

February 28th, 2020

**Alternative report on the fifth and sixth
periodic reports of Canada to the UN
Committee on the Rights of the Child**

RE: Province of New Brunswick, Canada

**Submitted by the New Brunswick Office of
the Child and Youth Advocate**

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PART I INTRODUCTION

1. The New Brunswick Office of the Child and Youth Advocate is an independent human rights institution for children. The Advocate is an Officer of the Legislative Assembly for the Province, and acts under statutory authority pursuant to the *Child, Youth and Senior Advocate Act*.¹
2. The New Brunswick Office of the Child and Youth Advocate (“NBOCYA”) appreciates this opportunity to provide submissions to the United Nations Committee on the Rights of the Child (“the Committee”) on Canada’s compliance with the provisions of the United Nations Convention on the Rights of the Child (“UNCRC”). The Child and Youth Advocate’s work is grounded in the voices of children and youth while engaging with families, community organizations, and government partners, to defend the rights of children and youth to ensure that their best interests are considered in all decisions affecting them.
3. All issues and data in this report relate to New Brunswick issues and data and not necessarily to Canada as a whole. The NBOCYA is encouraged by the progress the Province of New Brunswick has made on several fronts since 2011, for child rights implementation. We allude to these below, but in the main this report will concentrate on gaps in implementation and areas for further improvement in fulfilling children’s rights in New Brunswick.

¹ Child, Youth and Senior Advocate Act, SNB 2007, c C-2.7, <<http://canlii.ca/t/53815>> retrieved on 2020-02-24

PART II GENERAL MEASURES OF IMPLEMENTATION ADOPTED BY THE GOVERNMENT OF NEW BRUNSWICK

Review of Reservations to the UN Convention on the Rights of the Child

4. Canada has not removed its reservation under Article 37(c). In 2012, the *Youth Criminal Justice Act* (YCJA) was amended to provide that no person under 18 is to serve a sentence in an adult institution. In New Brunswick, all youth aged 12-18 inclusive are housed at a facility that has been repurposed from a youth detention and secure custody facility to housing youth in one section and adult female inmates in another. The Child and Youth Advocate finds this situation to be a violation of the spirit and intent of Article 37(c). The Department of Public Safety also transports youth accused and convicted to this facility in vehicles with adult detainees and inmates.

Ratification of other International Human Rights Instruments

5. Canada has not ratified Optional Protocol 3 to the Convention and the New Brunswick government has not officially requested that the federal government do so. Canada's recent ratification of the Optional Protocol for a communications procedure under the CRPD in 2018, leaves children as the remaining silenced citizens in Canada before the treaty body mandated to hear them.
6. Canada is considering the ratification of the Optional Protocol under the Convention Against Torture for a National Prevention Mechanism. The NBOCYA supports ratification and is ready to participate as an institutional member in Canada's proposed NPM as the oversight body for children deprived of liberty in New Brunswick, but additional funds and staff would be required from Canada for our office to effectively undertake this mandate.

Legislative Measures to Implement the UNCRC

7. New Brunswick has not heeded the advice of the Committee on the Rights of the Child in General Comment 5, that "[e]nsuring that all domestic legislation is fully compatible with the Convention and that the Convention's principles and provisions can be directly applied and appropriately enforced is fundamental." No provincial legislation in New Brunswick references the UNCRC. The NBOCYA has encountered government officials who have stated an erroneous belief that the New Brunswick government cannot reference the UNCRC in legislation because the Province "has not yet officially recognized the UNCRC."
8. Reference to the UNCRC is limited at present in New Brunswick to policy documents within the Department of Education and Early Childhood Development, and Practice Standards within the Department of Social Development.
9. In 2019 the NBOCYA recommended to government: "That the Province of New Brunswick take all measures, legislative, administrative or other in order to fully implement the UN Convention on the Rights of the Child in New Brunswick and in particular by ensuring that children in schools are made aware of their rights and of

mechanisms for redress and that all school services be delivered in rights respecting approaches.”²

