cases in Canada where a child has actually challenged the restriction of his or her fundamental freedoms.

### Examples of Court Challenges

*Devereux v. Lambton County R.C. Separate School Bd* found that a separate school board that requires the

wearing of a student uniform does not result in any violation of freedom of expression for “to do so would trivialize the Charter.”<sup>49</sup>

In *Peel Board of Education v. Ontario (Human Rights Commission)* (1991),<sup>50</sup> it was decided that a Sikh student had the right to wear his kirpan (a ceremonial dagger carried by religious Sikhs) to school. However, certain safety restrictions, such as the size of the kirpan, had to be followed. This ruling was based on the principles of freedom of religion, not expression.

In *Zylberberg v. Sudbury Board of Education* (1988),<sup>51</sup> the majority decision of the Ontario Court of Appeal declared regulations forcing recitation of the Lord’s Prayer and the reading of the scriptures from the Christian Bible did violate the Charter freedoms. Exempting a student who did not wish to participate was not sufficient for it would compel “students and parents to make a religious statement.”

Two years later, the same court decided, in *Canadian Civil Liberties Association v. Ontario*,<sup>52</sup> to strike down regulations allowing indoctrination of pupils into the Christian faith. It was held that section 2(a) of the Charter prohibits religious indoctrination, but that it does not prohibit education about religion.

In 1986, a 12-year-old Ontario girl was denied the right to play hockey on a boy’s team, an action which was upheld by the Ontario Human Rights Commission by reason of section 19(2) of the *Human Rights Code*, which allows athletic organizations to restrict their members to persons of the same sex. In *Re Blainey and Ontario Hockey Association et al*,<sup>53</sup> the Ontario Court of Appeal found that section 19(2) of the Ontario *Human Rights Code* was inconsistent with section 15(1) of the Charter because it permitted discrimination in an athletic activity on the basis of sex but prohibited discrimination on other grounds such as race, colour and ethnic origin. However, the Court did not direct the hockey association to extend its membership because the hockey association was not exercising a governmental function and the Charter does not extend to private activity.

In *Chamberlain et al versus Surrey School Board*,<sup>54</sup> the Surrey School Board said that resources by gay and lesbian groups were not approved for use in the school district, including three books depicting children with same-sex parents for use in kindergarten and Grade 1. The British Columbia Supreme Court concluded that the Surrey board’s books resolution is contrary to the *School*

*Act* and beyond its authority. The Court said that the second resolution was “significantly influenced by religious consideration” and that this was contrary to the *School Act* provisions requiring schools to be conducted on strictly secular principles.

## Human Rights Commissions

Each province or territory has a human rights commission or similar body that has jurisdiction over its respective human rights legislation. Most commission activities revolve around the investigation and conciliation of complaints about discriminatory practices within the public and private sectors.<sup>55</sup> Although age is a prohibited ground in certain provinces and territories, only people between 18 and 65 years of age are protected from age discrimination. In British Columbia and Saskatchewan, however, the human rights commissions have petitioned the provincial governments to change the legislation to offer protection against age discrimination to those under 19 years of age.

The British Columbia Human Rights Commission’s mandate does not include services to children. The Nova Scotia Human Rights Commission does not accept complaints from children under the age of 18 without consent from a parent or guardian and it estimates that fewer than 12 have been received since 1991.<sup>56</sup> While other commissions allow children to file their own complaints, most report that children’s complaints are usually filed on their behalf by their parents. Typical complaints include harassment in a school setting; refusal to permit a child to participate in certain sports activities; and stores that try to limit the number of children allowed inside at one time.

## Ombudsmen

Generally, an ombudsman is an independent person appointed to receive, investigate and resolve complaints about the administration of public services. She or he is an impartial investigator with the power to discover the facts of a case and to determine an appropriate resolution.<sup>57</sup> The ombudsman does not advise the minister and does not represent a department or a complainant at the outset of an investigation.<sup>58</sup>

All provinces and territories, except Newfoundland, Prince Edward Island and the Northwest Territories, have an ombudsman. There is no national ombudsman for federal matters.

The Nova Scotia Ombudsman’s Office reports that children in care have brought forward concerns about their fundamental freedoms. The concerns were investigated and

recommendations made to the appropriate ministry. However, the Ombudsman's office does not publish materials specifically on children's freedoms and "the majority of youth are not aware of these redress mechanisms."<sup>59</sup>

The Ontario Ombudsman has jurisdiction over provincial government organizations, excluding municipalities. Each municipality addresses complaints in its own distinct manner but with no independent recourse for unresolved complaints. Since 1991, thousands of children have complained to the Ontario office about government agencies. A large number of complaints have come from young persons confined to custody under the *Young Offenders Act*. Some of these complaints relate to matters of freedom of expression, thought, conscience and religion, association and peaceful assembly.<sup>60</sup>

In Manitoba, the position of Investigator, Child and Adolescent Services was created in the Office of the Ombudsman. The Investigator is responsible for receiving, investigating and reporting on complaints involving children as they relate to actions and decisions of the government. The investigator regularly visits government institutions where children reside. The office hears from children regularly, according to Cheryl Ritlbauer, senior investigator, Manitoba Ombudsman, "Youth in institutions often complain that the rules, regulations, policies or legislation impinge on their rights and freedoms or that staff have inappropriately impinged on their freedoms, such as the freedom to practise religion of choice, gang association, right to make medical decisions, freedom of speech and expression."<sup>61</sup> The redress mechanism, continues Ritlbauer, is a "thorough, impartial investigation and, if necessary, a recommendation to" the appropriate person or body or to the public.

## Child Advocates

There are child advocate offices in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec. Each office has a different mandate, services and legislative authority but all focus on children who receive government services. Each reviews and investigates matters brought forward by children, parents and government departments or agencies.

An advocate is defined as a person who speaks for or with children or assists them to speak on their own. He or she might advise government on matters relating to the child's welfare and defend the child's rights, interests and viewpoints. Frequently, child advocates are called upon

to assist children in care to ensure that the child's views and preferences are heard.

*Parents are most often the best advocates for their own children.... Unfortunately, some children do not have parents, extended family or significant others who are able to effectively advocate on their behalf. Children who are in the care of government, such as children living in foster care, children receiving extensive health services or young people in conflict with the law, have very special needs and require systems to ensure that their rights are being protected. Government provides many of these safeguards for children through legislation, policies and direct programs. Sometimes these government safeguards are not enough and children need an advocate who will help them raise the concerns they have or who will raise the concerns on their behalf.*  
— Saskatchewan Children's Advocate Office<sup>62</sup>

Don Alexander of the Alberta Children's Advocate Office reports that "the most frequent complaint that youth express to us is the frustration in not having those responsible for their care consider their views or opinions.... A common issue is deciding where a young person will reside. Child welfare workers frequently decide that it is in the best interests of the youth to live in a certain place; however, the youth may hold a different opinion."<sup>63</sup>

*There are many views about what the focus of the Children's Advocate should be... Yet for the Children's Advocate, while being sensitive to the needs and perspectives of others, there can be only one focus... It must be the child.*  
— Alberta Children's Advocate<sup>64</sup>

## Voices

A lot of my foster homes were all very religious. For me it was negative just because I wanted to be away from the religion and the pressure that was around with it. There were a lot of bad memories. It was just a whole mess, these people with their religion. I mean, I had no choice. I had to go to the church, whether or not I wanted to.<sup>65</sup>

## Promoting the Freedoms

Young people must know and understand their rights for it is not sufficient for them to assume that adults will always be there to protect them. Recently in a high school in Ontario, 19 Grade 9 boys were strip searched after \$90 was reported missing from a classmate's gym bag. According to one of the students, the vice-principal and the gym teacher "made us go into the phys ed office one at a time and we had to take our clothes off in front of them.... I was embarrassed. They told me to bend over but I just crouched. It was kind of frightening."<sup>66</sup> While the actions of the vice-principal and teacher were widely criticized, it is evident that there is confusion about students' rights. Some students refused to obey the teachers and several hundred left the school for an hour at lunch time in protest; however, 19 students followed the orders of the adults.

The school system, while offering the greatest opportunity for young people to learn about their rights, must also respect the rights of students.

### Schools

Generally, Canadian students learn about rights and responsibilities through the social studies curriculum of their particular provincial department of education. Other subjects, such as legal education, health education and personal development, may deal with particular aspects of the freedoms. For example, in British Columbia, freedom of expression is dealt with in the personal development class, whereas cultural traditions and world religions are part of the social studies curriculum. In Saskatchewan, human rights are the focus of a unit of study in Grade 11. The preamble of the Newfoundland Multicultural Education Policy states that: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms."<sup>67</sup>

Outcomes are established to ensure that, by the end of a particular course, students can demonstrate specific skills or knowledge. In Prince Edward Island, for example, the social studies curriculum requires that students be able to "speak, listen, read, view, think, write, dramatize, and articulate their thoughts." Graduates are expected to be able to "reflect on and express their own ideas, learnings, perceptions and feelings."<sup>68</sup> Under new (1998) curriculum in Ontario, students in Grade 5 must demonstrate an understanding of the rights of Canadians,

## Voices

### Coalition Questionnaire:

I wanted to book an appointment with the principal so I went to his secretary. The secretary was typing and she asked me to hold on a moment. The moment turned into 20 minutes later when a police officer walked in and she stopped her work immediately to serve him. She treated me like I was so insignificant.

— Stacy, aged 16, Ontario

including those specified in the *Canadian Charter of Rights and Freedoms*, and demonstrate an understanding that for every right, there is a responsibility.

### Human Rights Commission, Advocates and Ombudsmen

The extent to which human rights commissioners, advocates and ombudsmen promote the freedoms varies from province to province. Among the commissions that responded to our questionnaire, six prepare educational materials and conduct programs for young people on various human rights themes while two do not, unless specifically asked to do so.

The Manitoba Human Rights Commission has designed human rights workshops and developed a human rights manual for administrators, principals, guidance counselors, parents, and students. This manual provides an overview of human rights and has a checklist for administrators and students to assess the extent to which the fundamental freedoms are reflected in their school climate.<sup>69</sup> As part of its activities to commemorate the fiftieth anniversary of the Universal Declaration of Human Rights, the Manitoba Human Rights Commission held a competition in three Manitoba schools. Students were invited to design a sticker with a human rights theme. Stickers in English, French and Michif (the Métis language) were selected and will be used in other educational programs.

In Quebec, the Human Rights Commissioner and the child advocate are within the Human and Youth Rights

Commission, which has the mandate to investigate complaints and to promote the principles of the *Quebec Charter of Human Rights and Freedoms*.<sup>70</sup> The Commission offers a wide range of resources to elementary and secondary schools, such as *Sharing a Better Life Together Through Human Rights*, a book that devotes a chapter to the freedoms, and *Rights and Freedoms: Schools on the Move*, a booklet on “empowering students through human rights.” This booklet answers questions such as: What are human rights and freedoms? Who is entitled to them? Are there any limits to these rights? What are the objectives of human rights education? How can they be integrated into the existing curriculum?

The ombudsmen in Nova Scotia and Manitoba noted that they do not publish resources or promotional materials on children’s freedoms but they do meet with children in care to discuss their rights.

While child advocates do not necessarily publish material on the freedoms, most educate children about their rights insofar as they apply to provincial child welfare legislation. In Saskatchewan, a priority of the advocate is the promotion of the rights of children through education and the Convention is used as a framework for its public education activities.

Hey Kids!  
when you think no one is listening...  
CALL US.  
we’re here. we’ll listen.  
we’ll help you speak up.  
call  
1-800- ...  
— Saskatchewan Children’s Advocate Office<sup>71</sup>

## The Federal Government

In 1993, the federal government launched SchoolNet as part of its activities to help students and teachers connect to the Internet. To date, some 13,378 schools and 1,944 public libraries have connected and it is estimated that by the end of the 1998-99 fiscal year, all 16,500 Canadian schools and 3,400 public libraries will be connected. SchoolNet offers an interactive Website providing students and teachers with online lesson plans on rights and freedoms. It includes stories, questions and answers, suggestions for independent study and group discussions. Freedom of religion and freedom of expression are covered.<sup>72</sup>

To commemorate the fiftieth anniversary of the Universal Declaration of Human Rights, the federal Department of Canadian Heritage, in collaboration with *MuchMusic/Musique Plus* television station, launched the CREDO program in December 1997. This program invites children to submit their views on human rights via an interactive Website or in the form of poetry, art, essays, murals, rap songs, Web pages, quilts, posters, and so on. Children will vote, via the Internet, on the Youth Credo Top 10 Human Rights and the results will be posted.<sup>73</sup>

## Media

The *Canadian Broadcasting Act* states that the needs and interests of children must be considered in programming.<sup>74</sup> One television program of note is *The Incredible Story Studio*, which offers children a chance to tell their own stories on television. In its first season, of 6,000 submissions by students in Grades 6, 7 and 8, 25 fictional stories were chosen for inclusion in one of 13 episodes.<sup>75</sup>

In 1996, the Canadian Centre for Social Justice established Young Peoples Press, a national news service designed to give young people under 24 years of age a voice in the mainstream media. By September 1997, some 60 stories had been published in 220 daily and weekly newspapers across the country.<sup>76</sup> However, Young People’s Press says that “young people are still being asked to be seen and not heard” in the mainstream media.<sup>77</sup>

## Conclusion

It is difficult to determine the extent to which children’s fundamental freedoms are observed and encouraged in Canada, for there is a critical lack of accessible and reliable information. More research and less anecdotal information is needed for an evaluation.

Certain observations, however, can be made: children are not fully recognized as active subjects of rights in Canada; adults can often place arbitrary limits on children’s freedoms; children are not systematically taught about their fundamental freedoms; and there are few redress mechanisms available to children. Finally, it can be said that children’s fundamental freedoms are very dependent on the good intentions of adults.

## Endnotes

1. Hodgkin and Newell, p. 145
2. Premier Ralph Klein, January 13, 1999
3. Dueck (Re), [1999] S.J. No. 143
4. John Drapper
5. [1989] 1 S.C.R. 927, at 968
6. See also: R. V. Sharpe, [1999] B.C.J. No. 54, which said that the detrimental intrusion into the rights of freedoms of expression and to privacy by making it an offence to possess pornography substantially outweighed its salutary effect of combating practices that put children at risk; *Libman v. Quebec*, [1997] 3 S.C.R. 569, which said that freedom of expression protected by s. 2(b) of the Charter must be interpreted broadly; *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 said that community needs warranted overriding a teacher's constitutional freedom to make discriminatory statements in his off-duty time; *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835, said that publication bans ordered to protect the fairness of a trial can restrict freedom of expression and should be imposed only in exceptional cases
7. [1985] 1 S.C.R. 295, at 351
8. *Re Public Service Employees Relations Act* [1987] 1 S.C.R. 313. *PSAC v. Canada* [1987] 1 S.C.R. 424. *RWDSU v. Saskatchewan* [1987] 1 S.C.R. 460
9. A/RES/44/25, 20 November 1989
10. A/RES/217 A (III), 10 December 1948
11. A/RES/2200 A (XXI), 16 December 1966
12. *Constitution Act 1982*, L.R.C. 1985, app. II, no 5, Part I
13. Hodgkin and Newell, p. 171
14. R.S.C. 1985, C-46
15. [1990] 3 S.C.R. 697
16. R.S.C. 1985, C-46
17. Peter Sim, free.html at www.mbnet.mb.ca. In *R. v. Butler*, the Supreme Court ruled that the obscenity provision of the Criminal Code did not violate the *Canadian Charter* but decided that material which depicts explicit sex in forms which are not violent, dehumanizing or degrading would generally not be obscene unless it involved children in its production
18. *International Covenant on Civil and Political Rights Fourth Report of Canada*, p. 40
19. *Canadian Human Rights Act*, R.S.C. 1985, H-6, Section 12. *British Columbia Human Rights Code*, RSBC 1996, Section 7. *Alberta Human Rights, Citizenship and Multiculturalism Act*, Section 2. *Ontario Human Rights Code*, R.S.O. 1990, c.H.19, s. 13. *New Brunswick Human Rights Code*. 1971, c.8,s.6?? *Nova Scotia Human Rights Act* 1991, c.12.s.7. *Prince Edward Island Human Rights Act* R.S.P.E.I. s.12. *Newfoundland Human Rights Code*. R.S.N. 1988. c.62. s.14
20. *Irwin Toy Ltd. v. Quebec(A.G.)*, [1989] 1 S.C.R. 927
21. Ken Gray, p. A1
22. R.S.C. 1985, H-6
23. *Human Rights Act*, R.S.Y. 1986 (Suppl.), c. 11
24. *Saskatchewan Human Rights Code*, S.S. 1993, c. 61
25. *Charter of Human Rights and Freedoms*, L.R.Q., c. C-12
26. Hurlbert and Hurlbert, p. 45
27. *Ibid*, p. 68
28. *Criminal Code*, s.43
29. *R. v. M.R.M.* [November 26, 1998], S.C.C. from N.S., 52 pp.
30. *Ibid*
31. Jeffery Wilson, 8.57
32. Mark Cleveland
33. Keith Wagner
34. Newfoundland Department of Education, s.2.1
35. André Picard, A-4
36. Commission des droits de la personne et des droits de la jeunesse Québec. February 1995, p. 41
37. Linda Quattrin, B-4
38. Ken Gray, "T-shirt tension" in *The Ottawa Citizen*, June 7, 1997, C-3
39. Alan Borovoy, general counsel of the Canadian Civil Liberties Association. Letter to Diane Williams, chair of the Scarborough Board of Education, July 13, 1990
40. Jonathon Gatehouse, p. A5
41. *Ibid*, p. A5
42. Joanne Laucius
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44. Office of the Child, Youth and Family Advocate of British Columbia, *Child, Youth and Family Advocate Releases 1997 Annual Report*
45. Office of the Child and Family Service Advocacy of Ontario, p. 11
46. *Ibid*
47. A. Alan Borovoy, *Fundamentals of our freedoms a Primer on Civil Liberties and Democracy*, pp. 24-25
48. Peter W. Hogg at 37-23 for explanation of "Court of competent jurisdiction"
49. cited in Jeffery Wilson, p. 8.47
50. (1991) 3 O.R. (3d) 531
51. 65 O.R. (2d) 641
52. 71 O.R. (2d) 341
53. 54 O.R. (2d) 513
54. *Chamberlain v. Surrey School District No. 36* [1998] B.C.J. No. 2923
55. Prohibited areas of discrimination may vary from one province/territory to another but generally include: employment, housing, leasing and sales, public accommodations, services or facilities, membership in labour unions, professional, business or trade associations, signs
56. Lori MacLean, coordinator, communications and public education, Nova Scotian Human Rights Commission
57. Ombudsman Ontario, p. 2
58. Barry Tuckett
59. Linda Chilholm, senior investigator, Office of the Ombudsman
60. Michael Orr, policy advisor, Ombudsman Ontario
61. Cheryl Ritlbauer, senior investigator, Ombudsman Manitoba
62. Saskatchewan Children's Advocate Office. *One More Voice for Children's Rights*, Volume 1, Number 1, November 1997, p. 2
63. Don Alexander, manager, program policy services, Children's Advocate Office of Alberta
64. Alberta Children's Advocate Annual Report, 1996-97. Alberta Family and Social Services, p. 14
65. Brian Raychaba, p. 38
66. Pat Bell, p. A3
67. Newfoundland Multicultural Education Policy: Responding to Societal Needs, March, 1993
68. Foundation for the Atlantic Canada English Language Arts Curriculum, p. 7; Prince Edward Island Department of Education, p. 10
69. Manitoba Human Rights Commission, pp. 19, 25 & 26
70. Recall that the freedoms are provided for in the *Quebec Charter of Rights and Freedoms*
71. Saskatchewan Children's Advocate Office, flyer, 1995
72. *School Net News Room Fast Facts*
73. www.credo98.com
74. Unofficial Chapter No. B-9.01 (119), c.11, s. 3d(iii) & i(i)
75. TVO Media Release
76. Janice Turner
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# article 19



# Child Abuse and Neglect



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violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Interpretation:<sup>1</sup> Article 19 asserts the child's right to physical and personal integrity. It is linked particularly to the right to life and to maximum survival and development guaranteed under article 6 and to article 3, that in all actions concerning children, the best interests of the child shall be a primary consideration.

Article 19 requires the State to take legislative, administrative, social and educational measures to protect children from violence, abuse, maltreatment and neglect within the home and in the community. Paragraph 2 provides a non-exhaustive list of measures that States

## Article 19

### Child Abuse and Neglect

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental

should take to protect children and prevent violence and emphasizes the relevance of social conditions to the protection of children from violence, and in particular, to the protection from neglect and maltreatment. It is therefore linked to other relevant Convention articles, particularly the duty in article 4 to implement measures “to the maximum extent of available resources,” article 18 (obligation to render appropriate assistance to parents), and articles 26 and 27 (children’s right to benefit from social security, and to an adequate standard of living.)

The Committee on the Rights of the Child has emphasized that corporal punishment is incompatible with the Convention and has called for a clear prohibition of all corporal punishment—in the family, in other forms of care, in schools, and in the penal system—and has proposed, in this regard, that legal reform should be coupled with education campaigns in positive discipline to support parents, teachers and others.

It is true that article 5 of the Convention requires States Parties to “respect the responsibilities, rights and duties of parents to provide appropriate direction and guidance” to children. Nevertheless, the Committee has commended States Parties that have implemented a clear prohibition of corporal punishment within the family and has particularly criticized a number of countries whose criminal and civil law includes specific confirmation of parents’, teachers’ and some other caregivers’ rights to use violent forms of punishment provided it is “reasonable” or “moderate.” In this regard, the Committee has stated that “the dividing line between the two [correction of children and excessive violence] is artificial. It is very easy to pass from one stage to the other. It is also a question of principle. If it is not permissible to beat an adult, why should it be permissible to do so to a child?”

## Introduction

Article 19 requires countries to take broad measures to protect children from maltreatment, including violence, abuse and neglect. This report focuses on child protection systems in Canada and presents issues and concerns around corporal punishment. The research focuses on Canada’s three most populous provinces—Ontario, Quebec and British Columbia—but includes some information from other jurisdictions.

A lack of resources limited research on prevention issues. Although comments from experts indicate that little is known about prevention programs, more evaluation is needed, prevention programs are often the first to be cut when budgets are squeezed, and that without prevention services, the practice reverts to apprehension of the child instead of providing support to families.

## Overview of Child Welfare in Canada

In Canada, the protection of children from maltreatment is the responsibility of provincial and territorial child welfare systems. Every province and territory has its own child welfare legislation and service delivery network and it is difficult to compare systems. Statistically, there are “extensive variations” in the types of data collected and the manner in which they are reported in the various jurisdictions.<sup>2</sup> Over the years, many task groups have recommended that national statistics on the number of children who are reported to child protection authorities be collected.<sup>3</sup> To this end, the federal government initiated the Canadian Incidence Study of Reported Child Abuse and Neglect, which is expected to publish its first report in 2000.<sup>4</sup>

The child welfare legislation in every province and territory generally recognizes that families are primarily responsible for the “care, nurturing, supervision and protection of their children” and that families should be “supported and preserved.” Most Canadian child welfare legislation also recognizes that children have “certain basic rights, including the right to be protected from abuse and neglect and that governments have the responsibility to protect children from harm.”<sup>5</sup> The legislation in each province and territory defines when a child is in need of protection and when the government can intervene to protect the well-being of a child who is at risk.<sup>6</sup>

Within each province or territory, child protection services are responsible for investigating alleged or suspected child abuse or neglect, providing appropriate family services and/or removing a child from the family home (temporarily or permanently) when required. Removing a child in need of protection from the family home is referred to as “taking a child into care.”<sup>7</sup>

## Overview of A Child Protection System

The child protection system in the province of Quebec was selected to provide an overview of a provincial child protection system. In Quebec, child protection is addressed primarily through the *Youth Protection Act* (YPA), which is rights-based legislation that has been characterized as modern, progressive and humanitarian.<sup>8</sup> The YPA outlines the situations in which a child's security or development is compromised or in danger due to neglect, violence, exploitation, sexual abuse, physical ill-treatment, deprivation of appropriate care, threat to mental or affective development and/or lack of fulfilment of parental obligation to maintenance, education and supervision.<sup>9</sup>

Section 3 of the YPA states that any child protection activity must be in the child's best interest and respectful of the child's rights. If there is a conflict between the child's interests and parental authority, the child's interests are paramount if it is determined that the security or development of the child is at risk.

Health and social services are delivered by 16 regional service networks in Quebec, each of which has a Youth Centre (Centre jeunesse) and several Local Community Service Centres (Centre local de services communautaires or CLSC). CLSCs have a prevention mandate and work with Youth Centres to identify children at risk and provide social services to families.<sup>10</sup>

Youth Centres are responsible for the coordination of child protection services in their region and operate under the authority of a Director of Youth Protection (DYP).<sup>11</sup> The Director is responsible for determining when a child is at risk or in danger, deciding on a plan of intervention and reviewing ongoing child protection cases.<sup>12</sup> Child protection services can be provided voluntarily or by court order, either in the family home or through foster or institutional care by establishments licensed under the *Act Respecting Health Services and Social Services*.<sup>13</sup>

The *Youth Protection Act* mandates the Commission des droits de la personne et des droits de la jeunesse (Human and Youth Rights Commission) to investigate any situation where there is reason to believe that a child's rights have been infringed upon by persons, institutions or bodies.<sup>14</sup> In its 1998 report of *The Case of the Abused Children of Beaumont*, the Commission found that it took 13 years (1981 to 1994) of escalating violence and 16

reports to the Director of Youth Protection before "the unbearable nature" of the children's living conditions was finally recognized.<sup>15</sup> The Commission said that while protecting the rights of children is largely dependent on the quality of the services provided by the Youth Protection staff, this responsibility is "becoming diluted as part of a broader series of changes that include the assimilation of child protection services."<sup>16</sup> The Commission found that the "profoundly inadequate services" provided to the children in this case resulted from a lack of: attention to previous reports; coordination of information; specialized training; supervision; record keeping; and local guidelines for intervention.<sup>17</sup>

Waiting lists for protection services and a lack of communication and coordination between systems appear to be persistent problems, first identified by the Jasmin report in 1992.<sup>18</sup> In the 1998 Lebon report (*Etat de la situation et recommandations au regard des listes d'attente en protection de la jeunesse et de l'accessibilité aux services la jeunesse*), experts in child protection revisited the issues of chronic waiting lists, ineffective protection interventions and worker burnout. This report identified inadequate case documentation and planning;<sup>19</sup> a lack of risk assessment tools;<sup>20</sup> delays in planning for the future of children in care and for measures to improve the situation in the home;<sup>21</sup> high staff turnover; insufficient professional training;<sup>22</sup> worker confusion about roles;<sup>23</sup> and a shortage of placement facilities for children.<sup>24</sup> The experts also spoke to the lack of leadership over the past three years as child and youth services took a backseat to the province's health service reforms and provincial budget cuts.<sup>25</sup> The experts attributed these problems to underfinancing, a fragmented service network (including the justice, education and social service sectors) and inadequate professional training.<sup>26</sup> The 1998 Cliche report (*Pour une stratégie de soutien du développement des enfants et des jeunes: Agissons en complices*) also identified a need to improve cooperation, collaboration and integration in child and youth services in Quebec.<sup>27</sup>

The 1997-98 provincial auditor-general's report echos these concerns, citing a number of problems with how social services for children and youth are managed. The auditor reviewed a sampling of services provided by regional boards (régies régionales), Youth Centres and CLSCs from April 1996 to March 1998. Although the auditor recognized that child abuse and neglect interventions are complex and difficult, he identified a number of areas in need of improvement. The concerns identified include:

- a lack of clear goals for child abuse prevention and inadequate services for high risk families;
- serious delays in case planning and few individualized service plans for children in care;
- poor permanency planning for children who cannot return to their families;
- a lack of reliable information for managers;
- a need for reliable, independent reviews of ongoing interventions;
- inadequate training and upgrading for professionals;
- an under-utilization of clinical diagnostic and risk assessment tools;
- fragmented and uncoordinated services for children and youth;
- few support services for foster families; and
- uneven allocation of resources among the regions.<sup>28</sup>

## Failures of Child Protection Systems

A key challenge for child welfare workers is deciding when a child should be taken into care and when a child would best be served by staying in the family home, with services and supports provided to the parents.<sup>29</sup> Bruce Rivers, executive director of the Children's Aid Society of Toronto, says that when Ontario's child welfare legislation was changed in 1984, it became more difficult to separate at-risk children from their parents. "The overriding emphasis [was] on maintaining the autonomy and integrity of the family."<sup>30</sup> Currently, the focus on family preservation is losing ground in most jurisdictions to a renewed emphasis on protection of the child. This shift in focus has been fueled in part by child death reviews highlighting tragic failures of child welfare systems.

### The Gove Inquiry, British Columbia

In 1995, the British Columbia *Gove Inquiry into Child Protection* told Matthew Vaudreuil's story. Matthew was almost six years old when he was killed by his mother. Throughout Matthew's short life, he was a client of the Ministry of Social Services, under the responsibility of 21 different social workers and seen by doctors 75 times. Yet he was not protected, "not by his mother, not by his community and not by those charged with protecting British Columbia's children."<sup>31</sup>

The Gove Inquiry went beyond Matthew's death to review the entire child protection system in the province and resulted in 118 recommendations for change. The

inquiry found that social workers were confused about their role and two-thirds of them had no professional social work qualifications. Files were not reviewed, reports discounted, professional risk assessments not done, case plans were disjointed, files disorganized or incorrect, and there was no complaint process for clients.<sup>32</sup>

Judge Gove found that "for as long as anyone can remember," child protection had been conducted in secrecy, that the system in British Columbia was fundamentally flawed and that a new one needed to be developed.<sup>33</sup>

### Inquests and Reviews, Ontario

Child welfare reform in Ontario has been fueled by recommendations from recent public inquests and inquiries into the deaths of children who were killed by their parents. In 1996, the Ontario Association of Children's Aid Societies (OACAS) and the province's Coroner's Office formed the Ontario Child Mortality Task Force to review the deaths between 1994 and 1995 of children receiving child welfare services. The Coroner also initiated eight inquests into the deaths of children known to children's aid societies (CASs).

The Child Mortality Task Force and the inquest juries made more than 400 recommendations on a range of child protection issues, including revisions to the *Child and Family Services Act* (CFSA) to broaden the grounds for finding a child in need of protection.

The government struck a panel of experts on child protection to review the CFSA. In March 1998, the panel detailed its recommendations in *Protecting Vulnerable Children*. The main changes to the CFSA called for by the panel include:<sup>34</sup>

- a clear statement that the legislation's focus is protecting the safety, well-being and best-interests of children;
- the inclusion of a definition of neglect;
- more focus on the characteristics, past conduct and behaviour of the caregivers when determining the risk to a child;
- a less onerous test of risk of harm;
- ensuring that key concepts in the legislation are more consistently interpreted;
- reducing lengthy delays in decision-making processes; and
- clarifying the duty to report and for information-sharing.

