

CHAPTER 2

## **Passion, Action, Strength and Innovative Change: The Experience of the Saskatchewan Children’s Advocate’s Office in Establishing Rights-Based “Children and Youth First” Principles**

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There can be no keener revelation of a society’s soul than  
the way it treats its children.

— *Nelson Mandela*

Passion, Action, Strength and Innovative Change. This is the precise terminology needed when considering changes in the delivery of child welfare services to children and their families. Although there are many dedicated staff and much good and innovative work that occurs within child welfare systems, there is also a desperate need for a fundamental change. It is the contention of this chapter’s authors that child welfare

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services and the children and families they serve would greatly benefit from a change that would entrench child rights as a foundation for services and put children and youth at the centre of these services. Unfortunately, much child welfare legislation, policy, and practice has deviated from the concept of the child as the primary client. This has left many jurisdictions, including Saskatchewan, in need of rights-based review and child-centred change to better serve children and their families.

This chapter explores the importance and relevance of child rights, as articulated within the United Nations *Convention on the Rights of the Child* (hereafter, UN CRC or *Convention*), the definitive international treaty regarding child rights. The term “child” is used in accordance with the definition of “child” as set out in Article 1 of the *Convention*, which means “every human being below the age of eighteen years ...” (Canadian Heritage, 1989). The connection between the *Convention* and the Saskatchewan Children’s Advocate Office is clarified, and the work of the Office is described. Actual children’s case studies that exemplify a lack of child rights and child-centred legislation, policy and practice in child welfare are provided to illustrate the strong need for such principles and the action that should follow from them. A practical list of child rights-based child welfare practice is also provided, leading into the Saskatchewan Children’s Advocate “Children and Youth First” Principles. A call to action is followed by the conclusion, which stresses the need to move from children’s “paper rights” to “lived rights.”

## **UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD**

The UN CRC is the most widely endorsed international treaty in history, ratified by 193 States Parties,<sup>1</sup> clearly reflecting the commitment of those signatory nations to respect and promote the positive development of their children and youth. “By its almost universal ratification, by its comprehensiveness and by its legally binding character, it is ... a never seen global binding social contract” (Verhellen, 1996, p. 43). All but two States Parties signed and ratified this treaty, and this was completed more quickly than any other international treaty developed.<sup>2</sup> It was met

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1 States Parties is the term used by international treaties including the *Convention on the Rights of the Child* to represent nations or countries.

2 The United Nations *Convention on the Rights of the Child* was the most quickly

positively on a global level and “[c]learly, the *Convention* has become the most important international legal instrument on the rights of the child. It has also acquired considerable political importance, being repeatedly cited as the most authoritative standard-setting instrument on children’s rights” (Leblanc, 1996, p. 357).

The UN Office of the High Commissioner for Human Rights (OHCHR) has identified four general principles within the 54 articles: non-discrimination; best interests of the child; right to life, survival and development; and respect for the views of the child. These four general principles are meant to guide national programs of implementation (OHCHR, 1996).

The UN *CRC* states that children are entitled to the same basic human rights that all citizens of the world enjoy. “The rights-based approach means describing situations ... in terms of the obligation to respond to the rights of individuals. This empowers people to demand justice as a right, not as a charity” (UNICEF, 1999, p. iv). This is a very important distinction—whereas charity work reflects a generosity of spirit and can contribute to positive outcomes, only rights-based work entrenches both the rights and obligations of all involved. In addition, the *Convention* entitles children to special rights, due to their developmental vulnerabilities. Thus, signing and ratifying the *Convention* legally obligates Canada<sup>3</sup> and Saskatchewan<sup>4</sup> to:

ensure that all children—without discrimination in any form—benefit from special protection measures and assistance; have access to services such as education and health care; can develop their personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in their rights in an accessible and active manner. (UNICEF, 2005)

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signed and ratified treaty in the history of the United Nations. Only the United States and Somalia have failed to ratify this treaty, although each has signed.

- 3 Canada signed the *Convention on the Rights of the Child* on May 28, 1990, and ratified it on December 13, 1991.
- 4 Saskatchewan signed the *Convention on the Rights of the Child* on December 11, 1991.

## Saskatchewan's and Canada's Commitment

In 1994, Saskatchewan created an Action Plan for Children, which developed a number of programs and services to support and enhance the care and protection of our children. The Plan was based on the belief that “Children have rights and entitlements as defined by the United Nations *Convention on the Rights of the Child*” and on such positive principles as “Wherever decisions are made that may affect the child, the safety and best interests of the child must be the primary consideration” (Legislative Assembly of Saskatchewan, 1994, p. 1). The Plan also established the Children’s Advocate Office and was the foundation for the excellent work later achieved by the non-partisan Provincial Legislative Committee on the Sexual Exploitation of Children (Legislative Assembly of Saskatchewan, 2001). The Plan was a good beginning. As a province, we must now take the necessary next steps to ensure that the fundamental human rights of children and youth under the *Convention* are given sufficient priority and are integrated within government legislation, policy, and practice. We must take the “paper rights” of the *Convention* and make them “lived rights” for Saskatchewan’s children and youth.

November 20th of each year has been designated as National Child Day in many countries around the globe. Proclaimed by the government of Canada in 1993 (Howe & Covell, 2007), National Child Day celebrates two historic events for children: the adoption of the United Nations *Declaration on the Rights of the Child* in 1959 and the UN *CRC*, adopted by the United Nations General Assembly in 1989 (Howe & Covell, 2007). Canada signed the UN *CRC* on May 28, 1990, and ratified it on December 13, 1991 (Senate of Canada, 2007). Likewise, the Saskatchewan legislature confirmed its support two days earlier on December 11, 1991, with the provincial government stating:

Support for the Convention is essential because it reaffirms our responsibility for the care and well-being of all children in our society. The Convention also serves as a reminder that as long as there are still children in this province who are not receiving the care and protection to which they are entitled, there is more which must be done. (Legislative Assembly of Saskatchewan, 1991)

The United Nations Committee on the Rights of the Child, in a General Comment in 2002 regarding the need for a National Human Rights

Institution (NHRI) for children in all countries (something Canada is lacking), summarizes succinctly the need for offices such as the Saskatchewan Children’s Advocate:

While adults and children alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that children’s human rights are given special attention. These include the facts that children’s developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments’ response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children’s access to organizations that may protect their rights is generally limited. (Committee on the Rights of the Child, 2002, p. 2)

In 2007, National Child Day had special significance, as the UN CRC turned eighteen. Consequently, Saskatchewan and Canadian youth reaching the age of eighteen on or after November 20, 2007, became the first children born with universal rights under the *Convention*. Although Canada and Saskatchewan have made some progress in protecting the rights and promoting the well-being of this first generation, to a great extent these entitlements have not been sufficiently implemented and have been largely relegated to mere “paper rights.” Howe and Covell have described Canada’s level of commitment in the following terms:

The overall evidence ... suggests that Canada’s level of commitment is—at best—characterized as wavering .... What the record shows ... is an overall pattern of vacillation, sporadic or halting efforts and spotty and uneven policy and legal developments. The CRC [Convention on the Rights of the Child] has rarely even been mentioned in legislation and child-related policy, and this reflects the lack of political concern or even awareness of the rights of the child. (Howe & Covell, 2007, p. 397)

As this vital and eminent international treaty comes of age, there is still much to be achieved by all state governments—including Canada and its thirteen provinces and territories—in order to meet their legally binding international obligations. Both Canada and Saskatchewan must commit to ensuring that the next generation of children and youth will have their rights upheld more stringently and vigorously than their predecessors, and in total conformity with the UN *CRC*. By doing so, they will be taking a lead role in setting standards of care, advancing best practices and ensuring that all children and youth have services and programs that will support their well-being.

