

SECTION 2: APPLICATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

Overall Objectives

- To examine how the Convention applies to Canadian legal cases.
- To discuss and understand policy issues associated with children's rights.

ACTIVITY 1 – THE SPANKING CASE

Learning Objectives

- To introduce students to how the Convention has been applied in Canadian domestic law.
- To develop an understanding of rights and responsibilities under the Convention.

Materials

- Copies of Case Summary 1: *The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada* (one per student)
- Copies of *What's Your Opinion?* Activity (one per student)

Steps

1. Read the following statements aloud and have students form a value line in the classroom, arranging themselves from strongly agree to strongly disagree. Encourage students to discuss the statements with each other to determine where to stand in the continuum.
 - a. Parents should be allowed to use physical force to discipline their children.
 - b. Teachers should be allowed to use physical force to discipline or restrain students.
2. Review Case Summary 1: *The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada* by asking students to volunteer to read aloud. After each paragraph, stop to check for understanding and clarify any points.
3. Discuss the following issue with students: Children are the only group in society that can be assaulted by a parent or teacher in the name of discipline. (Assault is not permitted for prisoners, detainees, etc.) Is it acceptable that section 43 creates a defence for the assault of children?
4. Review *The Relevant Law*. This case includes law from the *Criminal Code of Canada*, the *Canadian Charter of Rights and Freedoms*, and the UN Convention on the Rights of the Child. Explain why each is important, different, and how they all work together in this case.
5. Divide the class into groups. (Ideally, divide students based on their views for or against the repeal of section 43.) Ask students to read *The Arguments in Court* for their respective sides and then present them to the class. Have students review the Convention in their groups and decide which articles of the Convention are relevant to this case. This is a good opportunity for students to take part in a brief and informal discussion/debate on the issue.
6. Ask students to read *The Final Judgment*. Instruct students not to look at this section until they have expressed their own opinions and speculated about the outcome of the case. Discuss the judgment as a class.
7. Have students read the first exercise in the *What's Your Opinion?* Activity and write a brief letter to the editor expressing their opinions. For the second exercise, allow students to discuss the question before answering in the space provided.

ACTIVITY 1 – THE SPANKING CASE

Discussion

1. What is “reasonable force under the circumstances”
 - b. in families?
 - c. in the classroom?
2. Do you agree with the Supreme Court of Canada’s guidelines? Why or why not? What changes to these guidelines would you suggest?
3. Why is it significant that the Convention was included in this case in addition to the *Charter*?
4. Why is this case important for children’s rights?
5. What are some current examples in your everyday life where you could see the Convention protecting your rights? For example, children have the right to peaceful assembly, so why are kids kicked out of malls or parks for “causing trouble?” Think of some more examples based on the Convention.
6. How do we listen to and find out about children in Canada whose rights aren’t protected?
7. By listening and working together with children and families whose rights are not protected we can all make a difference. However, instead of always speaking for children whose right aren’t protected, how do we help them to speak for themselves and fight for their own rights?



CASE SUMMARY 1

The Canadian Foundation for Children, Youth and the Law v. The Attorney General of Canada

Facts

The Canadian Foundation for Children, Youth and the Law (CFCYL) is a group dedicated to the protection of children's rights. In November 1998, the CFCYL applied to the court for a declaration that section 43 of the *Criminal Code of Canada* is invalid since it legalizes the use of corporal punishment on children for the purpose of correction.

WHAT IS A DECLARATION?

When the court declares that a law or piece of legislation violates the *Charter*, the government must correct the problem.

The basis for the challenge was that s. 43 was unconstitutional and violated many sections of the *Canadian Charter of Rights and Freedoms*. The challenge also relied on Canada's commitment to comply with the UN Convention on the Rights of the Child. They also claimed that the law violated the UN Convention on the Rights of the Child, which attempts to establish an international standard of human rights for children all around the world.

Aside from the applicant (CFCYL) and the respondent (Attorney General of Canada), there were also a number of groups that felt they had an interest in the outcome of this challenge. These groups applied to the court for intervener status so that they too could participate in this case. Status was not granted to all applicants. The only group granted intervener status in support of this challenge was the Ontario Association of Children's Aid Societies. Parties opposed to this challenge that were granted intervener status were the Canadian Teachers' Federation and a group of organizations that joined forces to form the Coalition for Family Autonomy.

