

## **First Call: BC Child and Youth Advocacy Coalition briefing note: Federal Child and Youth Rights Issues in Canada, July 2011**

This briefing note is designed to be a reference document outlining some on-going and critical issues respecting the promotion and protection of child and youth rights within Canada, particularly those within federal jurisdiction.

The following material is organized thematically:

- General measures to promote and protect children’s rights
- Children’s rights reporting and monitoring resources
- National Children’s Commissioner
- Parliamentary oversight
- Aboriginal children’s rights
- Child and family poverty and income inequality
- Early childhood development
- Immigrant and refugee children
- Children with disabilities
- Health and safety
- Youth Criminal Justice Act proposed amendments
- Post-secondary student debt

This is not a comprehensive list of children’s issues, but the many issues not mentioned can be found in several of the links to both government and civil society reports.

### **General Measures to Promote and Protect Children’s Rights**

Children have limited visibility in the federal government – there is no Minister for Children, no independent advocate such as a Children’s Commissioner, and no parliamentary committee or caucus to ensure a concerted focus on their specific interests. As a large, vulnerable part of Canada’s population, children need an explicit and specific focus to keep issues affecting them on the agenda and ensure sufficient consideration of their best interests.

The federal government has not put in place the processes and mechanisms for governance advanced by the UN Convention on the Rights of the Child (UNCRC). Most other industrialized countries have developed a number of governance mechanisms for children to ensure they are considered sufficiently in decisions affecting them and that government efforts are coordinated. These include:

- An independent children’s advocate (e.g. Ombudsperson, Commissioner)
- A process to conduct Child Impact Assessments of proposed laws and policies that would significantly affect children

- Awareness among decision-makers of Convention obligations and standards
- Budgetary processes to ensure children receive a “first call”
- Incorporation of the UNCRC into domestic law through the enactment of enabling legislation

It is important to note also that the Third Optional Protocol to the UNCRC, which will enable the UN Committee on the Rights of the Child to examine complaints from children and their representatives alleging violations of their rights within their home countries, will likely be adopted by the UN General Assembly in late 2011, and Canada will have the discretion to sign on to all or part of this Optional Protocol. **If Canada does not ratify this Optional Protocol in whole or in part, Canadian children will be left without any form of recourse when existing domestic adjudication mechanisms fail.**

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## Children’s Rights Reporting and Monitoring Resources

- Canada submitted its [official Third and Fourth Report](#) on implementation of the UNCRC on November 20, 2009.
- [Canadian Coalition on the Rights of Children](#) (CCRC) is preparing national, community-based reports on various aspects of children’s rights, in cooperation with other groups across the country. Their website contains a series of **19 thematic Working Documents** - and more are coming.
- When all of the thematic reports are completed, they will be consolidated for submission to the UN Committee on the Rights of the Child, for use in the official review of Canada’s implementation of the Convention.

[Children: The Silenced Citizens, Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children, Final Report](#) of the Standing Senate Committee on Human Rights, April 2007.

- An in-depth report touching on a range of child rights issues in Canada, including issues of participation and expression, violence against children, exploitation of children, youth criminal justice, child welfare, adoption and identity issues, migrant children, health issues, early childhood development and care, child poverty, sexual minority children, and Aboriginal children.
- Contains 24 recommendations

[Who’s in Charge Here? Effective Implementation of Canada’s International Obligations with Respect to the Rights of Children, Interim Report](#) of the Standing Senate Committee on Human Rights, Nov 2005

- This earlier report discussed the history and background of children’s rights in Canadian and international human rights law, as well as the application of the Convention in domestic law. It also discussed lessons learned, highlighting witnesses’ concerns about the lack of full

implementation of the Convention by the federal, provincial, and territorial governments because of jurisdictional issues, the apparent unwillingness of various levels of government at times to comply strictly with the terms of the convention, the lack of uniform standards, an over-complex reporting process to the Committee on the Rights of the Child, and a lack of public awareness about the Convention and children's rights.

