Raising the Status of Children: Based on an Interview with Landon Pearson

by Elaine Lowe

In midsummer, I met with the Honourable Landon Pearson, a long-time proponent of children’s rights, who graciously agreed to be interviewed. During her 11 years as a Senator, she worked tirelessly to promote children’s rights. One of her most challenging efforts in the Senate was to serve as Co-chair to the Special Joint Parliamentary Committee on Child Custody & Access. This Committee, struck in December 1997, was tasked to “examine and analyze issues relating to custody and access arrangements after separation and divorce, and in particular, to assess the need for a more child-centered approach to family law policies and practices that would emphasize joint parental responsibilities and child-focused parenting arrangements based on children’s needs and best interests.” A year later, after extensive hearings across the country and submissions presented to the Committee, it tabled its report, For the Sake of the Children, in both Houses of Parliament. Our discussion was based on the findings of the Joint Committee and what has happened in the decade that has passed with respect to the report and to Bill-C22, which was intended to enact the recommendations of the report.

To ensure that everyone understands why Landon Pearson is so passionate about children’s rights, I asked her to explain why children need rights. She described the process through which she came to understand and believe in a rights-based approach as one that had “evolved” over a lifetime of experience with children and young people. Historically, the movement to protect human rights through internationally agreed-upon human rights treaties began with the creation of the United Nations after World War II to prevent further wars and atrocities, and the 1948 Universal Declaration of Human Rights. Personally, as the wife of a diplomat, she has travelled the globe. “My experience of foreign service in various parts of the world made me recognize that there is a real commonality in terms of what happens when we build a culture of respect for children,” she said. “A fundamental theme in the Charter of the United Nations is the importance of human rights as the basis for peace and concord among all members of the human family. This is fundamental to the understanding of why a rights-based approach is so important.”

As for why children need special rights, she explained: “They need them because children have special vulnerabilities. They need protection in a way that adults don’t. Children, because of their evolving capacities, need families. They need guidance and support as they grow from babyhood to adulthood. What the Convention on the Rights of the Child does is address that developmental aspect of being human. And because children have no political power, they require particular attention.”

“My passion for children’s rights is my passion to elevate the status of the child to the point where he or she is respected as a person. When that happens, you get much better practices and policies. And children get a voice.”

A fundamental theme in the Charter of the United Nations is the importance of human rights as the basis for peace and concord among all members of the human family.
The following excerpts from the **UN Convention on the Rights of the Child** are those that are most relevant to children whose parents are separated or divorced or in the process of becoming separated or divorced. Articles 7, 8, 9, 10 and 12 are excerpted from the **Convention** text. The preamble below and Article 3 are written in more accessible language.

**UN Convention on the Rights of the Child**

“Rights” are things every child should have or be able to do. All children have the same rights. All the rights are connected to each other, and all are equally important. Sometimes, we have to think about rights in terms of what is best for children in a situation, and what is critical to life and protection from harm. As [children] grow, [they] have more responsibility to make choices and exercise [their] rights.

**Article 3**

The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

**Article 7**

The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

**Article 8**

States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

**Article 9**

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or where the parents are living separately and decision must be made as to the child’s place of residence.

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

**Article 10**

A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents.

**Article 12**

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

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Pearson went on to describe how she first awakened to the fact that many children do not have opportunities to use their voices. In 1979, she served as vice-chair of the Canadian Commission for the International Year of the Child. She somewhat blithely suggested that, given the theme, perhaps talking to children would be a good idea. And the Commission did – to children from all walks of life in the hearings that were held all around the country. In terms of findings, Pearson stated unequivocally: “There were two very consistent messages [that emerged], which I think are important from a family point of view. For those kids who felt that they were doing well, two things had happened. First, there had always been at least one person in their life who was crazy about them and consistently available. One person. And the second thing was that their families had enabled them to make meaningful choices from a very early age, choices under guidance but real choices so that the children felt that they had had a real voice in their family’s life and especially in any decisions that were being made about them.”