Justiciability of Rights

10. New Brunswick suffers from the same access to justice issue that the rest of Canada suffers from: Canada is a dualist system with no direct incorporation of the UNCRC into law. For rights to have meaning, there must be effective remedies for violations, and yet it is not possible to directly plead violations of the UNCRC in court or administrative tribunal matters. While courts have referenced the UNCRC throughout Canada, this is a rare occurrence in New Brunswick. Moreover, children in New Brunswick do not have free legal counsel in family law matters as they do in Canadian jurisdictions such as Ontario and Quebec, and while children aged 12-17 inclusive have access to free legal counsel in criminal justice matters, they receive only summary advice from ‘Duty Counsel’ during first appearances and sentencing hearings. Children in other parts of the country have access to far more fulsome legal counsel.
11. However, since 2006 the Advocates Office was established to hear and resolve complaints from children and youth with respect to violations of their rights and we have been operating intentionally since 2009 in a rights-based approach to advocacy. Additionally, the Province has adopted a Child Rights Impact Assessment process for all cabinet level policy decisions, since 2013.

Developing a Child and Youth Strategy

12. New Brunswick has no holistic child rights strategy or Provincial plan. The NBOCYA has recommended such a plan, as follows. “Government should coordinate a comprehensive Child and Youth Strategy to fully implement the UN Convention on the Rights of the Child. The Strategy should set measurable targets for a sustainable process of rights protection and promotion. Through this Strategy the UN Convention should be made widely known and understood. The Strategy should provide children and youth with information on all organizations that help to promote and protect rights, including the Office of the Child and Youth Advocate. The Strategy should also be driven by disaggregated data collection. We recommend that Government task the Interdepartmental Working Group on Children and Youth to steer the development of this Strategy.”³
13. This recommendation followed upon the experience of developing from 2013 to 2015 a Provincial Strategy for the Prevention of Harm to children and Youth, as a coordinating framework for the implementation of Article 19 of the Convention. The Strategy served as an effective public engagement tool and provided stakeholders with an example of a working process for child rights implementation.

² Office of the Child and Youth Advocate, *State of the Child Report 2019*, November 2019.

ISBN: 978-1-4605-2381-0. Page 8. <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

³ Office of the Child and Youth Advocate, *State of the Child Report 2017*, November 2017. ISBN: 978-1-4605-1915-8.

https://www.cyanb.ca/images/State_of_the_Child_Reports/State_of_the_Child_Report_2017.compressed.pdf

Coordination of efforts to implement children’s rights

14. The government of New Brunswick has engaged in coordinated rights-enforcement efforts with civil society in the form of a strategy to implement Article 19 of the UNCRC.⁴ The strategy was launched on World Children’s Day, November 20th, 2015. The Provincial government subsequently formed an inter-Ministerial working group to coordinate these strategic efforts of government and civil society. That working group has however languished since the last year.
15. Coordination of efforts to implement the UNCRC between government Departments, between levels of government and between government and civil society is negligible. The NBOCYA knows of no specific actions to undertake such coordination within the Province.
16. However, Integrated Service Delivery, a program to coordinated services to children and youth across ministries responsible for health and addictions, education, child welfare and public safety, has broken down many barriers in addressing issues for individual young people.

Ensuring Child Rights at All Levels of Government (decentralization, federalization and delegation)

17. The obligation to ensure treaty adherence in all jurisdictions within a federal state⁵ is ill-understood in New Brunswick. The NBOCYA has repeatedly encountered government officials who are of the belief that obligations under the UNCRC only apply to the federal government and not to Provincial or Territorial governments.
18. The Province of New Brunswick also delegates some powers to municipal governments. This in no way releases the Provincial government from responsibility to ensure rights adherence, yet this obligation is not acted upon in any intentional manner.

Obligations on Civil Society to conform to the UNCRC (privatization)

19. Enabling the private sector to provide services that are regulated by government does not in any way lessen the government’s obligation to ensure full realization of rights. As an example of progress, the Department of Social Development has referenced the UNCRC in updated (2018) practice standards for civil servants working with children brought into government care. Those Practice Standards now state: “The Standards also identify the importance of the child’s family members and significant persons to support the well-being of children and reinforces the requirement to respect the statutory entitlements of a child and their wishes, their interests and concerns are given consideration in any

⁴ Province of New Brunswick. “Keeping Children and Youth Safe from Harm in New Brunswick: A Five Year Strategy by New Brunswickers.” ISBN 978-1-4605-1181-7 (PDF). November, 2015.