In 1998, the Ministry of Community and Social Services published a report on a 1997 external review of randomly selected child protection files across the province to assess case practices. The key finding for child abuse cases was that there was high (87 percent) but not full compliance with mandatory standards. The following practices were found to occur sufficiently often to require attention:<sup>35</sup>

- assessments not comprehensive;
- plans of service not focussed;
- inconsistent decisions about whether abuse was verified;
- other potential victims of abuse not interviewed;
- Child Abuse Register not contacted during investigation;
- alleged victim of abuse not notified of outcome of investigation within 14 days; and
- 21-day record of investigation completed late.

- better child welfare information-sharing and information systems.

### After the Gove Inquiry

Since the Gove Inquiry, the British Columbia government has acted on many of its recommendations. New legislation in the form of the *Child, Family and Community Service Act* came into effect in January 1996. Its guiding principle states that the Act “must be interpreted and administered so that the safety and well-being of children are the paramount considerations.” In determining the child’s best interests, factors that must be considered include the child’s views and the child’s cultural, racial, linguistic and religious heritage.

Programs and services from five different ministries were brought together under the new Ministry for Children and Families. A Children’s Commission was established to review all child deaths. A risk assessment model was developed and all child protection workers trained in its use. Standards have been introduced for case management, workload and protocols for information sharing. The *B.C. Handbook for Action on Child Abuse and Neglect* was produced, reflecting the new legislation, policy and practice, and new child protection workers now receive 20 weeks of specialized training.

However, a 1998 review of the integration of children’s services found insufficient planning, inadequate project management, confusion about the goals, and a lack of consultation.<sup>38</sup> The Office of the Child, Youth and Family Advocate found that “there are not sufficient resources to provide proper training, supervision or staff time to implement changes,” such as using risk assessment tools.<sup>39</sup>

There have been concerns about the protection of children in British Columbia after they are taken into care. In 1998, the Children’s Commissioner reported on the death of a boy who had been placed in 10 foster homes, including four that were physically and sexually abusive. His death and the deaths of six other children in 1997 indicated that the system had failed to protect children at risk. “Inadequate risk assessments, coupled with failed foster-home placements, left these children with few supports and little protection.”<sup>40</sup> A 1997 Task Force on Safeguards for Children and Youth in Foster or Group Home Care found that there is a “gap between the policy and practice of screening prospective foster homes resulting from limited resources, high caseloads and frequent staff turnover.”<sup>41</sup> It found that while the policy

Provincial Average—Child Abuse Compliance Rating <sup>36</sup>	
Initial Response	97%
Investigation	87%
Outcome and Conclusion	85%
Case Management	80%
Child and Family Contacts	86%
Assessment and Planning	87%
Other Contacts	85%
Supervisory Review	93%
Records and Timelines	81%
System Procedures	93%
<b>Overall compliance results</b>	<b>87%</b>

## Aftermath

Other recent child death reviews in Canada have called for similar changes, according to Jeremy Berland, a director with the British Columbia Ministry for Children and Families.<sup>37</sup> These changes include:

- a risk assessment instrument to provide a structure for decision-making and planning;
- stronger working relationships among professionals and between disciplines;
- a redefinition of the grounds for finding a child in need of protection;
- increased training for child protection workers; and

## Damaged Goods

You run us through the assembly lines  
 "fragile, handle with care"  
 stamped on our foreheads  
 You drop us off in the nearest box  
 and ship us from place to place

You look past our eyes into your checkbooks  
 that balance our survival  
 Cut a little here, minimize a little there  
 Do you not know how much we have already  
 lost?

Our pasts are never printed  
 on your computer service budgets  
 Pain can never be withdrawn,  
 but please deposit some hope  
 And replenish some love  
 Please invest in some laughter  
 from children who have been kept silent  
 for so long  
 Whose lives totter on your scales

— Robyn Mulcahy, a Canadian child in the care of the state

manual states that the social worker must meet with a child in foster care at least once every three months outside the presence of the caregiver, this generally did not occur because the workers were either unaware of the policy or did not have time because of a high number of case.<sup>42</sup> The Task Force heard that social workers do not have time to complete plans of care for children.<sup>43</sup> The Task Force concluded that "much of the discontinuity of placement is the result of social workers having to make decisions that reflect what is least detrimental to the child, rather than what is in the best interests of the child."<sup>44</sup>

## After Ontario's Inquests and Reviews

In 1997, the Minister of Community and Social Services announced a Child Welfare Reform Agenda. Changes included the development and implementation of a province-wide risk assessment system, a computer database link for the province's children's aid societies and a specialized 12-week training program for new child protection workers. The development and design of a computerized information system for child welfare is underway, targeted for full implementation in 2001.<sup>45</sup>

## Voices of Children in Care\*

### Coalition Initiated Session:

I was close to my mom [but] I didn't get to see her for a long time and I wasn't allowed to write letters or talk to her. It was a long time before visits were arranged because she was so mentally unstable. But for a child that was really hard.

—GF

I had to ask [to be in court]. They told me, "you can be in court if you want but it's not really necessary." I was like, "I'm not going to sit in math class while you're in court deciding for me..." I was 15 years old; I could speak for myself.

—AF

I've had like twelve different social workers so it's kind of confusing. All I remember is that when I came into care I was crying. I didn't know what to do. I was scared.

—DF

[My social worker] called me down to the [children's aid society and said], "You're going to a group home." I kept crying, crying, crying. My mom was crying. I had no say in this. I couldn't do nothing, basically.

—FF

\* Focus group of the Children's Aid Society of Ottawa-Carleton's teen team, 1999

There have been many recommendations for changes to the *Child and Family Services Act* since its introduction in 1985. In May 1999, the *Child and Family Services Amendment Act (Child Welfare Reform)* was passed by the Ontario legislature. According to the Ministry of Community and Social Services, this Act:<sup>46</sup>

- ensures that the best interests, protection and well being of children is clearly paramount;
- expands the grounds for finding a child in need of protection, including adding the word neglect to several of the grounds and lowering the threshold for risk of harm and emotional harm to children;



- allows evidence of a person's past conduct toward children to be used in child protection court proceedings;
- clarifies the duty of professionals and the public to report that a child is or may be in need of protection;
- makes it easier for children's aid societies to get the information they need to protect children;
- promotes earlier and more decisive planning so that permanent arrangements for children can be achieved as soon as possible;
- ensures that access by relatives and other individuals to children who have been made Crown wards is granted only if it is beneficial to the child; and
- provides for a mandatory review of the *Child and Family Services Act* at least every five years.

The definition of a child was not changed in the legislation. A child is defined as being under 16 years or up to 18 years if under the care or supervision of a children's aid society.

## Aboriginal Children and Child Protection

### Voices

Most of our clients—probably 90 percent of them—are, in fact, victims themselves of the child welfare system. Most of our clients are young, sole support mothers who very often were removed as children themselves.... We take the approach in our agency that it is time to break that cycle. The other interesting note is that while the mother may have been in foster care, the grandmother—I think we all know where she was. She was in residential school. So we are into a third generation.

—Kenn Richard, executive director, Native Child and Family Services of Toronto<sup>47</sup>

[Serious breakdown in Aboriginal families is] so complex, so perplexing, and so difficult to deal with that only a grouping of resources from many and various professions can begin to unravel the quandary that Canada's Aboriginal people are in.

—Indian and Inuit Nurses of Canada<sup>48</sup>

The social problems suffered by families across the country tend to be even more concentrated in Aboriginal communities. The destruction of Aboriginal social systems by the mainstream society has left many Aboriginal children vulnerable and many Aboriginal communities mistrustful of child welfare interventions.

Jurisdictional issues affecting Aboriginal child protection are still unresolved. Federal funding generally requires the Indian band or tribal council to accept provincial child welfare legislation.<sup>49</sup> The right of Aboriginal children "to equal protection under provincial law," says researcher Andrew Armitage, "is weakened by the wider debate as to whether provincial law should apply to natives," and that the division of authority between "mainstream provincial agencies and independent First Nations organizations" has resulted in "a diminished accountability in the child welfare system as a whole."<sup>50</sup>

In some Aboriginal communities, "most of the children are victims [of abuse] and most of the adults too, were victims as children" and existing models and resources "are not able to address problems of this scale."<sup>51</sup> Compounding this is the reality that many First Nations communities are located in isolated areas and find it difficult to meet provincially-regulated standards of practice. Some reject the imposition of such standards, seeing them as non-Aboriginal attempts to control "emerging First Nations practice."<sup>52</sup>

The Royal Commission on Aboriginal Peoples catalogues the problems and the limitations of existing child welfare services in resolving them. Among these issues are:<sup>53</sup>

- intergenerational effects: the consequences of past errors continue to be felt in successive generations of Aboriginal families;
- external control of services and inappropriate funding: child welfare policy is set in provincial institutions and is based on a non-Aboriginal value system and world view;
- the need for community healing: families are losing their young less frequently to distant non-Aboriginal foster homes and adoption, but they still suffer the effects of highly dysfunctional families and community turmoil;
- inadequate follow-up and evaluation, as illustrated by the problem of repatriating children seeking to re-establish their Aboriginal identity;
- marginal and insufficient urban services, despite the increase in the urban Aboriginal population;

- systemic resistance to change;
- crisis orientation: resources are inadequate to go beyond crisis response; and
- inappropriate training of social work personnel.

In Manitoba, 67 percent of children in protective care are Aboriginal, although they represent only 10 percent of the province's children.<sup>54</sup> While Aboriginal children in British Columbia represent eight percent of the total child population, they comprise 30 percent of all children in protective care.<sup>55</sup>

### Snapshot Aboriginal Children in Manitoba<sup>56</sup>

- Aboriginal children make up 10 percent of Manitoba's child population.
- Sixty-seven percent of children in care are Aboriginal.
- The rate of adolescent suicide among Aboriginal youth is six times the provincial rate.
- The death rate of Aboriginal children is four times the provincial average.
- Aboriginal children use 50 percent of the children's hospital's beds.
- Aboriginal youth make up 69 percent of the youth in correctional custody.
- Approximately 50 percent of Aboriginal children live in poverty.

First Nations child welfare services have been in place in Manitoba since the mid-1980s. According to Andrew Armitage, Manitoba "provides the best example of a comprehensive approach to First Nations child welfare using tripartite agreements as the principal mechanism."<sup>57</sup> This model, as described by researcher Brad McKenzie, "involves federal funding, provincial responsibility for standards in accordance with provincial legislation, and First Nations administration and delivery of services."<sup>58</sup> Services are "usually provided by a combination of community-based staff members, who provide a broad range of generic services, and regionally-based supervisory and specialist staff."<sup>59</sup> While more Aboriginal children are in "community-based and culturally-appropriate placements," it "has not resulted in a reduction of children coming into protective care."<sup>60</sup>

In a June 1997 paper, called *Strategic Plan for Aboriginal Services*, the British Columbia Ministry for Children and Families said that it "has listened to Aboriginal people and communities and has learned about their desire for culturally appropriate services delivered by Aboriginal communities to fit the needs of Aboriginal children and families." The ministry set the following priorities:

- improved working relationships with Aboriginal communities;
- improved capacity within Aboriginal communities to deliver services; and
- improved service to Aboriginal clients.<sup>61</sup>

Between November 1997 and January 1998, 26 Aboriginal children were taken into protective care in the town of Quesnel, British Columbia while First Nations band councils loudly protested.<sup>62</sup> In July 1998, the Minister for Children and Families said that: "We've signed agreements with 13 First Nations, representing 76 Aboriginal bands, providing tools, training and support to operate their own child welfare agencies with virtually all the same powers and responsibilities as the broader child welfare system.... We're developing protocols with every Aboriginal community and child welfare organization in B.C. so everyone is clear on how we work together, and communities have every opportunity to plan for their children."<sup>63</sup>

In Ontario, a provincial government program review of Aboriginal children's aid societies is reportedly underway. However, the *Report of the 1997 Child Protection File Review* of all children's aid societies indicates that many Aboriginal children receive the lowest level of service in the province. While the average provincial rating across all standards was 87 percent, the ratings of three of the five Aboriginal societies were the lowest overall.<sup>64</sup>

## Child Abuse Prevention Resources

Prevention issues are key to any discussion of child welfare protection advocates in every jurisdiction across the country continue to call for increased resources for prevention. The following list is a sample of some of the prevention programs currently in place across the country.

- Caring Communities Project, funded by the Violence Prevention Project of Health Canada, has compiled 29 case studies representative of community initiatives to prevent child abuse across Canada;

- Better Beginnings, Better Futures is an Ontario community development model for child abuse prevention and includes a 25-year longitudinal study;
- Daybreak Parent Child Centre in St. John's, Newfoundland provides a child care program for children whose needs cannot be met in regular childhood settings;
- Supermom program of Charlottetown, Prince Edward Island, is aimed at teenaged parents;
- *Crying... What Can I Do (Never Shake a Baby)* is a video to explain the dangers of shaken-baby syndrome and offers various strategies for coping with crying infants;
- The National Clearinghouse on Family Violence distributes free information on family violence prevention and research;
- *Keeping BC's Kids Safe: A Guide to recognizing and reporting child abuse* is a pamphlet describing child abuse reporting requirements for a general audience;
- Child Welfare League of Canada's *Parenting in Canada* brochure was written for newcomers to Canada to explain Canadian laws on child rearing, child abuse and reasonable discipline;
- Children's Aid Society of Toronto produced *Feelings expressed by sexual abuse victims* and *What should you do if a child discloses abuse* brochures;
- Canadian Association of Volunteer Bureaus and Centres developed *The Screening Handbook: Protecting clients, staff and the community*;
- Society for Children and Youth of British Columbia distributes *Put the Child First: Training for Trainers (Child abuse prevention program for children and youth-serving organizations)*;
- Conferences such as "Keeping Our Children Safe" organized by the Public Legal Education and Information Service of New Brunswick and the Fredericton-Oromocto Caring Partnership Committee include discussions on child abuse issues; screening and training staff and volunteers; understanding youth dating violence; child abuse in a First Nations context; and advocacy and action strategies.

## Corporal Punishment

One of the difficulties in substantiating child abuse is the need to distinguish between physical abuse and corporal punishment. According to a 1994 Ontario study on child abuse and neglect, problems with punishment or discipline "were a factor in 72 percent of substantiated physical abuse cases."<sup>65</sup>

Section 43 of Canada's *Criminal Code* allows "reasonable force" to be used against children and this provision has

## Voices

### Coalition Questionnaire:

*Is it appropriate for parents or teachers to use physical force to discipline children?*

No, I don't think they should use physical force because you hurt them and I believe they will get more done if they ask nicely.

—Ryan, aged 12, Nova Scotia

I disbelieve in the right to physically punish a child. I believe disciplinary measures should be taken in other ways and hitting anybody is wrong.

—Stewart, aged 13, Newfoundland

Fear should not be used to discipline. Reasoning and compromising is much better.

—Minna, aged 17, British Columbia, self-described as a "street kid"

No, because violence is not worth it in life; it leads nowhere. (translation)

—Dominique, aged 15, Quebec

All it does is teach children that you can solve problems with violence--which you can't.

—Jessica, aged 16, Ontario

been used to justify a child being punched in the face or pushed down a flight of stairs.<sup>66</sup> Section 43 states that: "Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."

While Canada's constitutional division of powers places child welfare and child protection under provincial jurisdiction, criminal assault is a federal matter.<sup>67</sup>

Justice Weagant, in his ruling on *R. v. James*, [1998] O.J. No. 1438 (Ont. Ct. of Justice, Prov. Div.), describes how Section 43 singles out children:

*An assault in law usually means the intentional application of force in a situation where there is no consent to the contact. However, since the*

*object of the contact here was the son of the accused, then special rules apply. First, if the force used was for the purpose of correction, and second, if the force did not exceed what was reasonable in the circumstances, then assault cannot be regarded as criminal. This exemption from the normal law regarding assaults exists because children are a special class of citizens: they are singled out as the only minority against whom assaults by way of correction are legal as long as the force used does not exceed what is reasonable under the circumstances.*<sup>68</sup>

Justice Weagant further states that:

- there is some variance across the country with the legal test to demonstrate whether the force used was excessive;<sup>69</sup>
- the child has absolutely no due process at all;<sup>70</sup>
- Section 43 is in direct conflict with the UN *Convention on the Rights of the Child*;<sup>71</sup> and
- “I think this is an area that begs for legislative reform.”<sup>72</sup>

The *Canadian Charter of Rights and Freedoms* guarantees the right to the security of the person in section 7 and equal protection of the law without discrimination on the basis of age in section 15. According to section 2 of the Charter, limitations on these rights can only be allowed if they can be demonstrably justified in a free and democratic society. So, is section 43 justified?

According to Senator Landon Pearson, “At present, owing to section 43, children are the only persons not protected from the use of force by way of correction. In my view, it is a breach of the Charter to single out children for an all-purpose defence based on status rather than on circumstances.”<sup>73</sup>

## UN Committee’s Concluding Remarks

The UN Committee, in its concluding remarks on Canada’s 1995 report, suggested that Canada “examine the possibility of reviewing the penal legislation allowing corporal punishment of children by parents, in schools and in institutions where children may be placed.” The Committee recommended that “physical punishment of children in families be prohibited” and that “educational campaigns be launched with a view to help changing attitudes in society on the use of physical punishment in the family and foster the acceptance of its legal prohibition.”<sup>75</sup>

## The Arguments

While there are many organizations and individuals across Canada who advocate for the repeal of section 43, there is also concern that parents, teachers or other persons standing in the place of a parent could be unreasonably charged with abuse.

The Canadian Teacher’s Federation has argued that section 43 provides a necessary shield and a limited defence to “those adults accused of using force in their dealings with children. “The key legal issue,” says the Federation, “has been the test of ‘reasonableness’ or what constitutes ‘excess’.”<sup>76</sup> On the other hand, Corinne Robertshaw of the Repeal 43 Committee argues that “the best way to prevent teachers being charged with assault is to give them a clear and unequivocal message that force is no longer allowed for the purpose of correction but only in those situations permitted by other provisions of the law.”<sup>77</sup> Ken Johnson of the Canadian School Boards Association suggests that section 43 be replaced with the following: “Every parent, teacher or person standing in

### Test for Reasonable Force

There is no definitive Supreme Court of Canada judgement on the issue of reasonable force. Many judges consider the factors listed by the Saskatchewan Court of Appeal in *R. v. Dupperon* (1984), 16 C.C.C. (3d), 453 when determining whether the force used was reasonable under the circumstances:<sup>74</sup>

The only matter with which I am concerned here... is whether the force used exceeded what was reasonable under the circumstances so as to deprive the appellant of the protection afforded by section 43 of the *Criminal Code*. In determining that question the court will consider, from both an objective and a subjective standpoint, such matters as the nature of the offence calling for the correction, the age and character of the child and the likely effect of the punishment on this particular child, the degree of gravity of the punishment, the circumstances under which it was inflicted, and the injuries, if any, suffered. If the child suffers injuries which may endanger life, limbs or health or is disfigured, that alone would be sufficient to find that the punishment administered was unreasonable under the circumstances.

the place of a parent is justified in restraining a pupil or child who is a danger to him/herself or others if the action does not exceed what is reasonable under the circumstances.”<sup>78</sup> British Columbia has banned corporal punishment in its public schools: “The discipline of a student while attending an educational program made available by a board or a Provincial school must be similar to that of a kind, firm and judicious parent, but must not include corporal punishment.”<sup>79</sup>

Mel Gill, former executive director of the Children’s Aid Society of Ottawa-Carleton, has argued that “it would be a mistake to criminalize what might be considered “normal” parenting; this could have worse effects than spanking.” He further states that “child welfare organizations are not up to the task of dealing with consequences of repeal, because around 67 percent of parents use physical discipline.”<sup>80</sup>

A 1997 Global/Decima opinion poll of Ontarians found that:

- 59 percent consider spanking appropriate for children;
- 37 percent describe spanking as unacceptable under any circumstance;
- spanking ranks last among types of discipline parents would use today;
- preferred discipline options include taking away privileges, grounding and time-outs;
- 33 percent of parents of pre-teens have used spanking to discipline their children.<sup>81</sup>

Anne McGillivray, law professor at the University of Manitoba, argues that “corporal punishment is assault justified by tutorial motive, yet case law shows that most assaults are motivated not by ‘correction’ but by anger, frustration, ‘malice’ and ‘bad humour’.”<sup>82</sup>

## Repealing Section 43

There have been various initiatives to repeal section 43. In 1993 the federal government consulted with youth, parents, educators, child welfare personnel, police, lawyers and advocacy organizations. Most favoured the repeal of section 43 and the development of new provisions to “clarify the issues around use of force and to educate the legal system and the public.”<sup>83</sup> However, then justice minister Allan Rock said that the federal government had no intention of changing the *Criminal Code* to outlaw spanking. He thus rejected two decades of his Ministry’s work, according to legal advocate Anne McGillivray.<sup>84</sup>

However, Senator Sharon Carstairs, Deputy Government Leader in the Senate, introduced a bill in December 1996<sup>85</sup> to repeal section 43 of the *Criminal Code* while also protecting parents, teachers and primary caregivers “against unwarranted and nuisance prosecutions.”<sup>86</sup> It died on the order paper but was reintroduced by MP Tony Ianno in March 1998.

Most recently, the Canadian Foundation for Children, Youth and the Law filed a test case in November 20, 1998 to have section 43 declared unconstitutional. Cheryl Milne, counsel for the Foundation, says that “we will be arguing that the social science evidence and current international standards take away any justification for the use of corporal punishment against children in Canadian society.”<sup>87</sup> And in Quebec, the Commission des droits de la personne et des droits de la jeunesse (Human and Youth Rights Commission) has announced its support for the movement to eliminate section 43 from the *Criminal Code* in order to respect the UN *Convention on the Rights of the Child*.<sup>88</sup>

## Conclusion

Protecting children from maltreatment is an ongoing challenge in Canada. Little is known about the causes, prevention and treatment of abuse and neglect and child death reviews continue to identify the failures of child welfare systems.

Inquiries and reviews have led to hundreds of recommendations for improvements which have resulted in various child welfare reforms. Child neglect is strongly linked to poverty, however, and Canada has had little success in reducing child poverty.

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# article 23



# Children With Disabilities



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## Article 23

### The Rights of Disabled Children

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the

extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this

regard, particular account shall be taken of the needs of developing countries.

Interpretation: There is a wide range of disabling conditions, including physical disabilities, developmental disabilities, mental retardation, sensory deprivation and health related educational and behavioral problems.

Under article 2, States Parties are required to ensure and respect all rights set forth in the Convention to disabled children within their jurisdiction. Article 23 provides further guidance on realizing the rights of disabled children. The disabled child must be respected as a subject of rights and should be provided with conditions for living that “promote self-reliance” and facilitate “active participation in the community.” Paragraphs 2 and 3 recognize the right of the disabled child to special care and “effective access” to various services. Paragraph 4 promotes international cooperation to improve the capabilities and skills of those providing services for children with disabilities, particularly in developing countries.

Many Convention articles relate to causes of disability and their implementation can help prevent disability, for example by protecting children from involvement in armed conflict and from violence and various forms of exploitation. Articles 6 and 24 (maximum survival and development; health and health services) are also relevant to the prevention of disability.<sup>1</sup>

## Introduction

This paper considers the rights of children with disabilities, specifically:

- protection and promotion of equality for young people with disabilities;
- right to special care, including family support, early education, child care and early intervention;
- access to services, including education, employment training, health care and rehabilitation;
- recreation and play; and
- Canada’s international efforts with regard to disability issues.

Statistics Canada estimates that in 1991, there were approximately 534,430 children and youth (7.2 percent of all Canadian children) between 0 and 19 years with at least one disability. Eighty-five percent of these children were considered to have mild disabilities, 11 percent moderate and four percent severe disabilities.<sup>2</sup>

## Definition of Disability

According to Statistics Canada’s *Health and Activity Limitation Survey* (HAL survey), children (0 to 14 years) were considered to have a disability if they had any one of the following characteristics:

- difficulty hearing, seeing or talking;
- a chronic condition such as diabetes or muscular dystrophy;
- use technical aids, such as crutches, hearing aids or braces;
- a long-term condition or problem that prevented or limited participation in school, at play or in any regular age-appropriate activity;
- attendance at a special school or in special classes;
- a long-term emotional, psychological, nervous or mental health condition; or
- any other general limitation.

Youth (15 to 19 years of age) were considered to have a disability if they:

- had difficulty completing one or more of 17 activities of daily living (such as walking a flight of stairs, cutting food or reading a newspaper); or
- were limited in the kind or amount of activity they could perform at home, school, work or for recreation due to a long-term physical condition, emotional, psychological, nervous or mental health condition, a mental handicap or health problem.<sup>3</sup>

Statistics Canada’s 1991 HAL survey is the most current national research on children with disabilities and there is no commitment to conduct another such survey. Unfortunately, the survey aggregated all children between birth and age 14 so it is not possible to separate information on preschool children from school-aged children.

According to HAL survey results, in the 0 to 14-year age group with disabilities:

- almost 76 percent have a health problem or chronic long-term condition;
- 46 percent have a disability or long-term health condition, which limits or prevents participation in school, play or other pursuits;
- almost 11 percent have a long-term emotional, psychological, nervous or mental health condition limiting their activity;
- learning disabilities are the most common long-term condition;
- a higher proportion of boys are affected by all conditions; and

- almost 18 percent use a technical aid, such as a hearing aid, medically prescribed footwear or a brace.<sup>4</sup>

In the 15- to 19-year age group with disabilities:

- eight percent use a technical aid for mobility or agility limitations;
- six percent use technical aids to assist seeing or hearing; and
- 7.7 percent require an attendant or companion on short trips.<sup>5</sup>

### Causes of Disability

Although prevention of disability is not within the scope of Article 23, there is a growing awareness that disability does not simply stem from genetic origins or injury. According to Marcia Rioux, executive director of the Roeher Institute, more than 90 percent of infant disability is due to social, rather than genetic, causes.<sup>6</sup> People with disabilities are more likely to live in poverty than the non-disabled.<sup>7</sup> Poverty increases the risk of exposure to environmental pollutants that also have harmful effects. The Canadian Institute of Child Health reports that from before conception until adulthood, children are more vulnerable than adults to environmental hazards due to their developmental, behavioural and physiological differences.<sup>8</sup>

## Participation: Protection and Promotion of Equality

### Legislation and Policies

The Canadian constitution protects persons with disabilities from discrimination and promotes their equality. Section 15 of the *Canadian Charter of Rights and Freedoms* enunciates equality rights for persons with disabilities and permits special programs to advance disadvantaged groups in Canadian society. Section 7 of the Charter affirms that every citizen of Canada has the right to life, liberty and security of the person.

The *Canadian Human Rights Act* and the human rights codes in every province and territory prohibit discrimination on the basis of disability. However, legislation does not specifically protect and promote inclusion for children with disabilities. The Canadian Association for Community Living, the Council of Canadians with Disabilities and the Canadian Association of Independent Living Centres have called for a review of the *Canadian Human Rights Act* in order to reduce

systemic discrimination against persons with disabilities without the need for costly court cases.<sup>9</sup> This review is currently under way.

Two percent of children with disabilities in Canada require specialized features to enter or leave their homes (access ramps, street level entrances, etc.) and seven percent have difficulty taking short trips outside their place of residence.<sup>10</sup> Accessibility is supported to some extent by federal and provincial legislation. The *National Transportation Act* has been amended to ensure the accessibility of federal transportation services (airports, trains, etc.) for persons with disabilities. Section 3.8 of the *National Building Code* outlines barrier-free design requirements in building construction for new or renovated non-residential buildings. The Code has been adopted by most provinces and territories except Newfoundland, Ontario and British Columbia which have developed their own standards. The Canadian Standards Association has established a barrier-free standard which provides enhanced technical provisions for people with disabilities. The Canadian Human Rights Commission has called for greater progress in ensuring consistent accessibility standards across Canada.<sup>11</sup> Provincial building codes are not designed with children in mind.

Limited government support is available to assist with the cost of accessibility-related modifications. The *Income Tax Act* provides a tax deduction for expenses associated with accessibility-related building modifications. In addition, the provinces provide some degree of financial assistance to families and caregivers to improve physical access to homes or service facilities for children with disabilities and chronic illnesses. There is a lack of information about the physical improvements required to allow open access for children in public activities.<sup>12</sup>

According to the 1991 HAL survey, 7,984 children and youth with disabilities need specialized features, such as ramps, widened doors or hallways, automatic or easy-to-open doors, elevators or lift devices and easier access to parking, but do not have them.<sup>13</sup> The Canadian Standards Association recently established a working group to address the lack of accessibility standards in children's play spaces.

The federal *Immigration Act* states that a family's application to immigrate to Canada can be refused according to section 19(1)a)(ii), if the admission of one or more children would cause excessive demands on health or social services. This legislation has been

unsuccessfully challenged in the courts a number of times.<sup>14</sup> Citizenship and Immigration Canada acknowledged in 1998 that this provision is “often perceived as inhumane and the decision-making process slow.” A “significant number” of refusals are overturned on appeal to the Refugee Board or on humanitarian or compassionate grounds. However, the onus is on the families to appeal. Immigration Canada is currently assessing the impact of removing this provision for spouses and dependent children of Canadian citizens and permanent residents.<sup>15</sup>

### Policies

The Federal Task Force on Disabilities was established by the ministers of Human Resources Development Canada, Finance, Justice and Revenue. In its 1996 report, the Task Force argued that the federal government should “support programs and policies that help all Canadians participate effectively in the economic and social mainstream.”<sup>16</sup>

The Task Force encouraged the government to introduce a “Canadians with Disabilities Act,” including an enforcement and monitoring mechanism, similar to American legislation that has had considerable success in eliminating discrimination against people with disabilities in public life through mandatory compliance.<sup>17</sup> The government has not taken action on this.

In October 1998, the federal, provincial and territorial ministers responsible for social services released *In Unison: A Canadian Approach to Disability Issues*. This policy document was designed to guide government action and reduce litigation about discrimination complaints.<sup>18</sup> National disability groups have expressed concern, however, that the policy recommended: would further devolve federal responsibility for Canadians with disabilities to other levels of government; does not propose new funding; and will lead to a lack of program accountability and national standards.<sup>19</sup> These groups wrote the federal government in 1999, criticizing its lack of commitment to disability issues and the lack of action to implement the federal Task Force on Disability’s recommendations.<sup>20</sup>

The federal government is establishing centres of excellence on children’s well-being across the country. Parents of children with disabilities are very concerned that disability issues will not be addressed.<sup>21</sup>

### Government Advocates

New Brunswick and Alberta, among others, have disabilities advocates within their governments. In Alberta, the Premier’s Council on the Status of Persons with Disabilities was established in 1988 “to enhance and promote the opportunity for full participation of persons with disabilities in the life of the province.” The Council focuses on policy review and public education and works with government departments serving people with disabilities.<sup>22</sup> The effectiveness of the Alberta Council has been questioned since its independent chair was replaced in May 1998 by a member of the provincial legislature.<sup>23</sup> Neither the Alberta nor the New Brunswick council has an explicit focus on children in its mandate<sup>24</sup> and there is no information on the effectiveness of these councils.