### **ADVANCES BY THE SASKATCHEWAN CHILDREN'S ADVOCATE OFFICE**

The Saskatchewan Children's Advocate Office is a rights-based office with foundations firmly entrenched in the UN *CRC*. The Office endeavours to serve the children and youth of Saskatchewan from a rights perspective to ensure not only that they receive the services to which they are entitled but also that they have a voice in all decisions that affect their lives. Our Office continues to be guided by the African expression, "Say Nothing about Me without Me," a constant reminder that children and young people ought to be included and invited to participate in all matters affecting them.

At times we are challenged with queries regarding our rights-based work for children—questions such as, "Don't rights for children erode parental rights?" and "Is rights-based work even needed in a privileged country such as Canada?" In response to the first question, the UN *CRC* is a very parent- and family-friendly<sup>5</sup> international treaty that identifies the special/specific rights of children related to their developmental needs and complementing their basic human rights. "To construct an artificial conflict in the public discourse between parental rights and children's rights is therefore a reactionary position that could be, and sometimes is, used as a justification for repressing children" (Hammarberg, 2007,

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5 The UN *CRC* Preamble as well as twenty-three of the forty-one Articles pertaining to rights in the *Convention on the Rights of the Child* refer to family, parents or guardians. These are Articles: 2, 3, 5, 7, 8, 9, 10, 14, 16, 18, 19, 20, 21, 22, 23, 24, 26, 27, 29, 30, 31, 37, and 40.

p. 115). As retired Canadian Senator Landon Pearson wrote in the Foreword to *A Question of Commitment*:

The standards set by the Convention should not be seen as entitlements that set the child against the adult world. On the contrary, they represent the highest norms of civilized behaviour. Because they are vulnerable, children have the right to our protection. But at the same time, they also have the right to be treated with respect. And it is only within a culture of respect that constructive social responsibility is able to emerge. (in Howe & Covell, 2007, p. x)

With regard to the second question, even in a privileged country such as Canada, rights violations can occur. Historically, we are not so far removed from the adoption of earlier European practices. Myriam Denov, in her chapter titled “Youth Justice and Children’s Rights,” describes three principal stages in Canadian history identified by Covell and Howe as a way to understand the evolution of our perception of children and their rights from chattels to objects of protection to rights holders. “In the first stage, Canadian children were perceived largely as objects under the direct control of parental authority. In the second stage, children were considered a highly vulnerable population in need of state protection. In the final stage, children [are to be] regarded as subjects with inherent rights of their own” (Howe & Covell, 2007, p. 156).

It is imperative that child serving systems, in particular child welfare services, embrace the final evolutionary stage of child rights. To do so would be to recognize children and youth as genuine rights holders who are entitled to service and protection, rather than as vulnerable individuals eligible for charity.

There are still many rights issues that have not been adequately addressed in Canada. For example, full participation by children is far from being recognized, especially when it comes to child welfare proceedings in Saskatchewan. In these court cases, although their lives and futures are being decided, children do not have standing as participants. As our Office has previously submitted to the UN CRC:

In Canada, every province has its own statute dealing with child protection as “child welfare” falls under the

provincial head of constitutional powers. Most provincial child welfare statutes recognize that a child is entitled to separate legal representation where it is deemed to be in the child's best interests; where it will allow a child's perspective to be put forth; where the child has capacity to instruct counsel; or where the child's specific interests differ from those of the parent or state. It is noteworthy that Saskatchewan is the only province that expressly denies a child the right to participate. (Bernstein, St. Onge, & Schury, 2006, p. 5)

A review of the Saskatchewan Children's Advocate Office's advocacy and investigation files indicated that the views and best interests of children and youth were not being routinely represented in child welfare proceedings. Given the vulnerability and disadvantage experienced by youth in general, and especially by those youth who are subject to child welfare proceedings, it is particularly important that they have independent legal representation. In order to address this concern, the Saskatchewan Children's Advocate Office has partnered with Pam Kovacs, Executive Director, Pro Bono Law Saskatchewan, in developing a child and youth representation *pro bono* panel. This panel provides children and youth with a separate voice in the court process:

While the *pro bono* program is an interim measure, it functions to fill the gap until such time as the Government of Saskatchewan changes legislation and implements a permanent, supported program of legal representation for children and youth in appropriate cases. (Saskatchewan Children's Advocate Office, 2008, p. 28)

The Saskatchewan Children's Advocate has also forwarded the following four systemic recommendations to the provincial government, which have not been acted upon as of the time of the writing of this chapter:

**06-10840**

That the Minister of Community Resources introduce proposed amendments to *The Child and Family Services Act* enabling children to obtain full status as a party in child welfare proceedings.



**06-10841**

That the Minister of Community Resources introduce proposed amendments to *The Child and Family Services Act* authorizing judges at all court levels in Saskatchewan to appoint independent legal representation for children in child welfare proceedings.

**06-10842**

That the Minister of Community Resources introduce proposed amendments to *The Child and Family Services Act* setting out prescribed criteria by which a court will determine whether a child requires independent legal representation in child welfare proceedings.

**06-10844**

That the Minister of Community Resources and Justice, in collaboration with relevant stakeholders, develop, fund and implement a legal program, with sufficient training and administrative oversight, that would provide children with access to independent legal representation in child welfare proceedings.

A second rights issue that has not been adequately addressed for children in Canada is that of the corporal or physical punishment of children. As recently as January 30, 2004, the Supreme Court of Canada upheld the constitutionality of section 43 of the *Criminal Code of Canada*. This confirmation to parents and the public that it is acceptable to use corporal punishment “where the force is reasonable under the circumstances and is administered for the purpose of correction” (Bernstein, 2004, p. 2) appears to be unacceptable under the UN *CRC*. This would not be acceptable for any other group of rights holders, yet it is included in law in Canada. For example, Turpel-Lafond (2007) claimed that “[t]he legality of spanking certainly raises fundamental issues regarding whether children are truly free from domestic violence on the same par as their parents” (p. 46), and the Saskatchewan Children’s Advocate Office (2006b) stated that “[i]t is time for Canada to step up to the plate or risk significant embarrassment on the international stage” (p. 17).

At the writing of this chapter, Bill S-209, *An Act to amend the Criminal*

*Code*, has received third reading in the Senate and has been referred to the House of Commons for further examination and consideration.<sup>6</sup> While it was hoped by many children's advocates that this Bill would enact a total repeal of section 43 of the *Criminal Code*, the Bill merely amends section 43 and substitutes wording that is too broad, is not rights-based and does not sufficiently protect children. Specifically, the proposed amendment would allow reasonable force, other than corporal punishment towards a child, to be used by a parent, caregiver or teacher for the purpose of, among other things, "preventing the child from engaging or continuing to engage in excessively offensive or disruptive behaviour."

The decision to maintain the legality of corporal punishment is out of step with international developments, the direction many rights-based countries have taken, and Canadian public opinion (Bernstein, 2004). Furthermore, it has been noted that this decision has implications for child welfare workers. They are in the untenable position of working with legal guidelines that allow certain kinds of hitting, at certain ages, on certain areas of the body with children at risk of abuse.

