**THE RIGHT TO EDUCATION: ADVANCES AND CHALLENGES IN CANADA**

*This report is respectfully submitted by* [*People for Education*](http://www.peopleforeducation.ca)*, a Canadian NGO focused on public education, to inform the work of the Special Rapporteur for her thematic report to the Human Rights Council in June 2023.*

1. **In your country, are education issues approached through the lens of the human right to education, and if so, with what challenges and results?**
	1. Canada is a signatory to both the Convention on the Rights of the Child and International Covenant on Economic, Social and Cultural Rights. These documents of international law are legally binding and require a certain level of commitment to ensure that all domestic legislation is consistent in principle. (Gardiner-Milln, 2021; United Nations, 2020). In Canada, the responsibility to operate publicly funded education systems that are accessible to all belongs solely to the provinces and territories. While there is no over-arching federal oversight or policy specifically focused on the education or the right to education, it is broadly attributed to Section 15 of the Canadian Charter of Rights and Freedom which states “*that every individual in Canada – regardless of race, religion, national or ethnic origin, colour, sex, age or physical or mental disability – is to be treated with the same respect, dignity, and consideration*.” (Government of Canada, 2022).
	2. While education or education issues are not specifically approached through the lens of human rights in Canada, the concept does exist in a broader manner. The primary challenge in discussing the right to education is that it “*generally operates within the legal parameters of provincial or territorial legislation such as the relevant School Act or Education Act for each jurisdiction*” (The Canadian Bar Association, 2023). Thus, the right to education can look different in each province and territory, and young peoples’ realization of their right to education can be experienced differently depending on factors such as geography, socio-economics, race, disability, Indigeneity, culture, and 2SLGBTQ+ identification. At People for Education (PFE), a Canadian non-profit organization, we are actively advocating for a Right to Education Framework in Canada, to define quality education by providing clear goals, outcomes, sample indicators that can be developed, measured, and publicly reported by schools, boards, policymakers, education systems, and at a pan-Canadian level. Defining the right to a quality education – which has not yet been accomplished in Canada – will ensure that every child and young person has access to an education that prepares them with the wide range of skills and competencies they need to become capable human beings with an equitable chance for long-term success and the capacity to participate in democratic society.
2. **How do you assess the 4 A’s framework of availability, accessibility, acceptability and adaptability as conditions for realizing the right to education? Should the framework be reviewed to include other dimensions?**
	1. While Canada’s organization of authority over education allows provinces and territories to closely respond to local needs, it adds complexity and can pose challenges when trying to develop, consolidate, or implement country-wide strategies for education. For example, a Right to Education Framework is not something that currently exists at a pan-Canadian level. To address this gap and foster a common understanding of what quality education entails in Canada, People for Education (PFE) has developed a Right to Education Framework for the Canadian context (People for Education, 2022). This framework is grounded by the belief that quality education fulfils four key goals related to Access, Agency, Achievement, and Accountability. This is a conscious shift from the 4As described in the UNESCO Right to Education Handbook of Available, Accessible, Acceptable, and Adaptable, which were developed for the global context. Whereas these global 4As focus on the essential features of all types and levels of education, the revised 4As in the PFE Right to Education Framework articulate the key components of a quality public education. Canada is recognized as having one of the best publicly funded education systems in the world, but still, not all children have access to a quality education that will set them up for long-term success in school and life. The PFE Right to Education Framework provides a starting point for education systems across Canada to reflect, plan, and improve upon the promotion of every child’s right to quality education.
3. **The human right to education entails States’ obligations to respect, protect and fulfill the right to education in international human rights law. To what extent are these obligations clearly identified in your country’s legislation and in practice?**
	1. Canada’s federal government has repeatedly committed to ensuring all children have access to education by  signing on to a range of international contracts, including the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1976), the UN Convention on the Rights of the Child (1991) and the UN Sustainable Development Goals (2015). Canada also endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) and in 2020, introduced legislation to implement it. The Convention on the Rights of the Child was the first human rights treaty to explicitly recognize rights of Indigenous children to language and culture, and UNDRIP specifically references “*the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child*.” Canada made a further commitment in 2016 to adopt the Incheon Declaration for Education 2030, which outlines goals to achieve a strong, high-quality education system by 2030 (UNESCO, 2016).
