



THE CANADIAN
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Template for Canada's Report under the United Nations Convention on the Rights of the Child

**CANADIAN BAR ASSOCIATION
CHILDREN'S LAW COMMITTEE**

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA's United Nations Convention on the Rights of the Child Subcommittee (UNCRC Subcommittee) of the Children's Law Committee (CLC), with assistance from the Legislation and Law Reform Directorate at the CBA office.

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Template for Canada's Report under the United Nations Convention on the Rights of the Child

I. INTRODUCTION

As a State Party to the United Nations Convention on the Rights of the Child (the Convention or UNCRC), Canada must submit a report to the Committee on the Rights of the Child (the UN Committee) every five years, on its progress in implementing the Convention. Since ratification in 1991, Canada has submitted four reports to the UN Committee. Its fifth and sixth reports are due on July 11, 2018. In preparation, Heritage Canada developed a draft reporting template in consultation with federal institutions and provincial and territorial counterparts. In September 2017, the draft, was circulated for comment to Indigenous organizations, child rights advocates, non-profit organizations and professional associations (collectively, civil society).¹

The Canadian Bar Association's Children's Law Committee (the CBA Committee) welcomes the opportunity to comment on the draft reporting template. The Government's declared intent is to build on Canada's record in human rights diplomacy.² Leadership in this field, as in any other, must begin at home, and requires transparent and accountable mechanisms for keeping our promises to children. The CBA Committee has repeatedly urged the federal government to move forward with the early implementation of the UN Committee's last Concluding Observations to Canada.³

This submission briefly outlines contextual factors, including the UN Committee's feedback on Canada's earlier reports, the evolution of the reporting process, generic⁴ and treaty-specific⁵ guidelines on drafting State Party reports, and the status of the UN Committee's collaboration

¹ See Appendix A for Request for Comments and Appendix B for Draft Reporting Template.

² Prime Minister Trudeau to UN General Assembly 2016, 2017, available [online \(https://gadebate.un.org/en\)](https://gadebate.un.org/en).

³ [Resolution 13-11-A](#); [Letter](#) to Prime Minister Harper (March 2014); [Letter](#) to Prime Minister Trudeau (May 2016)

⁴ Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a core document and treaty specific documents. HRI/MC/2006/3, issued on May 10, 2006.

⁵ Treaty Specific guidelines regarding the form and content of periodic reports to be submitted by State parties under article 44, paragraph 1(b), of the Convention on the Rights of the Child, CRC/C/58/Rev.3, adopted in the Committee's 65th session January 13-31, 2014.

with Canadian and global child rights researchers on the development of a new standard for child rights monitoring and report writing⁶. We suggest improvements to the proposed grouping of rights. We also suggest the addition of reporting issues on substantive rights protected under the Convention, and on procedural obligations of Canada and other States Parties, including general measures of implementation

II. CONTEXT

In 2012, the UN Committee commented simultaneously on Canada's third and fourth reports, as the third report, due in 2007, had not been filed in a timely fashion. The UN Committee expressed concern about Canada's failure to follow the reporting guidelines and made clear recommendations to improve coordination of its reporting across federal, provincial and territorial jurisdictions; to improve data monitoring; to develop a comprehensive legal framework for domestic incorporation of the Convention and its protocols; to establish a national Ombudsman for Children as an independent monitoring mechanism; and to develop and strengthen interjurisdictional coordinating mechanisms for child rights implementation and provincial and territorial plans of action for child rights.⁷

During the UN Committee's consideration of Canada's report in fall 2012, NGO participants noted the lack of opportunities for meaningful participation in the process by Canadian youth and children in attendance. They also noted that Canada's third and fourth reports lacked focus and cohesion.⁸

The development of a new reporting template is only one – albeit an important – step to improve the reporting process. State Party Reports are about more than accountability at the UN. Fundamentally, they constitute periodic check-ins by States Parties to monitor their own progress. As the basic enforcement mechanism for many international human rights treaties, the process relies on the ratifying parties to address the UN Committee's concluding

⁶ GlobalChild: (<http://ow.ly/by4830hkDDx>)

⁷ Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012), CRC/C/CAN/Co-3-4, 6 December 2012, [available online \(http://ow.ly/TC1830hkDMy\)](http://ow.ly/TC1830hkDMy)

⁸ "UN confronts Canada over lack of national child rights strategy", Canadian Press (26 September 2012), [available online \(http://bit.ly/2Dzk0TK\)](http://bit.ly/2Dzk0TK). The criticism about the lack of interjurisdictional coordination can be measured against the report itself : Convention on the Rights of the Child: Third and Fourth Reports of Canada – Covering the Period January 1998 to December 2007, [available online \(http://ow.ly/pdub30hkE2y\)](http://ow.ly/pdub30hkE2y)

observations in good faith, with a view to improving their record of implementation and enforcement between reporting periods.