Trial Decision

This application for a declaration began in the Ontario Court (General Division), now the Ontario Superior Court of Justice. Mr. Justice McCombs heard the application of the CFCYL from December 6-10, 1999. Justice McCombs ruled that section 43 was consistent with the *Charter* and that it did not violate Canada's obligations under the UN Convention on the Rights of the Child. He dismissed the application. However, he suggested that federal Parliament should examine the use of reasonable force, as set out in section 43, and come up with more clearly defined parameters to guide teachers, parents and caregivers.

Court of Appeal for Ontario

In January 2001, the CFCYL appealed the decision to the Court of Appeal for Ontario. The court upheld the previous decision, stating the purpose of section 43 was to allow parents and teachers to "apply strictly limited corrective force to children without criminal sanctions so that they can carry out their important responsibilities to train and nurture children without the harm that such sanctions would bring to them, to their tasks and to the families concerned." The appeal was dismissed.

Supreme Court of Canada

In March 2002, the CFCYL applied for leave to appeal to the Supreme Court of Canada (SCC). The SCC usually hears cases that are of national significance, on appeal from a provincial appeal court. Often the cases deal with constitutional issues. CFCYL's argument was that the Court of Appeal for Ontario made an error in law and did not give adequate enough consideration to the expert evidence before them and, as the matter was one of national significance, permission to appeal should be granted. The SCC announced it would hear the appeal, and granted intervener status to those groups that had participated in the two previous hearings in the lower courts, as well as to two other organizations that applied for status, the Child Welfare League of Canada and the Quebec Human Rights Commission.

The Issue

Is it acceptable that section 43 creates a defence for the assault of children?

The Relevant Law

CRIMINAL CODE OF CANADA

43. 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.

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The principles of the Convention that are most relevant to this case are:

- every child has the right to have her/his basic needs fulfilled
- every child has the right to express his/her opinions and be respected
- children have the right to be protected from abuse and exploitation

The Arguments in Court

CFCYL and Supporting Interveners:

- Section 43 creates an environment where violence towards children is accepted as a matter of discipline and has allowed people to be found innocent even after hitting kids with belts, paddles, sticks and other objects.
- Criminal law plays a big role in setting acceptable standards of behaviour in society. Allowing section 43 to stand sends a message that it is OK to hit a child as long as it is "reasonable" and "for correction."
- Children are being discriminated against because of their age and have suffered serious harm at the hands of the people who are supposed to protect and nurture them.

Attorney General and Other Opposing Interveners:

- Approximately 75% of parents in Canada use physical discipline with their children. Eliminating section 43 won't change attitudes regarding physical punishment.
- Parents need to use physical force sometimes. Eliminating section 43 would result in parents being prosecuted for removing a screaming child from the mall or trying to put an uncooperative child in a car seat.
- Physical force is sometimes needed to maintain order in schools; for example, removing a child from a classroom, leading a student to the principal's office, getting a child's attention, and guiding a child to line up. These behaviours would be considered assaults if not for section 43.



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The Final Judgment

On January 30, 2004, the SCC ruled that section 43 was constitutional, upholding the previous decisions of the lower courts. The majority in the SCC (six judges to three) ruled that section 43 did not violate children's *Charter* rights. However, they did establish some legal guidelines to use when determining how much force would be considered "reasonable under the circumstances." The SCC held:

- that spanking by parents is only acceptable for children aged 2-12 years;
- that the use of objects such as belts or hitting on the head is not permissible;
- that no child should be hit in anger or out of frustration.

The SCC also added that teachers are not allowed to hit students, but that limited force is allowed in order to restrain students during a violent outburst.

WHAT'S YOUR OPINION?

Exercise One: People have very strong feelings and opinions about this issue. Assume that the case was just resolved and has been on the news and in the newspapers every day. On a separate sheet of paper, write a brief letter to the editor of your local paper saying why you agree or disagree with the court's decision.

If you agree with section 43, explain why and use one example to support your position on this issue. Also, include any other guidelines or limitations you would include to protect children.

If you disagree with section 43, explain why and use one example to support your position on this issue. Also, include any ideas or ways that parents and teachers would control unruly children.

Exercise Two: Section 43, also known as the defence of reasonable correction, first appeared in the *Criminal Code of Canada* in 1892. Since that time it has only been amended once, removing the master and apprentice relationship from the wording. Is it acceptable for a law to go virtually unchanged for well over a century? What can be done to make sure that our laws are keeping up with society's changing values and beliefs, and who would be responsible for such an overwhelming task as updating laws?

