

HOW TO MAKE LEGAL PROCEEDINGS IN CANADA MORE CHILD FRIENDLY?

Anne Levesque, Daniella Bendo,
Jean-Frédéric Hübsch & Mona Paré¹

Children in Canada and around the world are taking increasingly active roles in advocating for their own human rights and those of others. Children and youth in Canada face significant barriers to justice, however, as demonstrated by judicial responses to recent climate change litigation initiated on behalf of young people. However, courts are not the only way to defend human rights. This article reviews existing non-judicial structures and processes in Canada that offer venues for children to act as human rights defenders. This research involves documentary and legal research and a questionnaire to human rights commissions and tribunals, advocate and ombudsman offices, and international human rights mechanisms. The questionnaire focused on understanding how children and youth in Canada can access these institutions to defend their human rights. The authors focus on four principles to draw out good practices and shortcomings in the various institutions: availability of mechanisms, children's access and participation, child-sensitive procedures, and communication with children. The objective of this article generally is to outline potential pathways for improving access to justice for children in Canada.

Au Canada et dans le monde entier, les enfants jouent un rôle de plus en plus actif dans la défense de leurs propres droits et ceux des autres. Les enfants et les jeunes au Canada se heurtent toutefois à d'importants obstacles à la justice, comme le montrent les réponses judiciaires aux récents litiges sur le changement climatique intentés au nom des jeunes. Les tribunaux ne sont cependant pas le seul moyen de défendre les droits de la personne. Les auteurs de cet article passent en revue les structures et processus non judiciaires existant au Canada qui offrent aux enfants des possibilités d'agir en tant que défenseurs des droits de la personne. Leur travail comprend des recherches documentaires et juridiques, ainsi qu'un questionnaire adressé aux commissions et tribunaux des droits de la personne, aux bureaux des défenseurs et des ombudsmans, ainsi qu'aux mécanismes internationaux de défense des droits de la personne. Le questionnaire visait à comprendre

¹ Anne Levesque is an Associate Professor at the Faculty of Law of the University of Ottawa (Common Law Section). Daniella Bendo is an Associate Professor in the Department of Childhood and Youth Studies at King's University College at Western University. Jean-Frédéric Hübsch is a Ph.D. candidate in the University of Ottawa's Faculty of Law (Civil Law Section). Mona Paré is a Full Professor at the Faculty of Law (Civil Law Section) and Director of the Interdisciplinary Research Laboratory on the Rights of the Child.

comment les enfants et les jeunes au Canada peuvent accéder à ces institutions pour défendre leurs droits. Les auteurs se concentrent sur quatre principes pour mettre en évidence les bonnes pratiques et les lacunes des différentes institutions : la disponibilité de mécanismes, l'accès et la participation des enfants, les procédures adaptées aux enfants et la communication avec les enfants. L'objectif général de cet article est d'esquisser des pistes pour améliorer l'accès des enfants à la justice au Canada.

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1. Introduction

More and more, children and youth around the world are playing increasingly active roles in promoting, defending, and asserting human rights. From climate change to online safety and education, children and youth are actively engaging as human rights defenders on some of the most pressing human rights issues of our times. As highlighted in the 2018 Day of General Discussion convened by the Committee on the Rights of the Child on Protecting and Empowering Children as Human Rights Defenders, there are unique considerations that arise relating to the treatment and protection of children and youth who are human rights defenders.² Indeed, children are owed a heightened duty of care due to their unique status, necessitating particular actions that consider their developmental stage and abilities that are different from those of adults.³ This translates into particular and increased protections when they assert

² United Nations Committee on the Rights of the Child, “[Day of General Discussion: Protecting and empowering children as human rights defenders](#)” (2018), online: <tinyurl.com/59fjzpnr> [“UNCRC, Day of General Discussion”].

³ United Nations Committee on the Rights of the Child. *Protecting and Empowering Children and Human Rights Defenders*. [Day of General Discussion Outcome Report](#). (Geneva: Committee on the Rights of the Child, 2018): <tinyurl.com/wh4mrh8h>.

and defend human rights.⁴ At the same time, young people have the right to be actively involved as agentic beings in decisions that impact their lives. States have specific obligations towards children and youth, such as those relating to the right to education and the provision of information, which can empower children and youth to become aware of and assert their rights.⁵ In light of these obligations, it is not surprising that one of the key recommendations arising out of the Day of General Discussion regarding children as human rights defenders was to ensure that “child human rights defenders can access child-friendly complaint mechanisms at the national and international levels to report and file complaints of human rights violations.”⁶ This is an important recommendation, as it may help to support young people in being active, agentic human rights defenders, especially when they are keen to be involved in decisions that will impact their lives.

In Canada, as in other countries, children and youth in recent years have been particularly active in climate change litigation. Many advocates for the rights of children and youth have lamented the disappointing outcomes for children and youth involved in these cases, and legal scholars have analyzed reasons for such failures.⁷ Indeed, despite the effervescence of youth-initiated constitutional challenges in Canada, no Canadian court has yet to recognize a violation of rights relating to the failure of the state to take action to prevent climate change or protect children and youth from its harmful impacts. Procedurally, the track record is equally bleak. Indeed, research shows that Canadian courts have not adapted their procedures to deal with proceedings initiated by children and youth.⁸ This shortcoming applies equally to provincial and federal courts, including appellate courts.

⁴ *Ibid.*

⁵ *Ibid* at 6.

⁶ *Ibid* at 34 (“5.1.7 Access to remedial mechanisms”).

⁷ Nathalie J Chalifour, Jessica Earle & Laura Macintyre, “Coming of Age in a Warming World: The Charter’s Section 15(1) Equality Guarantee and Youth-Led Climate Litigation” (2021) 17:1 *JL & Equality* 1; Camille Cameron & Riley Weyman, “Recent Youth-Led and Rights-Based Climate Change Litigation in Canada: Reconciling Justiciability, Charter Claims and Procedural Choices” (2022) 34:1 *J Envtl L* 195; Mona Paré & Anne Levesque, “La participation citoyenne des enfants qui défendent leurs droits devant les tribunaux : regard sur le contentieux des changements climatiques” (2024) 40 *Windsor YB of Access Just* 20 [Paré & Levesque].

⁸ For an analysis of youth led climate justice cases outside of Canada through the lens of child friendly justice, see Aoife Daly, “Child and Youth Friendly Justice for the Climate Crisis: Relying on the UN Convention on the Rights of the Child” (2024) 32:3 *Intl J of Child Rts* 632.

Courts of law are not the only institutions that allow children in Canada to defend their rights. Other mechanisms are available for children to bring rights violations to light and seek remedies, such as human rights commissions and tribunals, advocate and ombudsman offices, and international human rights mechanisms. While some of these mechanisms are very similar to courts, others operate according to entirely different parameters. The types and extent of rights that can be examined by these institutions also vary. What they have in common is offering children avenues to defend and claim their rights.