Allowing for children to be physically punished has been shown to be the wrong approach clinically and from a rights perspective, yet it continues. Opposition to corporal punishment is further supported by both the UN Committee on the Rights of the Child and more recently the Senate of Canada. In October 2003, the Committee on the Rights of the Child, in response to the Canadian presentation, stated:

[T]he Committee is deeply concerned that the State party has not enacted legislation explicitly prohibiting all forms of corporal punishment and has taken no action to remove section 43 of the Criminal Code, which allows corporal punishment. The Committee recommends that the State party adopt legislation to remove the existing authorization of the use of "reasonable force" in disciplining children and explicitly prohibit all forms of violence against children, however light, within the

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6 On June 22, 2009, Senator Hervieux-Payette's Bill S-209, amending section 43 of the Criminal Code, received second reading and was referred to the Senate Justice Committee for further study (after being re-introduced again after the earlier version died when Federal Parliament was prorogued in December 2008).

family, in schools and in other institutions where children may be placed. (Committee on the Rights of the Child, 2003, p. 32)

The Saskatchewan Children’s Advocate has done much work in this area, culminating in three systemic recommendations :

**CAO.SYS.1 (05)**

That the Department of Learning amend *The Education Act* to prohibit the use of corporal punishment in Saskatchewan schools.

**CAO.SYS.2 (05)**

That all government departments and agencies who provide services to children and families incorporate the judicial interpretation provided by the Supreme Court of Canada with regard to Section 43 into policy.

**CAO.SYS.3 (05)**

That education about positive non-violent methods of disciplining children be made widely available to parents by all government departments and agencies responsible for services to children and families.

CAO.SYS.1 (05) and CAO.SYS.2 (05) have both been closed with the Saskatchewan Children’s Advocate Office as accepted and implemented. CAO.SYS.3 (05) was reviewed by our Office and archived.

Another argument that has been put forward is that children’s rights are a non-issue, as children already have basic human rights and are protected by their parents’ authority. On the other hand, Paulo Pinheiro, the Independent Expert for the United Nations Secretary-General’s *Study on Violence against Children*, has astutely stated:

Children are not mini-human beings with mini-human rights. As long as adults continue to regard children as mini-human beings, violence against children will persist. Every boy and girl, as any human being, must have their rights completely respected to develop with dignity. Any form of violence can only undermine their development. (Pinheiro, 2005, p. 6)

The United Nations *Convention on the Rights of the Child*, a document meant to be used in pursuit of rights at a large systemic level as well as basic practical rights at the state level, was written to entrench child rights at both the international and state (country) level. The *Convention* was written for *all* children, and clearly, while most children in Canada (let us be clear—*not all*) live a more comfortable life than many children around the world, rights are a fundamental entitlement and protection, even when life is good, and life is certainly not always good for *all* children in Canada. If anything, the statistical information suggests an under-reporting of the extent of intra-familial violence inflicted upon children:

Official statistics in both the US and Canada indicate that children are over-represented as victims of physical violence in the family, and researchers and practitioners point out that the actual rates of violence and child deaths that result are much higher than those in official reports. (UNICEF Canada, 2005, p. 9)

The track records of both Canada and Saskatchewan are less than stellar when one examines child rights in regard to new Canadians, but especially with regard to indigenous children. As stated by the Standing Senate Committee on Human Rights:

Aboriginal children are disproportionately living in poverty and involved in the youth criminal justice and child protection systems. Aboriginal children also face significant health problems in comparison with other children in Canada, such as higher rates of malnutrition, disabilities, drug and alcohol abuse and suicide.

... The Committee recognizes that the protection of Aboriginal children's rights—and thus the protection of Aboriginal communities' future—is an issue of primary importance for all Canadians and an issue of fundamental concern with respect to the *Convention on the Rights of the Child*. Aboriginal and non-Aboriginal communities are destined to live "in perpetuity." For all the lives at stake, the cost of doing nothing ... is enormous. Cindy Blackstock reiterated the point, telling our Committee that "[b]y

doing nothing, I think we put our own moral credibility as a nation at risk.” (Senate of Canada, 2007, pp. 172-173)

With a rights-based Children’s Advocate in place, why is it so critical to adopt a “Children and Youth First” philosophy in Saskatchewan? Throughout our Office’s advocacy, investigation (primarily child death and critical injury), research and public education work, we have found the safety, protection and well-being of children are often compromised. Following an investigation into the care provided by Oyate, a safe house for sexually exploited children, we noted in our Oyate systematic issues report that the lack of a “child first” approach within government services to children was not unique to Oyate, but that we had repeatedly observed this phenomenon—and its harmful and sometimes lethal effects—through our child death and critical injury investigations:

The CAO has reported on a number of incidents in its Child Death Reviews whereby the current family-centred philosophy, with an insufficient child focus, has had devastating and life limiting effects on children. In the view of the Children’s Advocate, the loss of life of one child is too many—but we have seen too many deaths and critical injuries that reflect this harmful philosophy of reducing children to the status of ‘family chattels’ to be fought over.

In its investigation into the Oyate Safe House, the CAO found a similar pattern of repeated return to abusive and harmful family environments that contributed to the current lifestyle of many of the children interviewed, leaving them with a view of hopelessness and despair.

Often, decisions regarding the child are made in isolation, without the child or his/her input, with an underlying philosophy that values family reunification and cultural considerations over the needs, protection and well-being of the child in question. Unfortunately, the ultimate price is most often paid by the child. If the behaviour of the family, and therefore the living environment, has not changed, the cycle simply continues and becomes inter-generational in nature. (Saskatchewan Children’s Advocate Office, 2006a, p. 35)

## CHILDREN'S CASE STUDIES: EXEMPLIFYING THE NEED FOR ESTABLISHING A "CHILDREN AND YOUTH FIRST" VISION

Over the years, the CAO has been witness to many examples of good case practice; however, we have also been witness to the confusion and poor practice that can occur when a "Children and Youth First" philosophy is not entrenched in legislation, policy and practice. The UN *CRC* is rarely referred to in legislation and policy (Howe & Covell, 2007), leaving practitioners unclear or confused about who the primary client is. As rights holders, children are entitled to protection services that put them and their best interests at the centre of the child welfare involvement. The following stories are those of actual children and illustrate how lack of focus on the child or youth as the primary client or lack of respect for the child's rights can have tragic outcomes. While the stories are real, the names have been changed to protect the children's right to confidentiality.<sup>7</sup>

### Tyler, age 2

Tyler is a two-year-old boy who was beaten so badly by his father that he is now paralyzed on one side of his body. During the Children's Advocate Office's investigation into the services provided to Tyler and his family prior to his injuries, it was found that, over time, Tyler was severely malnourished; his parents continually exposed him and his siblings to known sexual offenders; the children exhibited symptoms of sexual abuse; the health of the children was compromised by the condition of the home (human excrement smeared in no less than fifty places, rotting food, molding clothes and excessive garbage found throughout the home); the children were often locked in the basement; abuse in the form of slapping and hitting was used on the children, including the infants; the parents had inappropriate age expectations of the children; and the parents refused support to learn new ways of parenting. Such a litany of abuse and neglect of children is shocking. However, equally shocking is the more than 40 documented referrals to the Department of Community Resources<sup>8</sup> over a 13-year time period. Despite Tyler's siblings being ap-

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7 One exception is Karen Rose Quill, where the family provided consent to use her full name in a child death review conducted by the CAO.

8 The child welfare agency responsible for child protection in Saskatchewan has

prehended for brief periods of time, Tyler himself was never in care prior to his critical injury, and it was only after his injury that the remaining siblings were brought into care.