Canada's reports appear to start from the premise that our laws comply with international human rights conventions; however, there is still work to be done. Periodic reports and Concluding Observations from the UN Committee would benefit from more dedicated and intentional follow up, commentary and analysis from Canadian governments and civil society.⁹ Establishing a robust process for child rights reporting is an encouraging first step in this direction. The CBA Committee invites Heritage Canada to work from a draft outline for State Party reporting that starts from the guidelines and working methods proposed by the UN Committee and builds on this to facilitate reporting that is comprehensive, data rich and responsive to the recommendations from previous reporting cycles.

Canada needs a more detailed and prescriptive reporting template for progressive implementation of children's rights. Inspiration can be drawn from the Treaty Specific Guidelines and the Harmonized Guidelines adopted by the UN.¹⁰ The CBA Committee recommends developing a Convention-specific reporting template that would be a Canadian adaptation of the core Harmonized Guidelines and the UN Committee's specific guidelines.

There is also the challenge of reporting on behalf of a federal state. It is appropriate for Canada's report to reflect the jurisdiction of provinces and territories and the need to coordinate with Indigenous governments in many aspects of child rights implementation. Their reports cannot be relegated to the status of subnational jurisdictions as in other national contexts. This would not advance a robust application of the Convention throughout Canada. All jurisdictions in Canada should be encouraged to embrace the challenge of international human rights treaty enforcement, and Canada's report should fully reflect their progress in implementing the UNCRC. Consequently, a 60-page limit on reporting documents may not be appropriate for Canada.

The UN Committee may be revising its State Party reporting practice to address specific questions or aspects of child rights enforcement. The CBA Committee recommends that Canada

⁹ See for instance the Children's Rights monitoring pages of the Canadian Coalition on the rights of the Child for access to Alternative [reports](#), UNICEF's Child Friendly version of recommendations to Canada in the Committee's Concluding Observations, An Action Plan for Canada with ten steps for implementation the Committee's key recommendations, etc:

¹⁰ Supra at notes 3 and 4 but reference also the Working Methods set out by the Committee on the rights of the Child, available [online](http://ow.ly/ffeE30hlAlI) (<http://ow.ly/ffeE30hlAlI>).

continue to prepare comprehensive five-year reports as a means of accelerating the advancement of child rights in Canada.

Finally, a detailed reporting template based on the UN Guidelines for Core Reporting and Treaty-Specific Reporting¹¹ would encourage all levels of government to adopt the data monitoring and evidence-based practices that the Convention's implementation requires. Canadians are leading the challenge of developing a universal standard for child rights monitoring and report writing through the Global Child Project funded through the Canadian Institutes of Health Research. Canada's template should be informed by that work.

III. IMPROVING THE TEMPLATE

1. **Template Reflecting the UN Guidelines** – We recommend a detailed template that more closely reflects the UN guidelines, in relation to both the Harmonized Guidelines and Treaty-Specific Guidelines. Canada's guidance to the provinces and territories should reflect this. Further, it is essential to focus attention on matters raised by the UN Committee in its Concluding Observations to Canada's previous reports, particularly in relation to Indigenous children and racialized youth.
2. **Third Optional Protocol** – We recommend the template address outstanding ratifications. In particular, child rights reporting would be more credible if Canada's report addressed the Third Optional Protocol on a Communications Procedure.
3. **Reservations** – Similarly, the template should address Canada's reservations. Removal of reservations to the **Convention** has been a matter of concern to the UN Committee.
4. **A More Comprehensive GMI Section** – Turning to the draft template itself, the CBA Committee **recommends** that the general measures of implementation (GMI) section be more clear and comprehensive:
 - a. **National Action Plans** – There is no mention of National Action Plans. As indicated in the last Concluding Observations to Canada, the template should invite participating governments to report on the existence of national, provincial or territorial plans of action for UNCRC enforcement and on their efforts to resource their plans.
 - b. **UNCRC-Specific Legislation and Practice** – The template should invite all levels of government to identify laws **and** regulations in their jurisdiction that reference the UNCRC or serve as implementing statutes in fulfilment of measures required under the Convention. Canada's national report could then list a schedule of Canadian laws by province and territory to show the legislative advancements and gaps in enforcement.