As we began to discuss the work of the Joint Committee, I mentioned that I thought divorce was in provincial jurisdiction. Pearson responded: “Normally, family law is provincial. The reason why there is a federal Divorce Act is because up until the time of Trudeau, divorces from Quebec had to be adjudicated in the Senate. And so Trudeau introduced the first Divorce Act to take it out of the hands of senators and make it a federal law. This way everybody throughout the country could be treated the same way in terms of divorce. It’s just one of those accidents of history. Secondly, in Canada where many laws are federal but implementation is provincial, then it is important that everyone sings from the same songbook.”

In a mobile country like ours, where families are often on the move, a federal Divorce Act is “more in the interests of children than leaving it entirely in provincial hands.”

When the Joint Committee began its work, everyone agreed that a rights-based approach was important since all divorces impact children, sometimes negatively. “Since it was basically about what was going to happen to the children, if we didn’t take a child rights-based approach we could do them harm,” Pearson explained. There was also agreement that custody and access “should be looked at from the child’s perspective. This was about children. It was about how to share the financial, the emotional, the disciplinary, all the other kinds of things involving decision-making, in a way that was appropriate for the child, and not in a way that only suited either parent,” she stated.

Since parents are going to continue to divorce whether we like it or not, it became all the more important to make sure that the process was “as sensitive to children as possible,” said Pearson. In her view, custody and access were problematic because “the kids don’t feel they have a choice and only sometimes have someone associated with the legal system to hear their point of
view about what they’d like to have happen, whatever that is. You need to examine the child’s life and be attentive to all the normal things the child likes to do and if you don’t respect the child, you won’t do that.”

Pearson talked about her experience of travelling the country and conducting these hearings. “In all my years in the Senate, this was the most emotionally loaded activity I undertook. I just had no idea of the intensity of emotions that are generated by battling parents. It’s just huge. Those passions are very powerful.” The committee tried to balance the hearings every day so they were less emotionally-charged. Even then, in some places plain clothes policemen were hired, “because there was no predicting what was going to happen.”

Pearson thinks that “the whole culture has been permeated to a considerable degree by the need to reduce the adversarial nature of the system.”

“Every time you heard one passionate presentation, you would think that what they were experiencing was almost too painful for words. But then you would realize that you were not hearing the other two sides of the story – the partner’s side and the child’s side. One of my challenges was to make sure we reached out to children and in ways that would not be intimidating for them. Kids, we always talk about protecting them, but often fail to recognize that they are quite capable of speaking out for themselves,” she asserted.

After six months of examining submissions and holding hearings, six more months were spent developing a report and recommendations. The report of the committee’s findings was written with considerable support from Pearson as co-chair and then the recommendations – 48 in all – based on its findings were debated at length by all 23 members of the committee and finally adopted. The report and recommendations became the published document, For the Sake of the Children. “It was a year of intense preoccupation,” said Pearson.

The committee felt that the terminology of custody and access needed to change since it made it seem children were more like baggage than people. The new, more inclusive language the committee recommended was “shared parenting” to enhance the roles of both parents in the child’s life. Pearson herself hoped that the language of the UN Convention on the Rights of the Child would become part of an amended Divorce Act, with the best interests of the child principle as defined by the committee incorporated so that “any judge adjudicating a divorce has to take all these items into consideration.”

She is proud that most of the recommendations of the report were imbedded in a new family law act (Bill 22) introduced into the House of Commons in December 2002. “Much of the Convention is actually related to this [proposed] Act. It was a good bill.” However, some groups were upset that the “presumption in favour of joint custody” was absent and the “friendly parent rule” had been removed. These and other conflicts made the recommendations, housed in Bill-C22, controversial and fractious. Though it passed two readings in the House, the Bill died in 2003 when an election was called and the government changed. It has not been reintroduced.

But even though Bill C-22 did not become law, the report itself was adopted by both Houses of Parliament, was widely circulated and has had a significant impact. Pearson thinks that “the whole culture has been permeated to a considerable degree by the need to reduce the adversarial nature of the system.” Terms like “best interests of the child” and “shared parenting” are becoming more commonplace. Anecdotally, divorce is becoming much less adversarial where child custody and access are concerned, and the percentage of high conflict divorces, already relatively small, is getting smaller.