	2. However, Canada is lagging far behind on fully implementing many of these commitments. A recent report from the UN raised serious concerns about Canada’s lack of progress on addressing children’s rights issues, strongly recommending the development of "*a comprehensive law on children’s rights at the federal level in line with the principles and provisions of the Convention and ensure the equal implementation of its laws throughout the country”* (UN Committee on the Rights of the Child, 2022). Among other things, the report pointed to Canada’s lack of federal oversight and monitoring of national, provincial, and territorial progress on children’s rights; the lack of an independent children’s rights commissioner at the federal level; and gaps in children’s education rights.
	3. Canada is legally bound to implement the rights and protocols under the UNCRC, but protecting the rights of children, tracking progress, and addressing disparities requires more than simply ratifying international conventions; it requires political will. Without a pan-Canadian monitoring framework to measure education and child well-being outcomes, including comprehensive data collection efforts that can be disaggregated by age, sex, disability, race, ethnicity, national origin, geographical location, and socioeconomic background, it will be impossible to address disparities in access across different areas, or even track targeted measures to address systemic discrimination that affect child well-being.
4. **Has the right to free education been progressively implemented at all levels of education in your country. If yes, please provide examples. If not, please explain why not.**
	1. Access to education is accepted as a right in Canada by virtue of its ratification of the ICESCR and other human rights treaties, however, there has been no mechanism or framework to assess Canada’s progress in realizing the right to a quality education.
	2. There is a universal right to free education in Canada from Kindergarten to Grade 12, and 92% of Canada’s approximately 5.7 million students attend publicly funded schools (Statistics Canada, 2021). However, there is inequitable access to an education “*directed to the full development of the human personality*” as described in Article 26 of the Universal Declaration of Human Rights. Students living in small, northern, and rural communities, students in lower income communities, and racialized students are less likely to have access to a variety of education services, supports, and enrichment.
	3. At the post-secondary level, individuals do have access to varying institutions based on merit, but post-secondary education is not free in Canada and funding supports for higher education (i.e., grants, loans, etc.) are managed by provincial entities (Gardiner-Milln, 2021). Furthermore, it has been found that Black, first-generation, and Indigenous students are less likely to pursue post-secondary education (James and Turner, 2017; Letseka, 2010). As such, the reality of Canada’s education system is not entirely consistent with the principles recognizing education as a human right.
5. **​​Is the right to education considered a justiciable right in your country and if so which aspects of that right? If so, please provide a short summary of emblematic cases.**
	1. The right to education is not an entirely justiciable right in Canada, however there are some exceptions. The most emblematic case in Canada has been Moore v. British Columbia (Education), which focused on Jeffrey Moore, a student with severe learning disabilities who required rigorous remediation. In 2012, the Supreme Court of Canada (SCC) concluded that students with disabilities are entitled to receive the accommodation measures they need, and that adequate special education is not “a dispensable luxury” (Council of Canadians with Disabilities, 2012). Most provinces and territories also have Human Rights Commissions which respond to local complaints on education.
6. **To what extent are the non-discrimination and equality principles respected in implementing the right to education in your country?**
	1. According to the Council of Ministers of Education Canada (CMEC), all of Canada’s 13 jurisdictions are committed to the elimination of discrimination in education at all levels (Council of Ministers of Education Canada, 2018). However, when one closely examines past recommendations from the Special Rapporteur, Canada is lagging on making progress. Even CMEC concedes that while legislative frameworks may refer to equality of access, “*in practice there are vulnerable groups in Canadian society whose access to education within the system demands special attention’*’ (Council of Ministers of Education Canada, 2018).
	2. In 2019, in a report on Canada’s progress on implementing the Convention on the Rights of Persons with Disabilities, the Special Rapporteur encouraged authorities to establish a mechanism to enhance national coherence to support its full implementation. However, only 5 provinces have enacted disability-specific and accessibility legislation, none of which is fully in line with the Convention (McKay-Panos, 2021).