- c. **Independent Human Rights Institutions** – The outline is silent on institutions for child rights enforcement. Past Concluding Observations have recommended establishing a national children's **Commissioner** or Ombudsman's Office and supporting the expansion of territorial and provincial Child and Youth Advocate mandates to permit the promotion and protection of all rights of all children within their territories, in conformity with the Paris Principles¹² and the Committee's General Comment No. 2.¹³ This observation should be addressed in Canada's next report.
 - d. **Child Rights Impact Assessment (CRIA)** – The CBA Committee recommends that the template explicitly welcome reporting on the development and use of Child Rights Impact Assessments. This is a GMI frequently cited by the UN Committee and an area where several Canadian jurisdictions have made gains since the last reporting period.
 - e. **Dissemination and Awareness-Raising and Training** – The template should invite specific reporting on measures to make the Convention and its Optional Protocols widely known to adults and **children** through dissemination, training and integration into school curricula, as well as an integrated strategy for training on children's rights for all professionals, including government officials, judicial authorities, and professionals who work with children in health and social services. This would build on previous Concluding Observations, the jury recommendations from the 2016 Inquest in Ontario into the death of Katelynn Sampson,¹⁴ and the Treaty reporting guidelines.
 - f. **Coordination** – The template should identify the coordinating mechanisms between governments.
 - g. **Allocation of Resources** – The template is silent on budgets for child rights implementation and yet resource allocation is a critical measure for success. If governments do not report what they spend on child rights implementation, it is not likely to improve.
5. **Definition of the Child** – One of the typical clusters of child rights relates to Article 1 and the definition of child. This heading should be included as it allows the government to summarize data on a host of indicators, such as: How many children are there in Canada? When do **Canadians** become adults? What are the birth rates, infant mortality rates, child death rates, and gender identity of children in Canada? All the basic demographic information about childhood in Canada, across various vulnerable populations, should be available to the UN Committee in this section of Canada's report. This should also include the number of children in care (including disaggregated data), which Canadian officials were not able to supply during Canada's last appearance before the UN Committee.

¹² Paris Principles on National Institutions for the promotion and protection of Human Rights adopted by the UN General Assembly, A/RES/ 48/134, 4 March 1994, available [online \(http://ow.ly/acSd30hlARf\)](http://ow.ly/acSd30hlARf)

¹³ GENERAL COMMENT No. 2 (2002)-The role of independent national human rights institutions in the promotion and protection of the rights of the child CRC/GC/2002/2, 15 November 2002, available [online \(http://ow.ly/dFTO30hlAY4\)](http://ow.ly/dFTO30hlAY4)

¹⁴ [2016 Inquest](#) into the death of Katelynn Sampson

6. **General Principles** – The CBA Committee welcomes the specific invitation in the draft template to include information about the over-representation of Indigenous and African-Canadian children in the justice system and out-of-home care. This is an example of how the template can be adapted to respond to the UN Committee’s past Concluding Observations. However, to be complete, the section should report on each of the four guiding principles, including Articles 6 (life, survival and development) and 12 (respect for views of the child), and, for the latter, on the measures that governments have taken to facilitate meaningful child participation in legal, policy and administrative processes (including custody, access and child welfare matters, criminal justice, immigration and the environment).
7. **Civil and Political Rights** – While the UN Committee may be moving to a new model of reporting, the treaty guidelines follow a rights clustering approach that is familiar to child rights experts in government and in civil society. At present, it would be preferable to follow the rights **clusters** in the treaty guidelines and to include the civil rights and freedoms of children before dealing with the protective provisions on violence against children. Canada’s reporting template should allow for and expressly welcome feedback on these matters, and in particular should welcome the participation of Indigenous children and their representatives.
8. **Violence against Children** – The enumeration of harms to be included in reporting on violence against children is helpful and addresses some concerns that the UN Committee raised with Canada in the past. Whatever legislative approach Canada takes, the template should squarely address s.43 of the *Criminal Code* as it has been a focus of the UN Committee. Additional harms that could be mentioned in the template include violence against children and youth who question their gender identity, girls who are vulnerable to sexual violence, violence against children with disabilities or mental health challenges, internet violence, and all forms of violence motivated by race, politics or religion.
9. **Family Environment and Alternative Care** – The enumeration of areas for comment are topical and **helpful**, but under-inclusive. The CBA Committee recommends including additional areas of focus that reflect those found in the UN Committee’s Treaty specific Guidelines:
 - a. Family environment and alternative care (arts. 5, 9–11, 18, paras. 1 and 2, 20, 21, 25 and 27, para. 4)
 - b. Family environment and parental guidance in a manner consistent with the evolving capacities of the child (art. 5)
 - c. Parents’ common responsibilities, assistance to parents and provision of childcare services (art. 18)
 - d. (c)Separation from parents (art. 9)
 - e. Family reunification (art. 10)
 - f. Recovery of maintenance for the child (art. 27, para. 4)

