

CHILDREN'S SYMPOSIUM

by

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Address to

A National Symposium

Canada's Children - The Priority for the 90s

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A year ago, at the largest gathering of world leaders in history, presidents, prime ministers and kings promised a revolution to two billion children. Canada was part of that process. Indeed, our prime minister was Co-chairman of the United Nations Summit on Children, which gathered people of power from 159 countries representing 99% of the world's population. They discussed, they debated, they proposed. And they went away, back to their own countries and the difficulty of implementing what they had vowed to do.

This conference focuses on the process of implementation. It is founded on recognition that even here, in one of the world's richest and supposedly most civilized countries, our children suffer. And it is predicated on the commitment of us all to eliminate that suffering.

Why, we may ask, has the spotlight suddenly focused on children? Has not our society -- like most societies in the world -- been constantly concerned with the welfare of its children? Have we not from our earliest collective memories recognized that our children are our only future and must be nourished, protected and made strong? Why then are people talking in terms of reform, indeed revolution?



The answer is simple. For all our rhetoric, for all our malls filled with toys, for all our schools and lessons and indulgence, the fact remains that much of the youth of this country is troubled. True, the troubles may be worse other places. But that does not excuse the suffering we find in our own backyards and schoolrooms.

The introductory commentary prepared for this conference bears eloquent testament to the gravity of the problem.

- . one in six Canadian children lives in poverty and many of those children live in families struggling on half of a poverty-line income;
- . poor children experience a 50 per cent higher death rate from all causes and are more than twice as likely to suffer long-term disability and other health problems;
- . health conditions for Aboriginal children in Canada have been compare to those in the Third World; their average life expectancy is eight years lower than the national average;
- . suicide is the second leading cause of death among Canadian adolescents;



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- . an estimated one in four girls and one in ten boys are victims of sexual abuse;

- . the high school drop-out rate, which averages about 27 per cent across Canada, is over 90 per cent in some areas and among some groups of young people;

- . an estimated 17 per cent of high school graduates are functionally illiterate;

- . youth leaving the child welfare system are 12 times more likely to be homeless within a year than other young people leaving home;

- . an estimated 20 per cent of the children in the case of child welfare agencies in Canada are Aboriginal children, although they are only two per cent of the child population.

And the statistics go on.

The questions before you as delegates to this conference are two. Why do we have these problems and what can we do about them?

Why do we have these problems? Why are so many of our children poor and troubled and neglected? The reasons are complex -- as complex



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as our society itself. Three different interests come into play -- and often into conflict -- where children are concerned. The first is the interest of parents in dealing with their children as they see fit. Children are first and foremost the children of their parents. We give legal recognition to the interest of parents in their offspring. In the United States the "right of parental autonomy" has been elevated to constitutional status.¹

The second interest which comes into play is the interest of the state, or society. Society, to be precise, has two interests in its children. The first is its direct interest in raising children who are healthy, happy and capable of contributing to society. The second is its interest as guardian of the children when their individual welfare is threatened.

Which brings me to the third interest involved -- the interest of the child herself. Quite apart from the interest of parents, quite independent from the interest of the state, we recognize that the child qua child has the right to health, security and happiness.

My thesis is simple. Children suffer when the first two interests are

¹ J.E. Probst, "The Conflict Between Child's Medical Needs and Parents' Religious Beliefs" (1990), 4:2 *Am. J. Fam. Law* 175 at p. 188. *Ibid.* at pp. 176-177. See also *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).



permitted to outweigh and negate the third interest, the welfare of the child. Let me elaborate.

Historically, the only interest that counted when it came to children was that of the parents. At common law the parent, more specifically the father, was regarded as the natural and absolute guardian of the child, with full rights of custody and control. This absolute control was mitigated only by the parens patriae power of the courts of Chancery, a power exercised only in exceptional circumstances.² Children were viewed not as individuals in their own right but as chattels. They were used as father judged best. If they were lucky, they might receive an education. More probably, in Victorian times, they found themselves working in fields or factories well before they reached their teens. In many parts of the world, this remains the sad reality. Children are every day still sold into virtual slavery in order to provide an additional pittance to their impoverished parents.