While these mechanisms each have their shortcomings and could be improved to be more child-friendly or to offer more effective remedies, they also have beneficial practices to share. This paper explores what Canadian courts can learn from non-judicial processes about promoting children's access to justice.⁹ We will examine human rights commissions and tribunals, child and youth advocates, ombudsmen, and international human rights mechanisms. Returning to the recommendation coming out of the Day of General Discussion, we will consider ways child human rights defenders in Canada can access child-friendly complaint mechanisms at the national and international levels to report and file complaints of human rights violations, and ways in which they cannot. Broadly speaking, the objective is to identify best practices and shortcomings when it comes to access to justice for children and youth in Canada.

2. Research Methodology

The observations and recommendations set out in this article are based on research conducted as part of a project titled *Children as Human Rights Defenders and their Access to Justice*.¹⁰ The project poses the following research question: Do existing legal structures and processes in Canada allow for children to act as human rights defenders? This research involves documentary and legal research and a questionnaire to institutions that

⁹ We note that non judicial processes can also look to efforts made by courts to promote the participation of children, such as voice of the child reports and children's lawyers. These mechanisms are not within the scope of our study. For more on voice of the child reports and children's lawyers, see, for example: Rachel Birnbaum and Nicholas Bala, "Views of the Child Reports: The Ontario Pilot Project" (2017) 31:3 Intl JL Pol'y & Fam 344; Nicholas Bala and Rachel Birnbaum, "Rethinking the Role of Lawyers for Children: Child Representation in Canadian Family Relationship Cases" (2018) 59:4 C de D 787.

¹⁰ Funded through an Insight Grant from the Social Sciences and Humanities Research Council (2021–2025). This project was led by Professor Mona Paré, who acted as primary investigator. Professor Anne Levesque was co-investigator, and Professor Daniella Bendo was a collaborator. Doctoral student Jean-Frédéric Hübsch, who was hired as a research assistant, played a crucial role in this study.

focused on understanding how children and youth in Canada can access institutions to defend their human rights.

As a first step, the researchers reviewed guidelines on child-sensitive procedures to identify principles that help compare and analyze the research results.¹¹ The principles cover (1) availability of mechanisms, (2) children's access and participation, (3) child-sensitive procedures, and (4) communication with children. Secondly, we reviewed domestic and international human rights procedures, relevant domestic and international case law, establishing legislation of Canadian advocates, ombudsmen, and statutory human rights bodies, and reports and publications of Canadian advocates, ombudsmen, and statutory human rights bodies. Third, a questionnaire, approved by the University of Ottawa's Research Ethics Board, was distributed via email to 16 federal and provincial statutory human rights bodies, ten child and youth advocates, twelve ombudsmen, and eight international treaty bodies. A handful of questionnaire recipients who declined to participate in the questionnaire referred us to other bodies. For example, an ombudsman referred us to their jurisdiction's child and youth advocate. Ultimately, we received 17 completed questionnaires: six from human rights bodies, five from advocates, four from ombudsmen, and two from international bodies.¹² The questionnaire covered the following questions: What are institutions' mandates with respect to children's rights? How do children communicate with institutions? How do institutions communicate with children? How do institutions implement child-centred practices?

The next steps of the project include the development of guidelines for promoting children's access to justice among the institutions we studied.

3. Child-Unfriendly Justice in Canada

Existing research has shown that, broadly speaking, Canadian courts and legal systems have not yet adapted to meet the needs of children and youth.¹³ Considering the principles that guide our research, it is clear that accessibility, child-sensitive practices, and communication needs are

¹¹ Council of Europe, CM, Del 1098, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, Documents (2011); *Access to justice for children. Report of the United Nations High Commissioner for Human Rights*, UNHRC, UN Doc. A/HRC/25/35 (2013); *Rights of the child: access to justice for children*, UNHRC, 25th Sess, UN Doc. A/HRC/RES/25/6 (2014) Res 25:6; The Canadian Bar Association, "[The CBA Child Rights Toolkit](#)" (2017), online: <tinyurl.com/4x97fbbp>.

¹² In this article, references to questionnaire responses refer to this study. Source data is on file with the authors.

¹³ See Justice for Children and Youth, *Children's Right to be Heard in Canadian Judicial and Administrative Proceedings*, (2006), online: <tinyurl.com/4a4ehf24>; Mona

not met. The first, availability of mechanisms, is partly met, as children, theoretically, may have access to courts as an avenue to claim violations of rights. However, availability is limited first because of how human rights are understood and implemented in Canada. Human rights in international law, including the *Convention on the Rights of the Child*, cover a much wider range of rights than those that are expressly protected in Canada through the *Canadian Charter of Rights and Freedoms* and provincial/territorial human rights legislation. Thus, children's right to a remedy for violations of children's rights is limited *ratione materiae*, despite the fact that UN human rights bodies call for the recognition of the justiciability of all human rights.¹⁴ Next, availability is limited if accessibility is hampered because of children's status as minors, which restricts their legal standing.¹⁵ Children may be able to initiate a Charter challenge in courts only if they are represented by their legal guardian. Research shows that children are rarely parties in constitutional challenges involving the *Canadian Charter of Rights and Freedom*.¹⁶ This demonstrates that children rarely launch court actions even with the help of their representative and that the availability of judicial avenues to access remedies remains mostly theoretical.

Climate change cases initiated by children and youth in Canada provide for an instructive case study of children's access to the courts. Children have been active litigants in such cases in recent years and have been able to bring cases to court with the help of adults. In *La Rose v Canada* and in *Mathur v Ontario*, young applicants, including minors represented by litigation guardians, brought suit alleging violation of their rights under the *Charter*.¹⁷ These cases demonstrate that courts can be accessible to children when an adult, acting as a litigation guardian, supports their claim. Climate change litigation, in particular, exemplifies an issue where intergenerational partnerships may benefit children, as their interests align with those of the adults representing them. This is not always the case in areas concerning children's rights.

Paré, "L'accès des enfants à la justice et leur droit de participation devant les tribunaux : quelques réflexions" (2014) 44:1 RGD 81; Paré & Levesque, *supra* note 7.

¹⁴ See especially *General Comment no. 5, General measures of implementation of the Convention on the Rights of the Child*, UNCRC, UN Doc. CRC/GC/2003/5 (2003) at paras 24-25 [UNCRC, "General Comment no.5"].

¹⁵ Sonja Grover, "Rights education and children's collective self-advocacy through public interest litigation" (2018) 1:1 Human Rights Education Rev 65; Mona Paré, "L'accès des enfants à la justice" (2022) 3 *Juriste Intl* 37.

¹⁶ Mona Paré, «Pour une application de la Charte fondée sur les droits de l'enfant» in Karen Drake et al, eds, *Critical Conversations in Canadian Public Law* (Ottawa: University of Ottawa Press, 2025).