- g. Children deprived of a family environment (art. 20)
- h. Periodic review of placement (art. 25)
- i. Adoption (national and intercountry) (art. 21)
- j. Illicit transfer and non-return (art. 11)
- k. Measures to ensure the best interests of children with incarcerated parents and children living in prison with their mothers.

Under this cluster, Canadian governments could take into account the UN Committee's General Comment No. 7 (2005) on implementing child rights in early childhood and consider the Guidelines for the alternative care of children (General Assembly Resolution 64/142, annex).¹⁵

- 10. Disability, Basic Health and Welfare** – The proposed template has a heading for Basic Health and Welfare, but the heading in the Treaty Guidelines is Disability, Basic Health and Welfare. Article 23 **rights** are part of this cluster. The CBA Committee suggests the template maintain the specific reference to reporting on the rights of children with disabilities. The invitation to report on recent developments is welcome, (e.g., food security, mental health services and integration of services), but could be perceived as a reading down of the reporting. The Treaty-Specific Guidelines offer the best means of ensuring comprehensive reporting.
- 11. Education, Leisure and Cultural Activities** – The CBA Committee suggests including measures taken by all levels of government to implement the minority and identity rights of Indigenous children in Canada, pursuant to Article 8 and 30 of the Convention. Given the central importance of the Truth and Reconciliation Commission recommendations and repeated **invitations** from the UN Committee to improve Indigenous childhoods in Canada, more dedicated and comprehensive reporting on these rights is in order. The draft outline addresses these as special protection measures under the last and final cluster of rights, but the Treaty Guidelines invite reporting in relation to Article 30 rights under the last two clusters. The nexus between minority rights and education and cultural rights deserves specific treatment.
- 12. Special Protection Measures** – The CBA Committee recommends that the final cluster of rights in relation to special protection measures use the language of the Treaty Guidelines to ensure comprehensive reporting. The federal government should be specifically invited to outline its progress in bringing immigration and asylum laws into conformity with the Convention and **other** relevant international standards, including addressing whether its policies and procedures in asylum-seeking, refugee and immigration detention situations give primacy to the best interests of the child. In the administration of juvenile justice context, governments should be asked to describe efforts to reduce rates of youth crime, youth incarceration and detention and youth recidivism, particularly in relation to populations over-represented in the youth criminal justice system, including Indigenous and African-Canadian youth.

¹⁵ Treaty Specific Guidelines, supra note 4, pp. 6-7.

- 13. Optional Protocols** – As suggested above, the template should invite submissions and reporting in respect of the Optional Protocols under the Convention, the two ratified by Canada and the third **not** yet ratified. The reporting process could be used as a prompt to solicit provincial and territorial feedback in relation to ratification of the Third Optional Protocol.

IV. CONCLUSION

A rigorous reporting template is the surest means of having good reporting on child rights implementation efforts. International human rights treaties are important standards and guideposts in the work of States Parties to support democratic development, reconciliation with Indigenous peoples, the rule of law and human rights. The CBA Committee welcomes the efforts of Heritage Canada to meaningfully engage Canadian governments and civil society in this work.

Children remain a disenfranchised class internationally, and Canadian children are increasingly falling behind their peers in developed economies across several measures.¹⁶ Canadian children deserve better. Canadian governments can do more. The CBA Committee welcomes the opportunity to contribute to advancing the rights and interests of all children.