- Contains 4 process-oriented recommendations, including legislation to establish a national children's commissioner.

[UNICEF reports and national campaigns](#), on child care, a national children's commissioner for Canada, child poverty, Aboriginal children, child trafficking and other topics. See for example [The UNICEF Innocenti Report Card 9, \*The Children Left Behind\*](#), ranking Canada's performance against 24 other wealthy countries, or

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## **National Children's Commissioner**

Canada has not put in place a National Children's Commissioner or other mechanism to monitor the federal implementation of the UN Convention on the Rights of the Child (UNCRC), speak on behalf of children and youth, and bring focus to national accountability and responsibility. This needs to be remedied.

The mandate of a National Children's Commissioner should include:

- Promoting, monitoring and advocating for the implementation of children's rights at the national level;
- Facilitating coordination between federal and provincial governments in areas that affect children's rights across Canada;
- Addressing matters under federal jurisdiction, such as Aboriginal children on reserves, children in the immigration and refugee systems, and equitable treatment of all children under the Charter of Rights and Freedoms.

## **Parliamentary Oversight**

- We would welcome the Official Opposition's support to ensure that Canada's combined third and fourth report to the UN on its implementation of the UNCRC is properly tabled and debated in Parliament, along with the reports assessing Canada's progress prepared by civil society organizations.
- Opportunities to be more proactive and progressive to advance the well-being of Canada's children are identified in the reports prepared by civil society organizations for Canada's UN review (see e.g. [Canadian Coalition on the Rights of Children](#) and [Child Care is a Right](#)), and could be tabled and discussed in a parliamentary process to debate Canada's review.

- As well, the final Concluding Observations of the Committee on the Rights of the Child, which are directed to Canada at the end of the reporting process, should be tabled for discussion and proposed implementation within Parliament.
- Further, a meeting of federal and provincial/territorial ministers with direct responsibilities for children's policy and services should be convened after the UN review to discuss the follow up required to bring Canada into greater compliance with the Convention.
- Consideration should be given to establishing a Standing or Select Children and Youth Committee of federal Parliament, where important reports and issues affecting the interests, well-being and rights of children can be tabled and discussed by all political parties.

## Aboriginal Children's Rights

There are a number of urgent issues affecting Aboriginal children's rights:

- Concerns about the federal government's failure to address [the inequitable and inadequate funding for child welfare](#) and [education services](#) on First Nations reserves; see also [federal Auditor General's June 2011 report](#).
- First Nations children living on reserves are eight times more likely to enter foster care than other children in Canada (Office of the Auditor General, 2008). The federal Auditor General documented that funding for Aboriginal children in need is less than funding for non-aboriginal children in similar circumstances.
- Concerns with the implementation of [Jordan's Principle](#) in good faith by governments
- Concerns with government's commitment to comply with the UN Declaration on the Rights of Indigenous People finally signed in 2010.
- Almost half (49%) of First Nations children under 6 living off reserve were poor in 2006, compared to 18% for non-Aboriginal children (Aboriginal Children's Survey and Census, 2006).

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## Child and Family Poverty and Income Inequality

### Two House of Commons resolutions:

- On 24 November 1989, the House of Commons passed an all-party resolution *"to seek to achieve the goal of eliminating poverty among Canadian children by the year 2000."*
- On 24 November 2009, a second resolution passed unanimously committing to *"develop an immediate plan to end poverty for all in Canada."*

According to the most recent statistics (2009), 9.5% of children in Canada are living in poverty, calculated after government transfers and income taxes (Statistics Canada, 2011). Canada ranked 17<sup>th</sup> out of 24 developed countries for children's material well being (UNICEF, 2010).

Children of immigrants, of Aboriginal identity, in racialized families, in female lone-parent families and those with a disability are at greater risk of poverty (Campaign 2000, 2010).

Children make up 38% of food bank users in Canada. Over half of food bank clients are families with children (Canadian Association of Food Banks, 2010).