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ACTIVITY 2 – MEDICAL TREATMENT AND MINORS

Learning Objectives

- To encourage students to analyze how the Convention would be applied to a legal case

Materials

- Copies of Case Summary 2: *A.C. v. Manitoba* (one per student)
- Copies of the Convention (Appendix A)

Steps

1. Ask students at what age they think that minors should be able to make the following decisions:
 - to become a vegetarian
 - to get a tattoo or piercing
 - to have plastic surgery

Ask students to identify what factors they considered in making their age assessments.
2. Review article 3 of the Convention and discuss the concept of “best interests of the child.” Discuss the importance of having parents make decisions that advance the well-being of their children.
3. Review Case Summary 2: *A.C. v. Manitoba* by asking students to volunteer to read aloud. After each paragraph, stop to check for understanding and clarify any points.
4. Discuss the following questions with students:
 - a. Why do you think the courts are concerned with children making decisions independent of parental influence? What potential consequences do you foresee?
 - b. Do you agree with the decision of the majority, or the dissenting opinion of Justice Binnie?
 - c. Do you think the government should decide what is in the best interests of the child? If not, who should?
 - d. Should the government be able to override parental decisions regarding the health of their child? Does your answer change depending on the age of the patient?
 - e. How do you think the best interests of the child should be determined?
 - f. Do you think 16 is the right age for self-determination? When do people display maturity? When should they have the autonomy to make decisions about their medical health? Should the age for self-determination be lower or higher? Explain why.
5. Explain to students that even though this particular case does not involve the Convention, it raises many important children’s right issues, and relates to many articles in the Convention. Have students work in pairs or small groups to identify which articles of the Convention could apply to this case. Take up their answers as a class, and discuss any discrepancies.
6. In small groups, have students debate the following statement. They should incorporate the relevant sections of the Convention into their arguments. Have students switch groups and argue the opposite side.

Mature minors should have the ability to make their own health choices regardless of age.

ACTIVITY 2 – MEDICAL TREATMENT AND MINORS

Discussion

1. Who ultimately determined the best interests of the child in this case?
2. Is it fair to impose your idea of best interests even if the person in question doesn't believe it is in his/her best interest? When? Why or why not?
3. How can the government adopt more of the values of the Convention into Canadian law?

Extension

- Have students prepare a postcard containing a visual representation of the children's rights issues they learned about.



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CASE SUMMARY 2

A.C. v. Manitoba

Facts

A child in Manitoba, A.C., was admitted to hospital two months before her 15th birthday, suffering from gastrointestinal bleeding caused by Crohn's disease. The child, a devout Jehovah's Witness, had previously completed a medical directive containing written instructions not to be given blood transfusions under any circumstance, including potential medical emergencies. The child's doctor believed that the internal bleeding created an imminent and serious risk to her health and potentially her life. The child, however, refused to consent to receiving blood despite the professional medical opinion of her doctor because of her religious beliefs. The majority of Jehovah's Witnesses believe that the Bible prohibits the ingestion of blood, including blood transfusions in medical emergencies.

The Director of Child and Family Services apprehended A.C. as "a child in need of protection." As provided for under subsections 25(8) and (9) of the Manitoba Child and Family Services Act (CFSA), the Director sought a treatment order from the court to authorize the medical treatment of the child. The CFSA gives the court this power when the court considers the treatment to be in the "best interests" of the child, and the child is still under the age of 16. The court ordered the child to receive the blood transfusions prescribed by her doctor; she survived and made a full recovery.

MANITOBA CHILD AND FAMILY SERVICES ACT

25(8) Subject to subsection (9), upon completion of a hearing, the court may authorize a medical examination or any medical or dental treatment that the court considers to be in the best interests of the child.

25(9) The court shall not make an order under subsection (8) with respect to a child who is 16 years of age or older without the child's consent unless the court is satisfied that the child is unable

(a) To understand the information that is relevant to making a decision to consent or not consent to the medical examination or the medical or dental treatment; or

(b) To appreciate the reasonably foreseeable consequences of making a decision to consent or not consent to the medical examination or the medical or dental treatment.

The CFSA presumes that the "best interests" of a child over 16 years of age will be most effectively promoted by allowing the child's views to be determinative, unless the child does not understand or appreciate the consequences. When the child is under 16, the court can authorize medical treatment through an interpretation of what is in the child's "best interests," with the child's views not being considered as the final decision.

