



Advancing Children's Right to Migration in Canada: Assessing the Participatory Rights of Unaccompanied Children in their Refugee Claim Process

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ABSTRACT

This paper applies Laura Lundy's model for children's participation to conduct a critical examination into the participatory rights of unaccompanied children as they encounter the Canadian Border Services Agency (CBSA) and the Immigration and Refugee Board (IRB) of Canada. The findings of this study reveal that while more child-adaptable measures are implemented by the IRB in contrast to the CBSA, each institution requires addressing significant gaps in children's rights to specifically uphold the participatory rights of unaccompanied children throughout their refugee claim process in Canada.

KEYWORDS

children's rights; children's participation; Lundy model of child participation; unaccompanied children; Canadian Border Services Agency; Immigration and Refugee Board of Canada

RÉSUMÉ

Cet article applique le modèle de Laura Lundy pour la participation des enfants afin de mener un examen critique des droits de participation des enfants non accompagnés lorsqu'ils sont confrontés à l'Agence des services frontaliers du Canada (ASFC) et à la Commission de l'immigration et du statut de réfugié (CISR) du Canada. Les résultats de cette étude révèlent que, bien que la CISR mette en œuvre davantage de mesures adaptées aux enfants que l'ASFC, chaque institution doit combler d'importantes lacunes en matière de droits de l'enfant afin de garantir spécifiquement les droits de participation des enfants non accompagnés tout au long de leur processus de demande d'asile au Canada.

As more people are migrating across the world than ever before (Council on Foreign Relations, 2024), it is important to reflect on who is migrating and to what extent their rights to seeking asylum are being upheld. In Canada, a record 132,525 people claimed asylum in the first 9 months of 2024 (Tasker, 2024). It is therefore critical to draw awareness to the faces behind these numbers and the extent to which their human dignity is being upheld. One way of doing so is to better understand their experiences with the legal processes for claiming refugee status.

While asylum seekers migrate in various forms (independently, in pairs, in groups, or as families), the predominant conception of the migratory process remains adult-centric. Not enough attention is paid to the fact that many children not only migrate but may do so on their own. In fact, Canada sees upwards of 3,000 unaccompanied children seeking refugee status on a yearly basis (Sadoway, 2018). Given the upward trajectory of migration to Canada on the whole, it is not unreasonable to suggest that this number may have grown in recent years. The extent

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to which these children's rights are upheld broadly, and their ability to participate in their refugee claim specifically, may be significantly challenged by a wide range of factors. This includes the disjuncture between the federal government's responsibility for these children and the various provincial childcare systems that define when childhood ends and adulthood begins, which calls into question the refugee child's right to a fair process (Sadoway, 2018).

Despite Canada becoming a State Party to the United Nations Convention Relating to the Status of Refugees in 1969 (UN Treaty Collection, n.d.a) and the United Nations Convention on the Rights of the Child in 1991 (UN Treaty Collection, n.d.b), this unjustifiable gap between the legal rights that asylum-seeking children should secure and the lived realities that they experience persists. Whether it be unaccompanied children's engagement upon arrival seeking refugee eligibility with the Canadian Border Services Agency (CBSA) or interaction over time as they pursue refugee status through the Immigration and Refugee Board (IRB) of Canada, questions abound as to whether Canada's migration institutions are facilitating the participatory mechanisms necessary to facilitate a child-adaptable refugee determination process.

Not unlike many societal institutions, Canada's migration institutions have a limited conception of the inextricable interconnection between children's rights and children's participation. It is the conceptualization of the child as a rights-bearing rather than needs-bearing individual that affirms a child's right to both express themselves and that such expression may be heard (UN Office of the High Commissioner for Human Rights [OHCHR], 1989). The emergence of the participatory child can be attributable to the coalescing of academic theorizing

and legal practice concerning children in the late twentieth century. With the advent of the "new sociology of childhood," childhood itself was now examined as a social construction. No longer conceived as universal, it was conditioned by the structural and cultural components of the location it transpired in (James & Prout, 1990). Children also became situated as social actors, and therefore attention must be paid to how they are actively contributing to the world around them (James & Prout, 1990).

At about the same time, in international law, the child secured more formal legal recognition for their independent subjecthood following the United Nations Decade of the Child (1979–1989), which culminated in the establishment of the United Nations Convention on the Rights of the Child (UNCRC) (Holzscheiter, 2010). Now, adult duty bearers have a legal obligation to balance the right of the child to participate with ensuring the best interest of the child in all matters impacting their lives (OHCHR, 1989). In fact, given what the Committee on the Rights of the Children (2013) has established as the "universal, indivisible, interdependent and interrelated nature of children's rights" (s. 16(a)), participation is not only a right in and of itself but is fundamental to ensuring all the other rights that children are entitled to (Hart, 2008).