Following our investigation, we concluded that the Department of Community Resources did not sufficiently consider the severe and extensive child protection history with all adults involved, including the large number of referrals over the 13-year period during which Tyler and his siblings remained at risk. The frequency, nature and severity of the protection concerns, both reported to the Department of Community Resources and identified by the caseworker, in concert with the failure of the family to demonstrate any positive change, offer ample evidence that Tyler and his siblings were left in a high-risk living situation. The Department failed to protect these children from contact with perpetrators with long and substantiated histories of sexual abuse. Further, the Department of Community Resources was aware that the children were not receiving medical care, and yet did not intervene. The Department of Community Resources did not adhere to a child-centred philosophy in this case, nor did they apply sound principles of permanency planning. This was a family-centred approach at all costs. It is the opinion of the Children’s Advocate Office that the critical injury to Tyler was preventable, had the Department of Community Resources provided Tyler with the child-centred protection services to which he was entitled. (Saskatchewan Children’s Advocate Office, 2008). As Ron Ensom, co-author of the Joint Statement on Physical Punishment of Children and Youth, notes: “There is no benefit to a family that receives preservation services that permit repeated harm to a child” (Ensom, August 16, 2007).

### **Dylan and Brandon, ages 5 and 7**

A CAO Child Death Investigation into the deaths of two siblings, Dylan (5) and Brandon (7), found casework that was solely focused on family reunification in spite of the parents’ continued drinking and non-compliance with case planning. This was one of those families that could be easily written off as “only” neglectful and not abusive. Issues of neglect are at times minimized as simply being a product of poverty, when

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gone through many name changes over the years. At the time of the writing of these investigations the name was Department of Community Resources. It is now known as the Ministry of Social Services.

compared to other child welfare issues. In reality, neglect can occur in any home, irrespective of income, and the outcomes can be just as damaging and tragic as abuse. It is for this reason that this investigation is being shared.

Dylan and Brandon were apprehended on four occasions in a five-year period due to their mother's severe addictions. There were serious neglect concerns, including abandonment in three of the four apprehensions, and an accidental house fire set by the mother in the fourth apprehension. At the time of the first apprehension, the boys were placed with their maternal grandmother briefly, in accordance with the family-centred policy prescribed by the Department of Community Resources until the grandmother refused to take care of them, due to their mother's disclosure that the grandmother's common-law partner had sexually abused her.

Although the two boys were never beaten, their basic needs were not met; they were often at risk due to abandonment, as well as at physical risk due to their mother's frequent intoxication. The mother was provided with a plethora of services related to her addictions and inadequate parenting. She was hosted in the foster home to improve her parenting and was provided with multiple hours of parent aide support, as well as in-patient and community addictions counselling. In spite of the mother's failure to maintain addictions treatment or sobriety, or follow through on any of the parenting supports, the child welfare authorities returned Dylan and Brandon to her. Prior to and shortly after their return, there were reports of continued alcohol abuse and abandonment by their mother. The boys had been returned to the same neglectful environment they had been removed from, in spite of alerts from concerned adults that it was still not a safe home. Very shortly after their return, as the adults were sleeping after drinking all night, the children started a house fire while trying to cook. Although the boys alerted the adults who escaped the blaze, the adults failed to bring the children with them when they fled. A neighbour, seeing the fire, was able to go back into the home and rescue the boy's sister, but was unable to find Brandon and Dylan. The lack of a clear child-centered plan, which in this case resulted in the return of these children to a home without identifiable change, placed them at further risk. The outcome was tragic. (Saskatchewan Children's Advocate Office, 2008).



**Karen Rose Quill, age 20 months**

In 1998, the CAO released a report on the death of Karen Rose Quill, a 20-month-old toddler who died while in foster care. Our Office concluded that Karen’s death was preventable, and that management at all levels exhibited a tolerance for non-compliance with established policy and procedures with regard to Karen’s placement and follow-up in an overcrowded foster home. Karen and her sibling increased the number of children to seven in the foster home where they were placed and where Karen died. The investigation into Karen’s death clearly documented that the foster care system was under stress in 1998.

Unfortunately, our more recent advocacy and investigative work documented that the situation has not improved, and, in fact, for some children it has gotten worse. It has been reported to the CAO, and acknowledged in our discussions with the Department of Community Resources, that on some occasions there have been up to 21 children in one foster home. It has also been reported, and confirmed by the Department, that there are many homes that are regularly operating in non-compliance with policy. According to policy, the approved number of children who can be in a foster home is four, depending on the assessed capacity of the foster home and the needs of the children (Department of Community Resources, 2001).

It is hard to conceive how a child who is being removed from his or her family home and has specific needs relating to being removed from the family, who may have been abused or neglected, and/or may have a developmental delay or medical condition, would have his or her needs met when placed in a foster home that has up to 21 children or youth. Research findings continue to point to the fact that young people in state care lack meaningful participation in decisions affecting them and face early and abrupt emancipation from care and poor educational outcomes (Blackstock, Brown, & Bennett, 2007; National Youth In Care Network, 2004).

**Discussion of Children’s Case Studies**

These three case examples and the current information about foster home overcrowding (Saskatchewan Children’s Advocate Office, 2009) might otherwise be construed as isolated cases and not reflective of the good work that is being done by child welfare system generally. However, our Office has concluded, as a result of our cumulative advocacy

and investigative experience, that the absence of a sustained focus on child-centred permanency planning has been a chronic problem in Saskatchewan's child welfare system.

There is no one simple answer when it comes to the rights, best interests and care of children who have experienced abuse and neglect. This is not to say that removal of children from their biological homes is the only answer; foster care has its obvious limitations as well. What is needed is individualized case planning for each child that meets the needs of the child from a rights-based perspective with a "Children and Youth First" direction. As Landgren (2005) pointed out, "A human rights approach to programming suggests that a wider range of interventions must be considered, based on keeping *all* children safe from harm" (p. 222). This means having access to all options and resources on the permanency planning continuum. For too long "children had to be hurt before they could be helped" (Kufeldt, Simard, Thomas, & Vachon, 2005, p. 305) in the child welfare system. We must be more creative with clinically sound, best interests, rights-based options for children. It is not enough to do the minimum, given that the *Convention* provides that "in all actions concerning children ... the best interests of the child shall be the primary consideration" (United Nations, 1989).

## **CHILD RIGHTS-BASED CHILD WELFARE PRACTICE**

As mentioned earlier, it is time to embrace the final evolution of child rights, recognizing children as rights holders in child welfare services. It is our belief that if child welfare workers were conversant with the United Nations *Convention on the Rights of the Child*, they would be better equipped to bridge the chasm between protection and rights, thereby concurrently protecting children and youth and elevating children and youth's rights. In this context, it is important to note that

Child protection workers are often the unsung heroes when a child is protected from harm or goes on to enjoy a happy and secure life as a result of judicious worker intervention. They should be admired for the importance of the work that they do and for the passion and commitment they exhibit on behalf of our most vulnerable citizens. (Bernstein, 2006, p. 14)

The protection of children and youth can only be strengthened by

rights, as children move beyond victims who require a minimum protective service to persons entitled to protection and recovery services according to their best interests, with full participation. The preamble of the UN *CRC* states clearly “that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding” (United Nations, 1989, p. 1). This moves the State Parties’ obligation far beyond the minimum level of protection services, which provide for survival, to an expectation of a higher best interests philosophy. “A broad definition of *child welfare* would encompass the general well-being of all children and the promotion of optimal child development” (Saskatchewan Social Services, October, 2000, p. 1). Similar to the *Convention* preamble, this definition goes beyond the limitation of protection for survival and speaks to optimal child development. Children and youth are clearly entitled to this, and with the *Convention* securely in their tool box of resources, child welfare workers will be better able to facilitate this.