The child and her parents appealed the court order for treatment arguing that it was unconstitutional because it unjustifiably infringed the child's rights under sections 2(a), 7, and 15(1) of the Charter. Unsuccessful at the provincial level, the case was brought before the Supreme Court of Canada (SCC)

The Decision

The SCC dismissed the appeal by a majority of 6 to 1, and declared subsections 25(8) and (9) of the CFSA constitutional. The majority held that when the “best interests” standard is properly interpreted, the legislative scheme does not infringe on sections 7, 15 or 2(a) of the Charter because it is neither arbitrary, discriminatory, nor infringes on religious freedom. When a child’s “best interests” are interpreted in a way that sufficiently respects their capacity for mature and independent judgment in a medical decision-making context, the legislation remains constitutional.

Under section 7 of the Charter, the majority held that, while it may be arbitrary to assume that children under the age of 16 do not have the ability to make responsible medical treatment decisions, the assumption is not arbitrary because children are given the chance to establish a maturity level that facilitates making such important decisions. A young person is entitled to lead evidence of sufficient maturity to have her wishes respected. Chief Justice McLachlin added that such legislation successfully balances society’s interest in ensuring that children receive necessary medical care on the protection of their autonomy.

Accordingly, although section 25(9) identifies 16 years of age as the threshold for ensuring self-determination, it does not constitute age discrimination under section 15 of the Charter because the ability to make treatment decisions is “ultimately adjusted in accordance with maturity, not age.” Additionally, the law is aimed at protecting the interests of minors as a vulnerable group by utilizing a rational standard that affords the child a degree of input, which is not discriminatory by the very definition of section 15 of the Charter.

Finally, if the child is entitled to prove sufficient maturity, the Manitoba legislation cannot be seen to be violating his/her religious convictions under section 2(a). Consideration of a child’s “religious heritage” is one of the statutory factors to be considered in determining their “best interests” and therefore is not being unconstitutionally disregarded. Even if the child’s religious beliefs are considered to be infringed upon, section 1 of the Charter justifies the infringement “when the objective of ensuring the health and safety and of preserving the lives of vulnerable young people is pressing and substantial, and the means chosen—giving discretion to the court to order treatment after a consideration of the relevant circumstances—is a proportionate limit on the right.”

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

2. Everyone has the following fundamental freedoms:

(a) Freedom of conscience and religion.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

15. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Dissent

Justice Binnie wrote that the *Charter* is not just about protecting “the freedom to make the wise and correct choice,” but rather to protect the individual autonomy and religious freedom to refuse medical treatment regardless of what the judge thinks is in their best interest. He expressed the opinion that the government has not shown that the limitations on the rights of mature minors are proportionate to the alleged positive effects. Justice Binnie concluded that the best interests of the child should be determined by the child if she has the capacity to make the decision and understand the consequences

Contrary to the majority’s opinion, Justice Binnie found that the provisions violated subsections 2(a) and 7 of the *Charter*. The presumption that a child under the age of 16 lacks capacity arbitrarily denies mature minors the same rights as children over the age of 16. It limits their religious freedoms and infringes on the life, liberty and security of the person in an arbitrary manner that is not proportionate to the positive effects the laws have on immature minors, which he argues are none. The benefits of ensuring judicial control over medical treatment for “immature” minor is not advanced by overriding the *Charter* rights of “mature” minors under 16 years old who are not in need of judicial control.



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APPENDIX A

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD IN PLAIN LANGUAGE

Article 1: **Definition of a child.** A child is recognized as a person under 18, unless national laws recognize the age of majority earlier.

Article 2: **Non-discrimination.** All rights apply to all children, and children shall be protected from all forms of discrimination.

Article 3: **Best interests of the child.** All actions concerning the child shall take full account of his or her best interests. The States shall provide the child with adequate care when parents, or others charged that responsibility, fail to do so.

Article 4: **Implementation of rights.** The State must do all it can to implement the rights contained in the Convention.

Article 5: **Parental guidance and the child's evolving capacities.** The State must respect the rights and responsibilities of parents to provide guidance for the child that is appropriate to her or his evolving capacities.

Article 6: **Survival and development.** Every child has the right to life, and the State has an obligation to ensure the child's survival and development.