¹⁷ 2020 FC 1008; 2020 ONSC 6918.

The ruling in *Environnement Jeunesse v Canada*, for its part, delivered a setback for children's participation in class actions.¹⁸ The trial judge held that children lacked the legal capacity to exercise their civil rights and that it was not in their best interests to be included as parties in a class action suit.¹⁹ This case, a climate change-related class action representing all Québec citizens aged 35 and under, highlighted significant barriers for children in asserting their rights in court.

Recent climate cases initiated by youth in Canada also reveal the limitations of human rights protections in the country. One key barrier is the absence of explicit constitutional references to children's rights, the environment, or health—an omission that severely restricts the legal arguments available to plaintiffs. Furthermore, lengthy procedural delays in getting to the hearing on the merits due to technical arguments put forward by governments reveal the limitation of human rights protection and access to justice in the country. Consequently, youth-led climate change cases expose the constraints of existing legal mechanisms for enabling children to effectively claim their rights.

Just as availability is linked to accessibility, so is accessibility related to child-sensitive practices. According to the Committee on the Rights of the Child, “[c]hildren’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives.”²⁰ For procedures to be child-sensitive, they must adapt to children’s age, capacity and needs, and they must respect children’s rights. They need to allow for children’s participation in procedures and take the best interests of the child into account. The Committee on the Rights of the Child explains that all processes in which children participate must be transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe, and accountable.²¹ The researchers’ review of the rules of procedure of courts that have examined child- and youth-led climate cases found no measures for adaptation when the claimant is a child, nor for meaningful participation of youth in proceedings.

Finally, judgments that were rendered in these cases show that the best interests of the child were not taken into consideration at the procedural level or in substance. In fact, while the principle of the best interests of the

¹⁸ 2019 QCCS 2885. The decision was upheld in *Environnement Jeunesse c Procureur général du Canada*, 2021 QCCA 1871.

¹⁹ 2019 QCCS 2885, at paras 132–133, 136.

²⁰ UNCRC, “General Comment no.5”, *supra* note 14 at para 24.

²¹ *General Comment no. 12, The right of the child to be heard*, UNCRC, CRC/GC/2009/12 (2009) at para 134.

child should be a primary consideration in all actions concerning children undertaken by courts of law and other institutions, it was not taken into account in the Canadian climate change cases in any meaningful way.²² As noted in an earlier publication, the trial decisions in *La Rose* and *Mathur* do not examine children's interests at all, whereas the public interest is discussed at length.²³ Yet, the Court of Appeal for Ontario, in *Mathur*, noted that interveners in the case raised the question of the application of the best interests of the child. Allowing the appeal, the court invited the appellants to consider pursuing issues raised by interveners in their amended pleadings, to be presented before the application judge during the new hearing.²⁴ So far, the cases have not led to remedy for the claimant children, and it remains to be seen whether the principle of the best interest of the child will be part of the considerations on merits in future rulings.²⁵

Related to child-sensitive practices and to the accessibility of procedures is the question of how courts communicate with children. For children to be able to claim their rights, they need to understand their rights, to be informed of procedures that are available to them, and to understand the process as well as the outcome. This means that information must be available, accessible, and adapted to children. Children and young people access most of the information online, and from what we have seen, information about court procedures is opaque and not written with children and young people in mind. The judgments in the climate change cases were not written in child-friendly terms either.²⁶ Rather, in all of these cases, nonprofit organizations involved in assisting and representing the children provided the children with information.²⁷ What these cases show is that courts may be theoretically available for children to claim their rights, but there are serious shortcomings that make them ill-suited to be places where children can act as human rights defenders. As courts are not the only existing avenues for children to defend their rights, it is

²² *Convention on the Rights of the Child*, 20 November 1989, UNTS 1577 3 at art 3(1) (entered into force 2 September 1990).

²³ Paré & Levesque, *supra* note 7.

²⁴ *Mathur v Ontario*, 2024 ONCA 762 at paras 6, 78. The parties' applications for leave to appeal and cross-appeal were dismissed: *His Majesty the King in Right of Ontario v Sophia Mathur, a minor by her litigation guardian Catherine Orlando et al*, 2025 CanLII 38373 (SCC).

²⁵ *La Rose* was also appealed, and the Federal Court of Appeal overturned part of the lower court's decision, allowing the case to go to trial (*La Rose v Canada*, 2023 FCA 241). In this case, the applicants will have to restrict their application to section 7 of the Canadian Charter.

²⁶ Judgments adapted to children are rare but not unheard of. See Helen Stalford & Kathryn Hollingsworth, "'This case is about you and your future': Towards Judgments for Children" (2020) 83:5 Mod L Rev 1030.

²⁷ Paré & Levesque, *supra* note 7.

useful to explore the practices of non-judicial processes to see if they could serve as inspiration for Canadian courts.

4. What Can Be Learned From Non-Judicial Processes in Canada

Here, we discuss in turn our research to date with respect to non-judicial processes available to children and youth in Canada for defending their human rights, including (a) human rights tribunals and commissions, (b) child and youth advocates, (c) ombudsmen, and (d) international human rights complaint mechanisms. We briefly describe each type of institution, identify shortcomings in each type of process that would need to be addressed to improve children's access to justice, and offer good practices that the courts could implement when hearing child-initiated human rights proceedings.

A) Human Rights Tribunals and Commissions

In every provincial and territorial jurisdiction in Canada, as well as federally, there is a law that prohibits discrimination in certain settings such as employment, housing, and the provision of services. In general, these laws, often referred to as human rights statutes, also create administrative bodies whose mandate is to promote equality and to receive discrimination complaints. In some jurisdictions, such as Ontario, it is the role of the Human Rights Commission to promote equality in the province and increase compliance with the provincial *Human Rights Code*.²⁸ The Human Rights Tribunal, on the other hand, receives discrimination complaints, referred to as applications, adjudicates them, and grants remedial orders when a finding of discrimination is made.²⁹ In Alberta, in contrast, the Human Rights Commission is the sole administrative body responsible for administering the *Alberta Human Rights Act* and therefore plays the dual role of promoting equality and adjudicating discrimination complaints.³⁰

Given that their mandates are inherently linked to promoting equality or enforcing the right to non-discrimination, one would expect human rights commissions and tribunals to be forerunners in the development and implementation of child-friendly practices in their procedures. This is not the case. In fact, many human rights laws across the country do not protect children against age-based discrimination.³¹ The significance of

²⁸ RSO 1990, c H19, Part III [OHRC].

²⁹ *Ibid* at Part IV.

³⁰ RSA 2000, c A-25.5, ss 15-19 (re Commission), ss 20-43.1 (re Enforcement).

³¹ See e.g., OHRC, *supra* note 28 at s 10(1) which defines age as 18 or over.

this exclusion cannot be overstated. In many jurisdictions, children and youth do not even enjoy formal equality when compared to adults in the context of protection against age-based discrimination.

