

**CHILD ADVOCACY INSTITUTIONS:
PROVIDING EFFECTIVE PROTECTION FOR CHILD AND YOUTH RIGHTS**

M^e Céline Giroux
Vice President
Commission des droits de la personne et des droits de la jeunesse

Speech presented on November 19, 2004 on behalf of the Commission des droits de la personne et des droits de la jeunesse du Québec and the Canadian Council of Provincial Child and Youth Advocates.

International conference *Making Children's Rights Work: National and International Perspectives* (November 18-20, 2004, Montréal), organized by the International Bureau for Children's Rights in partnership, among other organizations, with the Commission des droits de la personne et des droits de la jeunesse du Québec.

Who has never dreamed of living in a society where human rights are respected? Canada is generally recognized as being one such country.

Tomorrow, we will celebrate the fifteenth anniversary of the *Convention on the Rights of the Child*. It gives children everywhere essential rights linked to their health, well-being, education and protection. I say “children everywhere” intentionally, since the meaning and objective of the Convention is to ensure that children are fully recognized as persons, with their own specific rights, rather than as second-class citizens. We all know, however, that the protection and recognition of children’s rights cannot yet be taken for granted, even in countries with a highly developed system of protection. Some problems are universal, and know no boundaries.

This dual reality is convincingly evoked in the posters produced for this Conference. I asked the artist Marie-Denise Douyon to illustrate the reality of the documents and treaties that establish children’s rights. How often, though, are those rights infringed! Children must be the main focus. What do they have to say about themselves? What can they teach us, what do they want? Let’s listen to them, for a change. Let’s give them the right to speak. That’s all they ask, and it’s a reasonable request.

- *So, Marie-Denise, why choose the colour red?*
- *To indicate urgency.*
- *And what about yellow?*
- *Yellow is for hope.*

This is the dual context in which we all work.

Listening to children, informing them, consulting them, letting them participate. Respecting their dignity and, above all, protecting them. This is the core of my message to the Conference, on behalf of my colleagues at the Commission des droits de la personne et des droits de la jeunesse du Québec, and also on behalf of the Canadian Council of Provincial Child and Youth Advocates.

Children’s advocates in Canada

All the children’s rights listed in the Convention must be applied. To ensure that they are implemented, the signatory states must, as specified in the Convention, establish policies and programs, pass the necessary legislation and create supervisory mechanisms. Canada, as a federal state, does not have a nation-wide supervisory mechanism.

However, eight provinces have established children’s rights ombudsmen or advocates, under various titles: Children’s Advocate, Child and Youth Officer, Children’s Ombudsman, etc. They are Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Nova Scotia, Newfoundland and Labrador. In Québec, this role is played by the Commission des droits de la personne et des droits de la jeunesse. A ninth province, New Brunswick, will have a children’s rights advocate in 2005.

The provincial organizations came together in 2001 to form the Canadian Council of Provincial Child and Youth Advocates.

The mandate and powers of each provincial organization are defined in their constituting legislative acts. As a minimum, they all concern themselves with the most vulnerable children in our society, in other words those taken into care by child protection services – children who

have been mistreated, abandoned or neglected, and children who have serious behavioural problems. In some provinces, the organizations are also responsible for young offenders, or children receiving state-administered services in the areas of health, education or public security. In all, over 100,000 children and young people in Canada are concerned. The provincial organizations are responsible for ensuring that the rights of children under the care of the State are respected.

Our role is to help these children and their families gain access to the services they require, to monitor the quality of the services they receive, and to advise our governments on ways to improve those services. As we pursue these goals, we must maintain a general focus on the promotion and defence of children's rights. This involves making the best interest of the child the primary consideration in any actions that affect the child.

We are entrusted with various powers to pursue our mission. We can use mediation, settle disputes, carry out specific and systemic investigations, conduct studies and research, submit opinions and recommendations to our governments and legislative assemblies, and raise public awareness about children's rights and their application. We must file annual reports on our activities, and make them public.

Because of our membership in a single association and the range of our remits and powers, we have a unique overview of the child protection system in Canada and in each individual province.

The Québec human and youth rights commission (Commission des droits de la personne et des droits de la jeunesse) is a member of the Canadian Council. It has the unique additional power to bring before the courts the case of any child whose rights under the *Youth Protection Act* are infringed, and to use legal means to address any question coming under its authority.