Article 7: **Name and nationality.** Each child has the right to a name and nationality, to know his or her parents and be cared for by them.

Article 8: **Preservation of identity.** The State has an obligation to protect, and if necessary, to re-establish the child's identity. This includes name, nationality and family ties.

Article 9: **Separation from parents.** The child has a right to live with his or her parents unless this is not in the child's best interest. The child has the right to maintain contact with both parents if separated from one or both.

Article 10: **Family reunification.** Children and their parents have the right to leave any country or enter their own to be reunited, and maintain the parent-child relationship.

Article 11: **Illicit transfer and non-return.** The State has an obligation to prevent and remedy the kidnapping or holding of children abroad by a parent or third party.

Article 12: **The child's opinion.** Children have the right to express their opinions freely, and have their opinions taken into account in matters that affect them.

Article 13: **Freedom of expression.** Children have the right to express their views, obtain information, and make ideas or information known, regardless of frontiers.

Article 14: **Freedom of thought, conscience and religion.** Children have the right to freedom of thought, conscience and religion, subject to appropriate parental guidance.

Article 15: **Freedom of association.** Children have a right to meet with others, and to join or form associations.

Article 16: **Protection of privacy.** Children have the right to protection from interference with privacy, family, home and correspondence, and from attacks on their character or reputation.

Article 17: **Access to appropriate information.** Children shall have access to information from national and international sources. The media shall encourage materials that are beneficial, and discourage those which are harmful to children.

Article 18: **Parental responsibilities.** Parents have joint responsibility for raising the child, and the State shall support them in this.

Article 19: **Protection from abuse and neglect.** Children shall be protected from abuse and neglect. States shall provide programs for the prevention of abuse and treatment of those who have suffered abuse.

Article 20: **Protection of a child without family.** Children without a family are entitled to special protection, and appropriate alternative family or institutional care, with regard for the child's cultural background.

Article 21: **Adoption.** Where adoption is allowed, it shall be carried out in the best interests of the child, under the supervision of competent authorities, with safeguards for the child.

Article 22: **Refugee children.** Children who are refugees, or seeking refugee status, are entitled to special protection.

Article 23: **Disabled children.** Disabled children have the right to special care, education and training that will help them to enjoy a full and decent life with the greatest degree of self-reliance and social integration possible.

Article 24: **Health and health services.** Children have the right to the highest possible standard of health and access to health and medical services.

Article 25: **Periodic review of placement.** A child who is placed by the State for reasons of care, protection or treatment of his or her physical or mental health is entitled to have that placement evaluated regularly.

Article 26: **Social security.** Children have the right to benefit from social security including social insurance.

Article 27: **Standard of living.** Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. Parents have the primary responsibility to ensure that the child has an adequate standard of living. The State's duty is to ensure that this responsibility is fulfilled.

Article 28: **Education.** Children have the right to education. Primary education should be free and compulsory. Secondary education should be accessible to every child. Higher education should be available to all on the basis of capacity. School discipline shall be consistent with the child's rights and dignity.

Article 29: **Aims of education.** Education should develop the child's personality, talents, mental and physical abilities. Children should be prepared for active participation in a free society, and learn to respect their own culture and that of others.

Article 30: **Children of minorities or indigenous populations.** Children have a right, if members of a minority group, to practice their own culture, religion and language.

Article 31: **Leisure, recreation and cultural activities.** Children have the right to rest, leisure, play and participation in cultural and artistic activities.

Article 32: **Child labour.** Children have the right to be protected from economic exploitation, from having to participate in work that threatens their health, education or development. The State shall set minimum ages for employment and regulate working conditions.

Article 33: **Drug abuse.** Children have the right to protection from the use of drugs, and from being involved in their production or distribution.

Article 34: **Sexual exploitation.** Children shall be protected from sexual exploitation and abuse, including prostitution and involvement in pornography.

Article 35: **Sale, trafficking and abduction.** The State shall take all appropriate measures to prevent the sale, trafficking and abduction of children.

Article 36: **Other forms of exploitation.** The child has the right to protection from all forms of exploitation prejudicial to any aspects of the child's welfare not covered in articles 32, 33, 34 and 35.

Article 37: **Torture and deprivation of liberty.** No child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. Capital punishment and life imprisonment are prohibited for offences committed by persons below 18 years of age. A child who is detained has the right to legal assistance and contact with the family.