### Independent Complaint Mechanisms

Complaints about discrimination on the basis of disability can be pursued through the courts, human rights commissions, ombudsmen and/or child advocates. (General information about these mechanisms can be found in the chapter on The Fundamental Freedoms.) Cases involving discrimination against people with disabilities are the largest single category of complaint filed with human rights commissions in Canada and the number of cases continues to rise.<sup>25</sup> Discrimination on the basis of disability was cited by 32 percent of Canadian Human Rights Commission complainants in 1998, up from 29 percent in 1997.<sup>26</sup>

However, not all human rights bodies include children in their mandate and there are no statistics on the number of children with disabilities who file complaints with commissions. Time and money required to pursue discrimination complaints restrict the number of cases filed with these commissions.

The Court Challenges Program funds federal court challenges to advance equality and language rights for members of disadvantaged groups, including people with disabilities.<sup>27</sup> In 1996, the Federal Task Force on Disability Issues recommended that the Court Challenges Program be expanded to include provincial and territorial laws.<sup>28</sup> The Challenges program is funding an impact study by the Canadian Association for Community Living of the effects of two Supreme Court rulings involving disability issues and the Charter’s equality rights guarantee. (The Eaton and Eldridge cases are described later in this paper.) The study results are

expected to enhance understanding of equality rights for persons with disabilities and assist in future cases.<sup>29</sup>

## Protection from Abuse and Violence

People with disabilities are more likely to experience physical, sexual, psychological and emotional abuse, neglect, financial exploitation and violence than those without disabilities. The Roeher Institute provides the following statistical estimates of abuse of children with disabilities:

- 39 to 68 percent of girls with intellectual disabilities will be subject to sexual abuse before the age of 18;
- 16 to 30 percent of boys with intellectual disabilities will be subject to sexual abuse before the age of 18;<sup>30</sup>
- 54 percent of boys who are deaf have been sexually abused, compared to 10 percent of hearing boys;
- 50 percent of girls who are deaf have been sexually abused, compared to 25 percent of girls who are hearing;<sup>31</sup>
- 39 percent of children with multiple disabilities admitted to a psychiatric hospital have suffered maltreatment (mainly physical abuse);
- 40 percent of sexually abused children with multiple disabilities admitted to a psychiatric hospital have been abused by more than one perpetrator.<sup>32</sup>

Every province and territory has legislation to protect children from abuse and violence. It is an offence under Canada's *Criminal Code* to deny the basic necessities of life to persons with disabilities when it involves permanent injury or severe harm that endangers the victim's life. In some cases, courts have awarded custody and state protection due to parental failure to address the disability-related needs of children. The courts have also highlighted the state's responsibility to ensure that disability-related needs are addressed.<sup>33</sup>

The *Canada Evidence Act* allows individuals to provide evidence in any manner they can to make themselves understood. However, the Roeher Institute says that complaints to authorities by individuals with disabilities may be ignored.<sup>34</sup> For example, the Office of the Ombudsman of British Columbia filed a report in 1993 about abuse of some students with hearing impairments at the Jericho Hill school for the deaf. School children "who struggled to let their claims be known were ignored, discredited and unsupported. Their claims were measured strictly on the basis of whether there was evidence sufficient to justify criminal charges being laid... Few considered the importance of early, appropriate and fair intervention. This was an error."<sup>35</sup>

Some initiatives to address abuse and violence include:

- Toronto youth with disabilities wrote an abuse prevention handbook for youth with disabilities;<sup>36</sup>
- the Medicine Hat Regional Association for the Mentally Handicapped was funded by (the former) Health and Welfare Canada to develop a training manual to prevent abuse of the mentally disabled person;<sup>37</sup> and
- the Canadian Association of Independent Living Centres, funded by Health Canada and Human Resources Development Canada, studied the issue of family violence and abuse involving people with disabilities and produced a training resource.<sup>38</sup>

Assumptions about the quality of life of persons with disabilities can affect their legal protection from abuse and violence. For example, when Saskatchewan farmer Robert Latimer murdered his daughter, Tracy, many saw this as a mercy killing and over 26,500 people signed a petition in his support.<sup>39</sup> Robert Latimer was sentenced to two years less a day for second-degree murder, a conviction that normally has a mandatory life sentence and no eligibility for parole for 10 years. Both the Crown and the defendant are appealing the sentence. The Crown said that "Tracy's disability had a significant impact... on the decision to end her life. And to permit a person's life to be taken [under the defence of necessity] runs contrary to all our legal principles."<sup>40</sup> According to Bruce Uditsky of the Alberta Association for Community Living:

*Robert Latimer's sentence and the rationale for its reduction creates a clear and present danger to the lives of our children and other Canadians with disabilities... Societally sanctioned devaluation, as exemplified by Justice Noble's reasoning [in the Latimer case], invites discrimination, prejudice and abuse.<sup>41</sup>*

## Right to Special Care and Assistance

Beginning in the 1950s, funding began for community services for persons with disabilities. By the 1970s and 1980s, most provinces were beginning to consider alternatives to institutional life for people with mental handicaps. By the early 1990s all provinces had policies to keep people with disabilities in their communities.<sup>42</sup> Technological advances have significantly improved survival rates and also increased the numbers requiring

community-based services.<sup>43</sup> As a result, families are increasingly responsible for the financial, physical, emotional, developmental and social costs associated with caring for children with disabilities.<sup>44</sup>

## Financial Assistance

Provincial governments have various programs to financially assist families with the extra costs associated with disability. A sample of programs includes:

- Quebec provides a supplementary family disbursement of \$119.22 per month to all families with severely disabled children;<sup>45</sup> and
- the Saskatchewan Aids to Independent Living program lends assistive devices free of charge to children and adults. The *Paraplegia Program* supplies additional benefits to eligible children, including prescription drugs, medical supplies, rehabilitation equipment and grants for home and vehicle modifications.<sup>46</sup>

A national study has found that in most parts of Canada, there is little financial support for family members who are primary caregivers of persons with disabilities. In fact, most provinces and territories have no publicly-funded income support program for caregivers of children with disabilities.<sup>47</sup> The exceptions to this are Quebec,<sup>48</sup> Prince Edward Island and Newfoundland, which have provisions for parents who care for their children with disabilities. The federal, provincial and territorial ministers of social services intend to better coordinate income programs for people with disabilities.<sup>49</sup> However, it is not known if children will be a focus of this work.

Social assistance to Aboriginal families on reserve is generally lower than what most provincial governments provide to the rest of the population since band councils receive funding from the federal government and federal guidelines recommend lower levels of support. There is no federal supplement for disability-related costs, so parents of children with disabilities must cover the costs of the disability themselves or move off reserve to receive provincial social assistance benefits.<sup>50</sup>

According to a 1995 survey of 117 parents of children with disabilities conducted by the Canadian Association for Community Care, the means tests determining eligibility for support services are too rigid, access to services varies and waiting lists are used as a rationale for denying services. The cost of short-term relief care was

the most significant concern, followed by transportation and equipment costs. Half of the parents surveyed identified the absence of respite and child care services as important reasons for out-of-home placement of children with physical disabilities.<sup>51</sup> Parents said that foster families receive better financial support than natural families with disabled children. The Canadian Association for Community Care found that the working poor are often worse off than families on social assistance since welfare recipients have better supports and services available to them for their children with disabilities.<sup>52</sup>

Sharon Hope Irwin, director of SpecialLink: The National Centre for Child Care and Community Inclusion, says that primary caregivers of young children with disabilities are much less likely to be in the workforce than other primary caregivers and disability-related expenses are an added burden.<sup>53</sup>

## Voices of parents

I am worried about cuts to subsidized child care for special needs children and for funding and programming and support in school... funding to schools is being cut... So every need (programming, educational assistants) must be fought for by the parent and in some cases paid for by the parent.

There are waiting lists for everything...

Our employer-provided plan has been eroding and no longer covers orthotics. The drug plan is now reduced to 80 percent coverage. There are cutbacks to the assistive devices program approval process—it takes longer and funding is more difficult to access.<sup>54</sup>

## Early Identification, Early Intervention and Child Care

Special interventions for children with disabilities should begin as early as possible.<sup>55</sup> While services for children with disabilities have been developing over the past 40 years, the delivery of these services varies from

community to community. In some communities, services are non-existent or waiting lists are long. The Blind Children and Youth Parents' Association of British Columbia says that unlike the United States, there is a general lack of preschool intervention to address skill development for children with disabilities.<sup>56</sup> Services are not seen as an entitlement and can be reduced or eliminated in times of fiscal restraint.<sup>57</sup>

Canada has no national, public child care program and child care services, standards and eligibility criteria vary widely across the country.<sup>58</sup> Child care offers developmental opportunities for children with or without disabilities. According to the HAL survey, almost 43 percent of children between 0 to 4 with disabilities have needed child care but 12 percent have been refused the service due to their disability.<sup>59</sup>

Various impediments restrict the participation of children with disabilities in child care, including:

- discretionary admission criteria established by individual programs;
- high cost of child care;
- lack of access or transportation for children in both rural and urban areas; and
- child care workers who lack training and experience with disability issues.<sup>60</sup>

Most provinces and territories provide some subsidies for child care for children with disabilities and support inclusion in regular child care programs to varying degrees. Many families, however, have difficulty accessing the service. According to Sharon Hope Irwin, director of SpecialLink:

*...rights to early intervention and inclusive child care for young children with disabilities have not even begun to be addressed. In no province is there statutory entitlement for children with disabilities to be included in regular child care programs.<sup>61</sup>*

The Roeher Institute says that since “disability has not been a major policy thrust in child care, the policies that have emerged may *permit* but generally do little to *promote* inclusion.”<sup>62</sup> Disability often serves as an excuse to exclude children from child care.

## Voices of parents

There is a desperate need for good home child care for children with special needs. It takes a special person to look after our kids. I would stay home if I could afford it, but I have to work for our family to be financially secure.<sup>63</sup>

Our 11-year-old son, Shawn, has severe cerebral palsy. He communicates by means of gestures, a picture board and a computer. He cannot move or use his hands independently. And still he is part of his school, his church, his hockey team, his after-school day care... His self-esteem is high; our belief in his capacity to contribute to his community and to have a fulfilling life is solid. None of this would have been possible had he not been in inclusive community child care right from the beginning.<sup>64</sup>

### Support Services and Respite Care

The Roeher Institute says families with members who have disabilities have to wait until they have exhausted their emotional and financial resources before they receive emergency support.<sup>65</sup> Sharon Hope Irwin and Donna Lero report that parents of children with disabilities are “clearly under considerable stress. Fully 88 percent describe themselves as feeling tired and overloaded and 90 percent describe themselves as stressed about balancing work and family obligations.” Seventy-one percent of parents in their study said they found it difficult to find care for their child with special needs.<sup>66</sup>

Home care can offer medical care, respite care and other needed services. Respite care, which can be provided either in or outside the home, helps families by relieving stress, improving family functioning, improving attitudes towards the child and reducing social isolation.<sup>67</sup>

Home care is Canada’s only public health program with means testing to assess family need.<sup>68</sup> According to Taylor Alexander of the Canadian Association for

## Voices

### Coalition Questionnaire:

I love spending time with my family. If they're away, I have other people around me who help me feel better and also I always know they're coming back.

—Vanessa, 14 years of age, Ontario, has a developmental disability

Community Care, there is no coherent coverage of continuing-care services in the community.<sup>69</sup>

According to Lesley Larsen, former executive director of the Canadian Home Care Association, “there is no effort to create standards or even to define basic services so the public knows what to expect.”<sup>70</sup> There is no reliable data on comparing home care services across the country so it is difficult to assess service provision.<sup>71</sup>

Home care spending varies widely across the country. Ontario spends the most per capita and offers nurses, physiotherapy and homemaking without a means test. “Community-care access centres” coordinate care provision from agencies but do not have minimum standards or guaranteed access. The demand for services in Ontario has been growing by approximately 20 percent a year.<sup>72</sup> Quebec’s per capita spending is one-third that of Ontario.<sup>73</sup>

A national project on home-based care by the Canadian Association for Community Care found that all parents want greater access to respite, especially parents with children with psycho-social problems and that children who have a combination of health and social problems or diagnoses such as Fetal Alcohol Syndrome, also have more problems accessing the home care system.<sup>74</sup> This association recommended national standards for home care and support services for children with special needs.<sup>75</sup>

In 1997, the National Forum on Health recommended a universal, publicly-funded home care system with a wide range of professional services, supplies and care to ensure that the burden of care does not overwhelm family members.<sup>76</sup>

### Violence Against Children with Disabilities:<sup>77</sup>

- In November 1998, a Niagara Falls woman was accused of attempting to kill her six-year-old daughter who has cerebral palsy. Relatives said the child lives in constant pain.
- Robert Latimer of Saskatchewan killed his 12-year-old daughter who had cerebral palsy in October 1993. He is appealing his two-year sentence.
- Cathie Wilkieson killed herself and her 16-year-old son who had cerebral palsy and was partly deaf and blind in Hamilton, Ontario in 1994. Her suicide note said she was too tired to go on and could not leave her son behind.
- In November 1996, Danielle Blais drowned her six-year-old son who had autism in Montreal. She survived her suicide attempt and expressed frustration in getting school authorities to understand the boy’s condition. She received a 23-month suspended sentence for manslaughter.

Catherine Frazee, former chief commissioner of the Ontario Human Rights Commission, said that the situation of children with disabilities is often imperilled by popular sympathy for their parents. She stressed that society has a duty “to help to support the people who find themselves in these situations of intense suffering in trying to deal with their children.”<sup>78</sup>

### Alternative Care

Alternative care, which includes group homes and foster care as alternatives to institutionalization, is funded by provincial and territorial health and social service departments. It is available in every province and territory. Group homes for persons with disabilities exist across the country, except Newfoundland.<sup>79</sup> Associate family fostering programs are available in British Columbia, whereby natural and foster parents share caregiving responsibilities for a child with a disability.<sup>80</sup>

It is not known how many children with disabilities live in the care of the state. In a 1997 Alberta report, surveys of 2,618 children who were in care in Edmonton and Calgary found that:



- 64 percent were identified as having one or more disabilities or diagnoses;
- 35 percent had developmental disabilities;
- abuse (39 percent) and neglect (42 percent) were the main reasons for being taken into care, while seven percent were in care as a direct result of the disability;
- Aboriginal children were two-and-a-half times as likely to have Fetal Alcohol Syndrome/Fetal Alcohol Effect compared to Caucasian children, while Caucasian children were 50 percent more likely than Aboriginal children to have Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder or to be mentally ill.<sup>81</sup>

Among the recommendations for future planning, the report called for better training of child welfare and protection workers about the specific needs of children with disabilities and the need to make Aboriginal children a priority.<sup>82</sup>

### Aboriginal Children with Disabilities

According to Statistics Canada's 1991 Aboriginal Peoples Survey, 31 percent of Aboriginal Canadians have a disability, which is more than twice the national average.<sup>83</sup> The disability rate among the Aboriginal population between the ages of 15 to 34 was 23 percent, compared to eight percent among the general population.<sup>84</sup> Reasons for this disparity include unsafe living conditions, poverty, pollution and contaminants in the food chain.<sup>85</sup>

The federal government provides services to status Indians on reserve and to the Inuit, while the provinces provide services to Indians living off reserve, non-status Indians and Métis. There is also some service provision by community organizations, such as Alberta's three Aboriginal disability organizations.<sup>86</sup> Despite the large number of Aboriginal people affected by disability, service delivery is consistently poor or non-existent in Aboriginal communities.<sup>87</sup> Many Aboriginal people live in rural or remote areas, so access to community-based services is even more difficult.<sup>88</sup>

Jurisdictional issues also complicate health and social service delivery to Aboriginal children with disabilities. Provincial governments have refused to provide services to Aboriginal people on reserve and the federal government does not provide all the necessary services.<sup>89</sup> In 1992, the Department of Indian Affairs and Northern Development admitted that it is not doing an adequate

job in this area and that the demand for services is expected to increase.<sup>90</sup> In 1993, the federal Standing Committee on Human Rights and Disabled Persons observed that both levels of government appear to have forgotten the needs of Aboriginal people and that the "lack of clear departmental responsibilities, an absence of strong program structures, fragmented service development and inconsistent standards are all too evident, despite sincere intentions."<sup>91</sup>

The Committee also expressed concern about a lack of federal attention to the people most affected by its programs. The Department of Indian Affairs and Northern Development did not consult Aboriginal people about its five-year *National Strategy for the Integration of Persons with Disabilities*, which was launched in 1991.<sup>92</sup> The Royal Commission on Aboriginal Peoples recommended major structural changes to facilitate the participation of Aboriginal people in its 1996 report.<sup>93</sup> The Federal Task Force on Disability Issues also recommended that the Canadian government:

*...recognize the ways in which it has contributed to jurisdictional complexities that prevent Aboriginal Canadians with disabilities from gaining access to the supports and services they need and begin to work in collaboration with provincial governments and Aboriginal communities to provide flexible, client-centred services and supports to Aboriginal Canadians with disabilities.<sup>94</sup>*

The Standing Committee on Human Rights and Disabled Persons says that in addition to the transfer of administrative responsibility for health and social services from federal authorities to reserves, Aboriginal community leaders must have information about and prioritize the needs of persons with disabilities in the reserve community.<sup>95</sup>

## Access to Services

Services that promote the independence and participation of the child with disabilities include education, training and preparation for employment, health care and rehabilitation, and play and recreation.

### Education

In the 1994 Salamanca Statement on Principles, Policy and Practice in Special Needs Education, international

representatives recognized the right to education and the importance of inclusive education for all children.<sup>96</sup> All provinces express a commitment to integrated education in their education legislation and address the specific needs of students through individualized education plans.<sup>97</sup> However, implementation of this commitment varies and many jurisdictions provide separate programs when deemed necessary by education authorities.

### Preschool education

Preschool education provides opportunities for physical, emotional and cognitive development. Local education authorities in all provinces are funded to offer one year of preschooling (or kindergarten).<sup>98</sup> However, according to researchers Stienstra and Kellerman, most provinces and territories provide “little support for very young children and preschool children with disabilities and their care givers.” Access to preschool education is variable: Quebec has a network of preschool services;<sup>99</sup> Alberta and Saskatchewan have limited preschool education for children with disabilities;<sup>100</sup> New Brunswick and Manitoba include most children with disabilities in regular preschool programming; and the Northwest Territories provides child care services instead of preschools.<sup>101</sup>

Preschool programming for Aboriginal children with disabilities living on reserve varies widely. The federal government provides block funding to band councils but according to researchers Stienstra and Kellerman, most reserves do not have the resources or capacity to provide necessary supports for children with special needs.<sup>102</sup> SpecialLink recommends that all children with disabilities, ages 3-5, receive free and appropriate early education programs, in the most enabling setting.<sup>103</sup>

### Primary and Secondary Education

Provincial legislation guarantees all Canadian children the right to attend school and compulsory schooling from age five, six or seven (depending on the jurisdiction) to age 16. Consequently, 91 percent of children with disabilities attend school but they are more likely to stop their education after primary school and less likely to attend university than children without disabilities.<sup>104</sup>

The 1991 HAL survey found that 44.2 percent of children between five and 14 years of age with disabilities indicated that their disability interfered with their education, either by delaying the start of formal education, causing long periods of interruption or taking

longer to achieve it. Fifty-eight percent of the children surveyed attended regular school and 37 percent attended regular school with special education.<sup>105</sup> A national survey found that inclusion in regular classes appears to be more successful for students with physical disabilities than for those with multiple, developmental or emotional disabilities.<sup>106</sup>

Some examples of provincial efforts to meet the developmental needs of children with disabilities follow.

- In Saskatchewan, all children between six and 21 have the right to an education that is most appropriate for them.<sup>107</sup> The province spent \$5.8 million in 1996/97 for services for students with special needs.<sup>108</sup>
- In Newfoundland, the 1998 provincial budget made improvements to special services teaching.<sup>109</sup>
- In Alberta, school boards identified special education as a top priority and formed a task force on the issue in January 1997. Subsequently, the provincial budget increased funding for students with disabilities.<sup>110</sup>
- In 1994, a Quebec court ruled that inclusive education is not required by law. The Quebec government has since acknowledged that the integration of children with disabilities in schooling remains underdeveloped. Students with physical disabilities are more easily integrated in regular classrooms and inclusive education services vary widely from school board to school board.<sup>111</sup>
- The Building Inclusive Schools project in Ontario is a non-governmental initiative to improve the capacity of neighbourhood schools to support students with intellectual disabilities and has been a catalyst for change throughout the province.<sup>112</sup>
- Schools in the Woodstock school district in New Brunswick have had no special classes since 1985. Two educators in the province have developed a framework and key strategies for successful school inclusion elsewhere.<sup>113</sup>

In 1986, New Brunswick became the first province with inclusive education for all children in neighbourhood schools.<sup>114</sup> Alternatives are considered by education authorities only when it is clearly in the child’s best interests.<sup>115</sup> According to its *Education Act*, educational authorities will integrate classes “to the extent that is considered practicable... having due regard for the educational needs of all pupils.”<sup>116</sup>

The provinces and the Yukon have policies that support inclusion but do not require it. However, the Northwest Territories' *Education Act* clearly states that "every student is entitled to have access to the education program in a regular instructional setting in a public school or public denominational school in the community in which the student resides."<sup>117</sup> The Yukon and Prince Edward Island both specify that the placement of students with disabilities is to be done in the "most enabling" education environment.<sup>118</sup>

The Department of Indian and Northern Affairs does not have a formal education policy for children with disabilities who live on reserve. According to researchers Stienstra and Kellerman, except for Northwest Territories, inclusion in regular schools and classrooms for Aboriginal students with disabilities who live on reserve is unusual. Consequently, most Aboriginal children with disabilities do not remain on reserve. In order to access provincially-funded special education services, some Aboriginal parents place their children in the care of the state. The researchers also report that nongovernmental organizations for persons with disabilities are aware of Aboriginal parents being "frequently advised to relinquish guardianship in order that their children become eligible for provincially-funded special education programs."<sup>119</sup>

Despite provincial and territorial commitments to inclusive education, there are no adequate enforcement or assessment mechanisms and little commitment to review policies and implementation.<sup>120</sup> The right to education for children with disabilities is approached on a case-by-case basis by professional educators who assess each child and prescribe placement. Therefore, the inclusion of students with disabilities is not guaranteed and is dependent on school districts rather than provincial standards.

The Roeher Institute has noted that a lack of clarity about inclusion has resulted in widespread confusion and variation across the country. Generally, province-wide inclusion standards do not exist so schools in the same province can have very different approaches. Furthermore, decentralized funding allocations to schools can result in better supports for students with disabilities in larger, urban or richer schools.<sup>121</sup>

### Case Law

In *Eaton v. Brant County Board of Education*<sup>122</sup> the Supreme Court of Canada decided that:

- there is no presumption of integration with respect to children's needs for special education;
- special education placements must be based on the best interests of the child;
- parents do not speak for the child and decision-making about education placements must consider all of the best available evidence.<sup>123</sup>

The Court recognizes that while integration should be "the norm of general application because of the benefits it generally provides, a presumption in favour of integrated schooling would work to the disadvantage of pupils who require special education in order to achieve equality." Each exceptional child needs to be considered individually by educators with a: "subjective, child-centred perspective—one which attempts to make equality meaningful from the child's point of view as opposed to that of the adults in his or her life. As a means of achieving this aim, it must also determine that the form of accommodation chosen is in the child's best interests."

The Court affirmed the right of young people to participate in decision-making, stating that for "older children and those who are able to communicate their wishes and needs, their own views will play an important role in the determination of best interests."<sup>124</sup>

There is a growing recognition that equality rights and best interests require the involvement of parents as well as educators.<sup>125</sup> A sample of legislative and policy changes acknowledging this includes:

- Saskatchewan amended its *Education Act* in 1997 so that students with disabilities and their parents can request a review of decisions regarding designation, placement and program.<sup>126</sup>
- All provinces have policies that allow professional and/or medical assessments to be combined with parents' consent to determine the most appropriate individualized education plan and educational setting.<sup>127</sup>

# Voices

## Coalition Questionnaire:

Many of the students at my school come from the same backgrounds. There aren't any disabled, learning disabled or immigrant students. At my last school there was great diversity and I loved it! I think that schools should definitely be more mixed because it would make people more open minded and able to learn about different people.

—Jessica, aged 16, Ontario

I go to high school with my sister who is also going to that school. I am really having a good time there. I have a lot of new friends and it's nice being in a normal class, not being in a class with people who have problems like me...I have been in high school for almost half a year. I am in Grade 9. It is important to have friends in Grade 9 because I'll have them all the way through high school. It is not really a big deal that I have a disability because my friends treat me just like any other person. One big deal for people that have my disability is worrying a lot. Sometimes that is, like, taking over my life. I do my breathing exercises or I take my mind off of it if I'm not feeling well or something like that. That works pretty well.

—Vanessa, aged 14, Ontario, has a developmental disability.

There are teachers who don't know how to deal with disabled people. They act as if the disability doesn't exist. (translation)

—Andrée, aged 13, Quebec

Disabled people have a place in our school; they are not rejected. (translation)

—Dominique, aged 15, Quebec

- Both Quebec and Ontario have special education advisory committees to advise school boards on service delivery, resource allocation and individual cases but there is no student representation on these committees. Other provinces and territories generally do not provide for school board level participation for students with disabilities or their parents.<sup>128</sup>

Better educational supports are required by students with special needs. Many schools across the country, including those on reserves, have too few and poorly trained teachers' aides and insufficient instructional materials appropriate for students with disabilities.<sup>129</sup> Some teachers need better training.<sup>130</sup> Most teachers surveyed said they "should" and "could" accept primary responsibility for students with disabilities with professional preparation and appropriate personnel and material support in place.<sup>131</sup>

Funding cuts pose a serious barrier to education for children with disabilities. For example, despite a 30 percent increase budgeted for the education of students with disabilities in Alberta, some schools or districts cut their spending in this area in 1998.<sup>132</sup> Parents of Children with Disabilities in Alberta say that: "A government philosophy of inclusion of special needs children in classrooms has been combined with cuts to aides in classrooms" and "children in families who cannot afford [services such as physiotherapy, psychology and speech pathology] do without."<sup>133</sup> In Ontario, the director of the University of Ottawa's Human Rights Centre said that the Ottawa-Carleton District School Board's plans to cut \$8.2 million in special education ignores children with various disabilities and their right to an equal education. To support this argument, he cited the 1997 Supreme Court ruling in *Eldridge*, which found that equal access to public services includes those with disabilities.<sup>134</sup>

## Specialized Learning

In 1991, approximately five percent of children between five and 14 years attended a special education school and 38 percent had special education or remedial classes in regular schools. Nearly 11 percent of children in this age group had to leave their community to attend school.<sup>135</sup>

Confusion exists about special education provisions. Some families struggle to get specialized education in public schools for children with a hearing impairment, low vision or learning disabilities. Other families see inclusion as a cost-saving measure, rather than an effort to meet the best interests of the child. The Learning Disabilities Association of Canada has noted that local school boards, which are responsible for identifying learning disabilities, have low rates of diagnosis because if children's learning disabilities are not diagnosed, it is not necessary for school boards to allocate appropriate resources.<sup>136</sup>

The Canadian Association of the Deaf argues that specialized learning is often necessary for children who are deaf because “the regular school is the *least* enabling environment” for many students due to “very weak” support services. Academic performance, language skills acquisition and social, psychological and cultural factors, including a lack of peers, all justify centralized deaf schools as “a valuable option particularly for prelingually or early-deafened children.”<sup>137</sup>

Every province and territory except Northwest Territories provides segregated education programs for students with ongoing behavioural problems or those who are blind or deaf. There are no special or segregated education programs for Aboriginal students on reserves.<sup>138</sup>

Recent changes to specialized learning include the following:

- The 1999 federal budget expanded tax relief for parents of children with disabilities to include learning disabilities.<sup>139</sup>
- Alberta is adding 590 full-time intern teachers for literacy assessment and assistance in kindergarten and Grades 1 and 2.
- Saskatchewan has devoted \$3.3 million in 1998/1999 to the Education for Vulnerable Children program, which assists school divisions in providing for children with special needs. A “substantial portion” of this funding targets students with social, behavioural and emotional difficulties.
- Despite widespread budget cuts to public services, Ontario has maintained its special education budget at \$1.2 billion, most of which is devoted to programming for the learning disabled.<sup>140</sup> However, no framework ensures that this \$1.2 billion is in fact spent on this group of children.
- There is no information available about accountability frameworks in other jurisdictions.<sup>141</sup>

Services for blind or deaf students vary across the country.

- In 1995-96, 2,461 students attended schools for the deaf and blind in Canada. There is one separate school for the deaf and the blind in Nova Scotia.
- Schools for the deaf exist in Alberta, British Columbia, Manitoba, Ontario and Quebec and they have been closed in New Brunswick, Newfoundland, Saskatchewan and Prince Edward Island.
- All provinces and the Yukon have local programming for blind students.

- There is one school for the blind in Ontario.
- Most major Canadian cities have Canadian National Institute for the Blind centres, which offer white cane training, instruction in visual aids, printed material on tape and braille resources.<sup>142</sup>

Limited funds for public education result in competition between different groups of students with special needs for various learning programs.<sup>143</sup> Yude Henteleff, honorary counsel for the Learning Disabilities Association of Canada, says that certain school districts will not offer special help to a poor learner unless that child falls two years behind; others cut extra tutorials or special classes once a child shows some progress.<sup>144</sup> There is uneven availability in services within a city and between provinces due to different rules, regulations and budgets available to children.

Parents have fought legal battles to get education services for children with disabilities.<sup>145</sup> For example, in August 1998, six families in Prince Albert, Saskatchewan won the right to challenge the province and the boards of education over schooling provided to their children with learning disabilities.<sup>146</sup> The issue is currently before the court.

## Preparation for Employment and Rehabilitation

Rehabilitation services provide opportunities to develop basic skills and can be important to prepare people to take on school and work. However, these services and relevant supports are only partially covered by government. People have limited access in Canada to services such as physiotherapy, occupational therapy or speech therapy.<sup>147</sup>

Only 48 percent of working-age Canadians with disabilities are in the paid labour force, compared with 73 percent of persons without disabilities. Only 31 percent of people with intellectual disabilities have jobs.<sup>148</sup> In October 1997, federal, provincial, territorial ministers (except Quebec) approved a new multilateral framework for Employability Assistance for Persons with Disabilities. This program includes funding for students with disabilities.<sup>149</sup>

Governments fund various pre-vocational and vocational training opportunities for youth with disabilities. The more education and training people get, the more likely they are to pursue and obtain employment but for persons with disabilities, opportunities can be limited.<sup>150</sup> In November 1998, Human Resources Development Canada announced

more money to assist students with disabilities to get work experience through the Canadian Opportunities Strategy. The 1998 budget also increased the Canada Study grant for students with disabilities from \$3,000 to \$5,000 per year.<sup>151</sup>

Some career development resources are also available for young people with disabilities. For example, the Within Reach program of the Alberta Association for Community Living is designed to help parents foster positive career goals for children with developmental disabilities.<sup>152</sup>

Federal, provincial, territorial and municipal governments across the country have policies and programs to promote employment of people with disabilities.<sup>153</sup> These include:

- employment equity programs;
- human rights provisions to prevent discrimination;
- vocational rehabilitation programs; and
- employment training and counselling.

