

Prepared for the Standing Senate Committee on Human Rights
Committee Meeting: January 29, 2007

Submission by the Metropolitan Action Committee on Violence Against Women and Children (METRAC)

Application of the United Nations Convention on the Rights of the Child as it is applied in Canada and on *Who's in Charge Here? Effective Implementation of Canada's International Obligations With Respect to the Rights of Children*

Introduction

Founded in 1984, Metropolitan Action Committee on Violence Against Women and Children (METRAC) is a not-for-profit, community-based organization dedicated to the right of all women and children to live their lives free of violence and the threat of violence. METRAC's programs seek to prevent and end all individual, institutional and systemic forms of violence. We work collaboratively with a broad range of partners to develop strategies to end violence against women and children, and to build safer communities for everyone.

METRAC operates three (3) programs: (1) Community Outreach and Education, (2) Community Safety, and (3) Community Justice. Our programs build and support the capacity of communities to prevent and end violence against women and children through public education, safety initiatives, training, research, community partnerships, and public policy. We acknowledge the diversity of communities in our city, province and country and we strive to operate inclusive and equitable programs.

Community Justice Program

METRAC's Community Justice Program provides access to legal information for vulnerable communities (women with disabilities, rural women, Deaf women and immigrant and refugee women) who are experiencing violence. We have developed legal information materials in plain language that speaks to women's experiences. These are the first of their kind in Ontario and are available in seven (7) languages and English. As well, we provide legal information and training to service providers using a train-the-trainer model, on a broad range of legal issues faced by women experiencing violence.

METRAC has been at the forefront of law reform on key issues relating to violence against women, in particular, custody and access, restraining orders, dual charging, mediation and religious arbitration. We have been an active member of the National Association of Women and the Law (NAWL), Family Law Working Group, and a key actor in Ontario Women's Network on Child Custody and Access. Additionally, we have served as co-chair of the No Religious Arbitration Campaign.

The program's website, Ontario Women's Justice Network (owjn.org) is highly regarded among women and advocates for making available legal information and analysis from a woman-centred, anti-oppression perspective, written in plain language, formatted for easy accessibility, and speaking

specifically to the realities and needs of women experiencing violence. OWJN website is unique, as the only place women and service providers can access this kind of information.

Community Safety Program

The focus of METRAC's Community Safety Program is to ensure that women, children and youth live in our community free from violence and discrimination based on any number of factors (gender, race, ethnic background, income, sexual orientation, immigration status, among others) and from the threat or fear of violence and discrimination. The Community Safety Program accomplishes this objective through an integrated approach; involving women and children in the development of strategies for change.

Community Outreach and Public Education Program

This program provides outreach, referrals and information to diverse communities about violence prevention and intervention services and supports through personal contact, telephone, fax, and email. We develop and distribute brochures, fact sheets, booklets, tuck cards, youth zines, and bookmarks on topics such as stalking, sexual assault, dating violence, workplace and sexual harassment, healthy relationships, children's safety, community services and supports for women, youth, and children. Information is available to the public in English and some in French and nine other languages.

Our youth peer education program, Respect in Action: Youth Preventing Violence (ReAct), is comprised of twelve (12) diverse young women and men ages 13 to 25, who are trained as Peer Facilitators to lead interactive workshops in schools and other youth organizations across the Greater Toronto Area. Our workshops are designed to raise awareness, foster discussion; introduce community resources, and inspire youth involvement in violence prevention activities and in promoting healthy, respectful relationships among peers.

Application of *Convention of Rights of the Child* in Canada

It is our respectful submission that although Canada is a signatory to the *Convention of the Rights of the Child (CRC)*, the government has fallen short in implementing the laws that protect the rights of children. We are in agreement with the Senate Committee's concern as expressed in the *Who's in Charge Here?* Report that Canada has failed consistently to ensure that international human rights treaties are incorporated directly into Canadian law. Further, we submit that the current implementation strategies relied upon by the government (i.e. reliance on conformity of pre-existing legislation to international treaties) is inadequate. The result is that the rights of children in Canada as stipulated in the *CRC* are not being protected.

Through our work at METRAC, we have occasion to come into contact with women and children who experience/have experienced violence. As such, we would like to call to the Committee's attention, particular issues we feel of great importance when looking at how the *CRC* is being applied in Canada. These issues include:

- (a) Violence: Impact of Spousal Violence on Children and Violence Against Children;
- (b) Child poverty;
- (c) Treatment and protection of Children in the context of immigration and refugee law;
- (d) The gendered nature of violence and its impact on the lives of girls.

In our written submissions, we will highlight what we believe to be the salient points within each of these issues.

We respectfully submit that our concerns relating to the above noted issues can only be addressed if the government changes its approach to meeting its obligations under the *CRC*. Further, we support the recommendations posed within the Senate Committee's November 2005, Interim Report entitled *Who's in Charge Here?* The recommendations posed in that Report could potentially improve Canada's efforts in fulfilling its international treaty obligations.