All *Convention* articles are relevant to *all* children, but specific articles are particularly relevant to the core of child welfare work and the rights of the children involved in those systems. In order to fulfill this obligation, child welfare practice needs to be informed, at a minimum, by articles 1, 2, 3, 6, 9, 12, 19, 20, and 39. With this frame of reference in mind, we have developed the practice points below which, if carried out by child welfare workers, should bring a rights-based focus into their day-to-day child welfare practice. These practice points, as child welfare workers will recognize, are consistent with clinically sound and good casework practice:

1. Every human being under the age of 18 years is a child or youth and is entitled to basic human rights, as well as the special rights afforded by the United Nations *Convention on the Rights of the Child*. From the most vulnerable infant, who is unable to ask for what he/she needs to the most articulate adolescent at the age of 17, all are entitled to special child rights due to their developmental vulnerability. Child welfare systems need to be able to respond to children and youth of with age appropriate resources. (Article 1)
2. While there are many competing interests when child welfare issues arise, it is the child’s or young person’s best interests that

- must be the priority when working with families. The children and youth are the reason why child welfare services are involved—their best interests are paramount. (Article 3)
3. Some children and youth do not survive until adulthood due to neglect and abuse. Child welfare services are obligated to protect children and youth from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parent(s), legal guardian(s) or any other person who has the care of the child. (Articles 6 & 19)
  4. All children are entitled to rights-based child welfare services regardless of their race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status. Child welfare services should be provided without discrimination, regardless of whether the child lives in the far north, a rural or urban area. These services must be provided with cultural competence, recognizing the distinctive cultures of minorities, with special recognition being afforded to the unique circumstances of Indigenous children. (Articles 2 & 30)
  5. Children and youth have an uncharted course of their entire lives ahead of them and have the right to develop to their full potential. Explore their abilities, desires and hopes. Help them make these a reality and all of society will benefit. (Article 6)
  6. Safe and healthy families make for happy and healthy children and youth. The United Nations *Convention on the Rights of the Child* states that children and youth are entitled to be with their parents unless it is contrary to their best interests. Every effort and resource should be accessed to make the familial home a safe and nurturing environment for the child or youth. These homes hold history, culture and identity. If a child can safely stay with family and flourish, this is the best place for him/her. However, some families do not have the capacity to care for their children, and, in such circumstances, safe and caring alternatives must be sought. (Article 9)
  7. The child or youth is the primary client. Take the time to build a relationship, so that he/she will trust you and feel comfortable sharing vital information with you. Include him/her authentically in case conferences. Children being protected and served by

the child welfare system have a right to participate in discussions about them. This is their life; they have opinions and information that are vital to case management decisions. Children and youth are the experts when it comes to their own lives. (Article 12)

8. Alternative care must be supported, accountable, and monitored to ensure that the child is fully able to develop in his/her new home. This includes emergency homes, foster homes, group homes, extended family placements arranged by the child welfare agency, and persons of sufficient interest (POSI). Visit the children regularly and make sure you have time with them alone, so they can speak with you openly about their concerns. If you do hear concerns about a resource, investigate it fully. Moving a child typically means he/she requires additional resources, whether it is support to the home, counseling, new school books, or a set of winter clothing to get through the season. Moving is traumatic enough; children and youth are entitled to the necessities to make the alternative placement successful. (Article 20)
9. It is the responsibility of the child welfare system to provide appropriate services for children to heal from the abuse and neglect they have experienced. Recovery and reintegration of a child or youth is to be managed in a respectful manner. Think about what these children need in terms of support services to be successful. Many of them have suffered so acutely from previous abuse, neglect and placement changes that there may be a need for a number of services. They are entitled to all resources that will make their lives a little easier. (Article 39)

With an understanding of these particular UN *CRC* articles and how they can be applied to child welfare practice on the ground, child welfare workers will be much better prepared to address permanency planning from a rights-based perspective. Historically, permanency planning alternatives consisted of the biological family or closed adoptions. Permanency planning has evolved beyond these parameters with options such as kinship care, customary care, persons of sufficient interest, guardianship care, custom adoption, open adoption, and subsidized or assisted adoption. This more expansive permanency continuum needs to be further explored in this province to provide consistency, and offer permanence for children (Farris-Manning & Zandstra, 2007).

Children are entitled to permanency planning through detailed case work on an individualized basis throughout their exposure to the child welfare system, and must be considered the primary client in any planning. As Judge Thomas Gove wrote in his British Columbia “Report of the Gove Inquiry into Child Protection”:

The province needs to be clear that the child is the paramount client of the child welfare system. It needs to reflect this ‘child-centredness’ in legislation, training, policies, case supervision, case practice and advocacy. Doing so will demand that child welfare organizations act with undivided loyalty to the child, making choices based on what is best for the child. Such decisions might include assisting parents and other caregivers, when such assistance fosters the child’s safety and well-being. Sometimes, it will mean removing the child. (Gove, 1995, pp. 245-246)

We *all* have an obligation to be child rights advocates to support these, the most vulnerable citizens—our children. It is imperative that children and youth have as many advocates as possible, be they natural family, community or statutory advocates. In this regard, we would encourage everyone—whether a parent, family member, teacher, caregiver, or professional—to become effective child rights advocates for children and youth and to find practical ways to help them on a day-to-day basis.

With this backdrop in mind, it is our Office’s view that the current family-centred child welfare policy and legislation, combined with inconsistent child welfare practice, and an uneven application of relevant policy to *all* children, often converge in a manner that impedes the placing of “Children and Youth First” in the province of Saskatchewan.

### **“CHILDREN AND YOUTH FIRST” PRINCIPLES**

We next turn to the question as to why it is important to advance a “Children and Youth First” vision in Saskatchewan. Although we see many examples of committed casework by individual service providers, in our daily work we do not see strong evidence that government legislation, policy, programming, or practice with respect to children and youth are being consistently developed in keeping with: 1) the principles of the United Nations *Convention on the Rights of the Child*; 2) a “Children and

Youth First” service philosophy; and 3) an inclusive consultation process with children and youth.

A report released by the Standing Senate Committee on Human Rights, entitled *Children: The Silenced Citizens* (Senate of Canada, 2007), supports our contention that the principles of the UN *CRC* have largely been ignored, both in Saskatchewan and throughout Canada. The Report concludes that Canada is failing to demonstrate respect for the rights of its children and is ignoring the promises it made when it signed the UN *CRC*.

The UN Committee’s investigations have firmly led us to the conclusion that the UN *CRC* is not solidly embedded in Canadian law, in policy, or in the national psyche. Canadians are too often unaware of the rights enshrined in the *Convention*, while governments and courts use it only as a strongly worded guiding principle with which they attempt to ensure that laws conform, rather than treating it as an instrument necessitating concrete enforcement. No body is in charge of ensuring that the *Convention* is effectively implemented in Canada, and the political will is still lacking. (Senate of Canada, 2007, p. 193)

The Senate Committee Report makes the point that, while the vision of the UN *CRC* “properly puts children at the centre, in the context of their family, their community and their culture” (p. 28), there is nonetheless a “gulf between the rights rhetoric and the realities of children’s lives” (p. 224) in Canada. In particular, the Senate Committee observed that “[c]hildren’s voices rarely inform government decisions, yet they are one of the groups most affected by government action or inaction. Children are not merely underrepresented; they are almost not represented at all” (p. 27). The responsibility to address this situation appears to lie with all governments, including that of Saskatchewan—the Committee Report recognized that “all levels of government across Canada have a responsibility, and the capacity, to protect children’s rights” (p. 50) and to implement the UN *CRC* within their respective jurisdictions.