In the latter part of the nineteenth century many came to see the exploitation of children for their parents' ends as wrong. We are all familiar with Lord Shaftsbury's reforms in aid of children in workhouses

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Re Agar-Ellis, (1883) 24 Ch.D. 317. See also the discussion in O.M. Stone, "The Welfare of the Child", in I.F.G. Baxter and M.A. Eberts, ed., *The Child and the Courts* (Toronto: Carswell, 1978) 229 at pp. 231-33.



and factories. A new idea emerged, an idea of great power. The child was not a chattel, but an individual human being. With this idea came the corollary that the state had a the right to interfere in parental control of children where the interests of the child so required.

This idea fuelled legislation throughout the western world which had as its effect the removal of children from the workforce, mandatory education to specified minimum ages, and the protection of children from parental abuse and neglect. Today, each province in Canada has legislation aimed at protecting children.³ State challenges to parental authority usually are taken under the aegis of such legislation. Despite procedural and substantive differences between the statutes, they all emphasise that the paramount consideration is to be the "best interests of the child". In several jurisdictions, the Court is required to consider the child's religious, cultural and linguistic heritage when determining the best interests of the child.⁴

³ *Child Welfare Act*, S.A. 1984, c. C-8.1, *Family and Child Service Act*, S.B.C. 1980, c. 11, *The Child and Family Services Act*, S.M. 1985, c. 8/C80, *Family Services Act*, S.N.B. 1980, c. F-22, *The Child Welfare Act*, 1972, S.Nfld. 1972, Act. No. 37, *Children's Services Act*, S.N.S. 1976, c. 8, *Child and Family Services Act*, 1984, S.O. 1984, c. 55, *Family and Child Services Act*, R.S.P.E.I. 1974, c. F-2.01, *The Family Services Act*, R.S.S. 1978, c. F-7, *Child Welfare Act*, R.O.N.W.T. 1974, c. C-3, *Children's Act*, R.S.Y. 1986, c.22.

⁴ The child protection statutes in Alberta, Manitoba, New Brunswick, Newfoundland, Ontario and the Yukon contain such an express provision.



Examples of state or societal exploitation of children for social ends are less obvious in our society than examples of parental exploitation. But the terrible danger must be recognized. In the last days of World War II Hitler used children to man his armies. The murder of millions of non-Aryan children in the Nazi era was the unspeakable ultimate in the abuse of children in the name of social engineering. While these examples have little to do with current Canadian reality, the tensions created when the state's interests conflict with the best interests of the child must be recognized. For example, our juvenile criminal legislation is an attempt to achieve a balance between the interests of the state in punishment and sometimes incarceration of children, against the best interests of the child. The balance is a difficult one that sometimes leaves critics claiming on the one hand that a particular decision fails to give adequate recognition to the state's interest in preserving the security of its citizens, or on the other attaches too little value to the interests of the child. Similarly, the question of the amount of resources our society can devote to child care, education -- even programs giving school lunches to hungry children -- often posits stark choices between perceived social interests and the welfare of children. To take yet another example, some would argue that our society for economic ends permits the exploitation of children through the advertising of toys promoting wrong values, from violence to



inappropriate sexual stereotypes.⁵ I do not suggest that other concerns must always be subjugated to the interests of children. I do suggest that we must do the best for our children that we can, and that governmental and court decisions must be careful not to directly or indirectly override child welfare. Indeed, they must support it.

Thus far I have discussed the interests of parents, the state and children themselves in the language of conflict. Perhaps this emphasis on conflict stems from the fact that I work in the judicial system, where problems involving children so often arise in the context of conflict. But the true interests of children can be solved, in my belief, only if we go beyond the rhetoric of conflict to the language of cooperation and support. For the best interest of the child cannot be conceived except in relation to the family and society. We must ensure that the interests of parents and society as represented by the state do not triumph to the detriment of our children. But we must go further to ensure that the family and society positively support the welfare of our children.