The provinces and territories have introduced a number of innovative programs and practices in response to the report. Parenting plans are more the norm and family mediation is much more widely available. In Quebec, at least one mediation session is mandatory before anything can happen in court. In many jurisdictions, parenting education programs have been created for parents who are seeking separation and/or divorce. Such programs help parents to better recognize that there are lots of issues from the child’s point of view.

Pearson elaborates: “From the kid’s point of view, after their parents separate or divorce they see their lives as constrained by the formal decisions related to custody and access. Their favourite activities are often restricted by the fact of separation because every other Wednesday, for example, you can’t make plans to be with your friends here if the other parent is living in another town. We’re not going to change the need for formal arrangements but children have a right to have their daily lives and...”
preferences taken into account. We argued for parenting plans, that you’d sit down as a family – and that includ-
ed the kids – and figure out how this would work.

“My experience has been that in a divorce that is handled in a civilized way, there are good parts and bad parts. Kids may lose on some, they may gain on others. Sometimes they gain a better relationship with parents, as when one parent who has been somewhat unavailable, finds himself or herself alone with a kid for two days and has to pay more real attention to the child and the child’s needs. It’s not to say that all divorces harm kids, but it has the potential of harming. The need is to make sure that the harm is minimized in the child’s best interest and that the opportunities are maximized.”

When I expressed admiration for her accomplishments and those of the Committee over such a short period, she responded: “One of the things I learned in my days in the Senate was that if you really wanted to focus on something or some issue, if you were willing to put a lot of time and effort into it, if you really understood what you were about, then you would probably accomplish what it was you wanted to accomplish. You might run

into opposition here and there, but most of your colleagues would support you because they respected your commitment and I was extremely committed.”

She still is.

The Honourable Landon Pearson, O.C., has been involved with children and children’s issues for close to 50 years. She served on the Senate from 1994 to 2005. This year she was appointed an Officer of the Order of Canada for her dedication and leadership in advocating for the rights of children and youth, nationally and internationally. As the daughter-in-law of former Prime Minister Lester B. Pearson, public service is in her family tradition. Her efforts will no doubt continue as she strives to elevate the status of children.

Endnotes

1 The “friendly parent rule” was used by courts to determine custody. Under it, primary custody was awarded to the parent most likely to foster the child’s relationship with the other parent.


My meeting with Landon Pearson took place at Carleton University at the Landon Pearson Resource Centre for the Study of Childhood and Children’s Rights, two sunny offices whose walls are filled with literature, in addition to personal memorabilia that reflect her career and her passions. Landon, who is clearly very proud of this Centre, told me how it came into being and what her hopes are for it over time.

In Pearson’s work over the years, her interest in children and their rights led to her amassing a considerable and unique collection of resources that reflect this passion. “A collection does represent the vision of the person who has collected it and this does represent my long term passion for children’s rights. So everything here is organized according to the UN Convention on the Rights of the Child.”

When Pearson retired from the Senate, she had been thinking about what might come next: “What I should do with my collection of materials on children’s rights and how I could continue to promote the rights of children.” After a chance encounter with Dr. Tullio Caputo, a professor of sociology at Carleton University, she asked if the University might be interested in housing her collection. When he got back to her, he said yes but on one condition – if she came with it. Landon explains: “It was because I was known as a promot-
er of children’s rights and interests and had done it as well as I could.” She gladly accepted.

Landon now runs her Centre on a voluntary basis. The University provides the overhead. Much of her efforts are directed to raising funds for the Centre. “My dream is to build an endowment large enough to pay for a full-time coordinator. Happily, I am part of this larger group of academics who form the Centre for Initiatives on Children, Youth and Community. And in the end, because I will have to retire sometime, my dream is to secure an endowed chair in children’s rights. Not for me, of course, but to ensure that this remains a centre for scholarly endeavour, as well as social activism and information transfer.”

The Centre’s current order of business is to create an annotated bibliography of the collection, which will be publicly accessible. A student is assisting in this process as is staff at the university library. Pearson says, “Eventually, within two or three years, you will be able, from anywhere in the world, to type in ‘child labour’ and reach the annotated bibliography of all that I have here.” She herself supervises honours students in the department, holds an annual seminar with child rights scholars, hosts workshops with children and youth, acts as a guest lecturer, and continues to avail her time and energy to people like me.