In fairness, it is legislatures, and not human rights institutions, that are to blame for the failure of human rights laws across Canada to uniformly protect children and youth against age-based discrimination. While human rights commissions and tribunals in some Canadian jurisdictions are not expressly empowered to deal with age-based discrimination complaints from children, all are authorized to address complaints involving individuals under 18 years of age on other grounds, such as race, religion, or gender.³² What, then, are human rights commissions and tribunals doing to make their procedures accessible to children and youth in matters in which they do have jurisdiction?

Here too, the situation is discouragingly bleak. Indeed, for most human rights commissions and tribunals that responded to our questionnaire, the accessibility for children and youth of their complaint mechanisms, as well as their practices and procedures, seemed to be based on antiquated notions of formal equality. For example, one human rights institution boasted that “all callers, including children, are treated equally and given the requisite information they seek” yet did not mention any measures taken to adapt their approach to the unique needs of children and youth.³³ Implicit in such responses is the idea, rooted in formal equality, that children and youth can access human rights institutions so long as they can adapt to complaint mechanisms, practices and procedures created by and for adults. In other cases, children and youth were blamed for being unable to access or adapt to mechanisms, processes and procedures that were presumably designed by and for adults. For example, one potential access to justice barrier for children identified by a human rights institution was that they might be too young to understand the complaint process.

It is both surprising and disappointing that institutions created specifically to promote equality in society have not done more to adapt their procedures and practices to meet the needs of children. Human rights commissions and tribunals have long emphasized that exclusion often results from the failure to consider the needs of marginalized groups,

³² Despite age-based limitations, the Human Rights Tribunal of Ontario has, in certain individual cases, allowed age-based discrimination complaints from children and youth to proceed as a remedy under the *Canadian Charter of Rights and Freedoms*: see, e.g., *Arzem v Ontario (Community and Social Services)* (23 June 2006), HRTO 17, online: <canlii.ca/t/1r78j>.

³³ *Supra* note 12.

rather than from any inherent characteristics of the groups themselves.³⁴ This principle applies equally to children. Yet, some commissions and tribunals have failed to recognize the connection between their lack of child-centred practices and the low percentage of complaints initiated by children and youth. For example, one institution said children faced no access to justice barriers but signalled that likely less than one percent or maybe even zero individuals who contacted them were children. A more suitable approach, one that is more aligned with human rights and equality law, would be to question whether there are barriers within these institutions' processes and practices that make them inaccessible to children and youth, ultimately leading to their exclusion.

Despite their mandate to promote equality, many human rights commissions have not considered the needs of children in their policies or practices—reflecting a failure to recognize them as members of the general public. A telling response we received was, “We have a mandate to provide human rights education, but not specifically for children. We provide education and outreach on discrimination and human rights principles, but not specifically for children or youth.”³⁵ As noted by the majority in *Via Rail*, marginalized groups are members of the general public.³⁶ Designing services for a fictional public, from which members of certain marginalized groups are carved out, inevitably leads to discrimination and exclusion. In contrast, accessibility and inclusion are best achieved when services for the general public are designed with the needs of all, including marginalized groups, in mind. In light of this, human rights commissions and tribunals should proactively revise their procedures, practices, and outreach initiatives to ensure they are inclusive of children and youth. This includes developing child-centred practices and education programs tailored specifically to the needs of younger individuals. By recognizing children and youth as integral members of the general public and designing services that account for their unique needs, these institutions can better fulfill their mandate of promoting equality and preventing discrimination. This will also likely lead to greater participation of children and youth.

While most human rights tribunals and commissions may not have formally adopted child-centred policies and practices, they have considerable discretion in how they carry out their mandates.³⁷ This discretion can be leveraged to support the meaningful participation

³⁴ Ontario Human Rights Commission, *Policy on ableism and discrimination based on disability* (27 June 2016), online: <tinyurl.com/tnysfwmw> [perma.cc/2ZG5-HE8F].

³⁵ *Supra* note 12.

³⁶ *Council of Canadians with Disabilities v VIA Rail Canada Inc*, 2007 SCC 15 at para 221.

³⁷ *Prasad v Canada (Minister of Employment and Immigration)* 1989 CanLII 131 (SCC), at para 16.

of children and youth. A prime example of this is *Caring Society v Canada*, a case before the Canadian Human Rights Tribunal (“CHRT”) concerning Canada’s discriminatory treatment of First Nations children in the provision of welfare services and the implementation of Jordan’s Principle.³⁸ “This decision concerns children” was the first sentence of the 2016 decision on the merits.³⁹ The CHRT substantiated all allegations of racial discrimination made against Canada and, in its reasons, offered a preview of how it would approach the enforcement of its orders. This case also serves as a model for how human rights proceedings can be conducted in a child-sensitive and child-friendly manner.

First, the CHRT integrated the principle of the best interest of the child into its interpretation of the *Canadian Human Rights Act* (CHRA).⁴⁰ It determined that Canada must take into account the best interests of First Nations children when designing and delivering services in order to comply with its legal obligations under the CHRA. Drawing an explicit link between the best interests principle and human rights, it wrote:

... there is a need to refocus the policy of the program to respect human rights principles and sound social work practice. In the best interest of the child, all First Nations children and families living on-reserve should have an opportunity... equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society.⁴¹

In a later decision, the CHRT further clarified that Canada had an obligation to fund services for First Nations children that were required to safeguard the best interests of the child, even if those services were not available to other children.⁴² The panel’s reasons in the decisions in the *Caring Society* litigation serve as a best practice because they highlight that human rights institutions can and should interpret their home statutes in a child-friendly manner even when it is not explicitly required in the

³⁸ [First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada \(for the Minister of Indian and Northern Affairs Canada\)](#) (2016), T1340/7008, online: CHRT 2 <tinyurl.com/2v2eefka> [*Caring Society* (2016)]. Jordan’s Principle is a legal requirement that provides access to supports for First Nations children in need and ensures that the government of first contact pays for the supports without delay.

³⁹ *Ibid* at para 1.

⁴⁰ RSC 1985, c H-6.

⁴¹ *Caring Society* (2016), *supra* note 38 at para 482.

⁴² [First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada \(for the Minister of Indian and Northern Affairs Canada\)](#), (2020), T1340/7008, online: CHRT 15 <tinyurl.com/yr6ypme8> at para 120.

legislation.⁴³ Second, the CHRA facilitated the participation of children in the hearings in age-appropriate ways. For example, children were invited to sing at the beginning and end of the hearings, and the proceedings were televised to ensure they were accessible to children across the country.⁴⁴ The CHRT also made the hearing environment welcoming for children by providing designated spaces where they could eat, store their belongings, and discuss the case with their peers.⁴⁵ Again, while the CHRT's rules of procedure do not explicitly contemplate such measures to allow for child-appropriate participation of children and youth in proceedings, the case illustrates that human rights institutions can exercise their procedural discretion in a child-friendly manner. The case also highlights some examples of child-friendly measures that can be taken, when appropriate, to help children remain informed about matters that affect them and their rights.