Despite this importance being placed on children's participation, there is a discernible implementation gap to achieving it, and thus a more robust realization of children's rights remains out of reach for children. For Hanson and Nieuwenhuys (2012), this is emblematic of the very character of children's rights as "an imperfect compromise negotiated at a certain moment in time and in specific contexts by individuals representing different local and organizational interests and possessing different kinds of knowledge,

skills and power" (p. 10). Given the dynamic character of children's rights, it is necessary to conceptualize the rights of the child in a continual state of relation (Wyness, 2013) and ask how children's participation may contest adult-centric institutions to usher in child-adaptable practices.

The objective of this article is to address the preceding question in relation to unaccompanied children seeking asylum in Canada. According to the UNHCR (1997, p. 121), an unaccompanied child is

a person who is under the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier and who is separated from both parents and is not being cared for by an adult who by law or custom has the responsibility to do so.

As the UN refugee agency, the UNHCR is tasked with monitoring, evaluating, and advocating the improvement of refugee rights worldwide (UNHCR, n.d.). In its 2009 report, **Guidelines on International Protection: Child Asylum Claims Under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees**, the UNHCR (2009, p. 3) draws essential attention to the fact that

the specific circumstances facing child asylum-seekers as individuals with independent claims to refugee status are not generally well understood ... [and] their unique experiences of persecution, due to factors such as their age, their level of maturity and development and their dependency on adults have not always been taken into account.

Therefore, this article sees an opportunity to make a unique contribution to the literature on unaccompanied children in Canada. To better understand whether the rights of unaccompanied children are upheld, the Lundy model of children's participation will be applied to the experiences of unaccompanied children as they navigate the refugee claim process in Canada. In

her seminal article, "'Voice' Is Not Enough: Conceptualizing Article 12 of the United Nations Convention on the Rights of the Child," Lundy (2007) highlights that "there is a need for a greater awareness of the fact that respecting children's views is not just a model of good ... policy making but a legally binding obligation" (p. 930). Therefore, through her four-phase model, institutions may be critically analyzed as to how effectively they facilitate children's participation specific to the space where children may express their views, the voice with which children are able to share their views, the audience that hears such views, and the influence children may have on adult action being informed by such views (Lundy, 2007).

Drawing upon qualitative interviews with both executive and frontline settlement services professionals as well as expert lawyers in refugee law, this article asks: To what extent is Canada upholding unaccompanied children's right to participation specifically and in relation to their rights more broadly over the course of their refugee determination process? An institutional analysis of both the CBSA and the IRB using the Lundy model reveals that more child-adaptable measures are implemented by the latter relative to the former. However, both of Canada's migration institutions must address significant gaps to uphold the participatory rights of unaccompanied children throughout their refugee claim process in Canada. This article will proceed to support such an argument in four stages. First, it critically examines the unaccompanied children and international refugee law literature to situate itself as a unique participatory rights application to unaccompanied children in Canada. Next, the methodological approach is identified. In turn, the findings of a Lundy model assessment for the CBSA and IRB are discussed before the article comes to its conclusion.

UNACCOMPANIED CHILDREN AND INTERNATIONAL REFUGEE LAW

The precarious experiences of refugees and unaccompanied children reveal the inadequacies at best and injustices at worst of state-centric global politics. Writing on the totalitarian state and its implications for (non)citizens in the late 1960s, [Arendt \(1967\)](#) clearly articulates the fallacy of entrusting individual rights solely with the state institution. This is because it can in fact be the cause of rather than protector from human rights violations. Instead, Arendt postulates that “the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself” (p. 298). International law has long been tasked with addressing this global conundrum. Operating through a cosmopolitan rather than nationalist ethos, it strives to reflect the ideals of humanity that Arendt speaks to. This is because it advances progressive norms designed to enhance the state of human rights around the world. In their seminal article titled “International Norm Dynamics and Political Change,” [Finnemore and Sikkink \(1998\)](#) reveal the optimistic route whereby human rights norms may emerge, reach a tipping point, cascade, and become internalized by states across the globe.

In the context of international children's rights, the Decade of the Child (1979–1989), culminating in the establishment of the UNCRC, certainly fits [Finnemore and Sikkink's \(1998\)](#) emergence, tipping point, and cascade model. Moreover, its progressive realization requirement reflects an ongoing internalization as the most widely ratified international treaty ([UNICEF, n.d.](#)). However, despite the pervasive signalling by state actors that they align with the principles of the UNCRC, there remains a significant gap surrounding incorporation of these international laws into their domestic legislation ([Hoffman &](#)

[Stern, 2020](#)). Furthermore, despite a holistic approach to each article within the UNCRC, some articles may be unjustly prioritized over others, and therefore select children may better secure their rights in relation to others. Nevertheless, the UNCRC is a powerful legal instrument to advocate for all children broadly and, in the context of this paper, unaccompanied children specifically. This is because article 22(1) specifically requires that States Parties apply the UNCRC to all children seeking refugee status. However, the international refugee law literature clearly reveals that adult-centrism, denial of agency, and restrictive national policies significantly obstruct the rights of unaccompanied children. This section will therefore elaborate upon refugee children and unaccompanied children as it relates to the legal issues they encounter prior to the findings section of this Canadian study.

