

BACKGROUND PAPER 3

SEPARATED CHILDREN IN CANADA: RECEPTION AND CARE

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The reception and care of separated children begins with accurate identification at the point of entry and subsequently where initial guardianship care breaks down. The identification of a separated child is typically (though not exclusively) effected by Citizenship and Immigration Canada (CIC) officials, which in turn, activates a federally legislated citizenship or refugee determination process. At precisely the same moment when a child is identified as “separated” there exists an obligation for immediate referral to a child welfare authority (CWA). Provincial/Territorial legislation requires a referral to a CWA in any circumstance where a child appears to have been abandoned or is without appropriate supervision and is therefore “in need of protection”.

The overlapping nature of the federal and provincial/territorial legislation in this situation demands that a collaborative process involving both CIC and CWA officials should envelop such a child and once again, immediately upon identification. To date CIC and CWA's have not yet learned to cooperate in a consistent manner on behalf of separated children.

While there are 13 child welfare acts in Canada with differing provisions, both abandonment and lack of supervision are common elements in all provincial and territorial legislation. Through the CWA legislative lens and regardless of the provincial or territorial act, any child who presents in Canada without the care of a parent or appropriate guardian is in need of protection. A key legislative difference among the provincial and territorial acts is the age defined as the completion of childhood. This is defined as 16 years within the acts of six provinces and territories, 18 years within six others and 19 years in yet one other. Another point of difference is that there is a variety of models in place across Canada to serve children and youth and as a result, practice does vary considerably.

It is not simply “an ideal” that CIC and CWA's achieve optimum co-operation on behalf of separated children. It is required in order that Canadian practice with regard to these children is in compliance with a number of important international instruments and perhaps most importantly, the CRC. The tensions that exist when CIC and a CWA strive to meet their mandates with regard to a separated child can be considered through one important lens of the CRC – adherence to the principle of “best interests of the child”. However, this principle has not been well-defined and presiding judicial interpretations do not yet afford decisive guidance. Nonetheless, Canadian compliance with pertinent international instruments compels CIC and CWA's to collaboratively define practice guidelines that ensure that the standard of care received by separated children in Canada is equal to that enjoyed by resident children and is therefore in compliance with our nation's obligations under the CRC.

As a result of the existing tension between federal CIC and provincial/territorial child welfare legislation and practice, a number of separated children have not enjoyed the same standard of care as resident children in Canada. It is known that the experience of these children in Canada has been quite inconsistent. In the summer of 2001 a CWLC paper was prepared containing anecdotal information obtained from an accessible sample of separated children and youth. What is found in that paper includes the following descriptions:

- Hostile reception from CIC officials.
- Children under the age of 16 being sent from Pearson International airport alone with a map of the Toronto transit system and a list of shelters.
- Detainment in cells with adults.
- Some eventual support in accessing basic medical care and engaging in some form of education.

The sample information collected by the author of this paper illustrates that the reception and care experience of those interviewed fell short of Canadian obligations under international instruments as well as provincial/territorial legislation. One quote from the interviews reveals much:

“Sometimes I pray that I am dead. It’s hard adjusting to life without your family. People don’t really care about you here like my family would. I have trouble with the residents here. Being away from home is really hard.”

Child welfare legislation does not respond to children with or without citizenship differentially. Within the child welfare community there is broad consensus that determination of a plan that is in “the best interests of the child” involves at least the following three important considerations:

1. Assessing the degree of harm and/or risk of harm.
2. Determining and responding the individual developmental needs of the child.
3. Planning that secures both safety and permanency for the child.

It is asserted here that at minimum, these same three considerations should inform the practice guidelines and collaborative work of CIC and CWA’s in the process of responding to the reception and care needs of separated children in Canada

The following list from the draft of the Best Practice Statement on Separated Children in Canada document outlines the important considerations that should apply during all reception and care contact and/or action pertaining to these children. This list was developed with a view to Canadian compliance with international instruments that pertain to the separated child. (Please refer to the document for detailed explanations of each.)

- Identification and Referral
- Family Tracing and Contact
- Guardianship
- Registration and Determination
- Age Assessment

- Freedom from Detention
- Right to Participate
- Interim Provision (child welfare/care, healthcare, education, language & training, culture and recreation)
- Safeguards for return to country of origin

The Current Practice Reality

Reception and care activities involving separated children in Canada take place primarily in British Columbia, Ontario and Quebec although other provinces have indicated experience in this regard. Child welfare workers involved in the reception and care of these children in Quebec recently reported that the volume of separated children arriving in the province continues to increase. It is known that these children are coming from zones characterized by turmoil. Further it is reported that there is a continuing policy vacuum with regard to taking necessary guardianship action on behalf of the separated children in Quebec.