Article 38: **Armed conflict.** Children under age 15 shall have no direct part in armed conflict. Children who are affected by armed conflict are entitled to special protection and care.

Article 39: **Rehabilitative care.** Children who have experienced armed conflict, torture, neglect or exploitation shall receive appropriate treatment for their recovery and social reintegration.

Article 40: **Administration of juvenile justice.** Children in conflict with the law are entitled to legal guarantees and assistance, and treatment that promote their sense of dignity and aims to help them take a constructive role in society.

Article 41: **Respect for higher standards.** Wherever standards set in applicable national and international law relevant to the rights of the child are higher than those in this Convention, the higher standard shall always apply.

Articles 42-54: **Implementation and entry into force.**

APPENDIX B

UNDERSTANDING CHILDREN'S RIGHTS

HISTORY OF THE CONVENTION

Children have rights, as do all human beings. The rights of all humans are enshrined in the Universal Declaration of Human Rights (UDHR) which was adopted by the United Nations (UN) in 1948. This international treaty outlines the civil, economic, cultural and social rights that apply to individuals worldwide regardless of their age, race, ethnicity, nationality or any other distinction.

In 1979, world leaders decided that children needed a special convention that would recognize that they have rights and require specific care and protection that adults do not. This convention, which came into effect in 1989, became known as the United Nations Convention on the Rights of the Child (the Convention).

Drafting of the Convention began in March 1978 and took 11 years to complete. The Convention was adopted by the UN General Assembly in November 1989. Canada played an important role in the process, facilitating communication between over 40 countries as well as co-chairing the World Summit on Children at the UN in 1990 to encourage ratification of the Convention. The Convention is the most ratified UN human rights treaty, as there are only two countries which have not ratified the Convention: the United States of America and Somalia. Canada signed the treaty with support from all provinces and territories on May 28, 1990 and ratified the treaty on December 13, 1991.

PURPOSE OF THE CONVENTION

The Convention is a treaty which outlines the basic human rights to which every child is entitled. These rights include the right to survival, the right to development of their full physical and mental potential, the right to protection from influences that are harmful to their development and the right to participation in family, cultural and social life, among others.

The 54 articles of the Convention are based upon four guiding principles which are themselves articles of the Convention. They reflect the explicit values of the Convention and provide the means by which all other articles are interpreted. Adherence to these guiding principles is necessary for the full implementation of the Convention.

GUIDING PRINCIPLES

There are four guiding principles to the Convention.

1. **Non-discrimination (Article 2):** The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It does not matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.
2. **Best interests of the child (Article 3):** The best interests of children must be the primary concern in making decisions that may affect children. When adults make decisions, they should think about how their decisions will affect children and do what is best for them.

3. **Right to life, survival and development (Article 6):** Children have the right to live. Governments should ensure that children survive and develop fully.
4. **Respect for the views of the child (Article 12):** When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. The Convention requires that adults listen to the opinions of children and involve them in decision-making, but it does not give children authority over adults. Article 12 does not interfere with the right and responsibility of parents to express their views on matters affecting their children. Moreover, the Convention recognizes that the level of a child's participation in decisions must be appropriate to the child's level of maturity.

RATIFICATION AND ENFORCEMENT OF THE CONVENTION

Signing a treaty indicates a state's (i.e., a country's) intention to incorporate the treaty into domestic law, while ratification of a treaty is a declaration that the state's laws reflect the rights outlined in the treaty. By agreeing to (or ratifying) the obligations under the Convention, governments have committed to being accountable to the international community for protecting and ensuring the rights of all children. Under the Convention, the Government of Canada is a 'duty-bearer' with a primary responsibility to fulfill and protect the rights of all children in Canada. However, the responsibility to ensure children's rights is not the government's alone. Duty-bearers include all levels of government, and both public and private institutions such as schools and hospitals. As well, the Convention recognizes the primary role of families to nurture and guide their children. Under the Convention, children are 'rights-holders'. As in the diagram below, the rights-holders claim their rights from the duty-bearers and, in turn, the duty-bearers have the responsibility to ensure those rights are protected and fulfilled.



To ratify the Convention in Canada, the government reviewed all provincial and federal laws and concluded domestic laws provide for the rights outlined in the Convention; there was no legislation introducing the Convention into domestic law. Canada's Constitution provides that implementation of international treaties where provincial laws and policies are affected is the responsibility of the federal, provincial and territorial governments.