## Voices

### Coalition Questionnaire:

I want to go into social work or psychology. I'm more of a people person. I'm fascinated by how different people are, the logic of different people. I've had people come to me with all kinds of problems--from drug addiction to teen pregnancy. People listen to me. This has all happened through word of mouth. I even get letters and e-mail. Although I have become better known because of the motivational speech I give in the high schools, I attract people who wish to speak about their problems. My parents were a big factor because of the spiritual help and because my disability has given me a different thought process.

—Brian, aged 18, Ontario, has cerebral palsy and is finishing high school and preparing for university

I go to St. Mary's High School in Grade 12 and am in a special needs class. I am also in a co-op program, working towards an education program, by assisting ECE [Early Childhood Education] teachers with their class. I like this work because I like the little kids and also because they're good to me.

—Stefanie, aged 17, Ontario, has an intellectual disability

Current employment strategies for persons with disabilities emphasize tailoring work to the abilities and expectations of workers.<sup>154</sup> Despite these government and NGO initiatives, there is unequal availability for young people. Other challenges to effective training include:

- access to appropriate training;
- use of private or community transportation;
- inclusive workplaces and hiring practices;
- availability of personal supports;
- effective employment counselling; and
- cost-coverage of disability-related costs.<sup>155</sup>

The Roeher Institute states that accommodation of persons with intellectual disabilities is still not seen as a broad social responsibility, so employer claims of “undue hardship” often allow them to avoid workplace accommodation.<sup>156</sup>

## Health Care

The federal government financially supports the provision of health care, which is administered by provincial and territorial governments. The *Canada Health Act* provides free, universal health care coverage for Canadians. Section 7 of the *Canadian Charter of Rights and Freedoms* is understood to be the basis of the right to medical treatment for both children and adults.<sup>157</sup> Canada is one of the biggest public spenders on health care in the world, at \$2,500 per capita.<sup>158</sup> Families or private health insurance plans are responsible for such medical expenses as dental care or prescription drugs, and private or public health insurance may still require families to cover a significant portion of medical expenses.<sup>159</sup> Families without private health insurance or social assistance must pay for additional medical and prescription costs not covered by provincial plans.

The *Income Tax Act* provides for:

- an expanded medical expense tax credit to assist with the costs of disability;
- a refundable medical expense supplement for low-income families; and
- a caregiving tax credit up to \$400 for Canadians caring for a family member with disabilities.<sup>160</sup>

According to the Roeher Institute, ongoing challenges and key issues in health care for people with disabilities include:

- long waiting lists for services in both urban and rural areas;
- physically inaccessible services;
- lack of community-based services;
- little training about disabilities for health care workers; and
- scarce home health care and attendant services.<sup>161</sup>

## Voices of Parents

Alberta pays for leg braces only once a year, but my six-year-old needs new ones every six months (at a cost of about \$2,000 a pair). He also requires inserts for his shoes, at about \$400 per pair and that's not covered either.<sup>162</sup>

The health plan covers only \$300 of a \$1200 hearing aid and that's only part of the hearing system.<sup>163</sup>

My child's special enemas cost \$80.00 per month and that's not covered.<sup>164</sup>

All provinces have case management systems to integrate community-based health care services for a child with a disability or chronic illness but a lack of coordination by government departments can lead to gaps in services. Yukon has no case management system at all and the Northwest Territories was still developing one for preschool children in 1997 (and already had it in place for school-aged children).<sup>165</sup> Manitoba pediatrician Brian Postl argues that case management systems need to unify referral and intake systems.<sup>166</sup> Researchers Hayes, Hollander et al. recommend research to increase effectiveness and efficiency of service delivery for children, especially those with disabilities.<sup>167</sup>

The Canadian Pediatric Society strongly supports the right of every child to receive necessary medical care to improve or prolong life.<sup>168</sup>

*Usually the best interests of the child will favour the provision of life-sustaining treatment. This is self-evident where the result of the treatment will be the survival of a child with no or little handicap, but should be equally true even when a chronic physical or mental handicap continues to be present.*<sup>169</sup>

Health care commentator André Blanchet says that in practice, medical treatment for people with disabilities does not meet legislative or policy goals for equal health care provision, citing "conscious or unconscious value judgments made by professionals about quality of life of people with a disability." These judgments are reinforced by concerns about the costs of treating and maintaining the lives of children with severe disabilities.<sup>171</sup>

In 1995, an Alberta hospital denied a request to add a 17-year-old boy with Down syndrome to the waiting list for a lung transplant.<sup>172</sup> However, this decision was overturned after media attention, a letter-writing campaign and public demonstrations led the hospital to draft a policy to support needed transplants for people with intellectual disabilities.<sup>173</sup>

Due to the many obstacles to health care for Aboriginal children (jurisdictional conflicts, lack of services, remote communities, etc.)<sup>174</sup> the Royal Commission on Aboriginal Peoples recommended long-term structural changes to the Canadian health care system and improvements in prevention, treatment and rehabilitation.<sup>175</sup> The Commission also noted that some federal services and programs are available to registered Indians and Inuit but not other Aboriginal peoples.<sup>176</sup> Its recommendations included:

- reorganization of existing health and social services under Aboriginal control;
- adaptation of mainstream services to better meet the needs of Aboriginal people and encourage their full participation in decision making; and
- meaningful efforts for cultural sensitivity and responsiveness to the needs of Aboriginal people.<sup>177</sup>

### Technology and Disability

Technology can improve the quality of life and integration of persons with disabilities in society with useful assistive devices, improved communications and medical advances. Some Canadian jurisdictions provide funding to improve access to assistive devices. However, there is concern that genetic research leads to questions

### Case Law

In *Eldridge v. British Columbia (Attorney General)*,<sup>170</sup> the Supreme Court of Canada ruled that hospitals, as providers of government-sanctioned medically necessary services, have a constitutional duty under Charter s. 15 to provide equal access to all government services. Hospitals are now required to provide sign language interpreters for their patients who are hearing impaired.

## Voices

### Coalition Questionnaire:

Over the last 10 years my parents have spent over \$80,000 on rehabilitation supports and specialized equipment. It is a constant fight with insurance companies to cover equipment "not specifically listed on their payment schedules".

—John, aged 18, Ontario, has athetoid cerebral palsy

about whether people with disabilities are "part of the human family."<sup>178</sup> At the 1998 Edmonton conference on Universal Rights and Human Values, the panel discussion on bioethics and biotechnology noted that technology "should serve people with disabilities, not devalue them." The Canadian Human Rights Commission supports this conclusion and advocates for the active involvement of people with disabilities in the development of policies to guide technology use.<sup>179</sup>

### Play and Recreation

The 1991 HAL survey found that:

- 18 percent of people with an intellectual disability never take part in social activities;<sup>180</sup>
- 26.5 percent of children aged 0 to 4 years and 57.8 percent of children aged 5 to 14 with disabilities participated in community physical recreation programs; and
- 41 percent of youth with disabilities would like to participate in more activities in their leisure time and almost half of all youth with disabilities want to be more physically active. Cost and lack of opportunities were the two most common obstacles to their participation.<sup>181</sup>

Public recreation and play activities are traditionally coordinated by municipalities across Canada. The federal government's role is limited to injury prevention and fitness promotion.<sup>182</sup> Parks and recreation departments may provide special programming, equipment or staff to support the inclusion of children with disabilities but are not required to do so. However, funding for children's recreation depends upon the local economy and political will. Thus services vary widely across the country.

The Canadian Parks/Recreation Association recognizes that play is an equalizing medium for all children,

including those with special needs. The organization works with school boards and other bodies to ensure the development and maintenance of high quality outdoor play spaces that encourage the inclusion of all children.<sup>183</sup>

Buddy programs provide the companionship of trained people, usually volunteers, to individual children for recreation and sports. They exist in parts of all provinces and territories except Prince Edward Island, New Brunswick, Manitoba and Northwest Territories.<sup>184</sup>

The following describes some recreation programs in Canada.

- The Boys and Girls Clubs of Canada provides community-based programming at 99 local clubs across the country for children at risk and most include children with physical and intellectual challenges in a variety of programs. Twenty-two clubs have specific outreach or services for young people with disabilities.<sup>185</sup>

## Voices

### Coalition Questionnaire:

I have a special friend named Catharine who calls me almost every day. We talk about teenage stuff, such as going to the movies or about our favourite musical group, "The Backstreet Boys!"

—Stefanie, aged 17, Ontario, has an intellectual disability

I also love to take swimming lessons. I know all the instructors at our town's pool and everyone is happy to see me. I like to go swimming all year long. I work out at the fitness centre in my high school. I didn't like it at first but now I do. I go on a rowing machine, lift weights and ride a stationary bike. I like lifting weights the best and I am getting big muscles now.

—Jesse, aged 15, Ontario, has a developmental disability

Every time I go to the theatre with my parents, I pay my way and am responsible for my ticket. You should see the faces of the people around us when they see me do all that! (translation)

—Karl, aged 10, Quebec, has Down's syndrome



- Girl Guides and Scouts Canada encourage and promote inclusion of children with disabilities in their locally-based recreational activities. The Girl Guides' national office has a full-time advisor to support the inclusion of girls with physical or mental disabilities into local groups. Scouts Canada has an award program to recognize youth with some form of disability who participate to the best of their ability and inspire others.
- Special Olympics is a non-profit program with local chapters providing sport training and competition at local, regional, provincial, national and international levels for persons with disabilities.
- Easter Seals runs specialized camps for children with physical disabilities.

Recreational opportunities for children with disabilities are provided by special or integrated summer camps, most of which are coordinated by non-governmental organizations or service clubs, with limited government funding provided in the Yukon, Alberta, Nova Scotia and Newfoundland.<sup>186</sup>

Barriers to the participation of children and youth with disabilities in recreational activities include:

- a lack of specialized equipment;<sup>187</sup>
- a lack of accessibility standards for play spaces (described earlier);
- insufficient staff training and staff ratios;
- few recreational opportunities in small towns and rural areas; and
- limited transportation (every province and territory except PEI has public transportation for the disabled but it is generally limited to urban areas).<sup>188</sup>

The HAL survey found that more than 25 percent of youth said they would like to do more activities in their spare time but do not have adequate transportation.<sup>189</sup>

## International Cooperation

### International Instruments

In 1993, Canada agreed to implement the UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities. These rules outline improvements for disability policies and promote inclusion. A study completed in 1999 on Canada's implementation of three of these rules (education, employment and income maintenance) found advances in some areas but additional action required in others.<sup>190</sup>

Canadians led the development of the 1993 Declaration of Managua, which affirms a common vision for children with disabilities and their families, especially the need to recognize children as persons and "assure their dignity, rights, self-determination, full access to social resources and the opportunity to contribute to community life."<sup>191</sup> Representatives from 36 countries in the Americas worked on this declaration.

### International Recognition

Canada was awarded the Franklin D. Roosevelt prize at a United Nations ceremony in March 1998 to honour its achievements in improving opportunities for people with disabilities.<sup>192</sup> However, disability activists at the time pointed to reductions in program funding and transfer payments, which reduced services such as home care and transportation for persons with disabilities. A year later, eight national organizations publicly condemned the federal government's lack of progress on disability issues.<sup>193</sup>

### International Development

Canada has a number of international initiatives to address disability issues. These include:

- Disabled Persons International, an NGO supported by the Canadian International Development Agency (CIDA), with offices around the world working on children's issues relating to disability.
- The International Centre for the Advancement of Community Based Rehabilitation is working in Bangladesh, India, Indonesia and Russia to provide community-based services for the disabled, and in Thailand to exchange information and strategies.<sup>194</sup>
- The Canadian Association for Community Living worked on the Declaration of Managua and also initiated a fundraising drive for people with disabilities affected by Hurricane Mitch in Central America in 1998.<sup>195</sup> The Association is an active member of Inclusion International, in which 179 national non-governmental organizations in 109 countries promote the human rights of persons with developmental disabilities.<sup>196</sup>

The rights of children with disabilities are not yet considered a priority for Canadian foreign policy or overseas development assistance but a foreign policy strategy on disability was recently proposed by the Canadian Association for Community Living.<sup>197</sup> The International Centre for the Advancement of Community

Based Rehabilitation has produced a foreign policy research paper that outlines the foreign policy and development assistance implications of community-based rehabilitation for persons with disabilities.<sup>198</sup>

## Conclusion

Children with disabilities in Canada have varying opportunities to live full lives. While Canada has publicly-funded health and educational systems that are designed with “everyone” in mind, these systems do not necessarily meet the particular needs of children with disabilities.

Children with disabilities are vulnerable members of society. Early identification and intervention services can be vitally important to their development but are not universally available. The supports and services necessary to ensure their Convention rights are widely seen as a privilege and not as an entitlement. The quality of care and support available varies according to what part of the country the child lives in and programs are limited or reduced in times of fiscal restraint.

Public services do not sufficiently recognize the extra demands placed on the families of children with disabilities and many need better financial, physical, social and emotional supports.

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# articles 28 and 29



# The Right to and Aim of Education



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## Article 28

### The Right to Education

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education compulsory and available free for all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
  - (d) Make education and vocational information and guidance available and accessible to all children;
  - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy through the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Interpretation<sup>1</sup>: The right to education is to be achieved "on the basis of equal opportunity," stressing the general principle of article 2 (non-discrimination). The Committee on the Rights of the Child has expressed concern that specific groups of children are often discriminated against in education, including girls, rural children, minority groups, disabled children and children in detention.

The Committee has made clear that all forms of corporal punishment are unacceptable forms of discipline in schools and elsewhere. The phrase "in conformity with the present Convention" underlines the fact that the obligation under article 19 to protect children from all forms of physical or mental violence, injury or abuse applies to schools and other educational establishments as well as to the family home and child care institutions.

Paragraph 3 requires states to encourage international cooperation in education, which is one of the key components of development for both individual children and countries as a whole. A significant proportion of development aid should, therefore, be directed at assisting education programs in developing countries.

## Article 29

### Aims of Education

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Interpretation<sup>2</sup>: Article 29 reflects a consensus of world opinion about the fundamental purposes of education. It does not detail the tools of learning such as literacy, numeracy, problem solving and so on, but addresses learning's basic aims: to develop children's full potential (including their personalities, talents and mental and physical abilities), to prepare children for responsible life in a free society and to enshrine the values of respect for all others and for the natural environment.

Paragraph 2 explicitly preserves the rights of individuals and groups to arrange their own forms of education as long as these fulfil the aims of education set out in the article and any official minimum standards.

## Introduction

This section looks at primary- and secondary-level education in Canada, excluding early childhood education, preschool and kindergarten. It does not include international cooperation in the field of education or post-secondary education, which is not generally applicable for children under 18 years of age.

An effort was made to present a picture of public education across Canada, but due to limited time and

resources, this research focuses on education in British Columbia, Saskatchewan, Ontario, Quebec and Nova Scotia. However, information on education in the other provinces and territories is included when it was made available to the project researchers and was relevant to articles 28 and 29.

A full discussion of issues affecting children with disabilities, including education, can be found in “Children With Disabilities: Article 23.” A discussion of school discipline issues can be found in the corporal punishment section of “Child Abuse and Neglect: Article 19.”

## Background

Section 93 of Canada’s constitution designates education as a provincial responsibility. Canada is the only industrialized country with no national department of education.<sup>3</sup> Every province and territory has a ministry or department of education responsible for elementary and secondary education. Provinces delegate authority for education to local school boards or other bodies. As defined in provincial and territorial statutes, the powers and duties of these elected boards and bodies are generally consistent throughout Canada. They are responsible for:

- implementation of curricula;
- operation and administration of school systems;
- acquisition of needed financial resources;
- proposals for new construction or other major expenditures; and
- related staffing responsibilities.<sup>4</sup>

The federal government is responsible for education in the territories as designated in the *Northwest Territories Act* and the *Yukon Act*. The federal government also supports provincial and territorial efforts to increase educational language opportunities for French and English minority communities and for Canadian students to learn English or French as a second language, as outlined in the *Official Languages Act*.<sup>5</sup>

In 1867, the federal government enunciated its responsibility for status Indians, registered Métis and Inuit in section 91(24) of the *Constitution Act*. The *Indian Act*, first introduced in 1876, continues to outline the federal government’s legal relationship with registered Indians; sections 114 to 122 of the Act address the schooling of children.

## Article 28: The Right to Education

In Canada, over five million children attend elementary and secondary schools, with five percent of that total

attending private schools.<sup>6</sup> There are 14,981 elementary and secondary schools in the country: 10,314 English, 1,419 bilingual and 3,248 French. Most schools (9,797) are in an urban setting, while 5,184 are rural schools.<sup>7</sup>

Children from age five, six or seven (depending on the jurisdiction) to age 16 are obligated to attend school. All provinces have made it an offence in either education or labour legislation to employ a student during school hours.

In most jurisdictions, public education begins with kindergarten for five-year-olds, followed by elementary school for five (Saskatchewan), six (in eight provinces/territories), seven (British Columbia) or eight years (Ontario and Manitoba). Secondary schools usually continue from the end of elementary education to the twelfth year (except in Quebec, where it ends at Grade 11.) Eight provinces and territories include a junior high school or middle school between elementary and secondary levels, usually lasting three years.<sup>8</sup>

All children are entitled to free public education until the end of secondary school, which is usually completed by 18 years of age. (Young people with special needs are entitled to attend school up to the age of 21 in most jurisdictions.) In Quebec, *collèges d’enseignement général et professionnel* (cégeps) provide a tuition-free intermediate level of education for two years between secondary school and university. Students in Quebec must complete a cégep program in order to qualify for university entrance. Cégeps also offer three-year career and technical programs similar to those provided by community colleges elsewhere in Canada.

Education legislation in some provinces promotes the rights and interests of certain minority groups. For example, Nova Scotia supports heritage education for Mi’kmaq and African-Canadian children. New Brunswick has some special programming for Mi’kmaq and Maliseet children. The Yukon provides for the instruction of Aboriginal languages.

## Early School Leaving

In contrast to the 1980s when only 66 percent of young people completed high school, approximately 86 percent of students complete high school today, either directly without study interruption or as returning students.<sup>9</sup> Secondary school participation rates have increased for 16- to 18-year-olds.



Percentage of population enrolled in school			
school year	16-year-olds	17-year-olds	18-year-olds
1982-83	88.7	61.2	25.4
1992-93	92.4	66	34.4

Source: Council of Ministers of Education, Canada, *Education Indicators in Canada*<sup>10</sup>

Early school leaving, however, is a persistent problem. As outlined above, in 1992-93 over seven percent of 16-year-olds, 44 percent of 17-year-olds and over 65 percent of 18-year-olds were not enrolled in Canadian schools. The country's highest school-leaving rates are in the Atlantic provinces and Quebec, while Saskatchewan, Alberta and British Columbia have the lowest.<sup>11</sup>

A 1993 Statistics Canada survey found that approximately 80 percent of high school graduates were satisfied with their courses and found them useful and interesting. However, those who dropped out of school were more critical of the relevance and quality of their education.<sup>12</sup> Some jurisdictions are working to make academic subjects more practical and relevant to labour market requirements.

Other programs are in place to improve the education outcomes for children living in poverty or at risk of early school leaving or failure.<sup>13</sup> The Canadian School Boards Association reports that school programs for students living in poverty enables underprivileged students to progress at the same rate as their peers and to show intellectual and academic gains.<sup>14</sup> But Yude Henteleff, honorary counsel for the Learning Disabilities Association of Canada, argues that many more initiatives across the country are required to address the needs of children at high risk.<sup>15</sup>

### Education Spending

Since the early 1990s, education spending as a proportion of public expenditures has remained fairly constant but has experienced significant cutbacks in terms of actual dollars. As a proportion of Canada's gross domestic product, education spending has declined from about 8.5 percent in 1975 to about six percent in 1994. In comparison with Organization of Economic and Cultural

Development (OECD) member countries, however, Canada's education spending continues to be among the highest.<sup>16</sup> In 1994, Canada's total spending on education was \$56.5 billion, with approximately \$35.2 billion directed to the elementary and secondary levels, \$11.5 billion to universities and about \$9.8 billion to vocational and college programs.<sup>17</sup>

According to the Council of Ministers of Education, Canada, spending cutbacks have adversely affected transportation, pupil:teacher ratios, junior kindergarten, language training for immigrant children, special education, fine arts and staff development. "All of these changes impact upon students, parents and teachers," says the Council.<sup>18</sup>

The trend towards reducing the number of school boards has meant that there are fewer trustees to bring forward community concerns and as a result, not all factors are taken into account when funding formulas are determined.

## Development of the Child to Fullest Potential

### Personality and Talents, Mental and Physical Abilities

All provinces are working to maximize children's educational achievement. Quebec's goal is to increase school completion rates so that at least 85 percent of young people graduate from high school before 20 years of age (currently 73 percent); at least 60 percent obtain a cégep diploma (currently 39 percent); and at least 30 percent receive a bachelor's degree (currently 28 percent).<sup>19</sup> New Brunswick is emphasizing assistance for children in poverty, while Nova Scotia is ensuring smaller classes and more emphasis on the junior high school years.<sup>20</sup>

### Student Participation

Student participation in education is encouraged through student governments, clubs, sports, committees, course selection and leadership classes. Peer helpers, peer tutors and reading buddies are another way students are actively involved in education. Some schools ensure that their activities are financially accessible to all students and make special arrangements to cover the costs for students

### **Children's Participation at Jamieson School, Sydney, NS**

*Youth Speaks Up* involves young people in decision-making on social issues at the Jamieson elementary school in Sydney, Nova Scotia. Children form their own committee and get together with students from other schools to share their views on various current issues. Children are trained to make positive and socially aware decisions and to become involved in the community.<sup>21</sup>

living in poverty. However, many observers have expressed concern that school expenses and field trip costs are often left to parents or the community to raise, leading to unequal access and stigmatization of the underprivileged.

Data from the National Longitudinal Study of Children and Youth found that the late elementary school years are a positive experience for most young people in Canada. "They are achieving in school, feel good about themselves, have positive attitudes toward school and believe that their parents and teachers support their academic efforts."<sup>22</sup>

#### **Physical Health**

The Canadian Paediatric Society and the Canadian Teachers' Federation have urged parents, politicians and policy makers to take steps to increase the physical activity levels of children. Two national studies by the Heart and Stroke Foundation and Canadian Fitness and Lifestyle Research Institute found that the health of 63 percent of Canadian children is at risk due to high levels of physical inactivity. There is an increasing reliance on television, video games and computer technology during leisure time, in addition to an overall decline in physical education in schools. The Canadian Teachers' Federation notes, however, that there is little consensus on how to achieve the appropriate balance between academic and physical education within the core curriculum.<sup>23</sup>

In November 1998, a round-table meeting of representatives of federal, provincial and municipal

governments and non-governmental organizations (NGOs) developed a variety of strategies to ensure physical activity and recreation opportunities for children living in poverty.<sup>24</sup>

#### **National and International Assessments**

In the Third International Mathematics and Science Survey of Grade 8 students in over 50 countries, Canadian students did as well as or better in mathematics than students in 30 other countries and not as well as those from 10 countries. In science, Canadian students did as well as or better than students in 31 countries and not as well as those from 9 countries.<sup>25</sup>

The trend towards more testing is related to issues of standards and expectations. However, the Canadian Teachers' Federation criticizes national and international testing, questioning the validity of results and arguing that the tests do not assess the broader aims of education, such as promoting citizenship, ethics, character and respect for others. Furthermore, the distinct nature of the various education systems in Canada means that aggregated national testing results "are an inadequate measure of the efficiency of these systems," according to education commentator David Ireland.<sup>26</sup> Yet in 1995, the Council of Ministers of Education, Canada, supported testing of students' achievement in the arts, social sciences and civics and recommended that testing for these areas be developed to assess a wider range of subjects and skills of Canadian students.<sup>27</sup>

#### **Aboriginal Students**

In addition to facing the challenges of non-Aboriginal students, Aboriginal children have to cope with the legacy of social disintegration resulting from colonialism and the forced removal of children to attend residential schools. Consequently, Aboriginal children attain lower overall levels of educational achievement compared with other Canadian children.<sup>28</sup>

The table below compares the highest level of education attained in 1991 by all adult Canadians with the highest level attained by adults who identified themselves as Aboriginal. More than half of the Aboriginal adult population did not complete high school.

Highest level of education attained, all Canadians and Aboriginal Canadians, age 25 and older		
Highest level attained	All Canadians	Adult Aboriginal Canadians
Less than high school diploma	35%	56%
High school diploma	21%	12%
Some college or university	7%	13%
College diploma/certificate	24%	16%
University degree	13%	3%
Source: Statistics Canada, <i>Aboriginal Peoples Post-Censal Survey, 1992</i> and <i>Labour force Survey, Revised estimates, 1995</i> <sup>29</sup>		

Mi'kmaq Services Division within the Department of Education and Culture. Manitoba has opened two public schools with an Aboriginal focus and has summer institutes on Aboriginal education to assist teachers in the development of Aboriginal perspectives and education techniques.<sup>33</sup> The Northwest Territories is developing and implementing a curriculum that reflects Dené and Inuit cultures. The Yukon *Education Act* acknowledges the importance of Aboriginal cultural and linguistic heritages.<sup>34</sup> The federal government also has an Aboriginal Head Start Program to enhance the development and school readiness of Aboriginal children.<sup>35</sup>

However, more recent data suggests a trend towards higher educational attainment for Aboriginal students. In 1996, 73 percent of Aboriginal youth aged 15 to 19 were attending school.<sup>30</sup>

In February 1973, the Minister of Indian Affairs and Northern Development adopted a policy of local control of education so schools could better reflect Aboriginal histories, languages, values and aspirations. Since then, various measures have been implemented to advance the role and authority of Aboriginal peoples in education, with increasing emphasis on the transfer of authority and responsibility to them. The 1996 Royal Commission on Aboriginal Peoples reiterated the longstanding demand for more Aboriginal-controlled education systems. In Quebec, the Inuit, Cree and Naskapi nations now have their own school boards. Aboriginal-controlled education is already in place for the Nisga'a in British Columbia and the Mi'kmaq in Nova Scotia.<sup>31</sup>

Public schools in a number of provinces and territories are establishing long-term policies and directives to improve educational opportunities for Aboriginal children. Saskatchewan is encouraging greater participation of Aboriginals throughout its public education system.<sup>32</sup> Alberta's Native Education Program funds school boards to work with Indian bands on a framework for developing Aboriginal language and culture programs and resources. British Columbia has a Field Services and Aboriginal Education Team and Nova Scotia has a Council on Mi'kmaq Education and a

A 1992 Canadian Education Association survey of 458 schools in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba and the Northwest Territories found that 65.8 percent of respondent schools with Aboriginal students offer courses with Aboriginal content. In addition to courses dedicated to First Nations content, many schools had elements of Aboriginal education in the regular curriculum.<sup>36</sup>

### Provincial/Territorial Curricula

The following is a summary of a curricula review conducted by the Canadian Coalition for the Rights of Children to assess the essential elements of education in Canada for this research paper.

#### Development of Personality:

The goal of education in every jurisdiction is to develop citizens with healthy, well-rounded personalities, informed on scientific, ethical, cultural, geographical, political and social matters and on the arts, so they are prepared to meet the myriad challenges of the rapidly-changing world.

These efforts are supported by a national program operated by Lions-Quest to promote the

development of life skills. Since 1986, the program has trained 30,000 teachers so they can help young people from kindergarten to Grade 12 develop positive social behaviours.<sup>37</sup>

**Development of Talents:**

In every province, children are offered varying opportunities from kindergarten through high school to develop their talents and abilities through music, dance and drama.

**Development of Mental Abilities:**

All curricula are designed to further develop and enhance existing mental abilities in the child. Efforts are made to assist children with special needs and to remove barriers to their development whenever possible. Special studies may be available to gifted children to enhance their special abilities.

**Development of Physical Abilities:**

In every province studied, healthy living and physical education are part of the curriculum from the earliest grades and throughout high school.

## Development of Respect for Human Rights

In this United Nations Decade for Human Rights Education (1995-2004), Canadian education systems are promoting respect for human rights in different ways. For example, the Maritime Provinces Education Foundation has developed a Human Rights in the Elementary School/Classroom resource tool to assist with the organization of human rights activities and practices in Maritime schools.<sup>38</sup> The United Nations Association in Canada has produced the *Action Guide: A Human Rights Resource Manual for Secondary Schools*, distributed to approximately 3,000 secondary schools across the country.<sup>39</sup> In 1998, Alberta elementary and secondary students participated in a poster and essay contest to honour the fiftieth anniversary of the Universal Declaration of Human Rights.

Most schools' human rights education is part of the social studies or global education curriculum. The Council of

Ministers of Education, Canada, notes that schools often link human rights education with democracy education, despite the fact that they are distinct learning objectives.<sup>40</sup>

### Children's Rights

It appears that children's rights education has not yet been widely adopted in school curricula across the country, although some jurisdictions have initiated promising work in this regard. For example, the Greater Victoria #61 School Board in British Columbia pilot-tested a primary-level curriculum on children's rights and implemented it in 1998-99, with plans to consider wider provincial implementation the following year.<sup>41</sup>

The Cape Breton-Victoria Region in Nova Scotia offers children's rights education to over 60 classes at the Grade 6 level. The Children's Rights Centre at the University College of Cape Breton in Nova Scotia developed the curriculum with funding from Canadian Heritage. It is currently pilot-testing a Grade 8 curriculum in the school district. In February 1998, the province's Department of Education and Culture confirmed its intention to integrate the children's rights curriculum within the elementary program for all public schools and to translate it into French.<sup>42</sup>

### The UN Convention on the Rights of the Child

A growing number of schools across the country are integrating principles of the Convention, including non-discrimination and best interests, into administration, behaviour codes and teacher training. Some schools actively promote student participation (article 12) and clearly outline students' rights. The Tillicum elementary school in Victoria, for example, has a Code of Student Rights and Responsibilities.<sup>43</sup>

### Equality Rights

Efforts have been made to advance the equality of minorities in the education system, although the effectiveness of these efforts is unknown.<sup>44</sup> In Quebec, for example, teacher training includes work on gender equity issues, such as recognizing gender-based discrimination and selecting bias-free teaching materials. The province also has special training to assist teachers in adapting to the needs of multi-ethnic student bodies and developing closer school/home relationships. Ontario has resources for teachers, such as *Teaching Human Rights in*

*Ontario.* British Columbia has developed training for male instructors teaching girls in non-traditional fields. It also has guidelines to develop inclusive curricula for all groups. Manitoba organized summer institutes on anti-racist and multicultural education from 1989 to 1994.<sup>45</sup>

Visible minority teachers and administrators are under-represented in the education system. However, Nova Scotia is actively increasing the number of visible minority persons on staff and it has courses on race relations and cross-cultural understanding. Ontario's Ministry of Education and Training had projects to improve access to the teaching profession for candidates from racial and ethnocultural minority groups between 1994 and 1996.<sup>46</sup>

## Voices

### Coalition Questionnaire:

*Do you think that your teachers generally treat students with respect?*

**Yes, I think the teachers are very good at our school.**

*—Ryan, aged 12, Nova Scotia*

Not really. We're treated more like small children. We're only allowed to use one out of four doors. We're not allowed upstairs during lunch time. There could be good reasons for these, but they've never bothered to explain them to us. They do tell us to respect people, but the fact that they don't respect us doesn't give us much reason to respect them.