### Campaign 2000

- Annual national report card and provincial report cards (not all provinces) containing analysis and recommendations.

Key recommendation: Adopt a legislated poverty elimination plan, as proposed in the former [Bill C-545, \*An Act to Eliminate Poverty in Canada\*](#), with the following elements:

- An enhanced child benefit for low-income families to a maximum of \$5,400 (\$2010) per child; (The Canada Child Tax Benefit (CCTB) plays an important role in reducing poverty for low income families, but it has not been increased since 2007.)
- A system of high-quality early childhood education and child care services that is affordable and available to all children (0-12 years);
- Restored and expanded eligibility for Employment Insurance;
- Increased federal work tax credits of \$2,400 per year;
- A federal minimum wage of \$11 per hour;
- A strategy for affordable housing, secured in legislation such as the former [Bill C-304, \*An Act to ensure secure, adequate, accessible and affordable housing for Canadians\*](#), including substantial federal funding for social housing. Children under age 15 comprise more than half the number of Canadians living in housing that is unaffordable, substandard and over-crowded (Wellesley Institute, 2008).
- Proactive strategies, including employment equity in the public and private sectors, to level the employment playing field for racialized communities and other historically disadvantaged groups;
- Appropriate poverty eradication targets, timetables and indicators for Aboriginal families, irrespective of where they live, developed in coordination with First Nations and urban Aboriginal communities.

Additional parliamentary reference reports on poverty:

[In From the Margins: A Call to Action on Poverty, Housing and Homelessness](#) (Senate report, Dec 2009) -- contains 72 recommendations and extensive evidence for reference.

[Federal Poverty Reduction Plan: Working In Partnership Towards Reducing Poverty In Canada](#) (HUMA report, Nov 2010) – contains 59 recommendations, starting with a call for a federal action plan.

**Growing income inequality** in Canada has been well documented annually in our child poverty report cards and various publications by the [Canadian Centre for Policy Alternatives](#), the [Conference Board of Canada](#), the [OECD](#), and others.

This matters tremendously to children and youth because it creates preventable health inequities over the life course (see [Health Inequities in BC, Nov 2008](#)), and because it damages the social fabric and the quality of life for everyone, as documented in the research by Richard Wilkinson and Kate Pickett from [The Equality Trust](#).

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## Early Childhood Development

Canada has been roundly criticized by the UN Committee on the Rights of Children in previous reviews and by reporting on our compliance with the Convention the Elimination of All Forms of Discrimination Against Women (CEDAW) for our failure to address child poverty and our underinvestment in early childhood development. Canada's spending on early childhood development is the lowest out of 14 countries surveyed by the Organization for Economic Co-operation and Development (2006).

The [Child Care is a Right](#) project report, *A Tale of Two Canadas*, (Feb 2011) from the [Coalition of Child Care Advocates of BC](#) and the [Child Care Advocacy Association of Canada](#), captures the evidence of Canada's weak public policy for young children and their families, including summarizing the findings of key research reports, and offers comprehensive and integrated recommendations. The [Appendices to the report](#) are a gold mine of facts and resource links.

A consistent recommendation from advocates, based on research, calls for federal and provincial governments to stop relying primarily on parent fees to fund child care services and the private sector, whether non-profit or for-profit, to create them. Instead, advocates promote a leadership role for the federal government in public planning, public funding and public reporting.

Further evidence of our poor international ranking on early childhood can be found in [UNICEF Report Card 8, The Child Care Transition](#) and [Early Childhood Services in the OECD Countries](#).

The current federal government cancelled federal-provincial agreements to fund child care and replaced them with a monthly taxable Universal Child Care Benefit paid directly to parents, which **does not solve the crisis in child care resulting from lack of spaces, high parent fees and low staff wages**. The \$100 taxable benefit only covers a fraction of the cost of full-time child care, and only applies to children under 6 years.

