

National Children's Alliance (NCA)
E-mail Digest, week of 23-27 February, 2004

NCA ACTIVITIES:

1. **Reminder:** Ottawa-area members' meeting of NCA on 10 March
2. **RSVP:** for first meeting of Working Group to plan a Youth Agenda

NEWS FOR OUR MEMBERS:

1. **Invitation:** Conference on Building a Comprehensive Early Childhood Development System
2. **News:** Op-Ed piece by CCSD
3. **Response:** by NCA to draft National Plan of Action

ISSUE ALERT:

1. Supreme Court brings down ruling on "spanking defence"
2. UN Committee on Rights of Child invites written submissions on Early Childhood Practices
3. Research sought on human rights and the Millenium Development Goals

NCA ACTIVITIES:

1.

If you have any questions or require any further information, please contact the event coordinator, Diane Hull, at (613) 925-5672 or e-mail rhull@sympatico.ca.

3. Following a stimulating discussion with our Toronto members last week, the NCA would like to gauge the interest of all our membership in creating a Working Group to put forth policy recommendations on a national Youth Agenda. Members would be invited to a half-day policy workshop here in Ottawa, with some travel subsidies available to those coming from Toronto. Please let us know if you would be interested in attending such a workshop and if you would be able to continue your participation by being on such a Working Group. Please e-mail tashtakala@nvo-onb.ca as soon as possible.

NEWS FOR OUR MEMBERS:

1. The Centre of Excellence for Early Childhood Development is holding a conference on Building Comprehensive Early Childhood Development System on 25 May 2004 at the Quebec City Hilton Hotel. The first part of the day will include a review of the economic, biological and physiological determinants of early childhood development and an overview of integrated systems in other countries; the session will conclude with a round table discussion on the gap between what we know is good for young children and what we are actually offering to families and children. For more information and to register, go to www.excellence-earlychildhood.ca/www.excellence-jeunesenfants.ca. Note that registration fees go up after 15th March.

2. Tackling the “social deficit” is the subject of an op-ed piece written by one of our members. Marcel Lauziere, President of the Canadian Council on Social Development, asks in the Halifax Herald of 24 January whether Prime Minister Martin will actually seize the opportunity to create concrete social progress in this country or simply allow the new Ministry of Social Development to function in name only. Despite substantive surpluses and huge spending on health care during the latter years of Mr. Martin’s tenure in the Finance portfolio, poverty indicators in Canada have remained unchanged. The new approach to federal-provincial cooperation and the splitting of the Canada Health and Social Transfer will be a litmus test of whether the new Prime Minister is willing to confront the social deficit in this country with as much skill and vigour as he handled the financial one. For the full text of the piece, go to www.ccsd.ca/pubs/2004/oped-halifax.htm.

3. The NCA’s response to Senator Pearson’s draft National Plan of Action for children is now on our website. You can also see some individual responses prepared by our members, like the Canadian Association of Social Workers, Canadian Association for Community Living, Canadian Coalition for the Rights of Children.

ISSUE ALERT:

1. Supreme Court upholds s. 43 of the Criminal Code: In a landmark decision, the case of Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) 2004 SCC 4, six of the nine justices ruled that Section 43 of the *Criminal Code* justifies the reasonable use of force, for purposes of correction by parents and teachers, against children in their care. Dismissing an appeal from the Ontario Court of Appeal, the majority said that the century-old provision of the *Code* does not violate a child’s rights under sections 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms*.

Chief Justice McLachlin and Justices Gonthier, Iacobucci, Major, Bastarache and LeBel opined that: 1) s. 43 was not so overly broad a defence to corporal punishment of a child that it constituted a violation of a child's s. 7 right to life and security of the person. Rather, the Justices said, there are clear limits to the use of corrective force: the force must have been intended to be for educative or corrective purposes, relating to restraining, controlling or expressing disapproval of the actual behaviour of only a child who is capable of benefiting from the correction. Furthermore, "determining what is 'reasonable under the circumstances' in the case of child discipline is assisted by Canada's international treaty obligations, the circumstances in which the discipline occurs, social consensus, expert evidence and judicial interpretation."; 2) they also said that the application of corrective force, so long as it is not used on infants or teenagers, not exerted with an object and not directed at the head of the child, does not constitute cruel and unusual punishment under s. 12; 3) finally, while children need a safe environment, they also need the guidance and discipline of parents and teachers to protect them from harm and to promote their healthy development within society. Removing s. 43, they argue, would open the door to criminalizing corrective behaviour that falls far short of corporal punishment; "The decision not to criminalize such conduct is not grounded in a devaluation of the child, but in a concern that to do so risks ruining lives and breaking up families -- a burden that in large part would be borne by children and outweigh any benefit derived from applying the criminal process".

Justices Binnie (in part), Arbour and Deschamps dissented with the majority on the s. 15 argument; to deny protection against physical force to children at the hands of their parents and teachers is not only disrespectful of a child's dignity, but also turns the child into a second class citizen. Justice Binnie questioned the majority's dismissal of the s. 15 equality rights based on the view that children should be treated differently (that is, they are entitled to substantive and not formal equality) because of this society's prevailing view of the importance of the role of the family. He said that this argument amounted to an implicit justification of s. 43 under s.1 of the Charter (NB s. 1 is used to justify a law, even when it is found to be unconstitutional, if it is needed for the "proper functioning of a democratic society", on condition that the disadvantage that the law in question causes is not disproportionate compared to the benefit to society). In Justice Binnie's view, the extension of s. 43 protection to teachers in particular has not been justified under the s. 1 test. Justice Arbour said that the majority were mistaken in reading the words of s. 43 (ie "reasonable") as excluding

certain forms of behaviour; she said it is not the role of the courts to restrict the meaning of a statute before determining its constitutionality; thus, s. 43 is vague and consequently does violate a child's right to security of the person under s. 7. Finally, she argued, striking down s. 43 will not expose parents and persons standing in the place of parents to criminal charges for every minor instance of technical assault, because common law defences adequately protect parents and teachers from excusable and/or trivial conduct. Justice Deschamps added that the fact that children are one of the most vulnerable groups in society makes s. 43 fail the test under s. 1 of the Charter for causing a disproportionate disadvantage to children.

2. Early Childhood will be the object of a General Day of Discussion at the UN:

The Committee on the Rights of the Child will hold a day of discussion at headquarters in Geneva on 17 September 2004 to raise awareness about the rights of the youngest children and facilitate their implementation by the States parties to the Convention on the Rights of the Child. Two Working Groups will examine survival, protection and development practices of young children and will look at ways in which young children can participate as full actors in their own development. The discussion day is a public meeting at which government representatives, UN bodies and specialized agencies, NGOs, aboriginal organizations, individual experts and youth groups are welcome. The Committee is inviting written contributions on best practices in the early childhood area. For more information, contact: The Secretariat for the UN Committee on the Rights of the Child, UN High Commissioner for Human Rights, Palais des Nations, 1211 Geneva 10, Switzerland, E-mail: crc@ohchr.ch

3. Human Rights Internet and CIDA are also seeking written submissions, research and analysis on the topic of human rights concerns with regard to the Millennium Development Goals signed by all 189 members of the United Nations in the year 2000. The aim of the study is to clarify the gaps which may hinder progress towards achieving the 2015 targets. Information is being gathered from governments, the UN, international organizations, NGOs, academics, internet sources, etc. with the aim of presenting the perspective of people who experience the shortcomings of the Goals on a daily basis; grassroots and community development organizations are especially encouraged to contribute their research and policy work. To submit information, e-mail: aleks@hri.ca.

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