	3. In a 2014 report, the Special Rapporteur on Indigenous Rights found that “*At every level of education, indigenous people overall continue to lag far behind the general population*.” Despite some policy advances and increases in funding, the gap in graduation rates between Indigenous, and in particular, First Nations students, and non-Indigenous students remains very high. It is estimated that 44% of First Nations on-reserve between the ages of 18-24 have completed high school in comparison to 88% of other Canadians (Government of Canada, 2018).
	4. In addition, a recent report from the UN on Canada’s progress on implementing the Convention on the Rights of the Child pointed to a lack of progress on overcoming disparities for children living in marginalized and disadvantaged situations, such as youth in care, children with disabilities, migrant children, as well as children belonging to Black, Indigenous, and racialized groups.
7. **In your view, what are the main challenges in your country in implementing the right to education?**
	1. In Canada, everyone has a right to education, but that right is currently neither adequately defined, nor equitably accessible. Furthermore, unlike most countries, Canada does not have a national department of education. Control over education rests with the provinces, territories, and Canada’s First Nations.
	2. Canada is recognized as home to some of the best publicly funded education systems in the world, but persistent gaps and barriers mean that not every child or student has equitable access to the quality education that will provide them the chance for long-term success in school and life. Defining the right to a quality education would ensure that every child and young person has access to an education that prepares them with the wide range of skills and competencies they need to become capable human beings with an equitable chance for long-term success and the capacity to participate in democratic society.
	3. Without a pan-Canadian monitoring framework to measure education and child well-being outcomes, including comprehensive data collection by age, sex, disability, race, ethnicity, national origin, geographical location, and socioeconomic background, it will be impossible to address disparities in access across different areas, or even track targeted measures to address systemic discrimination that affect child well-being.
8. **What are the crucial issues to address, nationally as well as internationally, to ensure the realization of the right to education?**
	1. Canada has been called one of the best places in the world to live, but when it comes to the well-being of children and youth, it is trailing many other countries (CBC News, 2015). In UNICEF’s latest review of child well-being ranked Canada 30th among 38 of the world’s richest countries (UNICEF Canada, 2020). While Canada recognizes education as a core human right, there is no mechanism in place at the federal or provincial/territorial level to determine how the right to education is being upheld across the country. Canada has participated in a national voluntary review of its progress on the UN Sustainable Development Goals, specifically the goal of quality education, but the report and statistical annex do not identify progress toward the specific targets that are essential to ensuring this goal is met in its entirety.
	2. For Canada to ensure that all children and students are adequately prepared for the future, we need a Canadian Right to Education Framework to capture the extent to which learners are having their right to a quality education fulfilled. A Canadian Right to Education Framework would allow provinces and territories along with the federal government to report on progress toward the success of every student – no matter their geographical location, socio-economic status, ability, sexuality, gender, or race. The goal of Right to Education Framework developed by People for Education is to provide a mechanism to help ensure that all of Canada’s students are adequately prepared to participate in work, life, and society.
	3. At the same time, it is critical to distinguish Indigenous rights from a universalizing human rights framework. The People for Education Right to Education Framework recognizes existing standards for Indigenous education developed by Indigenous-led organizations such as the World Indigenous Nations Higher Education Consortium (WINHEC), which has developed standards and benchmarks for both K–12 and post-secondary Indigenous educational institutions. The Framework is not intended to replace or encompass Indigenous peoples’ rights in connection to education nor does it address the right of First Nations to control of First Nations education. The greatest injustices and barriers to Indigenous education rights continue to be the erasure and invisibility of Indigenous knowledge systems; the long-standing impact of residential schools; colonization; and the loss of language (Chiefs Assembly on Education, 2012).
	4. On an international level, there are more than 120 million children and adolescents who are not in the classroom (Human Rights Watch, 2016). Despite national and international efforts to make education accessible to children, there are millions “*left behind*”. Rights groups call this an “*education deficit*” in which there is a disparity between the educational reality that children experience and governments’ commitment to human rights declarations (Human Rights Watch, 2016). There are numerous avenues in which the right to education can be materialized on a global scale. According to UNESCO, we must take three steps to enforce the right to education: legal action, monitoring the implementation of norms and standards, and supporting countries in developing educational and policy frameworks. Incorporating these steps would further advance the cause of the right to education. (Human Rights Watch, 2016).

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