One last child-friendly practice that warrants attention from the *Caring Society* case concerns the treatment of evidence and the concern about having children testify relating to traumatic events. Although the complainants argued that First Nations children and their families experienced pain and suffering due to Canada's treatment, the CHRT did not require children and youth to testify about the harm they suffered in order to establish a breach of the *CHRA* or to award them compensation.⁴⁶ This approach, which would later be endorsed by the Federal Court, prevented the re-traumatization of children and youth while ensuring they received the remedies they were entitled to for the violation of their human rights.⁴⁷ The CHRT's application of the rules of evidence in a manner that was centred on the best interest of the child constitutes another best practice for human rights institutes and all administrative decision-makers when determining how to accept evidence in cases involving children and youth.

B) Child and Youth Advocates

Globally, children's commissioners, child and youth ombudsmen, and child and youth advocates have been appointed to protect and promote

⁴³ Julia Hernandez & Anne Levesque, "Movement Lawyering and the *Caring Society* Litigation" (2023) 15:2 *J Human Rights Practice* 395 at 400.

⁴⁴ *Ibid.*

⁴⁵ Cindy Blackstock, "The Complainant: The Canadian Human Rights Case on First Nations Child Welfare" (2016) 62:2 *McGill LJ* 285 at paras 310-311.

⁴⁶ [*First Nations Child & Family Caring Society of Canada et al. v Attorney General of Canada \(representing the Minister of Indigenous and Northern Affairs Canada\)*](#) (2019), T1340/7008 online: CHRT 39 <tinyurl.com/yckbpede>.

⁴⁷ *Canada (Attorney General) v First Nations Child and Family Caring Society of Canada*, 2021 FC 969.

the human rights of young people at individual and systemic levels, though these designations oftentimes differ based on their organizational and institutional mandates. In Canada, at the provincial and territorial level, independent child and youth advocate offices have been established across the country to address issues that impact the rights of children and youth.⁴⁸ Although these offices function independently, they are part of a national body known as the Canadian Council of Child and Youth Advocates (CCCYA).

Independent child and youth advocate offices, appointed as legislative officers by their respective provincial legislatures, are found in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Nunavut, and Yukon.⁴⁹ The remaining Council members, in Nova Scotia and Ontario, are ombudsman offices that focus primarily on monitoring compliance, systemic oversight, and administrative fairness through investigations, and, as a result, they do not have explicit mandates to protect and promote children's rights.⁵⁰ In comparison, advocates concentrate on working directly with young people through individual advocacy, systemic advocacy, investigations into critical injuries and child deaths, and educational outreach.⁵¹ Collectively, the CCCYA works to protect and promote children's rights and to champion issues that impact young people's human rights.⁵²

As a result of the direct engagement that many provincial and territorial child and youth advocate offices have with young people, these offices have established effective practices for communicating with children and youth through child-friendly, accessible approaches. For instance, many of the offices constantly review and edit their educational materials and resources to ensure they are accessible, age-specific, gender/culturally inclusive, and

⁴⁸ Daniella Bendo & Richard Mitchell, "The Role of Canada's Child and Youth Advocates: A Social Constructionist Approach" (2017) 25:2 *Intl J Child Rts* 335; Daniella Bendo, "Roles, Responsibilities, and Rights: An Organizational Analysis of Provincial and Territorial Child and Youth Advocates and Offices in Canada" (2021) 29:4 *Intl J Child Rts* 809 [Bendo, "Roles, Responsibilities and Rights"]; Daniella Bendo, "Child Rights and Realities: Implementing Children's Rights in Canadian Advocate and International Commissioners Offices" (2024) 32:2 4 *Intl J Child Rts* 235 [Bendo, "Rights and Realities"]; Mary Theresa Hunter, *Canadian Child and Youth Advocates: A Comparative Analysis* (PhD Dissertation, University of Victoria, 2017) [unpublished].

⁴⁹ [Canadian Council of Child and Youth Advocates, "About Us"](http://cccya.ca/about-us) (2024), online: <cccya.ca/about-us> [perma.cc/HDS8-LATX].

⁵⁰ Bendo, "Rights and Realities", *supra* note 48.

⁵¹ Bendo, "Roles, Responsibilities and Rights", *supra* note 48.

⁵² CCCYA, *supra* note 49; UNICEF, *Championing Children's Rights: A Global Study of Independent Human Rights Institutions for Children* (Florence: UNICEF, 2012).

offered in various languages.⁵³ Additionally, many of the outputs that the offices produce are informed by young people's viewpoints to ensure they accurately reflect children's experiences and suggestions, which enhances accessibility of the information contained therein. Some of the offices also have separate child- and youth-friendly portals or websites, designed with and for young people, so they do not have to navigate often complicated adult-centric language and information.

Intake teams are also available for young people to connect with when they contact advocate offices for support. These teams engage with young people through various modes of communication, and they inform young people about their rights, options, next steps, likely and actual outcomes, resources, and support services. This process was described in our questionnaire by an advocate's office as follows:

When children and youth contact our office for advocacy services there is a conversation about what they need, what outcome they hope for, and how they'd like to be involved ... When adults contact us on behalf of youth, we attempt to contact the child/youth to have a conversation with them to see how they'd like to be included.⁵⁴

Intake teams ensure that they are always looping back to young people so they are not left wondering what their options are, what steps they should take next, or what outcomes have developed from their inquiries with the offices. Intake team members may include lawyers, advocates, support staff, and others. While young people are welcome to contact the offices directly, CCCYA members also meet children and youth in various community settings to support them, inform them about their rights, and explain how they can access an advocate's services.⁵⁵ For example, the offices engage in outreach in schools, community centres, clubs, and other venues.

Such communication practices are important because they can significantly impact the services and experiences that youth have engaging effectively with child and youth advocate offices. Such practices are applicable and beneficial in a range of other contexts, including in legal settings that have historically failed to engage effectively and communicate directly with young people in child-friendly, accessible ways. As Justice for Children and Youth, a specialty legal clinic, notes:

⁵³ Bendo, "Roles, Responsibilities and Rights", *supra* note 48.

⁵⁴ *Supra* note 12.

⁵⁵ Bendo, "Roles, Responsibilities and Rights", *supra* note 48.

Courts and tribunals must become more child-centric if children are to be comfortable and trusting enough to participate. This means that lawyers or other adult representatives for children must be better trained to communicate with children. If a child does participate in judicial and administrative proceedings, the decisions made must be thoroughly and appropriately communicated to them. But most importantly, the starting point must be from the recognition of the inherent dignity of children and of the legal rights to which they are clearly entitled.⁵⁶

The practices outlined above speak to these recommendations and could effectively be applied in judicial settings. In turn, these practices may help to better support children as human rights defenders and address gaps, state obligations, and adult duty-bearer responsibilities that have been identified by the Committee on the Rights of the Child regarding the protection and empowerment of child human rights defenders.⁵⁷ These practices are also in line with a rights-based approach for children and youth who are, or may want to become, human rights defenders.