The Commission has a different approach to children's rights, because of the fact that it is also a human rights commission. Its mission covers all the rights granted by Québec's *Charter of Human Rights and Freedoms* to all individuals, whatever their age. It has the power to investigate, and order the correction of, any form of discrimination.

Although none of the children's advocates in Canada has a general mandate to apply all the rights recognized in the Convention, all strive, as I mentioned above, to promote its principles and use them as the basis for their actions and positions.

Maintaining independence

The UN Committee on the Rights of the Child has made two remarks about Canada's child advocates. First, child advocacy institutions must be independent, especially from the executive power, if they are to defend human rights in an effective way. The guarantee of independence depends on the organization's status. Currently, some Canadian children's rights advocates report directly to their provincial legislature, and others to a government department, a situation that may affect their freedom of action.

The Committee has also noted, with regret, the lack of an organization at the federal level to monitor children's rights. Several areas of federal jurisdiction in Canada nevertheless affect various aspects of children's lives, such as criminal justice, family justice in divorce cases, citizenship and immigration, Native communities and telecommunications.

The sphere of action of the Canadian Council of Provincial Child and Youth Advocates

Let's return to the Canadian Council of Provincial Child and Youth Advocates which, in addition to acting as a forum for the exchange of information and expertise, a spokesperson and a promotional tool for children's rights, also takes direct action. Here are a few examples.

At the legal level, the Council and the Commission intervened before the courts twice in 2003, in connection with cases involving federal legislation.

First, before the Supreme Court, the Council and the Commission contested the constitutional validity of corporal punishment as a way to discipline children. The Court set guidelines in this area. Before the Québec Court of Appeal, the intervention focused on the incompatibility of Bill C-7, concerning criminal justice for teenagers, with the Convention. We are still waiting to see what changes will result.

Next, members of the Council sit on several national committees such as the Advisory Committee on the Centre of Excellence for Child Welfare and the Advisory Committee or the Canadian Council on Health Services Accreditation. They are also participants in a pan-Canadian study to analyze, throughout Canada, the services provided for young offenders. Other members are active in work specifically aimed at Native children, and we are working with coroners in Canada to provide clearer guidelines for investigations following the death of a child.

At the international level, the Council was part of the Canadian delegation to the United Nations Summit on Children, in New York. It has also lobbied the European Association of Ombudsmen for Children for the creation of an international association of Children's Rights Advocates. Every year, we host delegations from other countries interested in observing our legislation and approaches.

Last, international authorities have solicited the expertise of the Council's members, who are currently cooperating in the North American consultation process led by the United Nation into violence against children around the world. And this is just a summary...

Now, let's look at the organizations themselves. What lessons can be drawn from their actions?

Lessons drawn from actions

It is important to understand how the lessons drawn from their work to defend rights in general and children's rights in particular have allowed the members of the Council to progress in their current endeavours.

Each organization has increased its actions to give children a voice, either by representing them or by helping them to represent themselves. They have defended children's rights by acting as a catalyst for change. They have acquired credibility. It is interesting to note that the source of the complaints they receive has evolved over the years: the first complainants, of course, were children and families, but later judges, lawyers, physicians, teachers, community workers and even educators employed by child protection centres began to file complaints. The media have also, in many cases, sounded the alarm.

Some types of change are slow to happen. It has been necessary to take action to transform mindsets and institutional cultures, to correct policies, to point out the lack of resources and of certain types of services, and to modify established practices, while ensuring that the children who called on our services did not fall victim to reprisals.

In many cases we have had to face resistance, and to mobilize the government apparatus from both the inside and the outside. We have set up alliances with other groups involved in children's rights, and with other players. Most successful interventions can be traced back to a combination of inside and outside pressure exerted on all decision-makers.

One fundamental concern has guided the members of the Council in their work: to demonstrate – an essential point – that access to and the quality of services are in a direct relationship to respect for children's rights. Only when we consider children as complete human beings and create a climate of trust with them does it become possible to establish personalized and effective assistance relationships.

General investigations, however, have shown that certain systemic problems in the ways services are organized and attributed still remain.