*—Kim, aged 14, Newfoundland*

Yes, I definitely do. The teachers I've had have a lot of respect for students [and] are glad to help with school work and problems. You may run into a teacher that you don't like but even then you will still receive respect.

*—Emily, aged 16, Ontario*

No...In my class, some kids did not understand and the teacher said: "Stupid, you understand nothing. It shows that you're in special ed." (translation)

*—Pascal, aged 13, Quebec*

## Culture, Language, National Values, Other Civilizations

### Respect for one's parents and cultural identity: multiculturalism, diversity and anti-discrimination

There are varying efforts to promote multiculturalism, diversity and anti-discrimination in schools across the country. The promotion of multiculturalism is protected in section 27 of the *Canadian Charter of Rights and Freedoms* and enunciated in Canada's *Multiculturalism Act*.

The rights of individuals are protected in national and provincial legislation and human rights codes, as well as in education acts.<sup>47</sup> All jurisdictions review curriculum and learning resources in an effort to eliminate racial, ethnic, cultural, gender and socio-economic biases.<sup>48</sup> Teachers are encouraged to promote an understanding and appreciation of all cultures in the classroom,<sup>49</sup> although the effectiveness of these efforts is unknown.

Efforts to teach respect for diversity have been constrained in some provinces recently. For example, the Ontario Education Department eliminated its Division of Anti-Racism, Access and Equity in 1997 and recently announced plans to remove violence prevention, anti-discrimination training and education about Aboriginal peoples from proposed secondary school curriculum guidelines, citing existing policies in these areas. However, according to Ken Ramphal of the Ontario Anti-Racist Multicultural Educator's Network:

*Teachers rarely look at policy statements, they will look at curriculum documents...which will translate into classroom instruction. To say it is included in their policy documents and not curriculum documents is to really encourage teachers not to use it.<sup>50</sup>*

A 1997 survey of the Canadian Council for Multicultural and Intercultural Education found that multicultural programming in western Canadian schools is marginalized because it competes as "one more provincial expectation" among too many other provincial priorities.<sup>51</sup> Furthermore, school reforms across the country make the priority of equity and diversity in Canadian education unclear.<sup>52</sup>

In its 1997 report on the UNESCO Convention and the Recommendation Against Discrimination in Education, the Council of Ministers of Education, Canada, recommended:

- inclusion of the study of citizenship to better promote the understanding of others;
- strict adherence to bias-free teaching materials; and
- emphasis not simply on open access but on barrier-free learning environments to embrace the right of all to equally benefit from education.<sup>53</sup>

### Language Instruction

Canada has two official languages: English and French. In 1996-1997, approximately 2.8 million students were in French or English second-language programs.<sup>54</sup> The federal government supports official language education and bilingualism for young Canadians with the Official Languages in Education Program. Each year, 7,000 students participate in language exchange programs and travel to other parts of the country to learn their second official language.<sup>55</sup> The federal government also funds projects that promote innovative approaches and resource development for teaching official languages.<sup>56</sup>

In some elementary and secondary schools, instruction is offered in other languages such as German, Ukrainian, Italian, Mandarin, Hindi and Punjabi. For example, in British Columbia, more than 3,300 students were enrolled in Mandarin classes in 1996; Nova Scotia offers Mi'kmaq and Gaelic at the high school level; and there are over 1,100 students in the Yukon studying one of eight Aboriginal languages in regular school programming.<sup>57</sup>

### Minority Language Instruction

The majority of students take their school courses in English or French. Publicly-funded schooling in either language is guaranteed under section 23 of the *Canadian Charter of Rights and Freedoms* "where numbers warrant it," and this is decided on a case-by-case basis.

The Charter right to minority language education has not yet been fully implemented across the country. Canada's Commissioner of Official Languages has expressed concern that parents have to resort to costly

### Case law

In *Mahé v. Alberta*,<sup>58</sup> the Supreme Court held that section 23 of the Charter guarantees management and control of instruction and facilities by members of the language minority.<sup>59</sup> A number of factors have to be considered in the "numbers warrant" test, but there must be a balancing of parents' rights under section 23 against the students' rights to a normal childhood, "without the intervention of unusual compulsory transportation obligations."<sup>60</sup> In another case, *Reference Re Education Act of Ontario and Minority Language Education Rights (1984)*, the court held that minority language rights belong to children of French-speaking citizens if they received their primary school education in French (even if they no longer speak the language) and if a child is receiving or has received instruction in French. In addition, the court held that the minority language rights apply in both denominational and non-denominational schools.<sup>61</sup>

## Voices

I have lived in the Halifax area since I was seven years old. Most of the population here speaks English. Only five percent of the 300,000 people who live here are Francophones. Learning in French has many disadvantages in my area. Some may laugh but school transportation discourages many from studying in French. We have serious overpopulation at our school. It was built for 600 students but has to accommodate 910 of us. (translation)

—Serge, aged 17, Nova Scotia<sup>62</sup>

legal action against public educational authorities.<sup>63</sup> A number of recent cases in British Columbia, Ontario, Prince Edward Island, New Brunswick, Manitoba and Saskatchewan demonstrates that the right to a separate school facility and a separate school system for minority language instruction is still not well established.<sup>64</sup> According to legal experts Hurlbert and Hurlbert, the rights of linguistic minorities are being neglected and treated inconsistently across the country.<sup>65</sup>

In Quebec, all children may attend French-language public schools but education in English is restricted because the Quebec government is concerned about preserving and promoting French in the province. Only children with a parent who was educated in English in Quebec may attend a English-language public school. Exemptions are possible for children with serious learning difficulties and the brothers and sisters of that child.<sup>66</sup> Section 59 of the Canadian Charter suspends the application of section 23(1) in Quebec to give the province time to develop legislation in compliance with the Charter's guarantees.<sup>67</sup> Montreal language activist Brent Tyler says that this restriction is contrary to the Quebec *Charter of Human Rights and Freedoms* and that discrimination on the basis of language denies the child's right to education.<sup>68</sup>

Despite political concerns about the fate of the French language, English-language instruction for francophones still remains a priority for many parents in Quebec. Nevertheless, access to English instruction cannot commence before Grade 4 for Quebec students. English-language teachers in Quebec have expressed concern about the limited hours of instruction allotted to it at the elementary level.<sup>69</sup>

## National Values

### Canadian History

Concerns have been expressed about a diminishing importance of national history in education. Province-wide testing of Grade 7 and Grade 10 students in British Columbia in 1997 found a significant and troublesome decline in knowledge of Canadian history since the last testing in 1989.<sup>70</sup> According to commentator Mark Starowicz, "there is a crisis in the transmission of our society's memory."<sup>71</sup> A national survey found that only one in two Canadians can pass a basic test about the country's past, people and geography.<sup>72</sup> The elementary curriculum was recently changed in Ontario, however, so that students start studying history and geography earlier.<sup>73</sup>

### Religious Education

In Canada, denominational schools are primarily Roman Catholic schools and school boards which are publicly funded. These schools provide some religious instruction and generally follow provincial curricula. There is constitutional protection of these schools through section 93 of the *Constitution Act* of 1867 and section 29 of the *Canadian Charter of Rights and Freedoms*. Quebec, Ontario, Alberta, Saskatchewan and the Northwest Territories used to operate denominational school systems

although Quebec and Newfoundland recently changed from denominational to secular education systems.<sup>74</sup> There have been a number of court challenges initiated by parents who want public funding for non-Catholic denominational schools but these challenges have been unsuccessful to date because the constitutional protection does not provide a precedent for other religious denominations.<sup>75</sup>

### Case Law

In *Adler et al. v. Ontario (Minister of Education)*,<sup>76</sup> the court ruled that the lack of public funding for Jewish and independent Christian schools was a permissible "degree of impairment" of the Charter rights of the applicants.<sup>77</sup> This was also the conclusion of *Bal v. Ontario*.<sup>78</sup>

## Different Civilizations: Global Education

"Global education" is the term for teaching about international issues, such as social and economic development, sustainability, human rights, peace and security, the environment, social justice, equity, mutual respect and global interdependence.<sup>79</sup> At this time, all provinces have at least one course on global issues at the senior level.<sup>80</sup> The effectiveness of global education courses is not known.

In the late 1980s, the Canadian International Development Agency (CIDA) supported the development of provincial curricula and resources on global education, in collaboration with provincial teacher organizations and ministries of education across the country (except Manitoba, Prince Edward Island and the Northwest Territories).<sup>81</sup> Funding in this area has recently been restored to continue global education efforts.

Non-government Organizations (NGOs) are active in global education in Canada. For example, Foster Parents Plan produced *Kids Who Care*, funded by CIDA and the Royal Bank of Canada, which provides teachers and students with background information and action-oriented strategies to address environmental and social issues. Foster Parents Plan is also coordinating the "Great Water Race," where Ontario elementary students gather pledges to support water projects overseas.<sup>82</sup> Free the Children is a youth organization that establishes programs to reduce poverty and exploitation of children around the world and empowers young people by giving them a voice in local, national and international issues.<sup>83</sup>

## Provincial/Territorial Curricula: Culture, Language, National Values and Other Civilizations

### British Columbia:

- Undertook efforts in 1996 to improve program access, relevance and success for Aboriginal students<sup>84</sup>
- In 1995, family life education was introduced to develop students' understanding of the role of the family and responsible decision-making.<sup>85</sup>
- Social Studies curriculum covers factors that have shaped Canada, citizen rights and responsibilities, diverse patterns of human activity around the world and tolerance, caring and respect for others.<sup>86</sup>
- Four Social Studies credits are required for a high school diploma.
- Language courses include Japanese and Mandarin.

### Saskatchewan:

- Indian and Métis Education Development Fund assists rural schools in providing enhanced programs and services.<sup>87</sup>
- Citizenship and Canadian government courses are included at the different grade levels.<sup>88</sup>
- Social Studies courses cover families, global education and Canadian studies.
- Language courses include Cree, Dené, German, Japanese, Saulteaux, Spanish and Ukrainian.
- Cultural Heritage programs are available, in a limited fashion, to high school students for credit. These courses include: Asian Studies, Indian Literature, Métis Studies, Native Studies, Native Education, Native Traditions, Pacific Rim Studies and Woods Cree Culture.<sup>89</sup>

### Ontario:

- Arts courses examine artistic traditions of various cultures.<sup>90</sup>
- Health discusses healthy relationships.<sup>91</sup>
- Social Studies looks at interactions between various cultural groups in Canada and in the world.
- History and Geography study diverse groups contributing to Canada's historical, cultural and economic development.<sup>92</sup> Native Studies and World Religions are also offered.
- International Languages Program provides 70 language courses in 69 elementary school boards.<sup>93</sup>

### Quebec:

- Obligatory instruction in languages and social sciences to expose students to history, citizenship, geography and economics, art, and moral and religious education.<sup>94</sup>
- The Kativik Regional School Board in northern Quebec requires students to be taught in Inuktitut until Grade 3, when English or French is taught as a second language.<sup>95</sup>

### Nova Scotia:

- Personal Development teaches respect for different genders and social backgrounds and confronting racism.
- Family Studies examines relationships and historical perspectives while sociology includes study of the family and minority groups.
- Gaelic Studies offered in Grades 3 to 6; German, Latin and Spanish offered in high school.
- Social Studies includes examination of anti-racism, multiculturalism and interculturalism (Junior High).
- Mi'kmaq education promotes understanding of the Mi'kmaq peoples.<sup>96</sup>

### Alberta:

- Grade 10 social studies focuses on Canadian citizenship.<sup>97</sup>
- Bilingual programs in Ukrainian, Arabic, Mandarin, German, Polish and Hebrew allowing for one of several languages to be used for instruction from 25 to 50 percent of the school day.
- 15 languages are taught as provincial or locally-developed courses.<sup>98</sup>



**Northwest Territories:**

- A major focus of the school system is Dené and Inuit cultural perspectives.<sup>99</sup>
- Two special language and culture curricula have been developed: *Dené Kede*, taught in the Western Arctic; and *Inuuqatigiit*, taught in Nunavut schools.<sup>100</sup>
- Civics education covers rights and duties of citizenship, government and politics, and participation in a democratic society.
- A teacher's resource book for Grades 7 to 9 discusses historical and language realities in circumpolar nations.<sup>101</sup>

**Yukon:**

- Developing a specific Yukon curriculum in cooperation with parents, community organizations and the Council of Yukon Indians.<sup>102</sup>

## Preparation for Responsible Life

Schools try different ways to prepare students for living responsible lives, such as seniors visiting programs and food drives. There is little information about the effectiveness of these programs.

### Access to Technology

Canada is implementing a nation-wide initiative to bring computers and the Internet into schools. In 1993, the federal government and the private sector launched SchoolNet, a national electronic network which is working to connect with every school system in Canada. The program includes federal funding for satellite technology for all Aboriginal schools under federal jurisdiction.<sup>103</sup> At this time, 85 percent of Canadian schools are connected to the Internet.<sup>104</sup> Furthermore, the Computers for School Program, sponsored by Industry Canada and Telephone Pioneers, plans to have 250,000 computers in schools and public libraries by March 31, 2001.<sup>105</sup>

Despite reductions in education spending, most provinces have expanded the role of technology in schools and devote many resources to acquire computer equipment. For example, Alberta is connecting every school to the Internet and will spend \$85 million by 2000 to make equipment available to students. Ontario allocated \$40 million for computer equipment. Nova Scotia requires that every new school have computer equipment and laser wiring.<sup>106</sup> The Northwest Territories Department of Education, Culture and Employment is a major funder of a digital communications network to link communities and deliver educational programs.<sup>107</sup> The Yukon, Prince

## Voices

**Coalition Questionnaire:**

*Do you think schools do a good job of educating students about positive relationships with others and about practical things you can use in your everyday life, e.g. time management and how to search for a job?*

I think it depends on the teacher; some of them try and educate us on these things as much as possible but most teachers just stick to the lesson plan and never talk about anything else.

—Colleen, aged 16, Ontario

Teachers teach us how to make a bibliography, how to organize our notes, but will a nice project on ancient Egypt really help you in life? A business teacher is the only teacher that will come close to teaching students about searching for a job. In the teachers' opinion, if you have a problem, go to the guidance counsellor.

—Ana, aged 16, Ontario

Edward Island, Newfoundland and Labrador and British Columbia similarly support education programs to enhance access and develop skills through the Internet.<sup>108</sup>

Some educators are worried that technology will eclipse more traditional lessons in science, mathematics, writing,

civics and other subjects.<sup>109</sup> There are questions about spending so much on computer equipment, maintenance and upgrades when class sizes increase and school budgets shrink across the country. Others are concerned that the large expenditures may mean cuts to art and music programs.<sup>110</sup> Heather-jane Robertson of the Canadian Teachers' Federation says that children with poor learning skills or those living in poverty or without computers at home need smaller class sizes and more teachers rather than more computers.<sup>111</sup>

### Media Literacy

Media literacy teaches critical thinking and evaluation skills to detect bias and recognize exploitative material from the Internet and other information sources but most provinces have not incorporated it into core curriculum guidelines. However, policies in British Columbia, Alberta, Saskatchewan, Manitoba and Quebec encourage it. In Ontario, media awareness is a mandatory part of the curriculum.<sup>112</sup> To address this learning objective, a Canadian NGO, the Media Awareness Network, has developed two innovative educational computer games to teach children about media literacy on the Internet.<sup>113</sup>

### Equality of the Sexes: Gender Concerns

Article 29 of the UNCRC says that education should advance equality of the sexes. Provincial governments have strategic plans or policy statements for gender equality in education. Most schools across the country include elements of gender equality in the curriculum.

There are also a variety of initiatives to redress gender imbalances and encourage girls to pursue science, mathematics, or technology studies.<sup>114</sup> Consequently, increasing numbers of women are enrolled in post-secondary engineering, mathematics and science classes but men still greatly outnumber women in these areas.<sup>115</sup> However, more women than men are currently enrolled in university programs in Canada.

Efforts to promote self-esteem in order to redress gender imbalances are carried out across the country. An annual conference by the Calgary Board of Education supports information-sharing and awareness for young girls to make positive life decisions.<sup>116</sup> "Girls! Stories Worth Telling" was a 1998 conference

where adolescent girls told their stories about overcoming barriers in education and other areas. A teacher at Rockcliffe Middle School in Toronto started a lunch-time Girls' Club in 1993 for girls to organize their own activities.<sup>117</sup>

## Voices

### Coalition Questionnaire:

A program at my high school in Canada addresses the fact that there are fewer girls enrolled in mathematics, science and technology at the secondary school level. In mixed (male/female) classes, girls are often shy and don't speak. Boys are more involved, answer questions and make decisions. Teachers found that in classes for girls only, girls participated actively and were willing to try and solve problems without worrying about embarrassing themselves in front of boys.<sup>118</sup>

Information from the National Longitudinal Study of Children and Youth found that the late elementary school years are "particularly positive for girls." Research showed that: "Despite societal expectations that boys exceed girls on mathematics, the results indicated no differences between the boys and the girls on this measure. Moreover, the girls were rated higher by their teachers on their academic skills than were boys."<sup>119</sup> In fact, the results indicate that girls experience more support than boys, who are benefiting less from what school has to offer at this age. The researchers suggest that parents and teachers need to be better informed of boys' educational needs.<sup>120</sup>

### Peace and Tolerance: Violence Prevention

Despite public perceptions that violence by young people is rising,<sup>121</sup> youth crime has been decreasing.<sup>122</sup> Bullying between students, however, remains a concern. A 1997 Queen's University survey of 1,954 adolescents from different ethnocultural groups in six secondary schools in Toronto and Vancouver found that 25 percent said they had been bullied at school.<sup>123</sup>

### Case Law

A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. As the Board of Inquiry stated, a school board has a duty to maintain a positive school environment for all persons served by it.

*Ross v. School District No. 15, [1996]<sup>124</sup>*

School-based police programs have been developed to address violence amongst young people.<sup>125</sup> British Columbia recently established an anti-violence centre to intervene with children at risk, combat bullying and prevent violence.<sup>126</sup> Peer helpers act as conflict mediators/supporters at E.J. Sand Public School in Thornhill, Ontario, the Tillicum Elementary School in Victoria, British Columbia and the Jamieson School in Sydney, Nova Scotia.<sup>127</sup> The Strawberry Vale Elementary School in Victoria, British Columbia has a compulsory bully-proofing program from kindergarten to Grade 7.<sup>128</sup> STOP, Students and Teachers Opposed to Prejudice, began in a Red Deer school and has made a significant contribution to the promotion of anti-racism among students and schools in Alberta.<sup>129</sup> There is no comprehensive program or funding available for violence prevention across Canadian schools.<sup>130</sup>

Research on violence prevention policies and programs at 126 school boards across the country in 1994 found that:

- the education community is involved in a tremendous amount of activity to understand school-based violence and implement effective solutions;
- information is disseminated to policy-makers and educators through conferences, teachers' organizations and university institutions; and
- most school boards have policies and/or programs to address violence.<sup>131</sup>

It was also found that some schools have adopted a "zero-tolerance" response to youth violence and nearly all schools have statements about suspension and expulsion with regard to students involved in violent acts

at school. There is concern that suspension does not address the underlying problems that lead to violence and can further marginalize students who are already at risk of school failure.<sup>132</sup>

There are a few initiatives to address homophobic violence in schools. Toronto has a Human Sexuality Program with counselling and classroom presentations and the Triangle Program to offer an alternative place to study for gays who have been harassed at school. Calgary's Action Plan on Gay/Lesbian/Bisexual Youth and Staff Safety has been protested against by a 250-member "Parents Rights in Education" group.<sup>133</sup> The British Columbia Teachers' Federation's efforts to fight homophobia and heterosexism in public schools generated a strong negative reaction from the BC Confederation of Parent Advisory Councils. The Surrey School Board disallowed resource materials depicting same-sex families, which was contested in the *Chamberlain* case.<sup>134</sup> The British Columbia court found that the Surrey School Board exceeded its authority.<sup>135</sup>

Matthew Martin of the Gay and Lesbian Community Centre in Vancouver says that "society may be making strides. But in schools today, gay kids continue to be the scum of the earth."<sup>136</sup> A 1994 Vancouver survey found that a disproportionate number of street youth in the city identified themselves as gay or bisexual, which suggests that homophobia is a factor for dropping out of school.<sup>137</sup>

### Provincial/Territorial Curricula: Preparation for a Responsible Life

#### British Columbia:

- A gender equity program was introduced in 1990.<sup>138</sup>

#### Saskatchewan

- Saskatchewan Education has a Gender Equity Policy Statement and promotes gender equity as an integral part of the educational system.<sup>139</sup>

#### Ontario:

- The elementary curriculum acknowledges and respects individual differences.<sup>140</sup>
- High school students are required to complete a minimum of 40 hours of community involvement.<sup>141</sup>

**Quebec:**

- Life in Society is one of six major areas of learning in the Quebec curriculum.<sup>142</sup>
- Citizenship Education is offered from Grade 3 to the end of high school.
- Values are explored in moral education and religious education.<sup>143</sup>

**Nova Scotia:**

- The Public School Program identifies citizenship as essential learning and should include: human rights, recognizing discrimination and principles of pluralistic, democratic societies and multiculturalism.<sup>144</sup>

## Respect for the Natural Environment

As a result of major reviews of policy and curriculum in most provinces, greater emphasis on environmental education has been incorporated across the country.<sup>145</sup> The extent and effectiveness of this learning objective is not known.

To support the 1992 Rio Declaration on Environment and Development (Agenda 21), a Canadian youth action guide was developed.<sup>146</sup> Furthermore, a national non-profit organization, Learning for a Sustainable Future, was established to address the Rio recommendations on sustainable development. Since its creation, the organization has:

- given workshops to over 2,000 educators;
- assisted with the development of teaching resource materials and the integration of sustainable development concepts into the Atlantic provinces' core curriculum, the Pan-Canadian Protocol for Collaboration on Science Curriculum and the Western Common Curriculum Protocol; and
- created the Ontario Learning for Sustainability Partnership (OLSP) in 1995.<sup>147</sup>

In order to advance the development of a pan-Canadian science curriculum, all ministers of education and teachers' federations received a report on proposed amendments to ensure the sustainable perspective.<sup>148</sup>

Environmental awareness is promoted in classroom work and extra-curricular clubs. For example, the Philippine Assistance Development Program, funded by the Canadian International Development Agency, coordinated a project called "Race Against Waste" where youth from Canada and the Philippines made environmentally friendly toys from recycled materials.<sup>149</sup>

**Case Study**

The unique, award-winning *Colquitz Watershed Stewardship Project* in the Greater Victoria and Saanich School Districts, supported by the public and private sectors, has trained 120 teachers in various environmental programs. Over 4,000 elementary students have completed class studies, participated on field trips and undertaken projects to clean streams and school yards, raise salmon, mark storm drains and plant shrubs and trees. Junior and secondary students get "Stream Keeper" college-level training. Following certification, they become involved in community restoration and hatchery projects, assist elementary classrooms with their field studies, participate in educating the public and monitor local water courses. Some students identified a previously undocumented hazard to Coho salmon fry, which significantly improved the survival chances of thousands of fish.<sup>150</sup>

### Provincial/Territorial Curricula: Respect for the Natural Environment

**British Columbia:**

- Environmental education is to be directed to all students from kindergarten to the post-secondary level and environmental concepts are integrated into all subject areas.<sup>151</sup>
- Issues include waste management, socially responsible and ethical economics, conservation and restoration of the environment, energy and resource management, technology and the environment, global awareness and responsibility.<sup>152</sup>

**Nova Scotia:**

- As part of the citizenship areas of learning, graduates will be able to assess environmental interdependence in a local and global context. In order to graduate from high school, students must complete one credit in global studies, global geography or global history.
- Studies in biology in Grades 11 and 12 educates students about the nature of science and technology so that they know about the significant impact of biology and associated technology on society but also the limitations. In addition, a course in oceanography is offered as an integrated approach to science.<sup>153</sup>

**Ontario:**

- The new science and technology curriculum, introduced in 1998, has a Life Systems strand for Grades 1 through 7, which includes examination of the characteristics of living things, growth and change in animals and plants, habitat and communities, ecosystems, and the effects of human activities and technological innovations.<sup>154</sup>
- Grades 7 and 8 geography encourages students to examine: the various ways in which resources are used, the impact technology has on natural resources, and sustainable development.<sup>155</sup>

**Quebec:**

- The redefined 1997 educational policy includes an emphasis on environmental education.<sup>156</sup>
- Consumer studies address the repercussions of individual consumption and participation in improving the environment.<sup>157</sup>

**Saskatchewan:**

- The natural environment is addressed throughout the curriculum, from social studies to biology.<sup>158</sup> Science study from Grades 1 to 10 includes examination of animals, plants, food chains, human impact on the environment, ecosystems, populations, essential characteristics of life, ecological regions of Saskatchewan, water quality and the greenhouse effect.<sup>159</sup>

## Parental Involvement and Alternative Forms of Education

### Role of Parents

The role of parents in their children's education is becoming increasingly important in Canada. For example, Manitoba organizes annual forums for parents to examine how curriculum is developed<sup>160</sup> and Alberta allows parents to choose where their children will be educated within the Edmonton public school system.<sup>161</sup> Parental input has been implemented with the establishment of school councils. For example, Yukon school councils include parental and Aboriginal representation and are responsible for many personnel, programming and administrative matters.<sup>162</sup> In Ontario, an 18-person Ontario Parent Council was introduced in 1993, mandated in part to oversee the role of parent councils at the school level.<sup>163</sup>

While there is general agreement about the desirability of greater parental involvement, there is some concern with the trend to decrease the power of school boards and increase the role of parent school councils. School councils' influence is affected by the attitudes and support of principals and board officials and the expertise and commitment of council members.<sup>164</sup> Research on school councils in Newfoundland, Alberta and Ontario identified a strong need for training and support.<sup>165</sup> It is unknown whether governments will invest in the required training and support to develop these bodies.<sup>166</sup>

In the 1992 Canadian Education Association survey about Aboriginal education, almost two-thirds of the sample (290/458 schools or 63.3 percent) did not respond to the question about the need for parental and community involvement. This may indicate that most Aboriginal parents are not participating in the education process. However, the remaining 168 schools in the survey described a variety of ways parents can become involved, such as tribal/community-school liaison, parental advisory committees, volunteer programs, local school board representation and regular parent-teacher meetings.<sup>167</sup>

### Alternatives to Public Schools

Education legislation allows for alternatives to public schools, such as home schooling, independent schooling or charter schooling.

#### Home Schooling

Home-based education is legal if parents provide "satisfactory" or "equivalent" instruction. The Canadian

Alliance of Home Schoolers estimates that there are approximately 50,000 students being educated at home.<sup>168</sup> Parents can establish their own curriculum and choose their own learning materials. To support home schooling, British Columbia, Alberta and the Yukon allow access to educational facilities and learning materials.<sup>169</sup> In some jurisdictions, children are required to register with a local school; others require that approved texts be used. Provincial monitoring of home schooling is mostly carried out by local school boards but home schooling has not generally been well defined or supported.<sup>170</sup> Regulations are now increasing due to the growing popularity of this alternative to public schools.

### Private Schools

Less than six percent of Canadian students are enrolled in private schools.<sup>171</sup> Independent private schools exist across the country and may operate in any province or territory if they meet general standards for elementary and secondary schools. Most private schools closely follow the curriculum and diploma requirements of the department or ministry of education. Alberta, British Columbia, Manitoba, Quebec and Saskatchewan support private education by providing some form of financial assistance to these schools.<sup>172</sup>

A private school may refuse to admit a pupil but legal mechanisms exist to ensure that private schools are non-discriminatory. For example, the Human Rights Code of Ontario protects against possible human rights violations in private schools. However it should be noted that since the Canadian Charter does not apply to private, non-governmental action,<sup>173</sup> it is likely that Charter guarantees will not apply to the procedures and decisions of independent school administrators.<sup>174</sup>

### Charter Schools

Canada has only nine charter schools, all of which are in Alberta.<sup>175</sup> These schools:

- are sponsored by the Minister of Education;
- are located in large urban centres;
- have been in existence for one to three years;
- have small classes, and
- are experiencing a growth in enrollment.<sup>176</sup>

According to University of Calgary research, parents see positive results from their children's charter schools, such as improved academic performance and increased student satisfaction with learning and personal confidence; 85 percent plan to keep their children in the charter school.<sup>177</sup>

Charter schools are not accepted by all educators because research has shown that these schools have:

- limited financial, moral or technical support;
- limited professional development for teachers; and
- adversarial relations with others in public system.<sup>178</sup>

Charter schools by their very make-up do not promote inclusiveness. Charter schools also have difficulties with governance, due to parents' lack of knowledge or expertise and vaguely defined roles between administrators and board members.<sup>179</sup> There is also a concern about undue criticism of public schools in order to justify charter schools and their separate public funding. Ontario's Education Improvement Commission rejected provincial funding of charter schools in 1997, saying it "would undermine the strength of Ontario's public education system."<sup>180</sup>

## Conclusion

Children's right to education is assured in Canadian legislation, which provides for primary and secondary schooling and obliges all children to attend. Alternatives to public schooling are also permissible. Education is a provincial responsibility and is administered by local school boards. As such, there are variations in the provision of education across the country.

The goals of education generally address the developmental needs of children although special programming for students is inconsistently available. Concerns have been identified about national educational efforts such as: the reduction in education spending and its adverse effect on the availability of programs and services; the reduction of the number of school boards and the impact this has had on access to programs such as special education; the high drop-out rate of Aboriginal children; the unclear status of rights education and multicultural programming; and the availability of instruction in both official languages "where numbers warrant."

A charter school is an independent public school. A Charter school must meet broad provincial guidelines but offers a distinct program, either in its treatment of subject matter or alternative teaching methods. Charter school founders sign a charter agreement with either a local school board or the minister of education in order to become autonomous administrators of the school. In return, the government provides full funding for each student.