Adult-Centric Approaches to Unaccompanied Children

As unaccompanied children pursue refugee status in a new country, they encounter institutions created by and designed for adults. According to [Bhabha \(2007\)](#), perhaps the foremost scholar on refugee children's rights, this is because children “have simply not been thought of as appropriate subjects of asylum applications or refugee status grants” (p. 206). Herein lies the *raison d'être* for the UNCRC: ensuring that societies dismantle adult-centric institutions to facilitate child-adaptable practices for children. However, in the absence of applying the UNCRC principles, children broadly and, in this context, unaccompanied children specifically are denied their fundamental rights. For instance, as unaccompanied children navigate the refugee determination system, they are the victims of “age-insensitive jurisprudence” ([Pobjoy, 2017, p. 3](#)). This is

because these institutions are ill-equipped to consider the unaccompanied child through a uniquely child rights-based framework (Pobjoy, 2017). As such, both the child's refugee claim process and ultimate decision concerning their citizenship status rests on questionable legal grounds.

The Denial of Unaccompanied Children's Agency

In a related manner, these same adult-centric migration institutions routinely deny the agency that unaccompanied children possess. A principal feature of children's law broadly and as stated in the UNCRC specifically is that "in all actions concerning children ... the best interests of the child shall be a primary consideration" (UNCRC, 1989, art. 3(1)). Yet, on account of their marginalized position vis-à-vis adults in society, children tend to be conceptualized in a passive rather than active state, failing to account for their social agency (Pobjoy, 2017). This is a significant tension in children's rights both academically and in their practical implementation. Finding this balance between the right of the child to participate and the collective determination of the best interest of the child with adult actors requires generational dialogue. It is important to note, and this will be elaborated upon during the discussion on unaccompanied children in Canada, that the safeguards provided by adult actors are fundamental for children given that they may be required to recall traumatic experiences as asylum-seeking children. However, this lends further legitimacy for the importance of child-adaptable practices because in their absence, children's experiences may not be heard at all, and such circumstances may limit both these children's agency and jeopardize their attainment of refugee status (Kanics, 2016).

Restrictive National Policies

Finally, if encountering adult-centric institutions and being denied one's agency was not difficult enough, unaccompanied children's precarious citizenship status renders them vulnerable to discriminatory treatment. Broadly speaking, the state-centric world humanity operates within sees each individual state take on what Bhabha and Young (1999) refer to as a Janus-like position: each country has nationalistic tendencies that perceive the need to deter migration. This is generally prioritized at the expense of a cosmopolitan ethic, which identifies the human dignity within all people regardless of where they come from. Therefore, the restrictive nature of state policies dichotomizes citizens and asylum seekers, whereby liberal democratic states generally fulfill their responsibilities to the former but outright deny their cosmopolitan obligations under international law to the latter (Agamben, 2005). This policy approach applies even in the context of children where the unaccompanied child's status as a rights-bearer is marginalized, thus emphasizing their asylum-seeking status and rendering them susceptible to significant rights violations (Crock, 2013).

Overall, the unaccompanied children and international refugee law literature provides rich detail on how adult-centric, agency-denying, and nationalistic government policies deny human rights (Bhabha, 2007; Crock, 2013; Pobjoy, 2017). Fundamental to redressing such circumstances is advancing the importance of facilitating unaccompanied children's participatory rights. Therefore, the next section will briefly lay out the methodological approach to contributing a Lundy model analysis of unaccompanied children's participatory rights that has been applied to the context of Canada.

METHODOLOGICAL APPROACH TO STUDYING UNACCOMPANIED CHILDREN'S PARTICIPATORY RIGHTS

In order to conduct this study, ethics approval was sought and granted by the Research Ethics Board at Trent University. As the research aims to understand the extent to which unaccompanied children's participatory rights are upheld by the CBSA and IRB over the course of their refugee claim process, two undergraduate research colleagues and I aspired to learn about this topic from key informants, including frontline and executive settlement services professionals, as well as expert lawyers in refugee law.

We spoke to 10 professionals in this field. These frontline and executive settlement services professionals included social workers and nonprofit organization members who navigate the asylum-seeking process alongside unaccompanied children. They developed close bonds with, provided ongoing support to, and were dedicated to the cause of upholding the rights of asylum seekers broadly and unaccompanied children specifically.