(a) Violence: Impact of Family Violence on Children and Violence Against Children

In the Preamble to the *CRC*, we find the following statement:

“Recognizing that the child, for the full and harmonious development of her or his personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”

In the recent 9th annual *Family Violence in Canada – A Statistical Profile*¹, released in July 2006 by the Canadian Centre for Justice Statistics, the report found that children are at far more risk to both physical and sexual violence than adults, with nearly six times more children being sexually mistreated than adults. Other statistics of interest highlight that girls generally experience higher rates of family violence than boys and were four times more likely to be sexually mistreated. Girls were the victims in 8 out of 10 family-related sexual assaults committed against children and youth. The statistics reflect the fact that existing laws are not necessarily doing much to ensure that Canada meets the obligations of the *CRC*.

To highlight this point, women and children who experience violence continue to face serious barriers when navigating their way through the criminal justice system or the family courts. In Ontario, a recent amendment to the *Children's Law Reform Act* that came into effect February 2006, now requires family courts to consider family violence that may have occurred at any point during an intimate relationship and that was directed towards the spouse or any other member of the household in assessing the ability of someone to act as a parent when they make an application for custody or access. Just how effective this amendment has been in protecting children from further risk at the hands of abusive parents is yet to be seen.

Further, in September of 2006, a private member's bill, Bill 89, known as “Kevin and Jared's Law” was passed by the Ontario legislature. The Bill amends the Ontario *Child and Family Services Act* to include the following changes:

- Mandatory supervised access to any parent convicted of child or domestic abuse within the family home
- Automatic inquest into the death of a child while in the care of the non-custodial parent who has been required to undergo supervised access, in the past or present

¹ *Family Violence in Canada – A Statistical Profile*, July 2006, www.statcan.ca/bsolc/english/bsolc?catno=85-224-X

- Custodial parent of victim will have the right to participate in the Inquest as well as apply to the Ministry of Correctional Services for legal counsel; costs of the inquest paid through Victims' Justice Fund

Bill 89 was brought by Conservative MPP Cam Jackson; in response to the deaths of Kevin Latimer, an 18th month old who fell to his death on an unsupervised visit with his father who was intoxicated at the time and Jared Osidacz, an 8-year-old who was murdered by his father during an unsupervised visit. The fathers of both boys had gained access to them in family court despite a history of abuse.

The process through which Bill 89 was passed, however, reflects how all levels of government are falling short in meeting Canada's obligations under the *CRC*. It should be noted that the governing Liberal party resisted the passing of the Bill after it had passed two readings because of concerns about the cost. In a last minute decision, the Liberals decided to support the Bill. However, even though the bill is passed into law, it does not mean it will take affect. To date, there is no further news on when the bill will received royal asset and be proclaimed into law. The new law is implemented, no child will benefit from the proposed amends or receive the protection that the law is meant to afford.

(b) Child Poverty

Article 27 of the *CRC* states:

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

According to the *2006 Report Card on Child and Family Poverty in Canada*² released by the group, Campaign 2000, close to 1.2 million children (1 child out of 6 in Canada) live in poverty. Further, the *Report Card*, emphasizes the reality that 1 in 4 children in First Nations communities lives in poverty. Children, but in particular, First Nations children are facing extreme poverty in Canada.

Campaign 2000 is a network of national, regional and local partner organizations actively working on child/family issues from diverse perspectives. Campaign 2000 takes the position that Canada has not done much to meet the 1989 unanimous all-party House of Commons resolution to end child poverty by the year 2000. They state further in their *Report* that by province, child poverty rates are highest in B.C. and Newfoundland and Labrador.

In Ontario, social assistance rates have undergone a 2% increase that was effective November/December of 2006, however, the amounts continue to be low. With the increase, a

² <http://www.campaign2000.ca/rc/rc06/06_C2000NationalReportCard.pdf>

single parent with one child can expect to receive \$470 per month for basic needs and a maximum shelter allowance of \$538; amounting to a total of \$1008 per month and far below the poverty line. In addition, each month the Ontario government claws back the National Child Benefit Supplement from children whose parents are on social assistance. According to the Income Security Advocacy Centre, [<http://www.incomesecurity.org/>] (based in Toronto) each month 170,000 children in Ontario are affected by these deductions.

There is no consistent national strategy or plan to combat child poverty in Canada. Of all the provinces and territories, only two provinces (Quebec and Newfoundland and Labrador) are committed to the issue; having in place poverty reduction strategies.³ There is no indication from the federal government that a similar national strategy is being considered. Until a more concerted effort is made to monitor child poverty in Canada and the subsequent impacts it has on communities, Canada will continue failing to meet its obligations under the *CRC*.