¹⁶ Unicef Innocenti Centre [Report Cards](https://www.unicef-irc.org/publications/series/16/) 11- 14, <https://www.unicef-irc.org/publications/series/16/> and also the Companion report to Report No. 11 from UNICEF Canada, available [online: \(http://ow.ly/tBvq30hlGg2 \)](http://ow.ly/tBvq30hlGg2)

Request for Comments on the Draft Outline of Canada's Fifth and Sixth Report on the Convention on the Rights of the Child (CRC)

Canada's next report aims to respond to the [Concluding Observations](#) (COs) issued by the UN Committee on the Rights of the Child (the Committee) at Canada's last appearance before the committee in 2012. You can find [Canada's previous CRC reports](#) on the website of the Department of Canadian Heritage.

The draft outline (below) is based on input by representatives of federal institutions and the governments of provinces and territories on issues which could be included in the next report on the *Convention on the Rights of the Child (CRC)*. It is structured using [Treaty-specific Guidelines](#) for reporting adopted by the Committee and the [Harmonized Guidelines](#) adopted by the UN for reporting under international human rights treaties.

This is a "working" outline and lists a number of issues that could be addressed in Canada's report. However, since the report, which will include information from key federal institutions and all 14 provincial and territorial governments, must be limited to approximately 21,200 words for the French version of the report (approximately 18,500 words for the English version) it will not be possible to address all potential issues.

Input is sought from civil society and Indigenous organisations at this time to ensure their perspectives and priorities are taken into account in the preparation of the report. Please provide your input by email to **Diane Haché** at diane.hache@canada.ca by **October 19, 2017**.

Draft Outline of Canada's Fifth and Sixth Report on the Convention on the Rights of the Child (CRC)

General measures of implementation (articles 4, 42 and 44, para.6)

This section would provide an update on general measures of implementation. Areas that could be addressed include:

- Legislation and practice
- Coordination
- Data collection
- Consultation with children and civil society, including Indigenous groups
- Dissemination of information, including reports and concluding observations
- Training

General principles (articles 2, 3, 6 and 12)

This section would report on measures taken to implement the four general principles of the convention: non-discrimination, best interests of the child, right to life, survival and development and respect for the views of the child. Specific subject areas that could be addressed include:

- Over-representation of Indigenous and African-Canadian children in justice system and out-of-home care
- Disparities in access to services (health services, including mental health, education and child welfare) by vulnerable groups (including Indigenous children, children with disabilities or complex/special needs)
- Best interests of the child principles in legislation, policies and programs

Violence against children (articles 19, 24, para.3, 28, para. 2, 34, 37 (a) and 39)

This section would report on measures to protect children against all forms of violence. Areas that could be addressed include:

- Violence prevention, including the gender dimension of violence
- Violence against Indigenous children, particularly girls (for example MMIWG)
- Child sexual exploitation and trafficking
- Forms of harmful practices, including female genital mutilation and early and forced marriage

Family environment and alternative care (articles 5, 9-11, 18, paras 1 and 2, 20, 21, 25, and 27, para. 4)

This section would report on measures taken to support families and children who are deprived of a family environment. Emphasis may be put on the following issues:

- Culturally appropriate services and supports for parents, including young mothers, foster parents and legal guardians

- Preventative measures to avoid placement of children
- Equal access to health care and education for children in care
- Child-friendly reporting mechanisms
- Transition support for children leaving care

Basic health and welfare (articles 6, 18, para.3, 23, 24, 26, 27, paras. 1-3, and 33)

This section would provide information on measures taken in relation basic health and welfare provided to children. Subject areas that could be addressed include:

- Strategies and plans of action on poverty and housing
- Food security
- Child obesity
- Mental Health services and integration of services
- Suicide prevention, intervention
- Access to safe drinking water and sanitation

Education, leisure and cultural activities (articles 28-31)

This section would provide information on laws, policies and programs related to the enjoyment by children of education, leisure and cultural activities. Subject areas that could be addressed include:

- Educational outcomes and disciplinary measures including referral to police
- Prioritizing childcare services
- Quality, accessibility and affordability of childcare, and its impact on poverty reduction
- Training for child care workers and early childhood educators
- Access to Internet in remote areas

Special protection measures (articles 22, 30, 32, 33, 36, 37 (b)-(d), and 38-40)

This section would include information on measures taken to protect the rights of vulnerable children. Areas to address under this section could include:

- Protection of vulnerable groups of children, including: Indigenous children (for example calls to action under the Truth and Reconciliation Commission), LGBTI children, refugee and immigrant children and disabled or cognitively challenged children
- Preservation of identity and culture for Indigenous children in care
- Juvenile justice and alternative measures to detention