We also spoke with experts in refugee law who represented and supported unaccompanied children, particularly by advocating for them at the IRB. These key informants were approached through a qualitative study that aims to integrate research advocacy (Gharabaghi, 2022) in order to mobilize enhanced understanding toward supporting a fair refugee process for unaccompanied children. Consequently, the methodological foundation of this study strives to align with the new sociology of childhood's paradigmatic shift to conceptualize the world through the lens of children's experiences (Christensen & James, 2008).

It is critical to note that a limitation of this study is that no unaccompanied children were directly spoken with for this research.

The key informants we interviewed felt that given the precarious nature of unaccompanied children's citizenship status, it was in the children's best interest to remain outside of research. The practice of conducting ethical research requires respecting the decisions made by individuals most closely connected to the issue. While the perspective of unaccompanied children is valued and would importantly contribute to this study, our research team fully respected the position of the key informants. This is particularly the case as they drew directly on their experiences with unaccompanied children and were well versed in child-adaptable practices. Such a technique aligns with maintaining children's rights in professional practice. It is fundamental that professionals engage in a relational children's rights-based approach where they "think critically and consistently about the various structural and systemic issues affecting children [and] youth" (Collins, 2024, p. 92). In this case, the key informants situated unaccompanied children as existing in a precarious state of citizenship and therefore "not only recogniz[ed] but actively and respectfully respond[ed]" (Collins, 2024, pp. 98–99) by suggesting that they did not take part in this research. While this study's findings therefore emerged solely from these professionals, what they shared conveys the essence of unaccompanied children's experiences as they knew it would advance these children's participatory rights throughout their refugee claim process.

This qualitative research design used both purposive and snowball sampling to engage 10 key informants in semi-structured, open-ended, virtual interviews, which were 60–90 minutes in length. Following each interview, data analysis consisted of open and axial coding for the four major themes from the Lundy model for children's participation. This meant analyzing how effectively

both the CBSA and IRB facilitated children's participation specific to the **space** where children may express their views, the **voice** with which children are able to share their views, the **audience** that hears such views, and the **influence** children may have on adult action being informed by such views (Lundy, 2007). What will become evident in the proceeding pages is that despite the IRB including more child-adaptable practices than the CBSA, both institutions need to improve the participatory rights of unaccompanied children in their refugee claim process.

A LUNDY MODEL ANALYSIS OF UNACCOMPANIED CHILDREN'S PARTICIPATORY RIGHTS IN CANADA

The Lundy model is among the foremost institutional assessment standards for children's participation. Recognizing the dual requirement for children's participation as ensuring they have "the right to express [their] views freely [and] ... be provided the opportunity to be heard" (UNCRC, 1989, arts. 12(1), 12(2)), the Lundy model examines the practical implementation of this fundamental child right. Acknowledging that by its very nature, the child's right to participation necessitates co-operation from adult actors (Lundy, 2007), the model conceptualizes children's rights in a state of relation. In so doing, it situates children as agents, may reveal the barriers they face to participation, and draws attention to best practices.

To begin, if participatory mechanisms for children to engage within an institution are profoundly absent, this could very well reflect a limited awareness for children's right to participate under article 12 of the UNCRC itself (Lundy, 2007). Article 12 extends further through operating in tandem with both articles 13 and 17, which identify children's right to both freely express themselves and to have access to information

from which to share their views (UNCRC). For Lundy (2007), it is important to therefore shed light on the fact that the absence of exercising these rights violates article 42 of the UNCRC: that State Parties "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike." Despite the obligation to uphold the UNCRC broadly, and article 42 specifically, one settlement services professional echoed such circumstances in relation to unaccompanied children in Canada. They stated that these children "are navigating a process that is made for adults [but] ... what would be really great is to have a child-friendly process ... that works for them" (A1). Therefore, this section of the paper will proceed to operationalize the Lundy model in relation to the CBSA and IRB through the two stages (the right to express views and the right to be heard) and four distinct yet interrelated and chronologically ordered elements (space, voice, audience, and influence) (Lundy, 2007). The results reveal that an enhanced focus on child-adaptable practices is essential to better facilitate the participatory rights of unaccompanied children.

Space

The first step in assessing the participatory rights of unaccompanied children is considering the physical space where they encounter representatives of Canada's migration institutions. For instance, Lundy (2007) outlines that the space children occupy should both encourage children to express their views while also respecting their right to forego involvement. While the space children are offered should be safe, inclusive, and supportive, in the context of the CBSA and the IRB, unaccompanied children experience many barriers to making this a reality.