(c) Treatment and protection of Children in the context of immigration and refugee law

METRAC regrets that the principles of non-discrimination, of the best interests of the child and of the respect for the views of the child have not always been given adequate weight by administrative bodies dealing with the situation of refugee or immigrant children. For example, there is insufficient consideration given to the urgent need of family reunification of children separated from their families for many years. Another example is the lack of rights of convention refugee children to include their parents overseas in their permanent resident applications. Furthermore, refugee or immigrant children born in Canada may be separated from their parents facing a deportation order. It should be noted that parents may apply for refugee status on behalf of their children, but children may not apply for refugee status on behalf of their parents or siblings. This results in the separation of children from their parents. Although the Immigration and refugee protection act states that children maybe detained in immigration detention centres only as the last resort, there are cases of children being detained with their parents or alone in cases of immigration and refugee hearings.

(d) The Gendered Nature of Violence and its Impact on the lives of Girls

Violence towards the girl child has been recognized as a significant international issue as demonstrated in the 1990 declaration of “The Year of the Girl Child”, the designation of the 1990s “The Decade of the Girl Child” and the United Nations recognition of the plight of the girl child to be incorporated into the Beijing Declaration and Platform for Action which was ratified by Canada. The Declaration identified the eradication of violence against the girl child as one of the objectives that state parties are expected to achieve.

In examining Canada’s implementation of the *CRC*, one must also examine the lack of gender analysis as promised in the Beijing Declaration. Many of the programs and policies attempting to address the issues facing children, collapse the needs of girls into the category of “youth” and “children”. For example school-based violence prevention programs are becoming more generic. The recognition that much of the violence directed at girls and women is gender-based and expressive of patriarchal power, is now being eroded and substituted by a growing emphasis on

³ 2006 Report Card on Child and Family Poverty in Canada, Campaign 2000, see note 2

“bullying” in the school yard, and girl gang violence suggesting that girls are just as violent as boys. However, such a view obscures not only the differences between girls but also masks the reality that girls are subject to sexual violence.

It should be noted that girl children who face barriers due to such issues as race, sexual orientation, disability or class would face further obstacles than a girl child of what is seen through the policies developed for children. For girls who are differently situated by virtue of their race, sexual orientation, disability and class, the situation is compounded by their marginalization and "lack of fit" within the dominant worldview. For example, there have been studies done that illustrate that girls with disabilities experience higher rates of sexual abuse (at 4 times the national average) because of their dependent status, isolation, and negative stereotypes that prevail in the dominant society. Afraid to report the abuse because of the fear of not being believed, many of these girls continue to lead lives that are jeopardized by threats and actual incidents of violence. Another example can be seen in the case of Aboriginal girls, who are confronted by racism, sexual abuse, physical and verbal abuse. Many of them may choose to run away from foster homes and reserves. Homeless and destitute, they survive on the streets where their vulnerability to violence escalates.

Statistical information reveals that Canada is not in compliance with the obligations set forth in the Beijing Declaration and Platform for Action. In the July 2006 *Family Violence in Canada – A Statistical Profile*⁴, the report found that girls generally experience higher rates of sexual and physical assault by family members than are boys, and were four times more likely to be sexually mistreated. Girls were the victims in 8 out of 10 family-related sexual assaults committed against children and youth. It has been estimated that up to 75% of Aboriginal women under the age of 18 have experienced sexual abuse, 50% are under 14, and almost 25% are younger than 7 years of age (Correctional Service of Canada, cited in McIvor and Nahanee, 1998).

In Canada, the girl child continues to be a victim of trafficking and sexual exploitation, both internationally and domestically (Philippine Women Centre of British Columbia, 2000; Russell, 1996; Shortt, 1998)⁵. Due to factors such as previous exposure to violence, poverty, low self-esteem and the adversity of a racist and sexist society, immigrant and refugee girl children are particularly vulnerable to this type of exploitation (Attorney General, British Columbia 2000; Davis and Shaffer, 1994; Holmes and Silverman, 1992; Jackson, 1998; Jiwani, 1998b; Save the Children, 2000). It maybe that immigrant and refugee girls also experience higher rates of violence because of dislocation, racism and sexism from both within their own communities and the external society. It maybe that harsh immigration restrictions force many of them to use illegal routes to get into the country, the payment for that often being sexual exploitation.

In light of the information which we have put forward today, there is a clear need for the Federal, Provincial and territorial governments to monitor compliance and work towards alignment of Canada's international obligations with domestic legislation and policies to protect the rights of children.

⁴ *Family Violence in Canada – A Statistical Profile*, July 2006, <<http://www.statcan.ca/bsolc/english/bsolc?catno=85-224-X>>

⁵ *In the Best Interests of the Girl Child, January 2002, Phase II Report, The Alliance of Five Research Centres on Violence, Helen berman and Yasmin Jiwani*