Our Office’s aggregate experience—in the areas of advocacy, public education, and child death and critical injury investigations—has demonstrated that, as a society responsible for the well-being and best interests of all children, we require a paradigm shift in attitude, policy, practice and legislation. To do a better job of addressing the needs of children, especially to place the interests of “Children and Youth First” in Saskatchewan, our Office felt it was necessary to develop a set of principles to firmly establish



a “Children and Youth First” direction. As part of the process of developing these principles, we sought both internal and external feedback and used external focus groups with youth. This enabled us to continually refine and improve upon earlier drafts of our principles. These “Children and Youth First” principles, then, represent our Office’s best efforts to simplify and highlight the most critical and relevant provisions in the *Convention*, based upon our observations and experience, and to make them explicitly applicable to all Saskatchewan children. They are as follows:

1. That all children and youth in Saskatchewan are entitled to those rights defined by the United Nations *Convention on the Rights of the Child*.<sup>9</sup>
2. That all children and youth in Saskatchewan are entitled to participate and be heard before any decision affecting them is made.<sup>10</sup>

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9 United Nations, *Convention on the Rights of the Child*. (1989: Geneva). This is one of the beliefs listed in the Saskatchewan’s Action Plan for Children, Policy Framework, (1995). See also Rae, J., *Indigenous Children: Rights and Reality: A Report on Indigenous Children and the U.N. Convention on the Rights of the Child*, (UN Sub-Group on Indigenous Children and Youth), University of Toronto: 2006, at p. 7, where it is stated that “the concept of ‘children’s rights’ in the UN CRC resonates deeply with many Indigenous peoples today as comparable to, or at least compatible with, their own concepts of human dignity and childhood.” The *Convention* is legally binding at the international level, and governments must take their obligations seriously to implement it in domestic practice, policy and legislation. In the absence of a clear conflict with domestic legislation, the United Nations *Convention on the Rights of the Child* should be used as a contextual tool for statutory interpretation. For instance, in *Baker v. Canada*, [1999] 2 S.C.R. 817 and *Winnipeg Child and Family Services v. K. L. W.*, [2000] 2 S.C.R. 519, the Supreme Court of Canada applied the presumption that an interpretation favoured by the *Convention* should be followed in domestic law. See also: Yoles, V., *The UNCRC: A Practical Guide for its Use in Canadian Courts* (Toronto: UNICEF Canada, 1998).

10 This principle is consistent with Article 12(1) of the United Nations *Convention on the Rights of the Child*, which provides that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” The African expression “Say Nothing about Me Without Me” has been adopted by the Saskatchewan Children’s Advocate Office and embodies this principle.



3. That all children and youth in Saskatchewan are entitled to have their ‘best interests’ given paramount consideration in any action or decision involving them.<sup>11</sup>
4. That all children and youth in Saskatchewan are entitled to an equal standard of care, protection and services.<sup>12</sup>
5. That all children and youth in Saskatchewan are entitled to the highest standard of health and education possible in order to reach their fullest potential.<sup>13</sup>
6. That all children and youth in Saskatchewan are entitled to safety and protection from all forms of physical, emotional and sexual harm, while in the care of parents, governments, legal guardians or any person.<sup>14</sup>
7. That all children and youth in Saskatchewan are entitled to be

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11 This principle is consistent with Article 3(1) of the United Nations *Convention on the Rights of the Child*, which states that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” See also Saskatchewan’s Action Plan for Children, Policy Framework, refinement of one of the Principles listed. The ‘best interests’ of the child should take precedence over any jurisdictional or political considerations: *supra*, note 4, Statement of Jordan’s Principle.

12 This principle is consistent with Article 2(1) of the United Nations *Convention on the Rights of the Child*, which provides that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” This means that the minimum child protection bar under provincial child protection legislation is a constant and does not shift between different groups of children.

13 This principle is consistent with Articles 24-29 of the United Nations *Convention on the Rights of the Child*.

14 This principle is consistent with Article 19 of the United Nations *Convention on the Rights of the Child*, which provides that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect, or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

treated as the primary client, and at the centre, of all child serving systems.<sup>15</sup>

8. That all children and youth in Saskatchewan are entitled to have consideration given to the importance of their unique life history and spiritual traditions and practices, in accordance with their stated views and preferences.<sup>16</sup>

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15 This principle is consistent with Article 3(1) of the United Nations Convention on the Rights of the Child, *supra*, note 9. See Gove, Thomas (Judge), British Columbia Report of the Gove Inquiry into Child Protection, Volume 2, (Matthew's Legacy), (Ministry of Social Services, 1995) at pp. 245, 246, where he states that "the Province needs to be clear that the child is the paramount client of the child welfare system" and emphasizes the importance of "child-centredness" and placing the child "at the heart of" the child welfare system. See also Hatton, Mary Jane (Madam Justice), Report of the Panel of Experts on Child Protection (Toronto: Ontario Ministry of Community and Social Services, 1998), where it was determined that the pendulum had swung too far in favour of parental rights, with the necessary child-focus being sacrificed in the process. See further, Bernstein, M., Regehr, C., and Kanani, K., Liability for child welfare workers: Weighing the risks, in Bala, N., et al. (Eds.), *Canadian Child Welfare Law: Children, Families and the State*, 2nd ed. (Toronto: Thompson Education Publishing, Inc., 2004) at p. 405, where reference is made to the finding of the Ontario Coroner's Jury, in the Jordan Heikamp Inquest, that the child protection worker's focus in the case "was primarily on the mother and not on the child" and to the jury's recommendation that "it should be made clear to all Child Protection Workers and their Child Protection Supervisors that their client is the child in need of protection, not the parent or the family." This will mean that in the event of a conflict between the best interests of a child and the interests of other family members, it is the best interests of the child that are paramount.

16 This principle is consistent with Article 30 of the United Nations *Convention on the Rights of the Child*, which provides that "In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language." See *supra*, note 1, especially *Oyate Beyond 'at Risk' Systemic Issues Report*. See also: Draft United Nations *Declaration on the Rights of Indigenous Peoples*, Resolution 1994/45, (approved by the United Nations Human Rights Council, June 2006, but not yet passed by the General Assembly), Preamble, where it is stated, among other things, that "Recognizing the urgent need to respect and promote the rights and characteristics of indigenous peoples ... which derive from their cultures, spiritual traditions, histories and philosophies."

Our Office has developed these “Children and Youth First” principles to define our core beliefs in relation to the care and services that ought to be provided to Saskatchewan children and youth. This is important in order to avoid definitional ambiguity, since our Office often finds itself in conflict with government’s interpretation of putting the needs of “Children and Youth First.” In addition, we have to be able to put what we mean to the test as an accountability measure not only for the provincial government, but also for our own Office.

### **A CALL TO ACTION**

Our Office has determined that there is a need for the provincial government to develop a revitalized “Children and Youth First” action plan. As a result, we have used our “Children and Youth First” vision and principles to engage government leadership and departments responsible for child-serving systems in a positive process of advancing and establishing a transformative action plan for children and youth. We have proposed four components to government, which are, in our view, foundational to a renewed action plan for children and youth. These are as follows:

1. A well-articulated and integrated vision that places the needs and interests of children and youth first.
2. The inclusion of references to both ‘children’ and ‘youth’ in action plan, vision statement and core principles. (A key component fundamental to a new action plan will be the need to expand the ‘child’ focus to include and identify ‘youth,’ so that the action plan is guided by a more inclusive “Children and Youth First” direction.)
3. The endorsement of all eight “Children and Youth First” principles that will anchor this new “Children and Youth First” vision.
4. A commitment to incorporate the “Children and Youth First” principles into existing and future government policy, practice, programming and legislation. (A commitment to incorporate the principles could generate the development of an enhanced and integrated ‘child and youth-centred’ permanency child welfare continuum, with expanded and more flexible options that are inclusive of aboriginal culture and spiritual traditions).