Space—CBSA

The initial institution that unaccompanied children encounter upon arrival in Canada is the CBSA. In their assessment of the child-adaptable nature of this institution, a settlement services professional shared that “the processes and the protocols that are put into place ... [do not protect] unaccompanied children to feel safe, to feel like they are being heard” (A2). This sentiment was reflected by the understanding expressed by another settlement services professional. They drew important attention to the fact that “throughout the process, youth coming alone are super scared ... [and] always sleep deprived” (A3). Therefore, while recognizing the responsibilities that CBSA officials are tasked with doing, it is an altogether intimidating experience they are forced to endure.

Even though the physical space they experience varies according to the way they enter the country, there continue to be few signs that the CBSA institutes child-adaptable practices. For instance, a settlement services professional explained that

the physical spaces [are] ... the same [as those for adults]; [it's a] waiting room. ... There's not anything that makes it more child-friendly or less intimidating. ... [They] wait in a room for hours, people coming and going and saying this will happen, [that] will happen. (A3)

Once a CBSA official can speak with an unaccompanied child, they will generally conduct their eligibility hearing “right at the border ... on the same day that you arrive, and then you leave that assessment with the [refugee claim] document” (A1) if determined eligible to do so. However, consider the haste with which this process unfolds, the difficult subject matter that is discussed, and the distressing environment where all of this transpires. For one settlement services professional, it was obvious that

unaccompanied [children] ... are not given appropriate space or time really [to] express their views and feel comfortable. ... It is a very intimidating process to be with an enforcement officer from CBSA who is asking a lot of questions. “How did you come to Canada?” “Why are you [here]?” “Why are you scared to [go] back home?” These children that have just arrived after a very long and difficult and traumatic journey, and to be asked those questions that are going to be put on the record for the refugee claim, and perhaps scrutinized by the person who is going to decide their refugee claim, I don't think that is adequate. (A2)

Therefore, the initial space of the CBSA that unaccompanied children encounter is absent clear policies and practices that may be adapted to the unique circumstances of children.

Space—IRB

Upon acquiring eligibility to pursue a refugee claim, unaccompanied children then encounter the IRB. Within this institution are more child-adaptable policies and procedures available from which to facilitate unaccompanied children's participatory rights. Nevertheless, many challenges remain. For instance, the unique status of unaccompanied children requires that they have an admissibility hearing with the immigration division of the IRB. Here, these children are actually “given a departure order from Canada [saying,] ‘You have to leave Canada but we're not going to enforce this until you've had the right to a refugee hearing’” (A1). Not only might this protocol unjustly intimidate children, but it is also very likely to confuse them and therefore requires addressing.

To somewhat alleviate this difficulty in particular and the complexities of the refugee claim process as a whole, the IRB is the first place where children are guaranteed a designated representative (DR). This person is assigned by the IRB but operates independently as their task is to serve as the child's “litigation guardian; ... to [help the child]

understand ... the nature of the proceedings and guide them through it" (A1). While the physical space of the IRB is an administrative tribunal that does not differ from the setting that adult asylum seekers experience (A3), one settlement services professional described their role as "need[ing] to explain in non-legal terms what's happening to [unaccompanied children as] ... for a lot of them English isn't their first language, they're so young, and they're dealing with [so much]" (A3). Therefore, the introduction of a DR is critical toward enhancing the child-adaptable practices of the IRB.

Overall, a Lundy model analysis of both the CBSA and IRB in relation to the space they provide for unaccompanied children shows significant limitations to their participatory rights. Little in the way of adult support is offered at the CBSA; however, the IRB's introduction of a DR can improve the exercising of rights these children hold.

Voice

The second stage of assessing the participatory rights of unaccompanied children is evaluating the voice they can convey within Canada's migration institutions. Perhaps among the most significant barriers that children face to exercising their agency is the adult-centric belief that children may not be equipped to participate in some matters. While fully recognizing that a child's evolving capacity as stipulated in the UNCRC (see [OHCHR \(1989\)](#), arts. 5, 12) shall importantly guide what they should and should not do, [Lundy \(2007\)](#) makes clear that "children's right to express their views is **not** [emphasis added] dependent upon their capacity to express a mature view; it is dependent only on their ability to form a view, mature or not" (p. 935). This suggests that as children, including unaccompanied children, have a right to participation, adult duty bearers are

called upon to do more such that children's voices may be made as clear as possible. Therefore, the voices of unaccompanied children must be elevated by CBSA and IRB officials, but this is not transpiring at the level it could and should.

Voice—CBSA

As unaccompanied children engage with the CBSA, they are required to answer the institution's questions. However, as one settlement services professional explains, despite the fact that "they are asked for their view ... they're not being given the appropriate time and space to ensure that they are comfortable to bring that information forward" (A2). In fact, unaccompanied children may be extremely limited in their understanding of the refugee claim process, such that they "might not know the term refugee [or may] not know what a refugee claim is, ... [so] you can't express your views freely unless you have enough information to form those views" (A1). Herein lies perhaps the most distinct difference in unaccompanied children's experiences between the CBSA and the IRB. At the former, children may speak without the presence of an adult for support, whereas the "IRB has the legal authority and responsibility to appoint a DR" (A1). The repercussions of such circumstances are evident as according to one settlement services professional:

It's up to the individual CBSA officer to support the child in expressing their views, and that depends totally on the officer's interest in doing that or their awareness of the rights of the child. ... There is no formal mechanism for CBSA to ensure [this]. (A1)

Clearly, this lack of institutional assurances reduces an unaccompanied child's ability to effectively express their viewpoints.