Comparably, our research revealed a few shortcomings in terms of how advocate offices could better support young people as human rights defenders. For instance, in relation to our key principles, it was apparent that many of the offices are focused more on children's protection rights and less so on their participation rights. As a result, some processes do not enable young people to be involved in individual or systemic advocacy cases. This is because the focus on protection typically involves adult staff members taking action to protect children's rights, which is important and not ill-intended. However, sometimes children are excluded from providing input or guiding adult decision makers on what they think would be in their own best interests.

It is also worth highlighting that many of the offices view children from a developmental point of view. These viewpoints shape the offices' policies and procedures and, ultimately, their engagement with young people. This viewpoint is realistic considering all children grow and develop biologically, but it fails to recognize social, cultural, historical, political, and contextual realities that impact children's lives. As a result of this viewpoint, many children are only involved or included in specific processes if staff members deem children capable and competent to contribute. This means that young children are oftentimes excluded from participation in their cases or in the offices' processes because they are perceived as individuals who lack capacity and competency due to their young age. Collectively, such shortfalls hinder young people's ability to act

⁵⁶ Justice for Children and Youth, *supra* note 13 at 7.

⁵⁷ UNCRC, "Day of General Discussion", *supra* note 2.

as human rights defenders. Advocate offices could improve their practices to ensure more direct engagement with children's participation rights.

C) Ombudsman

Ombudsman institutions vary in structure and scope. In Canada, all provinces and territories have legislative ombudsman who are independent and impartial officers of their respective legislative assemblies. Federally, specialized ombudsmen have been established in some areas, but there is no general legislative ombudsman nor a specialized federal ombudsman specifically for children.⁵⁸ Legislative ombudsmen, where they exist, receive and resolve complaints about public services in their jurisdictions. Of these, only Ontario and Nova Scotia have explicit roles relating to children and their rights. As noted above, however, they do not have an advocacy role, unlike their child and youth advocate counterparts in other provinces and territories.

Despite limited child-specific jurisdiction, the general jurisdiction of legislative ombudsmen includes matters that engage with children and their rights. For example, ombudsmen may have jurisdiction over matters related to youth justice, early learning and education, health care, and municipal services. Jurisdiction over administrative decision-makers, including the processes of administrative tribunals,⁵⁹ provides another way that ombudsmen could ensure processes involving children and their rights are fair.

Ensuring fairness in public administration is an ombudsman's *raison d'être*. So much so that the Canadian Council of Parliamentary Ombudsman released guidance for public institutions across Canada called *Fairness by Design*.⁶⁰ This guidance sets out standards for fair process, fair decisions, and fair service in public administration and includes self-assessment checklists for public bodies. The fairness standards proposed by the Council cover participation and being heard, impartiality and

⁵⁸ The jurisdictions of certain specialized federal ombudsmen, such as the [Office of the Federal Ombudsperson for Victims of Crime](http://tinyurl.com/bdft6c3y) <tinyurl.com/bdft6c3y> or the [Canadian Ombudsperson for Responsible Enterprise](http://tinyurl.com/ycpska73) <tinyurl.com/ycpska73>, may offer mechanisms for children and youth to defend their rights. These institutions are outside of the scope of the present project, however.

⁵⁹ For case law establishing an ombudsman's jurisdiction over administrative tribunals, see e.g., *Re Ombudsman of Ontario and Health Disciplines Board of Ontario et al*, 1979 CanLII 1763 (ONCA).

⁶⁰ Canadian Council of Parliamentary Ombudsman (CCPO), *Fairness by Design: An Administrative Fairness Self-Assessment Guide* (Victoria: Office of the Ombudsperson, 2022). Online: <tinyurl.com/2276rbe6> [perma.cc/N6UL-FK8R].

integrity, lawful and fair rules, reasoned decisions, equity, accessibility and responsiveness, and accountability.⁶¹

Ombudsmen in Canada also consider the *Canadian Charter of Rights and Freedoms* and statutory rights as part of the legal context of administrative fairness.⁶² Focusing on fairness includes focusing on human rights.⁶³ Internationally, ombudsmen are considered human rights institutions, as emphasized in the preamble to the *Venice Principles*: “[t]he Ombudsman is an important element in a state based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration” and “the Ombudsman plays an important role in protecting Human Rights Defenders.”⁶⁴ Jurisdictions around the world embrace the rights protection and promotion role of ombudsmen.⁶⁵

While ombudsmen in Canada are experts in matters of administrative fairness, responses to our questionnaire indicate that ombudsmen in Canada may be less familiar with their role as human rights institutions, in particular for children. As with statutory human rights bodies, legislative ombudsmen exercise jurisdiction only over matters explicitly set out in their enabling legislation. Since little legislation in Canada explicitly mentions children’s rights,⁶⁶ children are not necessarily understood as being the anticipated public for ombudsman services.

The services over which ombudsmen have jurisdiction directly affect rights, however, as acknowledged in *Fairness by Design*. Yet, in the context of our research, responses from ombudsmen did not necessarily engage with the scope of children’s rights as they relate to their areas of

⁶¹ *Ibid* at 33.

⁶² See e.g., Ontario Ombudsman, [Caught in the Act: Investigation into the Ministry of Community Safety and Correctional Services’ conduct in relation to Ontario Regulation 233/10 under the Public Works Protection Act](https://www.ontario.ca/govt/caught-in-the-act-investigation-into-the-ministry-of-community-safety-and-correctional-services-conduct-in-relation-to-ontario-regulation-233/10-under-the-public-works-protection-act) (7 December 2010), online: <<https://tinyurl.com/2z xu5nha>> [perma.cc/XNG7-4SJC].

⁶³ Margaret Doyle & Nick O’Brien, *Reimagining Administrative Justice: Human Rights in Small Places* (Cham: Palgrave Macmillan, 2020).

⁶⁴ Council of Europe, Venice Commission, 118th Sess., *Principles on the Protection and Promotion of the Ombudsman Institution (Venice Principles)*, Texts Adopted, CDL-AD (2019)005. See also *Principles Relating to the Status of National Institutions* (Paris Principles), UNGA, 20 December 1993, GA Res 48/134. In the context of children’s rights specifically, *General Comment no. 2 (2002): The role of independent national human rights institutions in the promotion and protection*, UNCRC, CRC/GC/2002/2 (15 November 2002).

⁶⁵ Vanessa Sedletzki & Agnes Lux, [Child-friendly complaint mechanisms. National human rights institutions \(NHRI\) Series: Tools to Support Child-friendly Practices](https://www.nhrilibrary.org/child-friendly-complaint-mechanisms-national-human-rights-institutions-nhri-series-tools-to-support-child-friendly-practices) (2019), online (pdf): <tinyurl.com/4zvdfdwf>.