Ensuring the legal protection of children's rights is an ongoing obligation. Governments are expected to develop new laws, as well as all types of public policy, administrative decisions, services and programs to uphold children's rights. As time goes on, standards become clearer about what it means to provide for and protect children's rights. Governments are expected to constantly revisit existing legislation and develop new legislation to incorporate the highest possible standards of treatment for children.

The Convention is monitored and assessed by the UN Committee on the Rights of the Child (the Committee). Canada is responsible for submitting a report to the Committee every five years which is prepared and filed by the Continuing Committee of Officials on Human Rights, formed within the Human Rights Program of the Department of Canadian Heritage. The Committee studies the reports, draws conclusions and makes recommendations for improvement. Governments, however, are not legally obliged to follow all recommendations.

The courts also have a role to play in advancing children's rights. According to Canada's Constitution, international law such as the Convention can be used by the courts and other decision-making bodies (such as tribunals) as an aid in interpreting legislation that affects human rights in Canada.

Some of the challenges to more fully realizing children's Convention rights in Canada are related to our legal system. Canada has a "dualist" rather than a "monist" legal system which means that international conventions do not automatically become part of domestic law when they are ratified. We must introduce a new law or laws, and make changes to existing laws, to give legal force to the rights—to bring legal charges when they are violated and to make claims in the courts and human rights commissions for them. Canada has not done so sufficiently in the case of the Convention on the Rights of the Child.

As well, because Canada is a common-law country, the courts have a strong influence on interpreting the rights in the law. Courts mainly use the Constitution and national and provincial laws to make rulings. They rarely consider the Convention as well, and when they do, their interpretations are not always rights-consistent. Furthermore, Canada has a "child-invisible constitution."^[i] There is no specific mention of children and their unique rights in the *Canadian Charter of Rights and Freedoms*.



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APPENDIX C

GLOSSARY

Article—A section of a treaty, contract or statute.

Bilateral treaty—A treaty agreement made between two countries.

Ceasefire—A temporary stoppage of a war in which each side agrees with the other to suspend aggressive actions.

Civil law—The body of law that deals with disputes between private parties, such as individuals and corporations. Civil law also refers to the legal system in Quebec.

Climate change—Small but steady changes in average temperatures around the world.

Common law—A system of law that originated in England and is based on past court decisions.

Commonwealth—An association of countries that were formerly colonies of the British Empire.

Constitution—The supreme law of a state that sets out how the state will be organized, the powers and authority of the government and the basic principles of society. The constitution will usually “trump” other national or local laws if there is a conflict between them.

Covenants and Conventions—Both terms refer to binding agreements, or treaties, made under international law.

Crimes against humanity—A legal term defined in the Rome Statute⁷⁶ as widespread or systematic offences that constitute a serious attack on human dignity or grave humiliation or degradation of one or more human beings.

Criminal law—The body of law that declares acts to be crimes and prescribes punishments for those crimes.

Custom—Law that becomes binding on states although it is not written, but rather adhered to out of custom. Customary international law is created when countries repeatedly behave a certain way because they believe they are legally required to do so. It is one of the main sources of international law.

Declaration—A document stating agreed upon standards, but is not legally binding.

Democracy—A system of government in which people freely choose who will govern them through elections. It also refers to the principles and ideals of such a government, such as freedom of speech and the rule of law.

Discrimination—The unjust or prejudicial treatment of different categories of people, especially on the grounds of race or gender.

Domestic law—The internal or national laws and legal system of a country, including laws made at the state, provincial, regional or local level. Domestic law is also referred to as “national law.”

Due process—The principle that the government must respect all legal rights that are owed to a person according to the law. For example, one of the rights protected under the doctrine of due process is the right to an impartial judge.

Ethnic cleansing—The elimination of an unwanted ethnic group or groups from a society, by genocide or forced relocation.

Extractive Industries—A term that describes industries or companies engaged in activities that have significant environmental impacts, such as oil, gas, mining and forestry.

Formal equality—To treat all people the same, regardless of their gender, race, religion or other circumstances or to treat all states the same, regardless of their economic, political or other status.

Genocide—The mass killing of human beings, especially a targeted group, such as people of a particular ethnicity, race, religion or nationality.

Globalization—The process by which regions and countries of the world are becoming interconnected.

Global Warming—The gradual increase in the temperature of the earth's atmosphere, believed to be caused by increased levels of greenhouse gasses such as carbon dioxide, methane and nitrous dioxide.