It is a fundamental truth that the family makes the child, and through the child, society. Karl Jung wrote:

The little world of childhood with its familiar surroundings is a model of the greater world. The more intensively the

⁵ Thus the Province of Quebec has outlawed certain forms of advertising directed at children, which has been upheld in *Irwin Toy* ([1989] 1 S.C.R. 927).

family has stamped its character upon the child, the more it will tend to feel and see its earlier miniature world again in the bigger world of adult life.⁶

So the welfare of the child, while it may be abetted by palliative programs aimed at children themselves, begins with the family. A violent family will stamp its violent character on the child and through her or him on the world, the cycle to viciously repeat itself. By contrast, a cooperative, rational, loving family will stamp that character on the child. The answer to bad families is not to take the children out of them -- although sometimes there may be no other choice -- so much as to assist them, difficult as that may be. We must also recognize that removing the child from her parents may have negative effects that outweigh the benefits to the child. Families may be fragmented. Children may be deprived of the only bonds and security they know and have difficulty forming new attachments.⁷ In the case of native children particularly, the result may be children who grow up with no clear identity and no real sense of where they belong in the world.⁸ In the final analysis, if children are to be helped, families must be helped. Parents must be helped to

⁶ From *Psychological Reflections: A Jung Anthology* [1953] (Edited by Jolandie Jacobel) p. 83. *Collected Works*, vol. 4, *The Theory of Psychoanalysis* [1913].

⁷ Mitchell A. Tyner, "Who Gets the Kid", (1991) 86:3 *Liberty* 8. *Supra*, note 8 at p. 187.

⁸ E.F. Carasco, "Canadian Native Children: Have Child Welfare Laws Broken the Circle?" [1986] 5 *Can. J. Fam. L.* 111 at p. 114.



accept and discharge their responsibilities to their children -- the provision of sufficient food, adequate child care and above all, a confident sense of self. They must learn to see the child as important in her or his own right and not as an extension of the parent's ego or as an opportunity for the exercise of authority or power.⁹

The same may be said of society. In the past century, we have moved from the negative proposition that the state and society must not harm our children to the positive proposition that the state and society has a positive obligation to ensure the welfare of children. The history of children in our society is the history of progressive recognition of the paramountcy of the child's peculiar interest. It began with minimum protection against undue exploitation of children in factories. It expanded to the notion that the state must protect children from other forms of exploitation, ranging from economic through sexual through social, and that the state should ensure that children receive minimum standards of health care and education. Now many seek to take the child's interest further yet. They are concerned that significant as our advances have been, children are still hungry, children are still neglected, children are

⁹ "Our children are not individuals whose rights and tastes are casually respected from infancy, as they are in some primitive societies ... They are fundamentally extensions of our own egos and give a special opportunity for the display of authority." Ruth Felton Benedict - *Patterns of Culture* [1934].

still mentally and physically bruised. They argue that society, in its own best interest, must remedy these wrongs. Wordsworth wrote, "The child is the father of the man."¹⁰ To neglect the child is to neglect the man or woman and to undermine the foundations of our future society.

If I could leave you with one thought as you commence your difficult search for solutions to the critical problems on your agenda for the next few days, it would be this: keep the children at the forefront. Too often in the past, the welfare of children has been sacrificed to other interests. We have too easily relinquished the interests of our children in favour of more compelling competing values. But this is self-defeating. The interests of parents and of society can only be served by putting the interests of our children first, by asking not what we would like, but what our children should be and become. Parents and society are but children's guardians. They do not own the children. They must not exploit them. And, like guardians at law, they must at all times put the interests of the children first. Above all, they must treat children not as commodities, but as human beings worthy of care, dignity and respect. I leave you with the following thoughts on children from the Prophet:¹¹

¹⁰ William F. Woodsworth, "My Heart Leaps Up".

¹¹ Kahil Gibran, *The Prophet* [1923] "On Children".

You may give them your love but not your thoughts,
For they have their own thoughts.

You may house their bodies but not their souls,
for their souls dwell in the house of tomorrow, which you
cannot visit, even in your dreams.

You may strive to be like them, but seek not to make them like
you,

For life goes not backward nor tarries with yesterday.

You are the bows from which your children as living arrows are
sent forth.

Ladies and gentlemen, the future, in a very real sense, lies in your
hands.