⁶⁶ Mona Paré, “Children’s Rights Are Human Rights and Why Canadian Implementation Lags Behind” (2017) 4:1 *Can J Children’s Rights* 24.

jurisdiction. One respondent stated that “our mandate isn’t as targeted at ‘rights’ as it is with fairness of government administrative processes and decisions.”⁶⁷ Such a distinction runs contrary to the principle that human rights are interdependent and interrelated. A child’s right to be heard in proceedings that affect them, for example, is both a human right and a core aspect of administrative fairness. While ombudsmen will refer children who raise rights concerns to other bodies such as human rights commissions, human rights tribunals, or advocate offices, creating a distinction between human rights and administrative fairness could leave everyday children’s rights concerns unaddressed. In jurisdictions without an advocate or a robust statutory human rights system, such a distinction could result in there being no remedy at all for the violation of children’s human rights. Returning to the principles of availability, access, child-sensitive procedures, and communication, a conceptual disconnect between ensuring administrative fairness and ensuring respect for children’s human rights means that legislative ombudsmen in Canada have some work to do to help children and youth seeking to defend their everyday human rights.

This is not to say children’s human rights are completely left behind by Canadian ombudsmen. Ombudsmen in Nova Scotia and in Ontario that have authority to investigate child protection services will refer to children’s rights because they are integrated into the legislation that governs these services.⁶⁸ In addition, one questionnaire respondent stated that the *Convention on the Rights of the Child*⁶⁹ is used as “guidance to determine the standards for what would be administratively fair in the circumstances of a complaint brought to us by a child”.⁷⁰ Moreover, ombudsmen may be available to support children in defending their rights in specialized contexts where legislation permits, for example, in education.⁷¹

In designing child-sensitive procedures, courts might find inspiration from ombudsman guidance with respect to relational fairness. Relational fairness is about the treatment of individuals who access public programs and services. Ensuring fair service means being accessible and people-centred and seeking accountability and continuous improvement. Public

⁶⁷ *Supra* note 12.

⁶⁸ *Child, Youth and Family Services Act*, 2017 SO 2017, c 14, Sched 1 at Preamble, Part II; *Children and Family Services Act*, SNS 1990, c 5 at Preamble.

⁶⁹ *Supra* note 12.

⁷⁰ *Supra* note 12.

⁷¹ Jean-Frédéric Hübsch, “At the Intersection of Fairness and Rights: The Ombudsman’s Administrative Oversight of Education in Ontario” (2022) 31:2 *Educ & LJ* 139. See also: Gouvernement du Québec, «[Protecteur national de l’élève](https://www.protecteur.gouv.qc.ca/leleve)» (2024), online: <tinyurl.com/22x9ehud>.

services should be “easily accessible to a diverse range of people,” and information about services should be available “without unreasonable effort”.⁷² This guidance reflects the child-friendly principles of accessibility and communication. Children and youth seeking to defend their human rights would be well served by court processes that are designed for relational fairness.

D) International human rights complaint mechanisms

There are many international human rights mechanisms that are also available to children in Canada to claim their rights. These are not courts or tribunals, but international institutions that have the mandate to examine Canada’s application of international human rights instruments domestically. Most of these human rights bodies can receive petitions for alleged human rights violations. Children in Canada have access to most United Nations human rights treaty bodies.⁷³ The Committee on the Rights of the Child, which is the monitoring body for the *Convention on the Rights of the Child*, would offer the most likely human rights complaint mechanism for children. However, Canada has not ratified the Optional Protocol on a communications procedure that would open up this option.

Though making a complaint to the Committee on the Rights of the Child is not available to children in Canada, United Nations human rights treaty bodies all operate in very similar ways, and their chairpersons meet annually to share and harmonize practices.⁷⁴ These complaint procedures are designed to be accessible to anyone filing a complaint on their own behalf or on behalf of someone else. Information is provided online for those who want to file a complaint, and measures of protection for the victim can be requested. If a violation is found, the treaty committee can recommend individual and systemic remedies.

This process inspired a group of children to submit a petition under the *Convention on the Rights of the Child* claiming that their respective countries were responsible for the climate crisis and that this has led

⁷² CCPO, *supra* note 60 at 13–14.

⁷³ See the Human Rights Committee (International Covenant for Civil and Political Rights), the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, and the Committee on the Rights of Persons with Disabilities.

⁷⁴ UN Human Rights Office of the High Commissioner, *The United Nations Human Rights Treaty System*, Fact Sheet No. 30/Rev.1 (United Nations: New York & Geneva, 2021); UN Human Rights Office of the High Commissioner, *Individual Complaint Procedures under the United Nations Human Rights Treaties*, Fact Sheet No. 7/Rev.2 (United Nations: Geneva & New York, 2013).

to children's rights violations.⁷⁵ While the Committee on the Rights of the Child recognized that states are responsible for the harmful effects of emissions originating in their territory and that this poses a threat to children's rights, the communications were found inadmissible due to failure to exhaust domestic remedies.⁷⁶ The requirement to exhaust domestic remedies is certainly the Achilles' heel of the international human rights system, especially for children, who have difficulty accessing domestic courts. Furthermore, our questionnaire results show that treaty body mechanisms were not "designed for working with children" and that their role is "to engage with states."⁷⁷ This could explain why there are hardly any direct rights claims to the committee by children.

Closer to Canada, there is an international human rights mechanism available at the regional level: the Inter-American Commission on Human Rights. Compared to the Geneva-based UN human rights bodies, the Commission is situated in Washington, D.C. The Inter-American Commission on Human Rights is one of the two main organs of the Organization of American States that promote and protect human rights, the other one being the Inter-American Court of Human Rights. This paper focuses on the Commission, as it is not a court, and as the Inter-American Court is not accessible to Canadian children due to Canada's lack of ratification of the *American Convention on Human Rights*.

The Commission has its shortcomings, like other international mechanisms, such as requiring the exhaustion of domestic remedies. This is a considerable obstacle for children, who, whether because of their status as a minor with reduced legal capacity, the cost of procedures, or available child-friendly information, are not likely to access and exhaust domestic remedies without the help of guardians. Furthermore, children need decisions about them to be taken fast, given their age and development, which is not the case with court procedures or international complaint mechanisms. Finally, another weakness of the Inter-American human rights system comes from Canada's lack of ratification of the *American Convention on Human Rights* and other Inter-American human rights

⁷⁵ *Sacchi et al v Argentina et al* (23 September 2019), UN Committee on the Rights of the Child Communication No. 104/2019 (Argentina), Communication No. 105/2019 (Brazil), Communication No. 106/2019 (France), Communication No. 107/2019 (Germany), Communication No. 108/2019 (Turkey).