Humanitarian law—Defines the conduct and obligations of nations engaged in warfare, both in terms of how states act toward one another and how they act in relation to civilians and those not involved in the fighting. It is also known as the "laws of war."

Human rights—The rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. Human rights are universal, inalienable and indivisible. The idea of human rights as inalienable means that it is impossible for anyone to give up their human rights, even if he or she wanted to, since every person is granted those rights by virtue of being human. It also means that no person or group of persons can deprive another individual of her or his human rights. The indivisibility of human rights means that none of the rights considered to be fundamental human rights are more important than any other; they are inter-related.

Human Security—An emerging way of thinking about security (the state of being free from danger or threat) that places human beings—rather than states—as the focal point of security considerations. Human security has been described as the freedom from fear and want.*

International governance organizations—Organizations that are set up by a legal agreement or treaty between two or more states to attempt to solve problems that affect multiple states and designate regulations intended for a global scale.

International law—A set of rules and customs that govern the relationships between countries, known as states.

Jurisdiction—The power or authority to do something, such as make laws.

Legally binding—Means that certain actions are now either required or prohibited by an agreement and violating the terms of the agreement can have legal repercussions enforceable by law.

Mandate—A direction or authorization to act in a particular way on an issue. In the context of the UN and other international organizations, it refers to the document that describes how a particular role is to be fulfilled.

Mass atrocities—A legal term that includes acts that are considered to be crimes against humanity, war crimes and ethnic cleansing.

Member State—A state that is a member of the United Nations.

Multilateral treaty—A treaty agreement made between three or more countries.

Negotiation—Discussion intended to produce a compromise or mutually acceptable agreement.

Non-governmental organization (NGO)—Organizations set up by individuals or groups that advocate for social justice and act as an intermediary between state- dominated international legal systems and individuals. NGOs work to influence government policies at national and international levels.

Optional Protocol—An optional protocol to a treaty is a multilateral agreement that governments can ratify or agree to, intended to further a specific purpose of the treaty or assist in the implementation of its provisions.

Party to a treaty—A country that has signed onto and ratified a treaty and agrees to be legally bound by its terms.

Peacebuilding—The process and activities involved in resolving violent conflict and establishing a sustainable peace.

Peacekeeping—An activity that aims to prevent further conflict between parties. Peacekeepers are usually deployed to monitor the implementation of a ceasefire and oversee the resolution of conflict.

Peacemaking—Peaceful efforts to stop a conflict or prevent its spread by bringing hostile parties to an agreement. These efforts usually involve the use of diplomatic techniques, such as negotiation.

Ratification—The process by which a state officially consents to being legally bound by a treaty.

Repatriation—To return someone to their country of citizenship.

Resolution—The formal decision of an organization.

Responsibility to Protect (R2P)—The international human rights standard aimed at preventing and stopping mass atrocities. R2P empowers the international community to intervene when a country fails to protect its population from serious harm.

Right—A moral or legal entitlement to have or do something.

Rule of Law—A fundamental legal principle that states that the law applies equally to all persons and that no one, neither an individual nor a government, is above the law.

UN Security Council Resolution—A formal expression of an opinion or intention adopted by the UN Security Council. For example, UN Security Council Resolution 1325 provides for the increased participation of women at all levels of decision-making in matters of peace and security.

Social justice—Refers to the idea of creating a society that is based on principles of equality, democracy and solidarity; that understands and values human rights and recognizes the dignity of every human being.

Sovereignty—The exclusive power and jurisdiction of a state to govern its territory.

State—A country or nation considered an organized political community under one government.

States party—A country that is a party to a treaty.

Treaty—An agreement between states that sets out their mutual legal rights and obligations. Treaties are one of the main sources of international law.

Tribunal—A specialized court set up to hear specific kinds of disputes. For example, the International Tribunal for the former Yugoslavia only hears cases related to the mass atrocities taking place in the former Yugoslavia in the 1990s.

United Nations Charter—The treaty that establishes the United Nations and describes its principles, purposes and structure.

Veto—The power of the permanent members of the UN Security Council to prevent the adoption of a draft Security Council resolution regardless of whether the draft has received the required number of affirmative votes. It is also called the “great power unanimity.”

War crimes—Serious violations of humanitarian law during times of war. War crimes may include the willful killing, torture or inhuman treatment of persons or the unjustified destruction of property.



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