The directors and staff of the provincial organizations are aware that child protection services, at all levels, face a heavy workload. Needs have become more varied and more complex. Many children present cases of extreme difficulty. In addition, we must take better care of street kids and young Native people, two populations in which distress is most evident and the suicide rate is highest. These children tend to be overlooked by the current system, and the services now provided need to be adapted to their needs since, in these cases, they are ineffective.

At the same time, although knowledge has advanced, training, clinical expertise and human and financial resources have not followed the same curve. Action must now be taken to improve standards of practice and give case workers better tools to perform their duties, support them and supervise them. Even with the enormous commitment they make to their work, they cannot always avoid the mistakes that create infringements of children's rights.

Above all, the necessary changes must always give young people who receive state services an opportunity to express their viewpoint. What is their perception of the services they receive? For, no matter how hard we have tried, we must be aware that:

How young people see the services they receive

Many young people say that they feel excluded from society. When taken into care, they feel that they are different and are treated differently from other young people. They see life as being full of ambiguity and arbitrariness. They generally have no link to the decision-making process that structures their lives, and cannot influence it. They have a low level of attachment to schools and other social institutions. They often have no significant link with their family or other adults. In short, they feel anonymous and adrift, and they resist any attempt to make contact.

If services are to be improved they must be redesigned with these young people and their needs as human beings in mind. This is what they themselves have stated. The services must be designed not only to keep them out of danger, but also, in particular, to prepare them to live independently. This also means that support services must be developed for when these young people return to society.

The double exclusion of young people in difficulty

There is a second form of exclusion that must be addressed. We cannot speak about children and children's rights without going to the heart of the matter and discussing the question of poverty. Poverty is often a factor in neglect and the development of delinquent behaviour. For

many young people, poverty has a negative effect on their physical and mental health, their ability to learn, their integration into society, and their professional and vocational skills.

This is why, in Québec, the Commission recently submitted a recommendation to the Government and the National Assembly to allow the economic and social rights of individuals already mentioned in the Québec Charter to take precedence over the provisions of other provincial legislation.

A priority for governments and communities

It is important to emphasize that this summary of necessary changes applies to a country where child assistance services are not entirely neglected. In Canada, many children and young people state that have benefited from the services they receive. The Council and the Commission are aware that that, in Canada, instruments are available to protect child and youth rights and monitor the services they receive that are already envied by children's advocates in many other countries.

Experience has shown, however, that we must never lose the sense of urgency that I have already mentioned. This feeling of urgency must lead to action to create the hoped-for changes. I am glad that we have come together here to find solutions.

For now, the aims and hopes of the Council and the Commission are contained in the concerns and suggestions they have made to develop our existing organizations.

Developing existing organizations

I would like to conclude by addressing the following points.

Services for children in difficulty must be a priority for both government and society. Rights, even codified, remain lifeless unless they are recognized. Child protection agencies and children's advocates cannot act alone. Their role is to lobby society to remove the obstacles and introduce the changes that will allow their objectives to be attained.

At the federal level, as stated above, the actions of the Canadian Council remain limited. This is still a vacuum. The implementation of the Canadian plan of action for child protection will need to be coordinated and monitored. Several laws and policies are still inconsistent with the spirit and principles of the Convention.

An institution to oversee compliance with child and youth rights in areas of federal jurisdiction would be a useful addition. Among other things, it would need to have a status that gave it legal standing to file reports with the UN Committee on the Rights of the Child independently from the federal government.

The Council continues its lobbying to ensure that each province and territory sets up an organization to protect children's rights, with the status and powers they need to intervene in an independent way.

Similarly, in addition to its responsibilities in the area of children's rights and oversight of the services provided under the *Youth Protection Act*, the Commission is drafting an avant-garde proposal to enshrine the rights recognized by the *Convention on the Rights of the Child* in the Québec Charter. This will allow it to continue to promote and defend those rights.

A favourable political decision will represent a source of hope, since it will provide new opportunities for both preventive and remedial work. But, if this hope is to blossom, we will have to realize that it is not enough to speak on behalf of children and young people. We must also speak **with** them, help them to express their thoughts, educate them about their rights and allow them to influence the decisions that concern them.

This is why it is a great pleasure for me to hand the floor over to Sheilagh Roxbourg, who has agreed to speak to us about this issue.

Thank you.