## Appendix A

### Provincial and Territorial Education Legislation

	British Columbia	Alberta	Saskatchewan	Manitoba
<b>Title of Act</b>	School Act R.S.B.C. 1996, c.412	<i>School Act</i> S.A 1988, c. S-3.1	Education Act S.S.1995, c E-0.2	<i>The Public Schools Act</i> R.S.M. 1987. C.P250
<b>Years of compulsory education</b>	6 to 16 (s. 3)	6 to 16 (s.8)	7 to 16 (s.142)	7 to 16 (s.258)
<b>Years of entitled education</b>	5 to 19 (s.1)	6 to 19 (s.3)	6 to 22 (s.142)	6 to 21 (s.259)
<b>Stated objectives</b>	Learners to develop their individual potential so as to become personally fulfilled and publicly useful.	Paramount consideration is the best educational interest of the student. Diverse nature and heritage of Alberta society is recognized.	Not mentioned	Not mentioned
<b>Alternatives to public education</b>	Home education is allowed if registered and an education program developed (s.13) <i>Independent School Act</i> (R.S.B.C. 1996, c. 216) classifies private schools within a four-tier system, same as <i>School Act</i> )	Home education is allowed if supervised by board or school and education program is approved by Minister (s.23). Private schools (more than seven students from more than one family) allowed if education program approved by Minister. Schools are monitored and evaluated by Minister (s.22). Charter schools are allowed (s.24.1).	Home education is allowed if registered with Minister. Registration involves meeting criteria set out in regulations. Independent schools are “controlled and administered by persons other than a public authority.” Must be registered with Minister and meet criteria in regulations.	Private schools defined in the <i>Education Administration Act</i> They must provide a curriculum and standard of education equivalent to that provided by public schools
<b>Access to education for special needs or exceptional children</b>	Not in the Act	Special needs defined as a behavioural, communicational, intellectual, learning, or physical characteristic. S.29 entitles qualified students to a special needs program.	Special needs defined as personal limitations attributable to physical, mental, behavioural or communication disorders. Gifted pupils defined as superior natural ability or exceptional talent.	Not in the Act
<b>Language of instruction</b>	English unless student falls within section 23 of the Charter	English unless student falls within section 23 of the Charter	English unless student falls within section 23 of the Charter	English unless student falls within section 23 of the Charter

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	Ontario	Quebec	New Brunswick	Nova Scotia
<b>Title of Act</b>	<i>Education Act</i> R.S.O. 1990, c.E-2	<i>Education Act</i> R.S.Q. 1993, c. I-13.3	<i>School Act</i> R.S.N.B. 1997, c.E-1.12	<i>Education Act</i> S.N.S. 1995-96, c.1.
<b>Years of compulsory education</b>	6 to 16 (s.21)	6 to 16 (s.14)	5 to 16 (s.15)	5 to 16 (s.5)
<b>Years of entitled education</b>	6 to 21 (s.33)	5 to 18 (s.1)	5 to 21 (s.15)	5 to 21 (s.5)
<b>Stated objectives</b>	Not mentioned	To contribute to the social and cultural development of the community.	Recognizes equality, duality and equity. Each child to receive education of highest quality.	Recognizes the diverse nature of Nova Scotia and promotes fair and equitable participation and benefit in education system to all persons.
<b>Alternatives to public education</b>	Private schools are defined as schools that serve more than five school age children during the school day. Monitored by Minister. (s.16) Home schooling is allowed (s.21).	Home education is allowed and evaluated by school board. <i>An Act respecting Private Education</i> R.S.Q. 1997 E-9.1 defines private institution as one dispensing educational services to more than five students. Once the eligibility criteria is met, a Minister's permit is issued.	May be exempt from school with authorization of Minister if under effective instruction elsewhere.	Private schools defined as schools that serve school age children and have a similar curriculum to public schools. (s.130) Home education is permitted with an educational program and registration with Minister (s.128).
<b>Access to education for special needs or exceptional children</b>	Exceptional children are qualified for a special needs program (s.11).	Handicapped students or students with a social maladjustment or learning disability will have an individualized education program developed for their needs (s.47).	Exceptional children (behavioural, communicational, intellectual, physical, perceptual exceptionalities) are entitled to a special education program (s.12).	Not in the Act but parents have the right to participate in individualized program for special needs children (s.25(2)).
<b>Language of instruction</b>	English unless student falls within section 23 of the Charter.	French unless student falls within s.23 of the Charter or s.73 of the Charter of the French language, L.R.Q., c. C-11.	English unless student falls within s.23 of Charter. Some programs for Mi'kmaq and Maliseet children (s.7).	English unless student falls within s.23 of the Charter. Mi'kmak (s.138) and African Canadian (s.140) heritage education promoted.



## HOW DOES CANADA MEASURE UP?

	<b>P.E.I.</b>	<b>Newfoundland</b>	<b>Northwest Territories</b>	<b>Yukon</b>
<b>Title of Act</b>	<i>School Act</i> S.P.E.I. 1993, c.35	<i>Schools Act</i> S.N 1997, CS.-12.2	<i>Education Act</i> S.N.W.T. 1995, c.28	<i>Education Act</i> S.Y. 1989-90, c.25.
<b>Years of compulsory education</b>	7 to 16 (s.69)	6 to 16 (s.4)	6 to 16 (s.27)	6yr 8mos to 16
<b>Years of entitled education</b>	6 to 20 (s.68)	5 to 21 (s.3)	5 to 21 (s.5)	5yr 8 mos. to 21
<b>Stated objectives</b>	Not mentioned	Not mentioned	Not mentioned	Recognition of the equality of Yukon Aboriginal peoples, gender equality and equality of educational opportunity.
<b>Alternatives to public education</b>	Private schools are granted a licence in accordance with regulations (s.133). Home education is allowed if conducted in accordance with regulations (s.139).	Private schools are authorized by s.43 with permission of Minister. The school must have valid teachers and prescribed instruction. Home education is authorized if under efficient instruction (s.6).	Private school is a school other than a public school and must be registered with Minister (s.21). Home education is allowed if registered with Minister (s.20).	Private schools defined as schools that offer educational program to school age children during school days. Must meet guidelines and standards set by Minister (s.29). Home education is permitted if program meets goals and objectives in s.4 and is planned in 3 year blocks (s.31).
<b>Access to education for special needs or exceptional children</b>	Not mentioned	Not mentioned	Education program to be modified for needs of student (s.8).	Students with intellectual, communicative, behavioural, physical or multiple exceptionalities entitled to an individualized education program (s.15).
<b>Language of instruction</b>	English unless student falls within s.23 of the Charter	English unless student falls within s.23 of the Charter	English unless student falls within s.23 of the Charter	English unless student falls within s.23 of the Charter. Aboriginal languages will be taught (s.52).

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## article 22



# Refugee and Asylum Seeking Children



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### Article 22

#### Refugee and Asylum Seeking Children

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her

family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Interpretation: Article 22 addresses the rights of refugee children, including those seeking refugee status, to appropriate protection and humanitarian assistance, including tracing family members. This article must be read in conjunction with Article 9 (separation from parents only when necessary in the child’s best interests), article 10 (rights to family reunification, to be dealt with in a positive, humane and expeditious manner), article 20 (protection of children without families), article 37 (deprivation of liberty as a last resort), and article 39 (recovery and rehabilitation).<sup>1</sup>

Other Articles to consider include: article 7 (right to know and be cared for by parents); the general principles outlined in article 2 (non-discrimination); article 3 (best interests of the child); article 6 (right to survival and development); and article 12 (respect for the child’s views); article 23 (full and decent life for children with a disability); and article 28 (right to education).<sup>2</sup>

## Introduction

Canada’s legislation governing refugees is the *Immigration Act*. This Act has been described as a complex patchwork of legislative provisions that lack coherence and transparency.<sup>3</sup> The *Immigration Act* does not set out specific procedures or criteria for dealing with the claims of children other than that a person be designated to represent a child in Immigration and Refugee Board hearings.

Statistics and information are generally unavailable on child refugees and it very difficult to assess the extent to which the protection and assistance set out in the Convention are accorded to child refugees in Canada.

## Canada’s International Obligations

In 1969, Canada signed the United Nations 1951 *Geneva Convention Relating to the Status of Refugees* and its 1967 Protocol, which provide the international definition of refugees. In signing, Canada undertook to protect refugees who find themselves outside their country and

unable to return to it for fear of persecution because of race, religion, nationality, membership in a particular social group or political opinion.

### The 1951 Geneva Convention set standards that apply to children in the same way as to adults:

- a child who has a “well-founded fear of being persecuted” for one of the stated reasons is a “refugee;”
- a child who holds refugee status cannot be forced to return to the country of origin (the principle of non-refoulement);
- no distinction is made between children and adults in social welfare and legal rights.

## Overview of the Refugee Determination Process

The United Nations estimates that there are over 30 million refugees and displaced people in the world.<sup>4</sup> Most of these refugees live in temporary situations and few are resettled in another country. In 1996, for example, the United Nations High Commissioner for Refugees identified 73,650 refugees needing resettlement; by the end of the year only 28,330 of these refugees were resettled.<sup>5</sup>

Annually, Canada resettles about 10,000 refugees from overseas and contributes \$18 million to the Office of the United Nations High Commissioner for Refugees.<sup>6</sup> While there “is no established international measure to determine the extent to which Canada should be providing resettlement,”<sup>7</sup> Canada selects large numbers in comparison to other countries<sup>8</sup> and maintains an annual resettlement quota.

People selected from overseas for resettlement in Canada can be either government-assisted refugees or privately-sponsored refugees. The Private Sponsorship Program is “unique to Canada in allowing private groups to sponsor refugees from overseas above and beyond the government program.”<sup>9</sup> Canada has a strong network of organizations across the country to assist in a refugee’s settlement, adaptation and integration.<sup>10</sup>

When a Convention refugee is selected for resettlement in Canada, he or she is usually settled with his/her family.

When the family lands in Canada, they immediately become permanent residents.

Over half of the refugees who are landed in Canada each year claim Convention refugee status at a border point or from within the country (“inland”). If the person is accepted as a Convention refugee, he or she is eligible to apply for permanent resident status. Immediate family members, whether in Canada or abroad, may be included on the application for permanent residence. If the person is not found to be a Convention refugee, he or she faces deportation from Canada. According to the Joint Centre of Excellence for Research on Immigration and Settlement—Toronto:

Among all industrialized countries, Canada has one of the most generous rates of acceptance of refugee claims: in 1992, when Italy, Belgium, and Norway granted asylum to only 10 percent of refugee claimants and Germany to only 4 percent, Canada accepted more than 50 percent of refugee claims.<sup>11</sup>

The number of refugee claims made in Canada has increased from 500 in 1977 to 24,000 in 1997.<sup>12</sup> Andrew Brouwer, manager of the Refugee and Immigrant Program of The Maytree Foundation, says that “the increasing accessibility of international travel means that it is often as easy or easier for refugees to flee directly to Canada than to seek temporary asylum in a neighbouring country first. Others live ‘underground’ in a neighbouring country for a time before making it to Canada to claim asylum.”<sup>13</sup>

According to the Auditor General, the “current practice dictates that from the time claimants arrive in Canada, and for as long as they remain and their claim is making its way through the process, they qualify for many of the benefits granted to landed immigrants, such as social assistance, legal aid, education and health care. The provinces, in administering these benefits, thus have some influence on refugee-related issues.”<sup>14</sup>

Refugees Landed in Canada <sup>15</sup>			
	1997	1996	1995
Government-Assisted	7,710	7,846	8,191
Privately Sponsored	2,660	3,073	3,251
Refugees Landed in Canada	10,629	13,842	13,778
Dependents Abroad	3,223	3,554	2,535
<b>Total Refugees</b>	<b>24,222</b>	<b>28,315</b>	<b>27,755</b>

## Legislation

Canada’s legislation governing immigration and refugees is the *Immigration Act* (1976-77, c.52, s.1), which was passed in 1976. Citizenship and Immigration Canada is the federal department that administers the Act. The definition of refugee, which has been incorporated into the *Immigration Act* (s.2.(1)), comes from the *1951 United Nations Convention Relating to the Status of Refugees* and its 1967 Protocol. The *United Nations Convention on the Rights of the Child* has not been incorporated into the *Immigration Act* or Regulations.

Canadian law allows for children to make their own refugee claims. The *Immigration Act* does not set out specific procedures or criteria for dealing with the claims of children, however, except for the designation of a person to represent the child in Immigration and Refugee Board hearings.

The *Immigration Act* stipulates that refugee claims are to be heard by the Convention Refugee Determination Division of the Immigration and Refugee Board. This Division is an administrative tribunal with inquiry powers.

The *Immigration Act* governs all of Canada’s asylum seekers, but Quebec is unique in that the *Canada-Quebec Accord*, signed in 1991, gives Quebec sole responsibility for selecting independent immigrants and refugees abroad who plan to settle in Quebec. Reception and integration services provided by Quebec must be equivalent to those provided by the federal government elsewhere in the country. The federal government maintains responsibility for defining general immigrant categories, setting the number of admissions per year, and enforcement.<sup>16</sup>

The *Canadian Charter of Rights and Freedoms* guarantees that everyone is entitled to life, liberty and security. The Supreme Court of Canada has ruled that these rights apply, not only to Canadian citizens and permanent residents, but to all persons within Canada’s borders. Under the Charter, individuals have the right not to be detained without just cause; the right, upon arrest or detention, to be informed promptly of the reasons, the right to retain and instruct counsel without delay and the right to challenge detention by *habeas corpus*. The Supreme Court of Canada further said that any claim having a minimum credible basis for refugee status must be heard.<sup>17</sup>



A report recently released by Citizenship and Immigration Canada says that the *Immigration Act* “has been amended on an *ad hoc* basis more than 30 times since 1976, resulting in a complex patchwork of legislative provisions that lack coherence and transparency. The logic and key principles of the Act have become difficult to discern for both immigrants and Canadians.”<sup>18</sup>

In January 1998, an independent advisory group established by the Minister of Citizenship and Immigration Canada to review the legislation released its report. The report, entitled *Not Just Numbers: A Canadian Framework for Future Immigration*, made 172 recommendations. One of the key proposals was for a “simpler legislative framework to ensure clarity, transparency and accountability.”<sup>19</sup>

In January 1999, the Minister released a document called *Building on a Strong Foundation for the 21st Century: New Directions for Immigration and Refugee Policy and Legislation*. This report outlined “broad directions” to guide the department “in adapting present policies and legislation.” The Minister said that she was seeking “views and practical advice on the specific policies and legislative proposals.”<sup>20</sup>

## Child Refugee Claimants

The refugee process in Canada can influence the lives of children in various ways.

- The child is selected for refugee resettlement from abroad as an unaccompanied minor;
- The child’s parent is selected for refugee resettlement from abroad and the child is dealt with as part of that claim;
- The child claims Convention refugee status within Canada as an unaccompanied minor;
- The parent and the child each claim Convention refugee status in his or her own right in Canada “where the persecution feared is particular to the child;”<sup>21</sup>
- The child’s parent claims Convention refugee status within Canada and the child is included as a dependant under a parent’s application;
- The parent claims Convention refugee status within Canada and the child waits abroad while the claim is being determined;
- The child is born in Canada while his or her parent’s Convention refugee claim is being considered.

Unaccompanied minors can claim refugee status within Canada. Occasionally, an unaccompanied child will be selected from overseas to settle in Canada,<sup>22</sup> except in Quebec where unaccompanied minors are not eligible for sponsorship.<sup>23</sup> When a child is admitted as an unaccompanied minor, there is no expectation that the child will be self-supporting.<sup>24</sup>

The Chair of the Immigration and Refugee Board estimated that there were 700 new cases of unaccompanied refugee children before the Board in 1994. “Most such children,” said the Chair, “are sent by parents or relatives from areas of significant danger to the care of relatives or friends in a safe country.”<sup>25</sup>

Guidelines on child refugee claimants came into effect in 1996.<sup>26</sup> The Guidelines’ general principle is the best interests of the child. Best interests are defined broadly in the guidelines and interpretation should vary depending on the circumstances of each case and the child’s age, gender, cultural background and past experiences.

The Guidelines also address the *Immigration Act* requirement that all child claimants be appointed a designated representative for all proceedings of the refugee claim. This designated representative is not the same as legal counsel although the child also has the right to be represented by legal or other counsel. The “linguistic and cultural background, age, gender and other personal characteristics” should be considered when appointing the representative. The representative’s duties are to:

- retain counsel;
- instruct counsel or to assist the child in instructing counsel;
- make other decisions with respect to the proceedings or to help the child make those decisions;
- inform the child about the various stages and proceedings of the claim;
- assist in obtaining evidence in support of the claim;
- provide evidence and be a witness in the claim;
- act in the best interests of the child.

Often, the designated representative is the child’s parent or adult friend and Geraldine Sadoway, a lawyer with Parkdale Legal Services in Toronto, says that representatives lack sufficient understanding and appreciation of the adjudication process to adequately take on that role.<sup>27</sup>

### **Guidelines: Processing Claims of Unaccompanied Children**

The fact that children claiming refugee status can be unaccompanied raises many unique concerns with respect to the processing of their claims...

1. Claims of unaccompanied children should be identified as soon as possible....
2. The Convention Refugee Determination Division (CRDD) and Refugee Claim Officer (RCO) should be immediately assigned to the claim and, to the extent possible, the same individuals should retain responsibility for the claim until completion. It may also be necessary in some cases to assign an interpreter to the claim as early as possible so that the child can develop a relationship of trust with the interpreter. Before the panel, RCO and interpreter are assigned, consideration should be given to their experience in dealing with the claims of children.
3. The claim should be given scheduling and processing priority because it is generally in the best interests of the child to have the claim processed as expeditiously as possible. There may be circumstances, however, where in the best interests of the child the claim should be delayed...
4. A designated representative for the child should be appointed as soon as possible following the assignment of the panel to the claim...
5. A pre-hearing conference should be scheduled within 30 days of receipt of the Personal Information Form....
6. In determining what evidence the child is able to provide and the best way to elicit this evidence, the panel should consider, in addition to any other relevant factors, the following: the age and mental development of the child both at the time of the hearing and at the time of the events about which they might have information; the capacity of the child to recall past events and the time that has elapsed since the events; and the capacity of the child to communicate his or her experiences.<sup>28</sup>

### **Guidelines: Eliciting the Evidence**

Whether accompanied or unaccompanied, a child claimant may be called upon to provide evidence through oral testimony about his or her claim... In general, children are not able to present evidence with the same degree of precision as adults with respect to context, timing, importance and details.... In addition, children may manifest their fears differently from adults.

1. The process which is to be followed should be explained to the child throughout the hearing to the extent possible, taking into account the age of the child. In particular, the various participants and their roles at the hearing should be explained as well as the purpose of questioning the child and the sequence of questioning...
2. Before hearing testimony from a child, the panel should determine if the child understands the nature of an oath or affirmation to tell the truth and if the child is able to communicate evidence. If the child satisfies both of these criteria then he or she can take an oath or solemn affirmation. A child who does not satisfy these criteria can still provide unsworn testimony. The weight to be given to the unsworn testimony depends on the child's understanding of the obligation and his or her ability to communicate evidence.
3. The environment in which the child testifies should be informal. It may be appropriate to use an interview-style room rather than a hearing room. It may also be appropriate to have an adult whom the child trusts present when the child is providing information about his or her claim.

4. Questioning of a child should be done in a sensitive manner and should take into account the type of evidence the child may be able to provide... The questions put to a child should be formulated in such a manner that the child will understand the question and be able to answer. Consideration should also be given to choosing the person who is best able to question the child.
5. Even in an informal environment, some children may find it difficult to testify orally in front of decision-makers. Where appropriate, the evidence of the child may also be obtained by using videotape evidence or an expert...
6. The hearing should, if possible, conclude in one sitting. If this is not possible then the earliest possible resumption date should be scheduled. Notwithstanding the desirability of concluding the hearing in one sitting, a child's possible need for breaks and adjournments should always be taken into consideration.
7. During the course of the hearing, extensive use may be made of conferences with the hearing participants to resolve issues as they arise.

In all cases, whether the child provides oral evidence or not, the following alternative or additional evidence may be considered:

- evidence from other family members in Canada or another country;
- evidence from other members of the child's community;
- evidence from medical personnel, teachers, social workers, community workers and others who have dealt with the child;
- documentary evidence of persons similarly situated to the child, or his or her group, and general country conditions.<sup>29</sup>

### **Guidelines: Assessing the Evidence**

The Convention Refugee Determination Division (CRDD) is not bound by the technical rules of evidence and may base its determination on any evidence it considers credible or trustworthy in the circumstances of the case.

1. If the child has given oral testimony, then the weight to be given to the testimony must be assessed. In determining the weight to be given, the panel should consider the opportunity the child had for observation, the capacity of the child to observe accurately and to express what he or she has observed, and the ability of the child to remember the facts as observed...
2. A child claimant may not be able to express a subjective fear of persecution in the same manner as an adult claimant. Therefore, it may be necessary to put more weight on the objective rather than the subjective elements of the claim. The Federal Court of Canada (Appeal Division) has said the following on this issue:

*... I am loath to believe that a refugee status claim could be dismissed solely on the ground that as the claimant is a young child... he or she was incapable of experiencing fear the reasons for which clearly exist in objective terms.*<sup>30</sup>

3. When assessing the evidence presented in the claim of a child refugee claimant, the panel may encounter gaps in the evidence. For example: a child may indicate that men in uniforms came to the house but not know what type of uniforms they were wearing or a child may not know the political views of his or her family.... In these situations, the panel should consider whether it is able to infer the details of the claim from the evidence presented.<sup>31</sup>

## Benefit of the Doubt

According to refugee advocates, the IRB guidelines do not give children the benefit of the doubt when considering evidence, as recommended by the *UNHCR Handbook on Procedures for Determining Refugee Status*. Refugee lawyer Geraldine Sadoway proposes that if the child is incapable of testifying or the child's best interests would not be served by testifying, other sources of information concerning the child's situation should be prepared for the Board such as the testimony of witnesses, expert evidence, documentary evidence concerning similarly situated children and general country conditions relevant to the claim. The IRB should determine the claim as recommended by the UNHCR, "allowing for the liberal application of the benefit of the doubt." If doubt remains, the hearing should be adjourned to seek further evidence.<sup>32</sup>

## Fear of Persecution

Geraldine Sadoway says that the Immigration and Refugee Board "has not yet tackled the substantive issues of what constitutes a well-founded fear of persecution for child claimants and how the Convention grounds for fear of persecution may be applied to cases involving child claimants." Actions against adults that might be considered harassment or discrimination may constitute persecution when applied to children, she says, because children have different basic needs, are more vulnerable and have fewer defences against abuse.<sup>33</sup>

## Refugees Selected Abroad

### Applying

Applications for refugee resettlement can be made at any Canadian High Commission, Embassy or Consulate outside the applicant's home country (except by those persons designated as Political Prisoners and Oppressed Persons, who may apply inside their home country). Applications are assessed by a Canadian visa officer, who interviews the applicants to determine their eligibility and admissibility. If accepted, the refugee is given a visa and becomes a permanent resident of Canada upon arrival.<sup>34</sup> The Government of Quebec, however, has full jurisdiction over the selection of refugees for settlement within the province.<sup>35</sup>

Members of the Canadian Council for Refugees have reported problems in visa posts overseas including:

limited access to visa offices, poor treatment of individuals, slow processing times, and variations in standards.<sup>36</sup> The Immigration Legislative Review Advisory Group recommends a system of protection officers who are trained in human rights law and in procedures for making fair and consistent decisions. These officers would be strategically placed overseas in order to be accessible to those most in need of resettlement.<sup>37</sup>

*Application processing [by Canada] tends to take longer than other countries, thus preventing it from being responsive to urgent protection needs... Canada selects refugees through its visa posts and this decentralized approach to selection has meant that approaches and standards vary.*  
—Canadian Council for Refugees<sup>38</sup>

*A fast-track system should be in place abroad to allow those who are determined to be in imminent danger to travel to Canada on an urgent basis.*  
—Immigration Legislative Review Advisory Group<sup>39</sup>

The Minister of Citizenship and Immigration is now proposing "working more closely with non-governmental organizations in identifying, pre-screening and resettling refugees," and "ensuring the immediate entry into Canada of urgent protection cases."<sup>40</sup>

### Admissibility

Refugees are not subject to the formal "point system" used to evaluate the skills and adaptability of independent immigrants, but there are eligibility considerations. Adult claimants are currently accepted if they are judged likely to be self-sufficient within a year of settling in Canada. However, Citizenship and Immigration Canada found that "most refugees have needed a longer period." The department also says that "the requirement makes it difficult to protect refugees who are in need of resettlement but who, like women at risk, victims of violence and torture, the elderly, people requiring medical treatment and unaccompanied minors, need considerably longer than a year to settle."<sup>41</sup> It has been estimated that 75 percent and as high as 90 percent of people in some refugee camps are women and children.<sup>42</sup>

*Selection criteria of demonstrating an ability to successfully establish can prevent particularly needy refugees from being selected.*

—Canadian Council for Refugees<sup>43</sup>

*Because priority should be given to the most vulnerable, we recommend that the likelihood of successful establishment in Canada not be a requirement.*

—Immigration Legislative Review Advisory Group<sup>44</sup>

On those occasions when refugees with “greater needs” are selected, the numbers are usually small. For example, Quebec annually accepts five claimants with physical disabilities and gives priority to those with the most minor disability.<sup>45</sup>

The Minister of Immigration and Citizenship Canada is now proposing to “shift the balance toward protection rather than the ability to settle successfully in selecting refugees.”<sup>46</sup>

In cases where assistance by the Canadian government or sponsorship by a Canadian group is arranged, assistance can include “housing, food, clothing, incidental expenses, community orientation, help in finding a job and some support in dealing with the challenges of settling in a new country.”<sup>47</sup>

Another discriminatory element of Canada’s refugee system is that in some cases, a refugee may not be admitted because the refugee “might reasonably be expected to cause excessive demands,... on health or prescribed social services.”<sup>48</sup>

The Immigration Legislative Review Advisory Group said it was inappropriate “to require that persons in need of protection or their families meet the requirements regarding excessive costs for health services.”<sup>52</sup>

Citizenship and Immigration Canada recently acknowledged that “the current *excessive demands* provision as applied to spouses and dependent children is often perceived as inhumane, and the decision-making process slow. A significant number of refusals of spouses and dependent children on *excessive demands* grounds are overturned either on appeal to the Immigration Appeal Division of the Immigration and Refugee Board or on humanitarian or on compassionate grounds when a Minister’s permit is issued.” The department says that “further research is being undertaken to assess the impact of removal of the excessive demands provision” and that “discussions with provincial and territorial governments will take place.”<sup>53</sup>

## Claiming Refugee Status in Canada

*The fundamental weaknesses in the Canadian refugee determination system lie at the beginning and end of the process, rather than in the refugee determination itself. Barriers to access to the system mean that refugees in need of protection are never allowed to be heard by the Immigration and Refugee Board. At the other end, claimants who are refused status are not given a fair opportunity to have the decision reconsidered or have other reasons for fearing removal reviewed.*

—Canadian Council for Refugees<sup>54</sup>

### What are excessive demands on health or social services?

These medical requirements for permanent residence status deny a disabled person, whether he or she is in Canada or abroad, from becoming a permanent resident.<sup>49</sup> In *Yogeswaran v. Canada (Minister of Citizenship and Immigration)* (1997):<sup>50</sup>

*The applicant sought to review a decision of a visa officer refusing his application for permanent residence due to the medical inadmissibility of his 11-year-old dependent son. One of the medical doctors who provided the respondent with the opinion stated that the key social service that the boy would require was a placement in special education classes.... There was sufficient evidence before the medical officers for them to determine that the admission of the dependent’s son would cause excessive demands on social services and the court was satisfied that education is a social service. Given that this was a medical opinion being given by the medical officers, it was not reasonable to expect a full examination of the costs of social services in such an opinion. Excessive demand means more than normal. The application for judicial review was dismissed.*<sup>51</sup>

## Visa Restrictions

The Immigration Review Advisory Group notes that Canada has, at times, used “visa requirements as a tool for limiting in-Canada refugee claims, both by groups having a high percentage of non-genuine claims (Chile) and by those making many successful claims (Sri Lanka, Czech Republic).”<sup>55</sup> There is concern that using visa requirements to limit the flow of refugee claimants may hinder “genuine asylum seekers from reaching Canada.” Canada currently requires nationals of more than 100 countries to obtain a visa in order to enter the country. As well, the Joint Centre of Excellence for Research on Immigration and Settlement--Toronto says that:

*Persons subject to persecution, as defined by article 1 of the Geneva Convention and Protocols, are not likely to have the time or freedom to participate in a lengthy visa acquisition process. In effect, Canada is asking asylum seekers to demonstrate the legitimacy of their asylum claims from the country in which the persecution is taking place. This is in direct contravention of article 3 of the Geneva Convention and Protocols, which protects asylum applicants from discrimination based on their country of origin.*<sup>56</sup>

## Convention Refugee Determination Division Process

Refugee status in Canada is determined through a hearing into the refugee claimant’s circumstances to determine whether there is a serious likelihood that he/she will be persecuted if he/she returns to his/her home country.

### Summary of the Process<sup>57</sup>

When a person claims Convention refugee status in Canada, the process is as follows.

- Person makes claim of being a Convention refugee to an immigration officer.
- Senior immigration officer determines if claim is eligible under the *Immigration Act*. (For ineligible claims, see box below.)
- If claim is eligible, it is referred to the Refugee Determination Division (also known as the Refugee Board).
- The claim is heard in an oral hearing which is to be conducted in an informal and non-adversarial manner. Generally, two Refugee Board members (who are independent decision makers) hear the claim and in

most cases, a favourable decision by only one board member will determine that a person is a Convention refugee. (For decisions requiring a favourable decision by both members, see sidebar.)

- Claimants have the right to full participation in the process.
- Claimants have a right to be represented by a lawyer, a friend, a relative or anyone else who can help them make their submission.
- Claimants have the right to services of an interpreter if necessary.
- Claimants have the full protection of the *Canadian Charter of Rights and Freedoms*.
- The presentation and acceptance of evidence is not restricted by technical or legal rules of evidence.
- If the panel determines that the claimant is a Convention refugee, then the claimant may apply to become a permanent resident of Canada. Immediate family members, whether in Canada or abroad, may be included on the application.
- If the panel decides that the claimant is not a Convention refugee, the claimant may apply for a judicial review by the Federal Court, Trial Division. If leave is granted, the claimant will have the case reviewed by the Federal Court. The Federal Court can return the claim to the Refugee Division for a rehearing. Or, if the Federal Court does not hear or rejects the claim, immigration officials may conduct a post-determination review to determine if removal from Canada would result in significant personal risk to the claimant. Prior to May 1997, post-determination risk reviews were automatic. However, new regulations permit risk reviews, but eligibility criteria are tightened.
- If the post-determination review finds that the claimant is a Convention refugee or would be at great risk if removed from Canada, the claimant is entitled to apply for permanent residency.
- If the above review makes a negative finding, a removal order is made against the individual.
- At any time throughout the refugee determination process, an individual may apply to the Minister for an exemption from a regulation or for admission to Canada based on compassionate or humanitarian considerations.

Section 7 of the *Canadian Charter of Rights and Freedoms* requires that the refugee claim must be determined in accordance with the principles of fundamental justice.

**Persons ineligible to have their claims heard by a Refugee Board<sup>58</sup>**

- war criminals;
- persons posing a security threat;
- persons convicted of serious crimes;
- persons previously found ineligible;
- persons, determined not to be Convention refugees, who have not been outside Canada more than 90 days;
- persons with refugee status in another country who can be returned to that country.

**Percentage of Refugee Claims deemed eligible<sup>59</sup>**

1993-94	99.5
1994-95	99.3
1995-96	99.5
1996-97	99.4

Unlike applicants abroad, a refugee claimant within Canada does not need to be medically admissible, establish an ability to be self-supporting, or have adequate settlement arrangements.<sup>60</sup>

Convention refugee applicants must undergo a medical examination to determine if they would be a danger to public health in Canada (e.g., tuberculosis). Their application would not be rejected on these grounds, but they may experience a delay in the process because of needed medical treatment.