Consider further the significant consequences that such a state of affair may have in light of the overall refugee claim process

unaccompanied children must follow. According to a legal expert, the initial eligibility interview is "very important because everything, every interaction they have with the CBSA, is recorded diligently and can be used against them at later points in their claim" (A5). This is a clear violation of justice as many key informants spoke to the negative impact that sleep deprivation from travel, experiences of trauma, and issues requiring cultural sensitivity may have on the responses they provide to the CBSA (A3; A4).

Voice—IRB

The participation of unaccompanied children is vital to conveying why they require asylum, and the presence of a DR is critical for success. As the sole systematic mechanism to ensure such outcomes (A1), it is vital that DRs are well versed in the refugee claim process and how to support children's voices most effectively. While anyone taking up the role of a DR may show noble intentions, the aptitude of DRs will vary considerably. This may in fact be a product of the institutional feature that sees DRs operating at arm's length from the IRB as they are tasked with supporting the refugee claimant. It is noteworthy that this policy may have limited the degree of oversight DRs experience. However, improved guidelines and competency profiles are recent developments that are enhancing the calibre of DRs (A1). The improving professionalism of DRs is a positive step to supporting the voices of unaccompanied children. Nevertheless, according to a legal expert, "a problem we see is that the appointment [of DRs] are interrupted, someone new [may be] brought in at every stage, and you need continuity when you're working with a[n] [unaccompanied child]" (A5). Ideally, enhanced proficiency may limit such circumstances, but this reality speaks to a breach of unaccompanied children's rights.

A second area impacting unaccompanied children's participatory rights that carries over from the experiences they have with the CBSA is their limited literacy in relation to the refugee claim process itself. While in the former they may have to navigate their circumstances relatively independently, within the IRB, the DR is tasked with guiding them throughout. However, despite this adult support, the extent to which DRs prepare unaccompanied children in the lead-up to their hearing is often limited. While best practices state a conference involving all responsible parties should transpire prior to their refugee hearing, this vital stage is becoming less frequently the norm (A1). As such, unaccompanied children's participatory rights are limited by their lack of knowledge of the process. According to a settlement services professional,

[In] almost all of the refugee cases that I've worked with, none of [the children] ever understand the system. ... This is the most important process of their lives at this given time, and when I talk to [the children] ... it's very clear that there is a big lack of awareness. ... [They say,] "My lawyer says I have to do this." [I say,] "Why are you doing it?" [They say,] "I don't know, they just told me to do it." (A4).

While recognizing the complexities that the law involves impacts children and adults alike, it is clear that DRs must enhance unaccompanied children's legal literacy.

Finally, the specific involvement of unaccompanied children in conveying their voice can be facilitated by DRs in several ways. For instance, the DR alongside the lawyer can have prerecorded testimony and take down written submissions, and the DR themselves may speak to certain issues on the youth's behalf (A3). If the unaccompanied child feels capable of delivering testimony during their hearing, the DR can provide significant preparation to ensure they are ready to do so and be next to them during the hearing to offer support and encouragement (A3).

Evidently, support of a DR gives unaccompanied children a multitude of options to convey their voice, serving as an important mechanism to uphold their participatory rights.

Audience

Reflecting the way by which article 12 of the UNCRC stipulates children's right to both express their views and be heard (OHCHR, 1989), the third stage of the Lundy model sees a transition from a focus on the former right in its previous two stages to the latter right in its final two stages. Therefore, this penultimate stage of the model places its attention on the audience that unaccompanied children encounter. This right to an audience is "a guaranteed opportunity to communicate [their] views to an identifiable individual or body with the responsibility to listen" (Lundy, 2007, p. 937). What becomes evident is that as unaccompanied children engage both the CBSA and IRB, there are substantial limitations to facilitating child-adaptable practices.

Audience—CBSA

For unaccompanied children's participatory rights to be upheld over the course of their refugee claim process, the CBSA must be equipped to listen to these children's requests for refugee eligibility. However, questions emerge over the extent to which CBSA officers are adequately trained to do so. For instance, according to a settlement services professional,

We have not been given any strong indication that there is training on, not even just the [UN]CRC, but how the process or approach to interviewing children [occurs]. ... They have these enforcement manuals that they use for training, and that is the only reference we can find ... [that has] a paragraph on vulnerable people. ... It mentions unaccompanied [children but] along with a whole bunch of other vulnerable categories. (A1)

Clearly, the failure to distinguish children from other vulnerable adult groups broadly, and the lack of focused attention being paid to unaccompanied children specifically, reveals an inability to facilitate child-adaptable practices. This same professional went on to say that while "there are some officers who, I imagine, are great with kids, and are really interested in children's rights, that doesn't really help from a systemic perspective of ensuring [their rights are upheld]" (A1).