Canada's **parental leave policy** has improved, but many families do not access the federal maternity and parental leave employment insurance program due to eligibility restrictions and/or inadequate remuneration levels. Only about one in five women have access to benefit top-ups from their employers (Human Early Learning Partnership, 2009).

Stable and adequate funding for the federally-supported [Community Action Program for Children \(CAPC\)](#) and [Canadian Prenatal Nutrition Program \(CPNP\)](#) and for sustaining and

expanding access to [Aboriginal Head Start programs](#) is another important goal of early childhood advocates across the country. See also [AHS programs in urban and northern communities](#).

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## Immigrant and Refugee Children

See [Children's Rights in Canada 2011 Working Document: Immigrant and Refugee Children](#), for a concise statement of concerns on these topics:

- Best interests of the child in immigration processes
- Detention of children
- Separated children
- Family reunification
- Statelessness (Canadian Citizen Act changes in 2009)
- Access to services

For depth on a number of issues, see [Canadian Council for Refugees](#) – a resource for information on the following child rights topics:

### [Reintroduction of anti-refugee bill \(C-4, Preventing Human Smugglers from Abusing Canada's Immigration System Act., formerly C-49\) deplored:](#)

Among others, the bill proposes the following unacceptable measures:

- The mandatory detention of some refugees, without independent review. This is arbitrary detention, which is contrary to the Canadian Charter of Rights and Freedoms and to international law. **Children will be among those jailed.**
- Long-term limbo for some recognized refugees, by denying them the right for five years to apply for permanent residence, **and blocking reunification with their children, in violation of the Convention on the Rights of the Child. Children left behind overseas are at risk while waiting to be reunited with their parents who are refugees in Canada.**

### [End the burden of refugee transportation loans](#)

- Refugees resettled to Canada must pay for their medical exam and their travel to Canada. Since most refugees of course can't afford these expenses, Canada offers them a loan. As a result, refugee families start their new life in Canada with a debt of up to \$10,000. They must repay this loan with interest.
- These loans undermine refugees' ability to integrate and to contribute to their full potential in their new home. **Refugee youth are forced to work long hours while going to school, or even postpone further education, because of the need to pay back the debt.**

"First Call's partner organizations were dismayed to learn that refugee families are required to re-pay transportation loans to the Canadian government. We are deeply concerned that the **successful settlement and integration of refugee children and youth is being undermined by a policy that puts additional financial strains on these vulnerable families**. We know that new immigrant families are over-represented in poverty statistics, and poverty puts healthy child and youth development at significant risk."

----Adrienne Montani, Provincial Coordinator, First Call: BC Child and Youth Advocacy Coalition, July 2008

**Refugee Assistance Program rates** are currently set based on the provincial social assistance rates. In BC, these monthly rates are 40-50% below the poverty line (See: [2010 BC Poverty Report Card, Fact Sheet #5](#)) and are insufficient to pay actual housing and cost of living expenses, particularly in Metro Vancouver where most refugees settle in BC. This policy puts refugee children's health and development at risk. The federal government should set the rates based on the actual cost of living, rather than provincial assistance rates.

### [Family reunification and the UNCRC](#)

- Prolonged family separation has its most dramatic impacts on the many children affected. As a society we have particular obligations to protect children, including by respecting their right to be with their family.
- The Canadian Council for Refugees proposes that family members of refugees, especially separated children, be allowed to travel immediately to Canada so that processing can be done here.
- The children of migrant workers, such as live-in caregivers, are also severely affected by long-term separation from their parents. Migrant worker programs for live-in caregivers and other temporary foreign workers require review with respect to children's rights to be with their families. Advocate call for the migrant workers from all skill categories to have the right to apply for permanent residence, thus allowing them to bring their dependent children with them to Canada.

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## **Children with Disabilities**

There are 202,350 children with disabilities under the age of 15 – of these, about 57% have mild to moderate disabilities and 43% have severe or very severe disabilities.