The challenge to implement the *Convention* has taken on significant weight in the context of the recent Supreme Court of Canada decision of *Syl Apps Secure Treatment Centre v. B. D.* (hereafter, *Syl Apps v. B. D.*), where that Court unanimously ruled on July 27, 2007, that government ministries and child welfare agencies have the right to intervene in the lives of families, without fear of being sued by parents or other family members, in order to protect vulnerable children who are at risk of harm and to promote their best interests. In particular, Madam Justice Abella, speaking for the entire Court, concluded that:

[I]f a corresponding duty is also imposed with respect to the parents, service providers will be torn between the child's interests on the one hand, and parental expectations which may be unrealistic, unreasonable or unrealizable on the other. This tension creates the potential for a chilling effect on social workers, who may hesitate to act in pursuit of the child's best interests for fear that their approach, could attract criticism—and litigation—from the family. They should not have to weigh what is best for the child on the scale with what would make the family happiest, finding themselves choosing between aggressive protection of the child and a lawsuit from the family. (*Syl Apps v. B. D.*, 2007, para. 50)

The outcome of this decision acknowledges the vital role of families as being “the core social unit” (*Syl Apps v. B. D.*, 2007, para. 1) of primary care for a child, but also affirms that the rights of the family are subordinate to the “state's overriding duty to ensure that children are protected” (*Syl Apps v. B. D.*, 2007, para. 2).

This Supreme Court of Canada judgment has particular relevance for Saskatchewan, where the current child welfare system is grounded in family-centred legislation, policy, programming and practice. The direct impact on children is that the family-centred approach, in combination with inconsistent child welfare practice and an uneven application of relevant policy to all children, has compromised child safety, protection and well-being. Adding to the danger that children already face is the system-generated confusion exhibited, at times, by child welfare authorities about whether the primary client is the child or the family.

The Court's decision has clearly articulated that the ‘child’ and not

the ‘family’ is the client to whom the duty of care is owed, and whose best interests are to be served at all times. The ruling is also consistent with two of our Office’s previous public statements: first, that all government levels, provincial, federal and First Nations, cannot place other agendas—be they jurisdictional, political, or financial—ahead of the needs and best interests of children; and second, that while recognizing the importance of family, culture and community, such governmental entities cannot place family and blood ties ahead of the safety, protection and well-being of children.

Within a First Nations context, the Court’s decision is consistent with Jordan’s Principle, contained in a 2005 First Nations Child and Family Caring Society of Canada report, which asserts in memory of a five-year-old Manitoba First Nations child named Jordan Anderson, that the interests of children should always come first, ahead of inter-jurisdictional and funding disputes:

In keeping with the United Nations *Convention on the Rights of the Child*, we recommend that a child first principle be adopted in the resolution of inter-governmental jurisdictional disputes. Under this procedure, the government (provincial or federal) that first receives a request to pay for services for a Status Indian child, where that service is available to other children, will pay for the service without delay or disruption. The paying party then has the option to refer the matter to a jurisdictional dispute resolution table. In this way the rights of the child come first whilst allowing for the resolution of jurisdictional issues. (First Nations Child & Family Caring Society of Canada, 2005, p. 107)

The pronouncement of the Supreme Court of Canada performs a positive service in acknowledging that “child protection work is difficult, painful and complex” (*Syl Apps v. B.D.*, 2007, para. 64) and in clarifying for child welfare authorities both the ambit and central focus of their statutory obligations. It also goes a great distance in establishing the need for a “Children and Youth First” commitment. Indeed, it recognizes that “it is not the family’s satisfaction in the long-term to which the [child welfare legislation] gives primacy; it is the child’s best interests” (*Syl Apps v. B.D.*, 2007, para. 43).

Accordingly, the Supreme Court of Canada judgment has provided the foundation and created the opportunity for our provincial government to implement a “Children and Youth First” vision relative to all programs and services provided to children. It is clearly time for a paradigm shift in attitude, legislation, policy and practice.

### **CONCLUSION: MOVING FROM “PAPER RIGHTS” TO “LIVED RIGHTS”**

In conclusion, and to return to the theme of the Prairie Child Welfare Consortium Symposium, we wish to emphasize that, while it has been an extremely positive, enlightening and collaborative process to create and promote the “Children and Youth First” principles, what we are asking for is *action*—an action plan by our government that commits to a course of action by all government sectors to incorporate these principles into legislation, policy, programming and practice, so that we can achieve positive outcomes for children and youth. This action plan needs to be implemented with fairness, vigor and passion. It is not sufficient for these principles to be reduced to simple platitudes or reflect only “future good intentions”—they must, instead, be given a sense of urgency and be translated into “passionate action.” Our children and youth deserve no less from all of us.

As a special tribute to National Child Day in 2007, when the UN *CRC* reached its majority, we must, as a province and community, pledge a stronger commitment to this new second generation of children with rights under the *Convention*. We must all seek opportunities to make a tangible difference in their lives and to ensure that they will be able to practically access and exercise their rights. In this way, we will go a great distance towards transforming these “paper rights” into actual “lived rights.”

### **POSTSCRIPT**

On February 25, 2009, in response to our Office’s Special Report, entitled *A Breach of Trust: An Investigation Into Foster Home Overcrowding in the Saskatoon Service Centre*, where our Office profiled the serious plight of children residing in overcrowded foster homes, the provincial government announced an Action Plan which set out, for the very first time, the following commitment:

... The Government of Saskatchewan has adopted the “Children and Youth First” Principles as formulated by the Children’s Advocate (see [www.saskcao.ca/documents/cao-principlesweb.pdf](http://www.saskcao.ca/documents/cao-principlesweb.pdf)). These Principles will act as a guide in examining policy and legislation and in developing and implementing both policy and legislative changes.

... The Government of Saskatchewan is committed to putting children and youth first, and to ensuring a better life for these vulnerable members of society (Ministry of Social Services, 2009).

In a subsequent letter, Premier Brad Wall provided the following supplementary statement:

Our government is committed to providing children within our province, and specifically those within the care of the Ministry of Social Services, with the security and opportunities they rightfully deserve. The well-being of Saskatchewan children and youth is paramount to this government, and as a result, we were pleased to adopt the “Children and Youth First” Principles (Wall, 2009).

After close to two years of persistent advocacy by our Office, it was gratifying to see the provincial government’s enlightened and progressive step towards elevating awareness of the rights, interests and well-being of children and youth in our province.

By adopting the “Children and Youth First” Principles, Saskatchewan has distinguished itself by addressing its obligations, after having endorsed the United Nations *Convention on the Rights of the Child*. Our Office is extremely pleased by this development and looks forward to working with all child-serving ministries, in the coming months and years, with a view to incorporating these Principles into legislation, policy and practice.

It is hoped that our experience can serve as an enduring teaching moment and that these Principles can act as a template to be applied and/or adapted in other jurisdictions.