What becomes clear is that this impromptu rather than defined policy approach jeopardizes the participatory rights of unaccompanied children. As no specific training is set forth by the institution itself, the process devolves into informal practices. Consequently, the CBSA requires addressing its adult-centric character by formally instituting child-adaptable practices for unaccompanied children.

Audience—IRB

Analyzing the extent to which the audience at the IRB supports the participatory rights of unaccompanied children, it becomes clear that more child-adaptable practices are available when juxtaposed with the CBSA. For instance, as early as 1996, the IRB established **Chairperson Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues**. In this document, the IRB (1996, p. 1) establishes that

The Immigration Act does not set out specific procedures or criteria for dealing with the claims of children different from those applicable to adult refugee claimants, except for the designation of a person to represent the child. ... [However], the procedures currently being followed ... for an adult claimant may not always be suitable for a child claimant.

Importantly, for over 25 years, a legislative commitment has indeed been made to facilitating child-adaptable processes for unaccompanied children. In this guideline,

it is stated who an unaccompanied child is, what the processing should include (i.e., retaining initially assigned parties, prioritizing the processing of the claim, ensuring a pre-hearing conference unfolds), and how to elicit the evidence (i.e., confirming the child understands the process, fostering an informal environment, showing sensitivity to questions and responses) (IRB, 1996). However, significant questions emerge over the depth of this guideline as well as its actual implementation. For instance, as one settlement services professional highlighted, a newly composed Guideline 3 is on the horizon that will better address questions, including:

Should the child testify? Should the DR testify? How? What's the appropriate questioning? ... [How] does children's development and the maturity of children ... affect how they view events? ... If a child answers questions and they leave out a bunch of information, is it because they just don't figure it's [relevant]? [Do] they [not] have the information because their parents haven't [shared it]? (A1)

Clearly, the pursuit of enhanced depth is an exciting prospect in more fully ensuring the participatory rights of unaccompanied children. There is a demonstrable anticipation that an updated Guideline 3 holds a great deal of potential for moving forward the child-adaptable practices of the IRB. However, this same settlement services professional worried that

a record number of refugees ... and a backlog of ... [refugee] claims who haven't been heard [means] ... board members are being pushed to be [more] efficient. ... [Consequently,] the bureaucratic mechanism [is] prevent[ing] all the adults ... [from] hear[ing] the child's voice. (A1)

Concerns are therefore warranted that despite a written commitment to improving the rights of unaccompanied children, this positive initiative could prove vulnerable to administrative contingencies.

Influence

The final step in assessing the participatory rights of unaccompanied children requires consideration of the ways in which they influence their proceedings at the CBSA and IRB respectively. Achieving an authentic form of participation means navigating the inevitable tension that exists between UNCRC article 3 (best interest of the child) and article 12 (right to participation), without falling prey to a performative experience of participation (Lundy, 2007). This means being able to facilitate the voice of children and youth to the extent that it may be unencumbered by adult bias but rather supported in the collective vision of the intergenerational prospect for the best interest of the child. Lundy (2007) makes it very clear that children "should be told what decision was made, how their views were regarded and the reasons why action has proceeded in a certain way" (p. 938). Therefore, unaccompanied children are entitled to know how they are actively influencing their refugee claim process. However, the extent to which this transpires is once more constrained in the context of the CBSA, while it is slightly more pronounced in the setting of the IRB, with room for both to significantly improve.

Influence—CBSA

For unaccompanied children's participatory rights to be upheld, the CBSA is required to indicate how these asylum seekers influence their refugee eligibility process. Such action acknowledges each child as a rights-bearing individual and lends credibility to upholding their rights as they engage with the institution. Unfortunately, such a dialogical approach does not appear to unfold. According to one settlement services professional,

Is there a clear and agreed upon process for communicating back young people's voices? ... No. I find it so top-down. It's always the authorities are

speaking to people. I don't see a two-way street where some of that comes back. (A4)

While it may be the norm that such a hierarchical relationship exists between CBSA representatives and asylum-seeking individuals broadly, this once more demonstrates a lack of commitment to child-adaptable practices specifically.