In Ontario the volume of separated children has reportedly decreased since the enactment of the visa requirement pertaining to Zimbabwe. The CIC office in Toronto was flooded with applications following The World Youth Day activities. The office was not prepared for this, thus long wait lists and difficulty accessing health and education services resulted. CIC officials reportedly have taken steps to remedy the situation and the waiting list is now reported to be approximately 2 weeks long while access to health and education has improved. Adequacy and appropriateness of housing for separated children in Ontario continues to be a problem area. At one point recently, 75-80% of the population receiving service from Covenant House in Toronto were separated children and youth.

Recently reported information from British Columbia illustrates concern that there are many separated youth of Honduran origin within the Vancouver area. It was further reported that the Department of Foreign Affairs has provided funding for staff of Casa Alianza (Honduras) to travel to Vancouver to assess the situation and respond accordingly.

The response of CWA's has been very inconsistent with regard to separated children. Some CWA's have demonstrated exemplary practice by providing a wide range of services and supports, engaging in protocols with CIC and becoming actively involved in the refugee determination process with an emphasis upon permanency planning in the long term best interests of the child. Other CWA's have been reluctant to engage in the provision of such service or simply do not yet understand the special service needs of separated children. The absence of an agreed upon protocol and best practices has created inconsistent and inadequate services placing these children at greater risk.

It is important to emphasise that in Canada, separated children are not immediately treated in the same manner as resident children in the country. They may experience immigration-related detention (even with adults), interviews without an appropriate guardian, and at times a complete absence of provision of minimally adequate care. The expertise of CWA's is not consistently utilised during interviews of the separated child. This expertise is essential to determine the degree of harm or risk of harm to the separated child, as well as to identify the developmental needs. Further, available information indicates that when planning for family reunification or safe third country deportation, investments in securing the separated child's safety and stability are inadequate.

Outstanding Questions

- What steps can be taken to harmonize CIC and CWA interpretations of, and functions in accordance with, “the best interests of the child” principle?
- In Canada are CWA’s consistently being engaged in the provision of care and guardianship of separated children?
- Are these children being accurately identified and referred to CWA’s at points of entry? (Including children in the company of adults or relatives who are not appropriate guardians?)
- What are the current practice and related policy and/or guidelines pertaining to the repatriation and/or family reunification of separated children? How is their welfare being ensured when they return to their country of origin? Are CIC officials working optimally with CWA’s and International Social Service Canada to ensure the durability of decisions toward this end?
- Article 1 of the CRC defines a child as “every human being under the age of 18 unless, under the law applicable, majority is attained earlier”. There is a significant problem within the six provinces and territories where the child welfare legislation defines the cessation of childhood as 16 years of age. As such a 17 year old separated child would be entitled to the support and services of a CWA in some provinces or territories and not others. How can this be appropriately addressed to achieve national consistency and compliance with the CRC?
- What happens to the separated children who arrive in Canada? There is little known about the outcomes of these vulnerable individuals either in the case of remaining in Canada or returning to their country of origin, or elsewhere.
- While the “Safe Third Country Agreement” has not yet been enacted, it may give rise to a number of children being sent across the Canadian border (as “unaccompanied minors” who are exempt from the Agreement), while their parents or other family members remain in the USA. Consideration needs to be given to what actions will be undertaken to ensure the welfare of such children?

Recommendations

The Government of Canada should be urged to include due reference to the unique needs and rights of separated children in Canada as part of their undertaking to draft the National Action Plan for Children. Therein commitments should be made to:

- Address the federal/provincial/territorial jurisdictional interplay to ensure nationally consistent policies and optimal co-ordination on behalf of the separated child.
- Be guided by the Best Practice statement on Separated Children
- Establish data gathering and outcome monitoring systems regarding these children.
- Implement appropriate action plans as indicated by the gathered data.
- Consideration should be given to employing resources to prevent the movement of separated children, where this is safe and appropriate and does not impede the movement of those in need of international protection, for example as has been done by Italy in response to the children arriving from Albania.