Children with disabilities are explicitly protected in the UNCRC. Yet the evidence is that they experience heightened vulnerability to poverty, abuse and being taken into care:

- Children with disabilities are twice as likely as other children to live in households that rely on social assistance as a main source of income.
- Children with disabilities are over-represented in provincial/territorial child welfare systems.

- Children with disabilities are two or more times more vulnerable to violence and abuse.

## Health and Safety

- One quarter of children between the ages of two and seventeen are overweight or obese (BC Healthy Living Alliance, 2011). The federal government can take action to reduce the incidence of obesity in children and youth by **restricting the marketing of junk food to children, and increasing funding to municipalities to build recreational infrastructure.**
- The federal government monitors the **safety of food, drugs and other products**, and sets guidelines for safe exposure levels for chemicals and other substances. They can **improve attention to the special vulnerabilities of children.**
- The federal government has not signed on to the **International Labour Organization’s convention on child labour** that would increase protections for children in the work force. This is important because some Canadian provinces like BC have weakened their employment standards as they apply to children.
- [Repeal Section 43 – Corporal Punishment Defense](#)

Children’s rights advocates have been working for years to get Canada to repeal section 43 of the Criminal Code which reads:

### ***Correction of Child by Force***

*Every schoolteacher, 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.*  
R.S.C., 1985, c .C-4

Canada has been criticized by the UN Committee on the Rights of Children for failing to make this reform in violation of the commitments to children’s rights in the UNCRC. The constitutionality of this section has also been challenged in court for violating the Canadian Charter of Rights and Freedoms.

The incredibly misguided 2004 majority Supreme Court decision which upheld section 43 has left children 2 to 12 years old still subject to legal physical punishment.

Whether ruled constitutional or not, section 43 is bad social policy. It is out of step with the rights of children and their need for the full protection of the law against assault. Their health and safety is at stake. **A bill to repeal s. 43 is the only just and effective option and should be introduced, passed, and brought into force without delay.**

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## Youth Criminal Just Act Proposed Amendments (formerly Bill C-4)

A good critique of this proposed bill is presented in the [submission by the Canadian Council of Provincial Child and Youth Advocates](#). They express particular concern about the introduction of deterrence and denunciation as principles of sentencing, an increase in pre-sentencing detention for youth, the establishment and use of an extrajudicial measures registry in any subsequent judicial proceeding, and the broadening of judges' discretion to lift the publication ban on the names of young offenders.

Their submission makes 7 recommendations, including:

- That the federal government provide evidence that shows that the amendments proposed in Bill C-4 will result in a decrease in criminal activity amongst youth, and increase public safety.
- That the federal government give full effect to the [existing] *Youth Criminal Justice Act [YCJA]* by adequately funding the non-custodial options provided for in the *YCJA*, by channeling funds to provincial and territorial governments who are charged with the administration of the *YCJA*.
- That the federal government facilitate a national multi-jurisdictional strategy that responds to the needs of young people with mental illnesses or severe behavioural and developmental disorders, thereby preventing them from becoming mired in a system that is ill-equipped to meet their needs. The strategy should be jointly developed by federal, provincial and territorial authorities and their respective oversight agencies.
- That the protection of the public and rehabilitation of youth be reinforced as two interdependent objectives, both of which are equally relevant as principles guiding the decision-making process under the *YCJA*.
- That the federal government ensures that any future proposed changes to the Canadian youth criminal justice system comply with the provisions and the spirit of the UN Convention on the Rights of the Child.

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## Post Secondary Student Debt Levels

The average student debt after graduating from a four year program is \$27,000 ([Canadian Federation of Students-BC](#), 2011). These graduates face interest rates of 7.5-8.5% on their student loans (Coalition for Student Loan Fairness, 2007). The federal government pocketed \$453 million in student loan interest in 2006-07. The negative impact of this debt on young parents who are starting families is tremendous. Many young people are deterred from even trying to get a post-secondary education by the spectre of debt.

Canada would do well to learn from other industrialized countries that reap the benefits of investments providing free post-secondary education for its young people.