To rectify such circumstances, it is vital that an institution like the CBSA receives feedback about their operating procedures. However, the degree to which that feedback is incurred, which may lead to the possibility of creating change in their policies, is questionable. This is because, as one legal expert explains,

[while the CBSA] has a complaints mechanism on the website ... there is no independent oversight body for the CBSA, which has been an issue that's come up for decades. ... Having an oversight body for the CBSA to be able to hold officers ... [and] departments accountable is critical. It's the only enforcement agency in Canada without independent oversight. (A5)

Evidently, the significant autonomy wielded by the CBSA indicates that any feedback it incurs is susceptible to being pushed aside. In unaccompanied asylum-seeking children's experiences, changes that see their participatory rights welcomed, acted upon, and explained as to how they shape their legal proceedings remain very much absent.

Influence—IRB

While unaccompanied children are extremely limited in learning how they influence their refugee claim process with the CBSA, the IRB certainly has more pathways for them to do so. Nevertheless, significant challenges remain. First and foremost, the DR is clearly essential for supporting unaccompanied children by both informing them of the processes they are experiencing and either relaying their wishes or encouraging them

to do so independently. But according to one settlement services professional, "Yes, it is possible for youth to complain on their own, but I don't know how they would know the pathway to do it honestly" (A3). A legal expert shares a similar sentiment in relation to how unaccompanied children may not influence the proceedings as much as they should be able to:

I've had [unaccompanied children], after repeated objections from myself, ... completely break down toward the end of their hearing because [the tribunal is] not listening to the accommodations that are being requested for that particular [unaccompanied child]. ... [This is because] the needs of the child in terms of how they can best present their claim in the least retraumatizing way may be ignored. (A5)

This speaks to a related point: Despite the DR acting as the point person for an unaccompanied child, facilitating the influence that they are entitled to make is a group responsibility. As shared by a settlement services professional, ensuring this influence is felt depends upon

how well the board member is trained ... [in relation to] how sensitive they are to children ... [and] having a good lawyer who manages to represent the views of the child. ... It's a team effort to make sure that the child's views are heard enough to be considered. (A1)

While the extent to which unaccompanied children are informed as to how they influence the proceedings of their refugee claim varies by how effectively each party at the tribunal ensures child-adaptable practices, there is one clear phase during which their influence is made apparent. In the ultimate determination of an unaccompanied child's refugee claim, "the adjudicator will read through the reasons that they deem, 'yes, you are a legitimate refugee' [or 'no, you are not a legitimate refugee,'] and they will cite what [the unaccompanied child has] shared with us" (A3).

In this way, the child has been informed as to how they have influenced their claim. However, one settlement services professional among a few shared the sentiment that when they do receive a decision from the IRB,

it's not really conveyed in a child-friendly way so that they can actually understand it. ... They're relying on council or the DR to take [it] and make it accessible to them. ... So I think that's an area where the system hasn't gone far enough to ensure that they're informed of how their views and their voice impacted the decision. (A2)

Evidently, increased effort into the precision of child-adaptable practices at the IRB are required to better support the participatory rights of unaccompanied children.

CONCLUSION

This Lundy model for children's participation analysis of Canada's migration institutions has demonstrated that the IRB includes a higher standard of child-adaptable measures when contrasted with the CBSA; however, both governmental bodies must clearly do more to uphold the participatory rights of unaccompanied children. By examining unaccompanied children's participation specific to the space where they may express their views, the voice with which they are able to share their views, the audience that hears such views, and the influence they may have on adult action being informed by such views (Lundy, 2007), a more holistic assessment for the multidimensional nature of their participation emerges. This is because the model situates unaccompanied children in relation and by doing so recognizes that upholding their participatory rights is a shared responsibility alongside adult actors operating within Canada's migration institutions.

Over the course of their refugee claim process, unaccompanied children clearly rely on the supports of adult actors to navigate

their circumstances. But engagement, consultation, and support with settlement services professionals, social workers, and legal representation are required for such support to be child-adaptable. While the IRB provides a record for refugee claims based upon countries of origin (IRB, 2024), information concerning who these claimants are, including unaccompanied children specifically, remains difficult to access. Therefore, as the migration of people around the world broadly and to Canada specifically will continue, Canada must be held more accountable to enhanced transparency and improved assurances for upholding the participatory rights of unaccompanied children.

The objective of this article was to explore the broad question as to how children's participation may contest adult-centric institutions and usher in child-adaptable practices. It has done so by examining the specific experiences of unaccompanied children in Canada, revealing the restrictions these children endure and the routes to participation that currently exist while advocating the removal of the former and enhancing improvement of the latter. At this time, unaccompanied children continue to move "through a system that hasn't been designed to be responsive to their needs, ... vulnerabilities, or their priorities" (A2). Consequently, this Lundy model assessment of unaccompanied children's participatory rights within the CBSA and IRB reveals that while the latter institution is better equipped for this task when juxtaposed with the former, both government bodies require improved child-adaptable practices to make unaccompanied children's participatory rights a more robust reality.

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