**Legal Representation**

According to the Canadian Council for Refugees:

*Right of counsel should be guaranteed at all points in the process, including port-of-entry interviews. Measures must be taken to ensure that this right is effective, and not made meaningless by the inadequacy or absence of legal aid coverage.... Legal aid coverage for*

*refugee claims varies from province to province, but in many parts of the country it is either minimal or non-existent. This means that many refugee claimants must present their case for refugee status with poor legal representation, or none at all.<sup>61</sup>*

However, the Joint Centre of Excellence for Research on Immigration and Settlement—Toronto says that:

*Given that refugee counsel are typically schooled in the adversarial procedure, they present proof through the detailed examination of claimant and witnesses. Replacement or modification by means of a more investigative procedure has been recommended. Such a system would place no burden of proof on the refugee claimant. The role of counsel would become one of collaboration rather than struggle. Consequently, the determination process could be expedited through a more collaborative and investigative procedure in which questioning is undertaken by CRDD members themselves rather than by refugee counsel and RHOs, while existing procedural guarantees of the right to counsel and legal aid would be retained.<sup>62</sup>*

**Documentary Evidence**

Refugee Board members have access to a documentation centre to assist them in making decisions. According to Citizenship and Immigration Canada, this is “one of the world’s finest refugee documentation centres.”<sup>63</sup> Others, however, dispute that claim.

*The credibility of documentary evidence is a source of concern in refugee hearings. Information assembled by the Immigration and Refugee Board’s Documentation Centres has frequently been called into question. Although refugee claimants are given an opportunity to refute adverse information used against them during refugee hearings, Board Members appear to give greater probative value to documentary evidence than to the claimant’s testimony... Little is known about the sources used in the production of documents.<sup>64</sup>*  
 —Joint Centre of Excellence for Research on Immigration and Settlement—Toronto

## Timeliness of the Process

There is general concern about the length of time it takes to determine refugee claims. The Auditor General, in particular, has expressed concern:

*The Immigration and Refugee Board has been unable to achieve its objectives for processing times over the past three years. The average processing time went from seven months in 1993-94 to nearly 13 months in 1996-97. The same period also saw a sharp increase in the backlog of claims waiting to be processed, from approximately 17,500 at 31 March 1994 to nearly 29,000 at 31 March 1997. At that date, more than 10,000 claims had been awaiting processing for over a year.*<sup>65</sup>

The Joint Centre of Excellence for Research on Immigration and Settlement--Toronto says that while “speed and efficiency are important in resolving claims, these goals should not be allowed to compromise legal standards. It should be acknowledged that complex cases may require protracted periods of adjudication.”<sup>66</sup>

According to the Auditor General, the processing times for refugee claims are unacceptable for various reasons:

- the time it takes to arrive at decisions unduly prolongs the fear and uncertainty felt by refugees;
- claimants settle in and create ties within Canadian society during this time;
- after a while, it becomes difficult to remove them.<sup>67</sup>

## Training

According to Citizenship and Immigration Canada officials, immigration officers do not receive training specific to the UN *Convention on the Rights of the Child*. However, they do participate in training programs on dealing with children in the immigration process.<sup>68</sup> Training for Immigration and Refugee Board (IRB) members did not specifically address the UN *Convention on the Rights of the Child*.<sup>69</sup>

## Acceptance Rates

The Auditor General found that: “There are major discrepancies among Board offices in acceptance rates for claimants from the same country. For example, in 1996 the acceptance rate for claimants from a certain country was four percent in one regional office and 49 percent and 82 percent in two others.”<sup>70</sup>

According to the Auditor General, when the Refugee Board examined the discrepancies it concluded that “a major contributing factor was that decision makers did not always use the same sources of information and interpreted the available information differently.”<sup>71</sup>

Canada has one of the highest acceptance rates for refugee claimants among industrialized countries.<sup>72</sup>

### Percentage of Favourable Immigration and Refugee Board Decisions <sup>73</sup>

1993-94	48 percent
1994-95	62 percent
1995-96	54 percent
1996-97	41 percent

## Lack of Documentation

Sections 85 to 93.1 of the *Immigration Act* make transport operators liable to penalties if they transport people to Canada without proper documentation. The House of Commons Standing Committee on Citizenship and Immigration said that: “We are aware that it strains public credulity when people who arrive in Canada without travel documents...are allowed to enter Canada and remain at large pending the hearing of their refugee claim.”<sup>74</sup> The *Immigration Act* permits detention if a person’s identity is not established.

Canadians, however, have recently heard accounts of Kosovo Albanians being stripped of their identification papers by Serb forces. It is likely that Canadians are more accepting of undocumented refugee claimants than the Standing Committee suggests. The Minister of Citizenship and Immigration speaks about undocumented claimants as follows:

*Because they have no ID, we will not grant these people permanent resident status until they have had time to demonstrate respect for the laws of Canada and for us to detect those who may be guilty of crimes against humanity or acts of terrorism.*<sup>75</sup>

At the end of 1998, there were approximately 13,000 undocumented refugees in Canada and 40 percent of them were children.<sup>76</sup> Many fled Somalia, which has had no central government to issue identity documents since 1991. Others are from Afghanistan, northern Sri Lanka



and the Democratic Republic of Congo. Some fled too quickly to retrieve documents, others came from nomadic cultures where identity documents are uncommon.<sup>77</sup> And others, as in Kosovo, had their documents taken from them.

Convention refugees must provide satisfactory identity documents in order to obtain permanent resident status, although Citizenship and Immigration now allows undocumented refugees from Somalia and Afghanistan to apply for permanent residence after five years. Families cannot be reunited until permanent residence is granted and for undocumented refugees, it is a long wait. The Canadian Council for Refugees says that:

*The most consistent message to emerge from the public hearings conducted by the task force was the cry for help from individual refugees who are forced to endure the anguish of prolonged separation from their families. The individual stories each have their own tragic twists.*<sup>78</sup>

Until refugees are accepted for landing they cannot:

- be reunited in Canada with their families;
- travel out of the country to visit their families;
- enjoy the right to full health coverage.<sup>79</sup>

Canadian immigration policy also prevents the children of refugee claimants from visiting their parent in Canada until the parent is accepted for landing.<sup>80</sup>

## Right-of-landing Fee

In 1995, the federal government began charging a \$975 right-of-landing fee for every adult refugee applying for permanent residence in Canada. The Canadian Ethnocultural Council says this so-called head-tax is “prohibitively high” and “poses a significant barrier for genuine refugees in need of protection.”<sup>81</sup> While refugees can apply for a loan under the Immigrant Loans Program, the “review of the loan application also adds another step in the process, meaning further delays in family reunification.”<sup>82</sup> Refugees who do not qualify for a loan are faced with further delays in sponsoring family members still abroad.

COSTI, the largest immigrant-serving group in Toronto, says that “the right-of-landing fee was ill-considered and should be abolished. This fee has created a tremendous

barrier for many who are struggling with the considerable expense of moving from their impoverished country to Canada.”<sup>83</sup> The Canadian Council for Refugees adds that “no other country charges refugees such a fee.”<sup>84</sup>

## Deportation

The best interests of the child do not have to be considered in deportation hearings. Children who have lived in Canada for years can be deported. And the parents of Canadian-born children can be deported without consideration of the children. Take, for example, Mavis Baker who has lived in Canada since 1981. Ms. Baker never became a permanent resident and was ordered deported in 1992, although she has four Canadian-born children. (Ms. Baker, who had supported herself for 11 years in Canada, had since been diagnosed as a paranoid schizophrenic and was on welfare.) The decision was appealed because of Canada’s obligations under the CRC. In *Baker v. Canada (Minister of Citizenship and Immigration)* (1996), the Federal Court of Appeal said that since the CRC has not been adopted into Canadian law, that the Convention cannot prescribe the obligation to give the best interests of children superior weight to other factors. However, the Supreme Court of Canada recently said that the decision to deport Ms. Baker was not sensitive to the interests of her children.

In *Sellakkandu v. Canada (Minister of Employment and Immigration)* (1993),<sup>85</sup> “the court concluded that it did not have to decide if the Canadian child’s interests would be affected, because only the parent who would be separated from the child was a party to the proceedings, not the child.”<sup>86</sup>

However, in *Francis (Litigation guardian of) v. Canada (Minister of Citizenship and Immigration)* (1998),<sup>87</sup> Ontario Court Justice McNeely said that if “the choice referred to is the choice between abandoning six and eight-year-old children by leaving Canada without them or taking them with her away from the country of their birth, residence, education and citizenship...then it is a choice compelled by government action.”<sup>88</sup> The Court found that it would be in the best interests of the children for them to remain in Canada with their mother and in her care. This case has been appealed to the Ontario Court of Appeal.

The House of Commons Standing Committee on Citizenship and Immigration believes that the interests of children, with regard to the criteria for humanitarian and compassionate consideration, should be given more emphasis.<sup>89</sup>

## Lack of appeal mechanism

There is also concern that claimants found not to be refugees have no opportunity to show that the decision was a wrong one (absence of an appeal on the merits). According to the Joint Centre of Excellence for Research on Immigration and Settlement—Toronto, procedures that limit appeals and judicial reviews violate the guarantee of fundamental justice given by the *Canadian Charter of Rights and Freedoms* and the guarantee of a fair hearing given by the *Canadian Bill of Rights*.<sup>90</sup>

Although these claimants can apply to have a risk-assessment done by an Immigration officer, “experienced refugee lawyers and advocates uniformly have found that this process cannot be relied on to pick-up strong and deserving cases. There is no hearing or interview involved. Officers making the decisions receive sparse and inadequate training... The acceptance rate under [this] process has generally stood at under five percent.”<sup>91</sup>

## Detention

Refugee claimants can be detained in Canada under the *Immigration Act* when “Immigration believes that a person will not appear for immigration proceedings (interviews, hearings, or removal from Canada) or poses a danger to the public in Canada. In certain cases, persons may also be detained if they are unable to prove their identity.”<sup>92</sup>

“Although children are not detained in immigration detention centres in their own right,” said the House of Commons Standing Committee on Citizenship and Immigration recently, “they are allowed to stay with their detained parents if the family wishes to stay together.” The Committee noted that detention is particularly trying for children for it not only “deprive(s) them of many of their normal activities” but it also “interrupts their education.” The Committee therefore “believes that special provision should be made for children who have lived in a detention centre for longer than seven days. Children in this situation should be provided with some formal education and language training, with the expenses paid by the federal government.”<sup>93</sup>

When a person is detained, the law provides for regular reviews of detention and identifies conditions under which a person may be released (within 48 hours, 7 days or 30 days). An adjudicator (an independent decision maker) may order release from detention on the posting of either a cash deposit, the signing of a performance

bond, or on the detainee’s acknowledgement of imposed terms and conditions.<sup>94</sup> The Immigration and Refugee Board, in its recent *Guidelines on Detention*, said that “given these provisions, together with the basic assumption that detention should be an exceptional measure in Canadian society, adjudicators should, in all cases, consider whether it would not be appropriate to impose certain conditions to reduce the risk of the person concerned failing to appear for an examination, an inquiry or removal from Canada, or to reduce the risk that such a person may pose to the public.”<sup>95</sup>

Minors may be detained if officials believe they or their parents are either a danger to the public or they would fail to show for examination, inquiry or removal from Canada. According to Citizenship and Immigration Canada officials, in practice, the detention of children, particularly unaccompanied children, is rare.<sup>96</sup> However, Citizenship and Immigration Canada director Neil Cochrane wrote in January 1998 that the department “does not capture statistics regarding the number of minors in detention or whether or not they are accompanied by a parent or guardian.”<sup>97</sup>

Decisions regarding the detention of refugee children, according to 1998 IRB guidelines, “should be made in a manner that is consistent with not only the *Canadian Charter of Rights and Freedoms* but also the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* and the *Convention on the Rights of the Child*.”<sup>98</sup> Policy dictates that detaining a child for more than a short period of time (the time required to ensure that the child will receive proper care away from the facility) should be a measure of last resort, and references in immigration manuals allow for the special treatment of unaccompanied minors in enforcement-related matters.<sup>99</sup>

*Many of the Committee’s non-governmental witnesses reported to us their impression that decisions to detain people on the ground that they presented a flight risk were often arbitrary and inconsistent. Moreover, it was their opinion that the criteria were applied in a different fashion in different parts of the country, and that the length of the period of detention also varied across the country... It is troubling to the Committee that so many witnesses believe that there is faulty decision-making in this area.*<sup>100</sup>  
—House of Commons Standing Committee on Citizenship and Immigration

The House of Commons Standing Committee on Citizenship and Immigration recommended that new detention guidelines for immigration officers be implemented to foster consistency across the country; and that detention should be imposed only if the guidelines have been carefully followed, and only as a last resort after the possibility of conditional release has been carefully considered and rejected.<sup>101</sup>

## Detention Facilities

There are three regional detention facilities for refugees: the Celebrity Inn in Toronto, the Skyline Hotel in Vancouver and the Laval Centre in Quebec. The Canadian Council for Refugees has recommended that the “Act should establish some minimum standards for the conditions of detention.”<sup>102</sup> The House of Commons Standing Committee on Citizenship and Immigration visited the sites. It found that the Celebrity Inn lacked sufficient indoor common space; had “a dreary, small” outdoor area; had inadequate facilities where children could play; did not seem “particularly clean”, and had “less than desirable” air quality. The Committee said that there was a need for uniform conditions in immigration detention centres and that these should be modelled on the Quebec facility.<sup>103</sup>

## Health, Education and Settlement Services

### Access to Health Care

Health care is under provincial jurisdiction and each province and territory has its own health insurance or medical care protection legislation. Refugee claimants who are not eligible for provincial health coverage rely on the Interim Federal Health Program.

In provincial statutes other than Quebec, Convention refugees who are residents of a province are entitled to health care services in that province. Refugee claimants in Quebec no longer have access to services provided by the Minister of Health and Social Services but are eligible for emergency services paid for by the Interim Federal Health Care program, as well as primary and emergency services available through the Service d’aide aux immigrants et réfugiés de Montréal Métropolitain, a semi-public organization affiliated with the Centres des loisirs et services sociaux.<sup>104</sup> Since 1996, persons waiting to be granted refugee status and those who have had their

request refused no longer have access to health insurance programs, hospitalization insurance or health assistance.<sup>105</sup>

Until October 1995, La Régie de l’assurance maladie du Québec (RAMQ) systematically issued health insurance cards to minors born in Canada to parents who resided in Quebec but who were ineligible for the RAMQ coverage. In November 1995, RAMQ decided that these children were no longer eligible. The federal government agreed to provide these children with emergency care coverage under the Interim Federal Health Care program.<sup>106</sup>

### Access to Free Primary and Secondary Education

Education is under provincial jurisdiction and each province and territory has its own education or school act. School attendance is compulsory for children aged five, six or seven (depending on the jurisdiction) to age 16. This includes Convention refugee children and children of a parent or guardian who has been determined to be a Convention refugee.

There are special *Immigration Act* provisions (Section 10; Regulations ss. 14.1, 14.2, 14.3, 15 and 16) for refugee claimants and their dependants to attend school: they will be issued a student authorization if they have been found eligible to have their refugee claim heard in Canada and their claim has been referred to the Immigration and Refugee Board. There is conflicting information from Toronto groups about whether or not schools prevent children from attending schools until their authorization paper has been issued.

In Quebec, access to free primary and secondary education is provided for child refugees, children claiming refugee status and for those who have unsuccessfully claimed refugee status but whose presence in Quebec is still legal. This applies to all children between the ages of four and 16 years (or up to the age of 18 or 21, if the child has disabilities).<sup>107</sup>

### Financial Assistance

For government-sponsored refugees, financial assistance is provided through the Adjustment Assistance Program to pay for temporary accommodation, necessary clothing and household effects, and living expenses for up to one year or until the newcomer is self-supporting.<sup>108</sup> Since 1996, this program has also provided income support to

privately-sponsored refugees where the sponsorship agreement has broken down and has made available additional funds to assist refugees with special needs.<sup>109</sup>

Loans are also made available for some refugees to cover the costs of medical examinations required to establish a person's admissibility, travel costs to Canada, costs related to finding accommodation and gaining employment, as well as the right-of-landing fee. Since February 1995, all loans are subject to interest provisions, although Convention refugees and members of a designated class selected abroad are eligible for interest deferral for up to three years. A refugee applying for an immigrant loan must demonstrate the need for the loan and the ability or potential ability to repay it.

For refugees in Canada who are not sponsored, financial assistance is available through provincial and territorial social assistance programs. Eligibility criteria for provincial social assistance varies across the country.

Since November 1996, refugee claimants in Quebec receiving welfare assistance are only eligible for the base amount and no longer have access to employability measures. Although parents are eligible for work permits, they often have difficulty working, and the situation has worsened over the past three years, with families turning to anti-poverty groups for help.<sup>110</sup> These families are ineligible for emergency social assistance according to section 7 of the *Loi de la sécurité du revenu*. However, a recent decision by the Ministère des relations avec les citoyens et de l'immigration provides free financial assistance once the Quebec identification papers have been issued. (These papers give the holder access to Government of Quebec services such as education and French language training, until a final decision is made regarding the holder's status.) These documents are issued within 48 hours of the claimant providing a resident address.

## Settlement Services

A project recognized as a priority for the Canadian Council for Refugees is developing national standards for settlement services. According to the 1998 non-governmental report, *Best Settlement Practices*, "national standards would be a tool to ensure that newcomers could be guaranteed certain minimum levels of services wherever they settled in Canada." This report also called for a "national clearing house for information on settlement services."<sup>111</sup>

Settlement services in Canada are primarily delivered by non-profit, non-governmental organizations located in communities across the country. Funding is provided to many of these organizations through the federal Immigrant Settlement and Adaptation Program (ISAP). Other sources of funding include provincial and municipal governments, fundraising and donations.

In Quebec, settlement services are provided by the Ministère des relations avec les citoyens et de l'immigration through a network of seven regional offices located in Montreal, Laval, Laurentides-Lanaudière, Montérégie, Estrie, Outaouais and Quebec City. The Quebec government depends on community organizations to deliver a variety of services such as orientation programs, French language instruction, assistance with employment and housing searches. These non-governmental organizations play a very important role in the delivery of services for refugees and are often reluctant to obtain government funding in order to maintain autonomy and ensure the protection of refugees and refugee claimants.<sup>112</sup>

The hundreds of agencies and organizations across Canada that provide settlement services for refugees and immigrants vary, depending on their size, location and mandate. For example, COSTI, the largest immigrant-serving group in Toronto, is a multicultural agency that works with all immigrant communities in Greater Toronto. Its services include: orientation, information, referrals, settlement services, counselling, English as a second language classes, citizenship preparation, programs for women (including social, economic and cultural issues), programs for seniors, vocational and placement services (including career counselling, training and placement), rehabilitation services (to assist people with disabilities to re-enter the workforce), family counselling, post-settlement support, advocacy and public education. COSTI has a diverse clientele of 20,000 annually and a staff of over 130 who, together, speak more than 30 languages.

The Joint Centre of Excellence for Research on Immigration and Settlement--Toronto says that "the resettlement needs of persons admitted to Canada under refugee status require more attention than they have heretofore received. Although resources may be available to help refugees during the first year after arrival, the period of adjustment is far more protracted."<sup>113</sup> The Ontario Council of Agencies Serving Immigrants is

concerned that the current transfers of authority from the federal to provincial governments could lead to an “erosion of the existing settlement infrastructure.”<sup>114</sup>

Other agencies, such as the Central Vancouver Island Multicultural Society in British Columbia, offer interpretation and translation services, assistance with social insurance and medical applications, assistance with child benefit and employment insurance applications, help with registering students into the school system, and referrals to community resources, among other services.<sup>115</sup>

In Quebec, Réseau d'intervention auprès des victimes, an organization of mental health professionals, receives referrals from schools, psychologists, lawyers and others for consultation in the areas of psychiatry, psychology and art therapy. It provides treatment to children and families who have been victims of war or political persecution.<sup>116</sup>

The Catholic Immigration Centre in Ottawa has been providing services to newcomers since 1952. A full range of orientation and settlement services are offered, including Reception House, a 90-bed facility for newcomers that provides temporary accommodations, food and clothing, information, counselling, orientation workshops, translation and interpretation, and access to settlement services.<sup>117</sup>

## Conclusion

Canadian law allows children to make refugee claims in Canada, whether accompanied or unaccompanied by an adult. Occasionally, unaccompanied children are selected from overseas for resettlement in Canada. Although general statements can be made about child refugees' right to fundamental freedoms, education and health care, very little is actually known about the situation of child refugees in Canada.

We do know that in many cases, family reunification is not dealt with in a positive, humane and expeditious manner; that the child's best interests are not taken into account in decisions to deport parents; that overseas refugees in the greatest need of help are not given priority; that parents of child refugees can be deprived of their liberty before other options are considered; and that settlement support is not offered to refugee families for an adequate period of time.

## Endnotes

1. Hodgkin and Newell, p. 281
2. Ibid, p. 292
3. Citizenship and Immigration Canada (CIC), 1998, p.3
4. Ibid, p. 2
5. Canadian Council for Refugees (CCR), *Background*
6. Immigration Legislative Review, *Not Just Numbers*, p. 78
7. CCR, *Background*, p. 3
8. Ibid, p. 2
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11. Joint Centre of Excellence for Research on Immigration and Settlement- Toronto, p. 3
12. CIC, 1998, p. 2
13. Andrew Brouwer, *Refugees in Legal Limbo*, p. 3
14. Auditor General of Canada, chapter 25.21
15. CIC, 1997b, section 4
16. CIC, 1997c, pp. 18-19
17. Auditor General of Canada, chapter 25, section 25.16
18. CIC, 1998, p. 3
19. Ibid, p. 5
20. Ibid, pp. i-ii
21. See *Cheng v. Canada (Minister of Employment and Immigration)*, [1993] 2 F.C. 314, 102 D.L.R. (4th) 214 (C.A.), where the Appeal Court recognized that a second child in China would be persecuted under China's one child only law
22. Jeffery Wilson, section 9.27, p. 9.17
23. Assemblée nationale, p. 2
24. Jeffery Wilson, section 9.27, p. 9.17
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27. Quoted in Bhabha and Young, p. 769
28. Immigration and Refugee Board, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of The *Immigration Act*, pp.5-7
29. Ibid, pp.8-10
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31. Immigration and Refugee Board, Guidelines Issued by the Chairperson Pursuant to Section 65(3) of The *Immigration Act*, pp. 11-12
32. Geraldine Sadoway, "Refugee Children before the Immigration and Refugee Board," p. 119
33. Ibid, pp. 107-108
34. CIC, *Canada's Immigration Law*, p. 15
35. *Loi sur l'immigration au Québec*, art.3
36. Canadian Council for Refugees, *An Uncertain Welcome: Refugees at Canada's Visa Posts*
37. Immigration Legislative Review, *Not Just Numbers*, pp. 87-88
38. CCR, *Background*, p. 2
39. Immigration Legislative Review, *Not Just Numbers*, p. 6
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49. Marsha Moshinsky, p. 69
50. *Yogeswaran v. Canada (Minister of Citizenship and Immigration)*, [1997] Doc. IMM-1505-96 (Fed. T.D.)
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74. House of Commons Standing Committee on Citizenship and Immigration, s. B, Criteria for Detention, pp. 5-6
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96. Neil Cochrane, Director, Case Presentation, Enforcement Branch, CIC, Correspondence with Marsha Moshinsky, January 13, 1998
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113. Joint Centre of Excellence for Research on Immigration and Settlement-Toronto, p. 6
114. Ontario Council of Agencies Serving Immigrants, #10
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# Components of the NGO Permanent Monitoring Mechanism



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## The Need for a Permanent Monitoring Mechanism

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Monitoring the *Convention on the Rights of the Child* is a complex endeavour. Although different approaches can be taken, some kind of systematic mechanism is needed to monitor implementation over time.

The *Convention on the Rights of the Child* is holistic, intricate and inter-related. Monitoring networks made up of experts and organizations must be participatory, broad and inclusive.

The Canadian Coalition for the Rights of Children has piloted a process for monitoring that is systematic, ongoing and true to the Convention. This mechanism involves many networks, uses key questions to keep the research unbiased and focused, includes situational analyses to bring the research to life, and encourages a diversity of viewpoints in the evaluation process.

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## Guiding Principles

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These guiding principles direct all aspects of the monitoring process:

- The Convention will define the focus of the research.
- Information will be gathered objectively and without bias.
- The final report will be accessible and inform future monitoring exercises.

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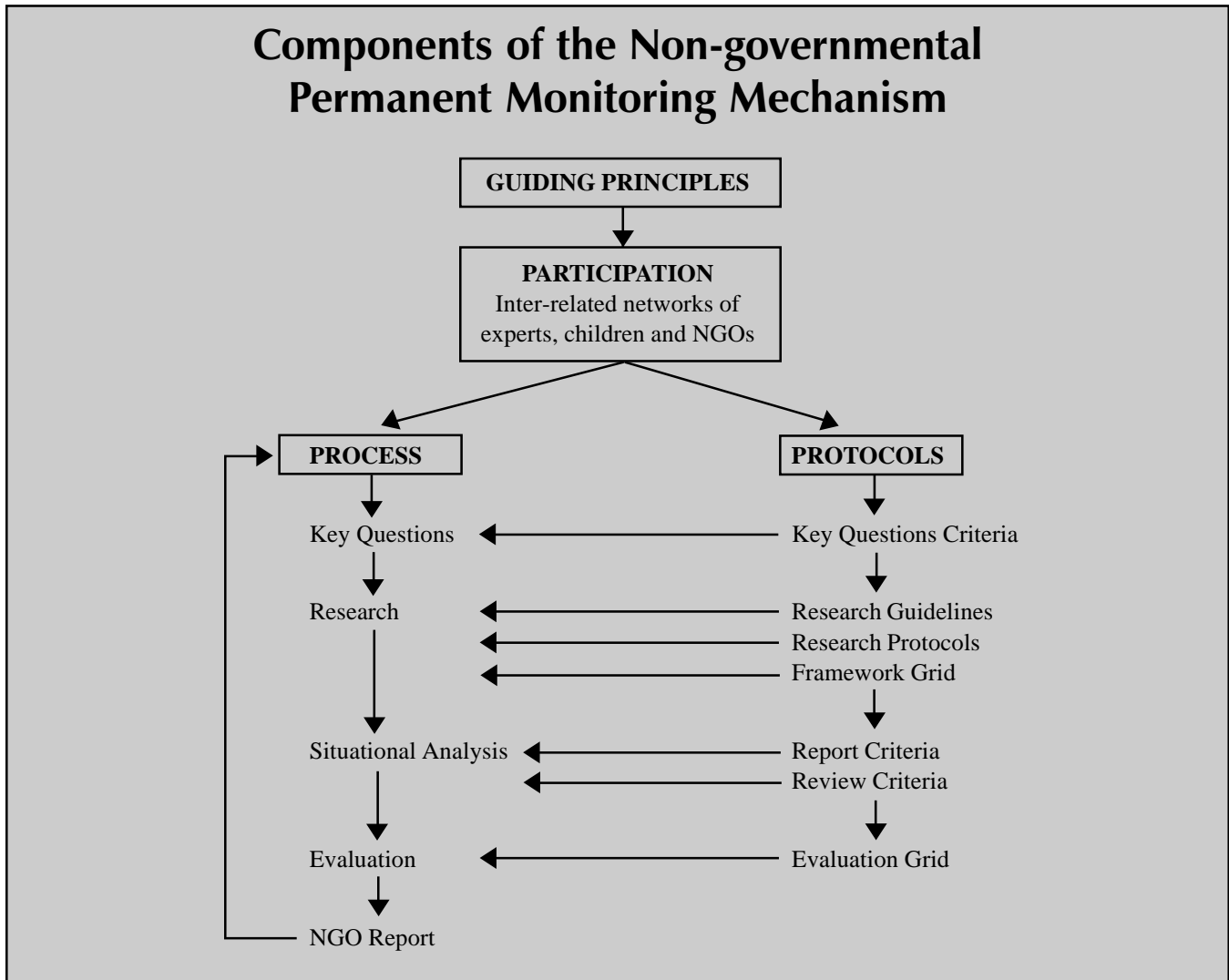
## Participation

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Non-governmental organizations, experts and children are involved throughout the monitoring process to assist in:

- developing and reviewing the key questions;
- identifying relevant sources of information;
- gathering voices of youth;
- reviewing the situational analysis; and
- evaluating compliance.

Participation can be formalized by striking task groups for each area of research.



## Process and Protocols

### PROCESS: Key Questions

Key questions are developed for each Convention article to guide the research. (Canadian Coalition for the Rights of Children. *Key Questions for Monitoring the UNCRC* Ottawa: Unpublished document, 1998.)

### PROTOCOL: Key Questions

#### Criteria for Developing Key Questions:

**Timeless:** Questions should be timeless; that is, they should not specify any particular period of time but be

suitable for ongoing monitoring of Canada's implementation of the Convention.

**Respectful of the Convention as a whole:** The Convention is indivisible and its articles are interdependent. One article is not more important than another. Questions, therefore, should not imply a hierarchy of rights or focus on paramount issues.

**Respectful of the Convention's general principles:** In analyzing and evaluating implementation of each article, consideration should be given to the four general principles of the Convention: non-discrimination, best interests of the child, maximum survival and development, and respect for the child's views (articles 2, 3, 6 and 12).

**Neutral/unbiased:** Questions should be neutral and not beg the answer or presuppose evaluation of the situation being researched.

**Comprehensive/inclusive/clear:** Questions for each article should encompass various aspects of implementation including: legislation and policy at relevant levels of government; practice in all parts of Canada; strategies and resource allocations to secure full implementation; monitoring and evaluation mechanisms; efforts to make the article widely known; and relevant training for those working with/on behalf of children and their families. Questions should also elicit a broad range of perspectives including those of professionals working with children and families, policy makers, advocates, young people themselves and the general public. The language of the questions should be clear and understandable.

Key questions are further informed and refined through the research process.

## PROCESS: Research

Research is conducted for each Convention article.

## PROTOCOL: Research Guidelines

- The Convention defines the focus of the research.
- Data is collected according to certain protocols, guided by key questions and consistent with the framework grid, which is a tool to help guide the research process.
- Research is vetted by working groups and experts.
- The project reports should be accessible to a broad audience and inform future monitoring exercises.

## PROTOCOL: Research Protocols

**Use the Coalition framework grid as the research lens.** Data collected when answering the key questions should be organized according to the elements of the framework grid. The grid guides the research and writing of the situational analyses.

**Apply the Convention’s general principles and definition of a child.** The UN Committee consistently emphasized that in considering implementation of the Convention, particular regard should be paid to the four

general principles. Definition of a child (article 1) is also relevant to every article.

**Disaggregate data by jurisdiction.** Because of the federal nature of Canada, data should be disaggregated by province and territory. While the federal government has primary responsibility for implementation of the Convention, provincial and territorial governments are responsible for the legislation, policy and practice relevant to many Convention articles. Aboriginal and municipal governments should also be included in the framework grid where relevant.

**Disaggregate data by populations.** The term “populations” is defined to include categories of age, gender, location (province/territory, urban/rural), those most likely to experience discrimination (minorities, Aboriginal, children with disabilities, refugees), and those who are socially and economically disadvantaged.

**Identify trends.** Recent and developing trends involving children should be identified to illustrate the significance of Canada’s commitment, or lack thereof, to children.