## REFERENCES

- Bernstein, M. (2004). The decision of the Supreme Court of Canada upholding the constitutionality of Section 43 of the Criminal Code of Canada: What this decision means to the child welfare sector. *Ontario Association of Children's Aid Societies Journal*, 48 (2), 2-14.
- Bernstein, M. (2006). The challenge of professionalizing child protection work and retaining the title of social worker. *Canada's Children*, Fall 2006, (p42-46).
- Bernstein, M., St. Onge, M., & Schury, R. (2006). *Saskatchewan children's right to participate and be heard in child welfare proceedings*. Paper submitted by the Saskatchewan Children's Advocate Office to the United Nations Committee on the Rights of the Child General Day of Discussion, Group 1, The child's right to be heard in judicial and administrative proceedings. Retrieved May 6, 2008, from <http://www.saskcao.ca/documents/Saskatchewan%20Children's%20Right%20to%20Participate%20and%20be%20Heard%20in%20Child%20Welfare%20Proceedings.pdf>
- Blackstock, C., Brown, I., & Bennett, M. (2007). Reconciliation: Rebuilding the Canadian child welfare system to better serve Aboriginal children and youth. In I. Brown, F. Chase, D. Fuchs, J. Lafrance, S. McKay, & S. Prokop-Thomas (Eds.), *Putting a human face on child welfare: Voices from the prairies* (pp. 59-87). Toronto, ON: Centre of Excellence for Child Welfare and Prairie Child Welfare Consortium.
- Canadian Heritage. (1989). *Convention on The Rights of The Child*. Canadian Heritage Booklet, Canada. Hull, Quebec: Human Rights Program, Department of Canadian Heritage
- Committee on the Rights of the Child. (2002). *General comment: The role of independent national human rights institutions in the promotion and protection of the rights of the child*. Retrieved May 9, 2008, from [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2002.2.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2002.2.En?OpenDocument)
- Committee on the Rights of the Child. (October 2003). *Concluding observations: Canada*. Retrieved May 9, 2008, from <http://www1.umn.edu/humanrts/crc/canada1.htm>
- Department of Community Resources. (2001). Family and Youth Division, Children's Services Policy and Procedure Manual, Chapter 4, Section 4, Subsection 7, pp. 47-51.
- Ensom, R. (August 16, 2007). Written personal communication to Marvin Bernstein, Saskatchewan Children's Advocate.
- Farris-Manning, C., & Zandstra, M. (2007). Children in care in Canada: A summary of current issues and trends with recommendations for future research. In Child Welfare League of Canada, *The welfare of Canadian children: It's our business: A collection of resource papers for a healthy future for Canadian children and families* (pp. 54-72). Retrieved May 9, 2008, from <http://www.cwlc.ca/files/file/policy/Welfare%20of%20Canadian%20Children%202007.pdf>



- First Nations Child & Family Caring Society of Canada. (2005). *WEN: DE: We are coming to the light of day*. Retrieved February 23, 2008, from <http://www.fnfcfs.com/docs/WendeReport.pdf>
- Gove, Justice T. (1995). *Matthew's story: Report of the Gove inquiry into child protection*. Victoria, BC: British Columbia Ministry of Social Services, Vol. 2.
- Hammarberg, T., (2007). The rights of the child – much more than charity. In J. Conners, J. Zermatten & A. Panayotidis (Eds.), *18 Candles: The Convention on the Rights of the Child reaches the age of majority* (pp. 113-119). Institut international de droits de l'enfant. Retrieved May 6, 2008, from <http://www.ohchr.org/Documents/Publications/crc18.pdf>
- Howe, R. B., & Covell, K. (Eds.) (2007). *A question of commitment: Children's rights in Canada*. Waterloo, ON: Studies in Childhood and Family in Canada.
- Kufeldt, K., Simard, M., Thomas, P., & Vachon, J. (2005). A grass roots approach to influencing child welfare policy. *Child and Family Social Work*, 10, 305-314.
- Landgren, K. (2005). The protective environment: Development support for child protection. *Human Rights Quarterly*, 27(1), 214-248.
- Leblanc, L. J. (1996). Reservations to the Convention on the Rights of the Child: A macroscopic view of state practice. *The International Journal of Children's Rights*, 4, 357-381.
- Legislative Assembly of Saskatchewan. (December 11, 1991). Hansard's Transcript, per former Justice Minister, Bob Mitchell. Regina, Saskatchewan
- Legislative Assembly of Saskatchewan. (1994). *Saskatchewan action plan fact sheet*. Regina, Saskatchewan: Author.
- Legislative Assembly of Saskatchewan. (June 2001). *Special committee to prevent the abuse and exploitation of children through the sex trade final report* (2nd Session of the 24th Legislature). Regina, Saskatchewan: Author.
- Ministry of Social Services. (February 25, 2009). News Release. *Putting children first: Province takes action on child welfare*. [www.gov.sk.ca/news](http://www.gov.sk.ca/news).
- National Youth in Care Network. (2004). *Speak the truth in a million voices. It is silence that kills: Stories for change*. Ottawa, ON: National Youth in care Network.
- OHCHR (Office of the United Nations High Commissioner for Human Rights). (1996). *General guidelines for periodic reports: 20/11/1996 CRC/C/58. (Basic reference document)*. Retrieved July 21, 2008, from [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.58.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.58.En?Opendocument)
- Pinheiro, P. (June 3, 2005). Statement by the independent expert to the North American regional consultation for *The United Nations Secretary-General's study on violence against children*. Retrieved May 6, 2008, from <http://www.violencestudy.org/r25>.

- Saskatchewan Children's Advocate Office, (September 2006a). *Beyond 'at risk' children systemic issues report regarding sexually exploited children and Oyate safe house*, Saskatoon, Author. Retrieved May 10, 2008, from <http://www.saskcao.ca/documents/Oyate%20Investigative%20Report.pdf>
- Saskatchewan Children's Advocate Office, (September 2006b). "*Child First:*" *The right focus*. Brief to the standing senate committee on human rights: Canada's international obligations to the rights and freedoms of Children, September 19, 2006, Saskatoon, Author. Retrieved May 8, 2008, from [http://www.saskcao.ca/documents/Child%20First%20--%20The%20Right%20Focus%20\(Submission%20to%20the%20Standing%20Senate%20Committee\).pdf](http://www.saskcao.ca/documents/Child%20First%20--%20The%20Right%20Focus%20(Submission%20to%20the%20Standing%20Senate%20Committee).pdf)
- Saskatchewan Children's Advocate Office. (June 2008). *Children's advocate office 2007 annual report. Children and youth first: The right action*. Saskatoon, SK: Author.
- Saskatchewan Children's Advocate Office. (February 2009). *A breach of trust: An investigation into foster home overcrowding in the Saskatoon Service Centre*, Saskatoon, SK: Author. [www.saskcao.ca](http://www.saskcao.ca).
- Saskatchewan Social Services. (October 2000). *Child welfare in Saskatchewan*.
- Senate of Canada, Standing Senate Committee on Human Rights. (2007). *Children: The silent citizens. Effective implementation of Canada's international obligations with respect to the rights of children: Final Report of the Standing Committee on Human Rights*. Ottawa, ON, April 2007. Retrieved May 9, 2008, from <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep10apr07-e>.
- Syl Apps Secure Treatment Centre v. B.D.*, 2007 SCC 38, [2007] S.C.J. No. 38.
- Turpel-Lafond, M. E. (2007). Who listens to children? *The Verdict*, 113, 46-47.
- UNICEF. (2005). *Convention on the Rights of the Child*. Retrieved February 1, 2005, from <http://www.unhchr.ch/html/menu3/b/k2crc.htm>
- UNICEF. (1999). "Forward" in *A Human Rights conceptual framework for UNICEF*. Retrieved May 8, 2008, from <http://www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=2>
- UNICEF Canada. (2005). *Violence against children regional consultation North America: United Nations secretary-general's study on violence against children*. Retrieved July 21, 2008, from <http://www.violencestudy.org/a94>
- United Nations. (1989). *United Nations Convention on the Rights of the Child*. New York: United Nations.
- Verhellen, E. (1996). *The Convention on the Rights of the Child*. In E. Verhellen (Ed.), *Understanding children's rights: Collected papers presented at the first International Interdisciplinary Course on Children's Rights* (pp. 27-43). Ghent, Belgium: University of Ghent.
- Wall, B. (March 17, 2009). Written correspondence from the Premier of Saskatchewan to Marvin Bernstein, Saskatchewan Children's Advocate.