⁷⁶ *Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure concerning communication*, UN Committee on the Rights of the Child, 88th Sess, CRC/C/88/D/104/2019 (2021) Dec No. 104/2019.

⁷⁷ *Supra* note 12.

treaties. This means that petitions can only be based on the American Declaration of the Rights and Duties of Man.⁷⁸

Yet, the Commission is interesting in many respects. For example, it allows any person or group of persons or NGO to submit a petition, on their own behalf or on behalf of someone else, concerning alleged violations of human rights in Inter-American human rights instruments.⁷⁹ There is no age restriction to the capacity to submit petitions to the Commission. Thus, children, individually or in a group, can bring a petition about an alleged violation of human rights by Canada. It also means that children could be supported by an NGO to bring forward a claim. Another interesting aspect of the Commission's mandate is that it can conduct hearings. These may be related to a petition or more general in nature.⁸⁰ This means that children could be heard as witnesses, for example. In relation to the general hearings, children can contact the Commission to present information on a human rights situation. According to the Commission's survey response, sessions "include information on their rights and IACHR mechanisms they can use."⁸¹

To date, these procedures remain largely theoretical, as there has been no petition or hearing initiated directly by children. However, the lack of initiative from children does not reflect a lack of interest in children's rights in the Inter-American human rights system. Numerous cases of violations of children's rights have been brought to the Commission, but in all these cases, children were represented by others, especially by NGOs.⁸² Furthermore, the Commission has a rapporteur on children, who brings children's rights to the spotlight and assists in cases that address children's rights. In addition, the Commission has published several

⁷⁸ Organization of American States & Inter-american Commission on Human Rights, *Petition and Case System. Informational booklet* (2022), online (pdf): <tinyurl.com/2rkbrkaz> [perma.cc/Q9NF-9BVY].

⁷⁹ Inter-Am Comm HR, *Rules of Procedure* at art 23, online: <tinyurl.com/cxe2anmj> [perma.cc/MN5C-QJ5X].

⁸⁰ *Ibid* at art 62.

⁸¹ *Supra* note 12.

⁸² For example: *Minors in Detention Honduras (Honduras)* (1999), Inter-Am Comm HR, Report No. 41/99, Case 11.491, OEA/Ser.L/V/II.106, doc. 6 rev; *Case of Michael Domingues (United States of America)* (2002), Inter-Am Comm HR, Report No. 62/02, Case 12.285, *Annual Report of the Inter-American Commission on Human Rights: 2002*, doc. 5 rev. 1; *Dilcia Yean and Violeta Bosico Cofi (Dominican Republic)* (2003), Inter-Am Ct HR (sec C) No 130, Report No. 30/03 Case 12.189; *Bernardo Aban Tercero, (United States)* (2015), Inter-Am Comm HR, Report No. 79/15, Case 12.994, *Report on Merits (Publication)*, OEA/Ser.L/V/II.156 Doc. 32; *IACHR, Edmundo Alex Lemun Saavedra y otros (Chile)* (2021), Inter-Am Comm HR, Report No. 458/21, Case 12.880, *Report of Merits (Publication)*, OEA/Ser.L/V/II Doc. 472.

reports concerning the rights of children, some of which address access to justice.⁸³ The Commission has also organized regular intergenerational dialogues with children.⁸⁴

Recently, the Commission adopted a resolution on the participation of children in its mechanisms and has published a child-friendly version of it.⁸⁵ In its resolution, the Commission commits to the following principles in relation to children's participation: best interests of the child, progressive autonomy, non-discrimination, meaningful and protagonist participation, wilfulness, accessibility, intergenerationality, intersectionality, and personal safety. Part of the implementation of the resolution requires the Commission to offer information to children that is accessible to them, including information about the Commission's mechanisms in different formats.⁸⁶ Children will also be encouraged to play a significant role in the Commission's hearings. The Commission will take measures to protect children's confidentiality and to create a safe environment for children.

This is a significant step in making international human rights mechanisms child-friendly, addressing all four principles outlined in this paper, particularly those of accessibility, participation, and communication. The Commission's initiatives, especially those regarding information adapted to children, encouraging children's participation, and committing to respect children's rights principles, should be considered as something that Canadian courts can learn from to become more accessible to children who want to defend their rights.

5. Conclusion

The role of children and youth in defending human rights continues to grow, particularly in areas like climate change litigation. Existing

⁸³ For example: OAS, Inter-American Commission on Human Rights, Violence, Children and Organized Crime, OEA/Ser.L/V/II, Doc. 40/15 (2015); OAS, Inter-American Commission on Human Rights, Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America, OEA/Ser.L/V/II. 155, Doc.16 (2015); OAS, Inter-American Commission on Human Rights, Towards the Effective Fulfillment of Children's Rights: National Protection Systems, OEA/Ser.L/V/II.166, Doc. 206/17 (2017); OAS, Inter-American Commission on Human Rights, Northern Central America: Organized Crime and the Rights of Children, Adolescents and Young People: Current Challenges and State Actions, OEA/Ser.L/V/II, Doc 51/23 (2023).

⁸⁴ Pursuant to OAS, General Assembly, 47 Sess, *Strengthening Democracy*, Resolution 2905 (XLVII-O/17) (2017).

⁸⁵ *Participation of children within the mandates of the IACHR*, Inter-Am Comm HR, Doc 330 (2023), Resolution 05/23.

⁸⁶ *Ibid* at 4.

research has shown that Canadian courts and legal systems have not yet fully adapted to meet their needs. This paper, for its part, has explored alternative mechanisms through which children in Canada can seek justice, drawing lessons from international processes, child and youth advocates, ombudsmen, and human rights commissions and tribunals. By identifying best practices and shortcomings in these examples, we have outlined potential pathways for improving access to justice for children in Canada.

Based on our research to date, courts and legal processes in Canada could learn from non-judicial proceedings to better serve child human rights defenders by:

- recognizing children as integral members of the public they serve;
- building in relational fairness for children at the process design stage;
- exercising discretion in ways that support the meaningful participation of children;
- reviewing educational materials and resources on a regular basis to ensure they are accessible, age-specific, gender and culturally inclusive, and offered in various languages;
- assigning specially trained staff for matters involving and affecting children;
- committing to child-friendly justice principles as a matter of course; and
- viewing children as competent, capable, agentic beings that have the right to participate in decisions that will impact their lives.

Ultimately, if Canadian courts and legal institutions are to fulfill their obligations to protect and empower children as human rights defenders, they must embrace reforms that allow these young advocates to effectively assert their rights and seek remedies for violations.

This research makes a contribution to the field of law and legal studies, childhood and youth studies, sociology, policy studies, and other academic disciplines that intersect with childhood. While we offer a starting point to unpacking best practices and shortfalls, future research could focus on engaging children and youth directly to understand from their own points

of view what adult allies, decision makers, and duty bearers can do to best support their efforts as human rights defenders.