**Fully document and verify the research process.** Care should be taken to ensure that all data is accurate and as current, consistent and complete as possible. All information sources should be fully documented. The date when Canada signed the Convention (December 1991) is the baseline for relevant information.

## PROTOCOL: Framework Grid

In the first phase of the monitoring project, the Coalition identified valid sources of information for monitoring (*Canada and the UN Convention on the Rights of the Child: Developing a Monitoring Framework, 1997*).

Valid sources of information make up the vertical axis of the grid. They are divided into the following categories.

**Legislation/Regulations** refers to law enacted by legislatures, parliaments or other legislative bodies, such as municipal councils. Regulations are rules with the force of law, issued by executive authority of government. Legislation/regulations can be international, national, provincial/territorial or municipal. Examples include universal declarations and conventions, the

# FRAMEWORK GRID

**SOURCES OF INFORMATION**

	Federal Jurisdiction	Provincial /Territorial Jurisdiction	Voices of Children
Convention Article			
Interpretation of Article (if applicable)			
Legislation and Regulations			“ _____ _____ _____ _____”
Case Law			_____ _____ _____ _____”
Policy			“ _____ _____ _____”
Practice			_____ _____ _____ _____”
Statistics and Research			“ _____ _____ _____”
Public Opinion			_____ _____ _____ _____”
Other Relevant Sources			_____ _____ _____ _____”

HOW DOES CANADA MEASURE UP?

*Canadian Charter of Rights and Freedoms*, the *Indian Act*, the *Young Offenders Act*, provincial laws dealing with social services and child welfare, and municipal by-laws on parks and recreation. It also includes legislated federal-provincial and interprovincial agreements, such as the *Canada-Quebec Accord*. This category does not include administrative guidelines, departmental guidelines or practice, none of which carry the force of law.

**Case Law** refers to principles and rules of law based on past decisions of courts or tribunals. These are used as a guide or justification for subsequent cases and decisions. Except for the civil law of Quebec (where case law does not play the same role), Canada is a common law jurisdiction, so court interpretations of legislation are a major source of legal rules. Quebec is a civil law

jurisdiction, and case law is only a secondary source of legal rules in that province. Relevant sources of case law include annotated citations of legislation, law digests, courts, tribunals and members of the legal community with specific expertise.

**Policy** refers to a governmental course of action which comes before or after the legislative process. Examples include royal commission and task force reports and recommendations, Throne speeches, governmental discussion papers, speeches of ministers and deputy ministers, action plans and guidelines. In this definition, policy is always “on paper,” as opposed to the actual practice or implementation of legislation. Relevant sources in this category can be proposed or adopted policy. An ignored task force report is still considered a relevant source.

## EVALUATION TOOL

Convention Article:					
	What	Meets Compliance	Rights Alert	Needs Action	Needs Dialogue
<b>Legislation &amp; Case Law</b> International Federal Provincial/Territorial					
<b>Policy</b> Federal Provincial/Territorial Local					
<b>Practice</b> Federal Provincial/Territorial Local					

**Practice** refers to the application or implementation of legislation and policy. Measured here is the extent to which the spirit of the legislation or policy is upheld. Included in this category are fluctuations in funding to relevant programs. Statistics related to the impact or effect are indicators of practice. Especially relevant to this category is the Convention’s general principle concerning non-discrimination. A universal act, guideline or policy may be applied unequally to persons because of race, gender, socio-economic status, etc. Practice does not necessarily reflect government policy, but can be the result—desired or undesired—of that policy.

**Statistics and Research** provide a situational analysis of a given area, beyond governmental practice and policy. Relevant statistics might include rates of poverty, crime, literacy, child neglect and school completion. To be valid, the research must follow accepted practices of research and data collection. This category could include international and comparative statistics. Statistics and research may reflect a certain “activity level” in an area of study, where the absence of statistics/research may mean a lack of interest on the part of government, the research community, the public, etc.

**Public Opinion** reflects moods, trends and perceptions of a given population. It influences legislation, policy, practice and the entire political process in many ways. Compared to the media or expert opinion, it is intended to be broadly representative, as opposed to anecdotal, and relatively free of interpretation. For our purposes, relevant sources could include public opinion polls, election results and focus groups.

**Other Relevant Resources** include other significant sources of information on the given topic. These include reports and opinions of non-governmental organizations, advocacy organizations, academics, practitioners and political parties.

Jurisdictions make up the horizontal axis of the grid. They are divided into the following two categories:

**Federal Jurisdiction** refers to the powers which are outlined in Section 91 of the *Constitution Act*, as well as all other domains where the federal government maintains spending and legislative activity. This category includes foreign policy and official development assistance.

**Provincial/Territorial Jurisdictions** refer to the powers as outlined by Section 92 of the *Constitution Act*, as well as all other domains where these governments maintain spending and legislative activity. Included are municipal institutions, which are the responsibility of provinces as defined in Section 92.

### Voices of Children

While children could inform the above seven categories/headings, the grid lens accommodates their “voices” throughout our process and without the constraints placed on other categories/headings. Relevant quotes from children can be drawn from their participation at focus groups, from first person narratives or testimonials, case studies, etc. This category is different from public opinion because it is not intended to be representative. Citations for this category could include name, age, city/town, province/territory and any other relevant background.

## PROCESS: Situational Analysis

A situational analysis is written for each Convention article or grouping of relevant articles which reflects the state of Canada’s children in relation to the rights in that article(s).

## PROTOCOL: Report Criteria

**Readable:** Clearly expressed in language appropriate for a report to the United Nations yet easily followed and understood by the general public including youth.

**Credible:** Thoughtful, intelligent review of reliable sources.

**Accurate:** Fully documents, verifies and cross-checks all references, sources of information and data.

**Comprehensive:** Synopsis of information drawn from all sources as defined in the framework grid.

**Transparent:** Reflects the contributions and input of NGOs, experts and children.

**Holistic:** Presents a perspective that captures the nuances, subtleties, successes and contradictions that mirror the reality of the practice and implementation of children’s rights in Canada.

## PROTOCOL: Review Criteria

A broad network of reviewers reviews the research papers and respond to the following questions:

- Is the research paper readable?
- Is it credible?
- Are there gaps or inaccuracies?

## PROCESS: Evaluation

Evaluation task groups are struck to:

- review the papers for clarity
- assist with expert review
- identify what should be evaluated based on the research paper
- apply the evaluation grid to each research area
- assess Canada's compliance
- assist in summarizing the findings.

## PROTOCOL: Evaluation Grid

### Meets Compliance

- Confident that children's rights are systemically being respected.
- In a situation where legislation meets compliance but case law or practice does not, if there are adequate redress mechanisms in place then compliance can still be met.
- While individuals may disregard the rights of children from time to time, compliance can still be met if redress mechanisms are in place to correct this.

### Rights Alert

- Systemic violation of children's rights.

### Needs Action

- Definable action is needed to improve children's rights.

### Needs Dialogue

- Action required is unclear or undefinable and the situation requires (public) dialogue.

## PROCESS: NGO Report

The resultant NGO report should communicate accurately and clearly the state of Canada's children in the articles examined as determined by the permanent monitoring mechanism.

# Lessons Learned

## Applying the Research Protocols

There were lessons learned after applying the research protocols.

### PROTOCOL: Use the Coalition framework grid as the research lens.

**Finding:** There was initial confusion about the application of both the framework grid and key questions. However, when the framework grid was seen as identifying the relevant sources of information and the key questions as evolving and needing to be informed by the research process, then the validity of both elements to the permanent monitoring mechanism became apparent.

### PROTOCOL: Apply the Convention's general principles and definition of a child.

**Finding:** Applying the general principles and definition of a child in a conscientious manner tended to be overwhelming. In the end, however, substantive information emerged regarding the general principles. As research prototypes are developed for each Convention article, the application of the general principles and definition of a child should become more routine.

### PROTOCOL: Disaggregate data by jurisdiction.

**Finding:** Every effort was made to provide disaggregated data by jurisdiction but information was often unavailable. For the research areas of education and the fundamental freedoms, questionnaires were developed and distributed to various levels of government, but the response rate was poor.

## PROTOCOL: Disaggregate data by populations.

**Finding:** It is easy to list populations that should be reported on but often difficult to find any information to report. However, the protocol sets a standard.

## PROTOCOL: Identify trends.

**Finding:** This protocol was particularly helpful when evaluating.

## PROTOCOL: Fully document and verify the research process.

**Finding:** Information was fully sourced. All quotations were verified. Every effort was made to find current data and pre-1991 information was only presented in exceptional circumstances, such as precedent-setting case law. For every publication cited in the bibliography, a search was conducted for a translated version (French or English) and existing translations were used.

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## Human Resources

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- Monitoring the *Convention on the Rights of the Child* is an extremely complex task requiring skilled researchers and a network of experts and reviewers. Monitoring should be conducted through a permanent monitoring mechanism and not on a short-term project basis.

- A national working forum of 75 experts launched this monitoring project. This forum was instrumental in finalizing the protocols of the permanent monitoring mechanism and in reviewing the first draft of key questions.
- The time required for research, review, revision, summarizing, evaluating and building consensus was consistently underestimated. While an impressive number of experts and organizations participated in the project (see addendum), the consultation process needed more structure and realistic time frames. With a permanent monitoring mechanism, a sustainable national research structure could be developed to provide ongoing support and advice.
- Evaluation task groups were limited to five members, including at least one child. In hindsight, criteria for task group membership should have ensured a mix of advocates, researchers and policy makers.
- Children\* participated throughout the monitoring project. They reviewed the key questions, helped develop research questionnaires, selected material for the children's workshop kit, participated in the national working forum, reviewed research papers and were members of evaluation working groups. Many organizations were enlisted to collect children's "voices" with regard to the six research areas. Unfortunately, no submissions were received from younger children and the project did not have the resources to pursue this further. If a permanent monitoring mechanism was in place, processes could be structured to better ensure the participation of children of various ages and in all research areas.

\*"Children" has been used throughout to refer to people under 18 years of age.



# Appendix A

## Update on the UN Committee's Concluding Observations, May 1995



This report summarizes the concluding observations made by the UN Committee on the Rights of the Child in response to Canada's first report on measures taken to implement the *UN Convention on the Rights of the Child* (UNCRC). The committee noted positive factors as well as areas of concern and made recommendations to Canada for addressing the concerns. The following update notes changes in Canadian policies and programs since Canada's last report that are relevant to the concluding observations. This summary is not the result of a comprehensive, systematic monitoring exercise but reflects relevant information that came to the Coalition's attention in the course of consulting with governments and non-governmental organizations for the overall monitoring initiative.

### Positive Factors Cited by the Committee

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#### Positive Factor

- Canada's past contributions in drafting the UNCRC and co-chairing the 1990 World Summit for Children

#### Positive Factor

- general strengthening of human rights through the *Canadian Charter of Rights and Freedoms* and legislative measures in the fields of children's rights

#### Positive Factor

- National Crime Prevention Council for the implementation of juvenile justice provisions

#### Update

- After three years, the Council was deemed to have fulfilled its mandate of developing community-based crime prevention strategies and was disbanded in 1997. It has been followed by Phase II of the government's \$32-million per year National Strategy on Community Safety and Crime Prevention, which includes the creation of the National Crime Prevention Centre within Justice Canada to administer the national strategy.<sup>1</sup>

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#### Positive Factor

- Family Support Enforcement Fund for child support payment enforcement

#### Update

- The federal government has continued to strengthen enforcement measures to ensure that child support obligations are met.<sup>2</sup>

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**Positive Factor**

- Children’s Bureau for ensuring that the UNCRC is taken into account in the development and implementation of federal policies and activities to disseminate Convention information

**Update**

- Since Canada’s last report to the UN Committee, the Children’s Bureau has ceased to exist as a separate entity. There is little public information about how the federal government monitors Canada’s ongoing implementation of the Convention. However, the Health Canada Web site reports that the Strategic Policy and Systems Coordination Unit, Childhood and Youth Division, Health Canada supports “departmental and interdepartmental coordination of child and youth health and well-being issues, as well as issues related to children’s rights from a domestic and international perspective.”<sup>3</sup>

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**Positive Factor**

- government’s expressed commitment to reduce child poverty, despite the economic recession

**Update**

- Statistics Canada reports that the incidence of low income among children under 18 years of age was 21.3 percent (an estimated 1,484,000 children) in 1993, 19.5 percent (1,362,000) in 1994, 21.0 percent (1,472,000) in 1995, 21.1 percent (1,498,000) in 1996, and 19.8 percent (1,397,000) in 1997.<sup>4</sup>

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**Positive Factor**

- efforts by schools and social services for the early identification of children’s disabilities

**Update**

- The Coalition’s research indicates that there is insufficient funding for the early diagnosis of children with disabilities and insufficient supports and services. A full discussion of the issue can be found in the research paper on Article 23, Children with Disabilities.

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**Positive Factor**

- Canada’s cooperation with UNICEF and other organizations

**Update**

- Canada continues to cooperate with international organizations and although children’s rights are a stated foreign policy priority, spending on overseas development assistance has declined an average of 3.3 percent per year from 1990-91 to 1995-96. A full discussion of the issue can be found in the research paper on Article 4, International Cooperation to Promote and Enhance Children’s Rights.

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**Concerns and Recommendations Cited by the Committee**

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**Concern**

- **jurisdictional issues and disparities**

**Recommendation**

- better legal and administrative coordination across jurisdictions to reduce disparities in children’s rights across the country

**Update**

- The devolution of federal responsibilities to the provinces is a growing trend in the context of the current social union agreement, which has the potential to lead to greater variations in programs and services for children and families. For example, the Canada Assistance Plan framework for federal tax transfers to share social assistance costs with the provinces has been replaced by the Canada Health and Social Transfer, which provides block funding and gives the provinces greater discretion in deciding how the money will be spent.
- The Coalition’s research papers illustrate the overall lack of national goals and standards for protecting children’s rights and well-being.

- Jurisdictional disputes between the federal and provincial governments over the funding and provision of services for Aboriginal children remain unresolved in many parts of the country.

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### Concern

- **no permanent monitoring mechanism**

### Recommendation

- more effective federal monitoring and data collection and better cooperation with NGOs and Aboriginal communities on children's rights issues

#### Update

- Although federal funding supported the development of the Coalition's monitoring project, the federal government has not disclosed any plans to establish a permanent mechanism to monitor Canada's implementation of the UNCRC.
- The lack of national data and statistics relevant to children's Convention rights significantly limits the ability to objectively assess many issues affecting compliance.

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### Concern

- **Canada's reservation Article 21 (adoption)**

### Recommendation

- consider removing the reservation

#### Update

- There is no evidence that the federal government is considering the removal of its reservation to the Convention provision that adoptions be authorized only by competent authorities. The stated reason for this reservation is to ensure that customary adoptions and alternative care arrangements among Aboriginal peoples are respected, as these tend to be private, consensual arrangements.
- There appears to be no available information on the impact of this reservation with regard to Aboriginal adoption practices in Canada.

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### Concern

- **Canada's reservation Article 37c (detention separate from adults)**

### Recommendation

- consider removing the reservation

#### Update

- There is no evidence that the federal government is considering the removal of its reservation to the Convention provision that children in detention be held separately from adult offenders. Federal officials<sup>5</sup> report that "although Canada agrees with the basic principles set out in Article 37, we are concerned that the wording may not permit the courts to take into account other relevant considerations in making placement decisions, such as the well-being of other young offenders or the safety of the public. As well, the reservation recognizes the benefit to young people who are 18 years of age or older who are permitted to remain in the youth justice system to complete their disposition or sentence, thereby retaining continuity and preventing exposure to adults whose criminality may be more entrenched."
- Canadian authorities continue to remand children in adult facilities prior to their trial. In these instances, decisions are often not based on children's well-being or the safety of the public but are based on the lack of available detention facilities in close proximity due to budget limitations.
- The proposed new *Youth Criminal Justice Act* will increase the number of young offenders transferred to adult court and held in adult facilities, as it expands the criteria for transferring youth to adult court and lowers the age of transfer to 14. It is unclear at this point how the system will deal with greater numbers of young offenders serving their sentences in adult correctional facilities.<sup>6</sup>
- A Correctional Service of Canada official has noted that "overcrowded institutions and continued budget reductions make special treatment of young offenders within adult facilities unlikely.... It will be particularly important to monitor the application of the transfer provisions to Aboriginal, visible minority and female offenders."<sup>7</sup>

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## Concern

- **domestic national law does not adequately reflect Convention principles, especially non-discrimination, best interests and views of the child**

## Recommendation

- take action to ensure that the Convention's general principles are reflected in domestic law and provide children the opportunity to be heard in judicial and administrative hearings affecting them

## Update

- Because its provisions have not been implemented by Parliament, the Convention does not have direct application in Canadian law.
- The majority decision in the recent Supreme Court of Canada ruling on *Baker v. Canada* said that “children’s rights, and attention to their interests, are central humanitarian and compassionate values in Canadian society” and that indications of these values may be found in international instruments, such as the Convention. However, a dissenting opinion was expressed by Justice Iacobucci, who said that requiring the *Immigration Act* “be interpreted in accordance with the Convention would be improper, since it would interfere with the broad discretion granted by Parliament, and with the division of powers between the federal and provincial governments.”
- Canada’s *Charter of Rights and Freedoms* does not explicitly recognize children’s rights and the Coalition’s research indicates that adults can place arbitrary limits on children’s freedoms in Canada.
- A full review of national domestic legislation was beyond the scope of this monitoring project. However, a discussion of children’s fundamental rights and freedoms can be found in the Coalition’s research paper on *The Fundamental Freedoms*, articles 13, 14 and 15.

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## Concern

- **child poverty, especially among vulnerable groups such as lone parent families, and the lack of programs for education, housing and nutrition are concerns**

## Recommendation

- allocate available resources to their maximum extent to ensure the full implementation of children’s economic,

social and cultural rights and take immediate steps to tackle the problem of child poverty

## Update

- According to Statistics Canada, in 1997, 19.8 percent of children under the age of 18 lived in low income families. (Statistics Canada defines “low income” families as those who spend 20 percent more of their income than the average on food, clothing and shelter. In 1992, the average family spent 34.7 percent of total income on these necessities, putting the low-income cut-off at 54.7 percent.) The 1997 child poverty rate marks a small improvement over the high of 21.3 percent reached in 1993 but it still means that an estimated 1,397,000 children grow up poor in Canada.
- In 1996, 61.4 percent of families headed by single mothers with children under 18 were poor.<sup>8</sup>
- The federal government has increased its contribution to the Canada Child Tax Benefit to \$850-million per year, beginning in July 1998. This tax-free payment (\$135 per month for the first child and \$118 per month for each subsequent child) is designed to prevent and reduce the depth of child poverty, reduce barriers to families who leave social assistance to join the paid labour force and reduce government duplication. The benefit is paid to all families with incomes under \$25,921 (except in Quebec, which is not participating in this initiative).<sup>9</sup> All the participating provinces and territories, other than Newfoundland and New Brunswick, have “clawed back” the increase in federal child benefits rather than increasing the welfare rate for families with children. All participating provinces and territories have invested in new or enhanced benefits and services for low-income families.<sup>10</sup>

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## Concern

- **inadequate weight given to immigrant and refugee children with regard to rights to non-discrimination, best interests and views of the child**

## Recommendation

- address the situation of unaccompanied children, deprive children of liberty as a last resort, speed up family reunification, avoid deportations that break up families and take into account the best interests and respect for the views of the child in immigration, refugee and deportation hearings

### Update

- The Supreme Court of Canada recently instructed Immigration Canada that decisions made on humanitarian and compassionate grounds require “close attention to the interests and needs of children since children’s rights, and attention to their interests, are central humanitarian and compassionate values in Canadian society.”
- A full discussion of issues affecting immigrant and refugee children can be found in the Coalition’s research paper on Article 22.

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### Concern

- **further measures seem needed to prevent and combat all forms of corporal punishment and ill-treatment of children in schools or institutions and to protect the child from violence and abuse within the family**

### Recommendation

- review legislation to prohibit the corporal punishment of children by parents, schools and institutions and consider educational campaigns to help change societal attitudes about the physical punishment of children

### Update

- There is no evidence that the federal government is considering the prohibition of corporal punishment. Section 43 of the *Criminal Code* allows parents and teachers to use “reasonable force” against children as a means of correction. This makes children the only persons in Canada who can be subject to physical assault without due process.
- A full discussion of corporal punishment and child protection issues can be found in the Coalition’s research paper on article 19.

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### Concern

- **need to protect children from harmful information, especially television violence**

### Update

- Most Canadian children watch up to three hours of television a day and this does not vary much according to age or income group.<sup>11</sup>
- A discussion of media literacy education can be found in the Coalition’s research paper on articles 28 and 29, The Right to and Aims of Education.

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### Concern

- **increasing rate of youth suicide**

### Update

- The suicide rate for boys aged 15 to 19 was five per 100,000 in 1960, 23 per 100,000 in 1991 and 18.5 per 100,000 in 1996.<sup>12</sup> The suicide rate for girls is about one-quarter the boy’s rate but girls are hospitalized more frequently for attempted suicide. The rate among Aboriginal youth is about five times the national rate.<sup>13</sup>

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### Concern

- **lack of fundamental rights for vulnerable children, especially Aboriginal, including access to housing and education**

### Recommendation

- strengthen efforts to ensure vulnerable and disadvantaged groups better access to education and housing and research solutions to infant mortality and youth suicide in Aboriginal communities

### Update

- Presently, social, economic and health indicators in Aboriginal communities are far below non-Aboriginal communities. The Aboriginal population is growing at twice the rate of the overall Canadian population. Two-thirds of the Aboriginal population are under the age of 30, increasing the demand for Aboriginal children’s services.<sup>14</sup>
- The federal government announced an Aboriginal Action Plan in 1998 to strengthen Aboriginal governance, develop a new fiscal relationship and build strong communities.<sup>15</sup>
- There a number of federal programs serving Aboriginal children, such as the Head Start Initiative<sup>16</sup> and the Community Action Program for Children,<sup>17</sup> but the existing services for vulnerable Aboriginal children do not meet the growing demand.

### Recommendation

- use UNCRC as a framework for international development assistance

### Update

- The Canadian International Development Agency has not articulated if or how it intends to use the

Convention as a framework for international development assistance. A full discussion can be found in the Coalition's research paper on article 4, International Cooperation.

## Recommendation

- launch a nation-wide public education campaign about children's rights, within the framework of the UN Decade for Human Rights Education

## Update

- The federal government has not launched a nation-wide public education campaign and there is no evidence that one is being considered. A discussion of the level of awareness of children's rights in Canada can be found in the Coalition's research paper, *The Fundamental Freedoms, Articles 13, 14 and 15*.

## Recommendation

- incorporate children's rights education into school curricula and the train professionals working with children, especially judges, lawyers, immigration officers, peace keepers and teachers.

## Update

- The coalition's research indicates that children's rights education has not been widely adopted in school curricula, although promising work has been initiated in some jurisdictions. A full discussion can be found in the Coalition's research paper on articles 28 and 29, *The Right to and Aims of Education*.
- It appears there are some children's rights training programs for various professionals working with children but research into this area was beyond the scope of the Coalition's monitoring project.

## Recommendation

- make Canada's report, relevant summary records and the Committee's concluding observations widely available

## Update

- Canadian Heritage distributes Canada's May 1994 report upon request.<sup>18</sup>

## Endnotes

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6. Lynn Cuddington, p. 43
7. Ibid, p. 2
8. National Council of Welfare
9. Human Resources Development Canada
10. Battle, Ken, p. 2
11. Canadian Council on Social Development, p. 47
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# Appendix B

## Acknowledgements



### Review and Evaluation Task Groups

Task groups were struck to review research papers and subsequent revisions, develop summaries of the research findings and recommend evaluations of Canada's implementation of the Convention to the Board of Directors of the Canadian Coalition for the Rights of Children. The Board of Directors, however, assumes final responsibility for this report.

### Convention Article 4: International Cooperation to Promote and Enhance Children's Rights

Task Leader: Cathie Guthrie is the director of international programs for UNICEF Canada. She has been involved in international development with UNICEF Canada for 17 years and travels throughout Africa and Asia, monitoring development programs for children.

Adrienne Clements is the director of programs for Save the Children--Canada, a child-focused international development organization aimed at improving the lives of children. She has worked in the area of children's rights for 10 years, designing programs, developing methodologies and promoting the participation of children in the development process.

Moira Hutchinson is a research consultant with unions and churches on human rights issues. She is currently assisting the Labour International Development Committee in its work with the Canadian International Development Agency on labour rights and labour sector development.

Henry Veltmeyer is professor of international development studies at Saint Mary's University in Halifax and visiting

and adjunct professor of political science at the Universidad Autonoma de Zacatecas in Mexico. He is a specialist in alternative development issues and author of numerous studies on world development and Latin American affairs.

Thanks to reviewers: Catherine Angus, Pueblito Canada; Peter Copping, Street Kids International; Jean-François Tardif, Results Canada; and Stacy Villeneuve, youth representative of the Canadian Coalition for the Rights of Children.

### Convention Articles 13, 14 and 15: The Fundamental Freedoms

Task Leader: Dianne Bascombe is treasurer of the Canadian Coalition for the Rights of Children and executive director of the Canadian Child Care Federation.

R. Brian Howe is associate professor of political science and co-director of the Children's Rights Centre at the University College of Cape Breton, Nova Scotia.

Alison Payne is an honours high school student in Ottawa and active in music and sports. She plans to be a lawyer specializing in children's rights.

Lex Reynolds is on the Board of Directors of the Society for Children and Youth of British Columbia. He practises family law with MacIsaac and Co. in Victoria.

Thanks to Susanne Tamas and Leslie Cole of the Baha'i Community of Canada for their "best thoughts," and to reviewers Francine Labrie of the Canadian Child Care Federation and Debra Parker-Loewen, children's advocate of Saskatchewan.

**Convention Article 19: Abuse and Neglect**

Task Leader: Sandra Scarth is the former executive director of the Child Welfare League of Canada (CWLC). She is currently a special children’s advisor for Health Canada (BC/Yukon Region) and manager of CWLC’s Siksika Nation project in Alberta.

Jeremy Berland is director of performance management in the British Columbia Ministry for Children and Families and co-author of the province’s *Child, Family and Community Service Act*.

Mel Gill was executive director of Children’s Aid Society of Ottawa-Carleton for 12 years. He spent years in front-line and management positions in child welfare, mental health and social service settings. In 1996, he chaired Canada’s Children... Canada’s Future conference, where a framework for a national children’s agenda was drafted.

Gail MacDougall is the past president of the Canadian Association of Social Workers. She is a Nova Scotia social worker with particular expertise in child welfare and health.

Jade Rox is a former Crown ward who is involved with the Children’s Aid Society of Ottawa-Carleton’s teens’ planning team. She has met with many youth from across Canada who are in the care of the state and has learned a great deal about child welfare. She hopes to participate in Katimavik next year and experience volunteer work in a different Canadian setting.

Thanks to reviewers: Jean Bremner, president, Children’s Aid Society Board of Halifax; Sandra Dunsford, Government of Prince Edward Island; Janine Granchelli, Government of New Brunswick; Reid Hartry, Winnipeg Child Guidance Clinic; Margot Herbert, University of Alberta; Sharron Richards, Children’s Aid Society of Toronto; Mary Scott, Child Find Canada; Wendy Trull, Nova Scotia Association of Social Workers; and Michael Udy, Batshaw Youth and Family Centres, Montreal.

**Convention Article 22: Refugee Children**

Task Leader: Fernande Meilleur is president of the Canadian Coalition for the Rights of Children and a past president of the Canadian UNICEF Committee. She currently is a consultant to UNICEF Canada on issues concerning children and the Canadian government.

Andrew Brouwer is manager of the refugee and immigrant program at the Maytree Foundation in Toronto. He has

authored two papers on Canada’s refugee and immigration policies as a joint project with the Caledon Institute of Social Policy and the Maytree Foundation.

Tom Clark is coordinator of the Inter-Church Committee for Refugees and a former member of the Steering Committee of the Canadian Coalition for the Rights of Children.

Gerald Dirks is professor of politics at Brock University, St. Catharines, with a particular interest in global migration issues and the formation of Canadian immigration and refugee policies.

Andrew Ignatieff is program director with the international programs division of UNICEF Canada.

Thanks to reviewers: Medin Admasu, youth representative for the Canadian Coalition for the Rights of Children; Gaynor Ehlext, COSTI Reception Centre in Toronto; and Sheena Scott, Justice for Children and Youth

**Convention Article 23: Children with Disabilities**

Task Co-Leader: Dawn Walker is a member of the Board of Directors of the Canadian Coalition for the Rights of Children and executive director of the Canadian Institute of Child Health. She was the former executive director of the Canadian Association for Community Care and former chief of the Family and Child Health Unit of Health Canada.

Task Co-Leader: Sharon Hope Irwin has been the director of SpecialLink, the National Centre for Child Care Inclusion, since 1990. She promotes high quality, inclusive, accessible early education and child care services across Canada through her work on various commissions and committees and through her organization’s teaching videos, speakers’ bureau and publications.

Dana Brynelsen is the provincial advisor on infant development programs in British Columbia. These programs serve families with young children who are at risk for or with a disability. She has personal and family experience with disability and has served on the Premier’s Advisory Council on Disability in British Columbia.

John Draper is a high school student in Oshawa, Ontario. He promotes the building of inclusive communities through presentations at numerous conferences from the perspective of a person with a physical disability and as an augmentative communication user.



Raf Sayeed is president of the Canadian Association for Community Living.

Zuhy Sayeed is president of the Alberta Association for Community Living.

Thanks to reviewers: Tracey Chevrier, Native Women's Association, Ottawa; Betty Dion, Betty Dion Enterprises, Ottawa; Gail Fawcett, Canadian Council on Social Development; Pauline Mantha, Learning Disabilities Association of Canada; and Dwaine Souveny, Children's Services Centre, Red Deer, Alberta.

### **Convention Articles 28 and 29: The Right to and Aims of Education**

Task Leader: Damian Solomon is vice-president of the Canadian Coalition for the Rights of Children and assistant director of professional development services for the Canadian Teachers' Federation.

Natasha Blanchet-Cohen is coordinator of the Unit for Research and Education on the Convention on the Rights of the Child, University of Victoria. She has particular interest and expertise in indigenous children's rights and community development issues.

Katherine Covell is an associate professor of psychology and director of the Children's Rights Centre at University College of Cape Breton. Her research and teaching is focused on the Convention, with a special emphasis on children's rights education.

Claudine Guindon is a secondary school student in Masson-Agers, Quebec. She has a particular interest in human rights and is a youth representative for the Canadian Coalition for the Rights of Children.

Alan Sears is associate dean, research and international development graduate program in the faculty of education at the University of New Brunswick. He is a specialist in citizenship education and has published widely in this area.

Swee-Hin Toh is director of the Centre for International Education and Development and professor of international and intercultural education at the University of Alberta. Since the 1970s, he has been active in the fields of peace, global and human rights education, as well as international educational development.

Thanks to reviewers: Tracey Chevrier, Native Women's Association of Canada, Ottawa; Reid Hartry, Winnipeg

Child Guidance Clinic; Yude Henteleff, Learning Disabilities Association of Canada; Darlene Scott, Community Services Council, St. John's; and Shelley Svidal, Alberta Teachers' Association.

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