<https://www.cyanb.ca/images/PDFs/ChildrenYouthSafeFromHarm.pdf>

⁵ United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf> [accessed 25 February 2020]

decision that affects them under the Convention on the Rights of the Child.”⁶ This is commendable, however, the Practice Standards for Group Homes and Foster Care placements do not reference the UNCRC, and government has delegated significant responsibility for the care of these children to these members of civil society. Obligations imposed by law on civil society in New Brunswick do not directly reflect provisions of the UNCRC.

20. A civil society organization incorporated as NB Champions for Child Rights Inc. is a provincial association of child and youth-serving agencies aimed at improving the implementation and fulfillment of children’s rights pursuant to the United Nations Convention on the Rights of the Child. Their mandate is to foster communication, collaboration, and child rights promotion among organizations working with and/or for children through advocacy, knowledge mobilization, and the creation of networking opportunities. However, lack of funding and the reliance on a volunteer board has presented many challenges in the formal establishment of a robust network.
21. Shaking the Movers (STM) is an annual youth organized and youth led workshop that takes place across several regions of the country. This project is funded by the Landon Pearson Resource Center of Carleton University. The goal of the workshop is to bring together children and youth to discuss and consider their rights as guaranteed under the *UN Convention of the Rights of the Child (UNCRC)*. The purpose of this event is to not only educate, but to encourage children and youth to get involved in decisions that affect them and share their experiences in the context of their rights. For the past four years youth have presented their recommendations to the Legislative Assembly of New Brunswick. Last year the theme of the STM event was the Right to Education from the perspective of immigrant and refugee youth.⁷
22. New Brunswick was the first jurisdiction in Canada to create a Children’s Law Section of the Canadian Bar Association (the country’s largest organization representing members of the legal community). The New Brunswick section has organized training events and webinars on use of the UNCRC in legal practice and other child-rights topics. The New Brunswick branch also participated in the creation of a national Child and Youth Law section and a Child Rights Toolkit to guide lawyers and judges in the application of the UNCRC in Canada.⁸

Monitoring Implementation of Rights

23. In 2013, the province of New Brunswick became the first province in Canada to implement mandatory Child’s rights Impact Assessments (CRIA) on all cabinet policy and legislative decisions. CRIAs are required by government to be carried out whenever

⁶ Province of New Brunswick. Department of Social Development. “Child in Care Program Practice Standards,” July 11th, 2018.

⁷ East Coast Shaking the Movers. “Defending Child Rights for refugees and Newcomers. 2018. https://www.cyanb.ca/images/Shaking_the_Movers/Shaking-the-Movers-FINAL.-EN.pdf

⁸ Canadian Bar Association. The CBA Child Rights Toolkit. <http://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit>

children's rights may be impacted by legislative or regulatory changes. In implementing the CRIA tool in 2013 a four day training session for over 200 civil servants from every government department was facilitated by UNICEF Canada. The application of the CRIA tool requires policy-makers to address the impact of their policy proposal on children as a whole as well as on vulnerable sectors of youth in relation to all of the rights enumerated in Convention, but also from an evidence base by encouraging policy-makers to consider the relevant data in the Child Rights Indicator Framework, which is hyperlinked to the online tool.

24. In developing the tool government consulted with CRIA practitioners in Belgium, the UK and Australia and opted for the Welsh government model of an ex-ante CRIA analysis by government officials in the lead up to law reform. This has proven beneficial in giving some working knowledge of child rights to a smattering of legislative coordinators across all government departments and the ripple effects of this training and work method are being felt every day. It has also prompted the NBOCYA to adopt a more formal post-facto CRIA analysis in its investigations, report writing and advice to government functions.

Data Collection and Analysis, and Development of Child Rights Indicators

25. The NBOCYA collaborates with various government Departments to produce the New Brunswick Child Rights Indicators Framework (CRIF). Government provides statistical data and consults on the applicability of available data in terms of human rights enforcement. The CRIF is published annually within the provincial State of the Child report.⁹ The NBOCYA is currently in discussions with government and civil society partners to produce an online version of the CRIF. The NBOCYA has also officially recommended the following. "Government should support publicly available comprehensive data on children and youth. This is essential in order to understand the challenges facing NB's young people, and to make informed plans to address these challenges. Government should invest in improved child rights data monitoring. The Office of the Child and Youth Advocate, the NB Institute for Research, Data and Training and the NB Community College have partnered to plan an online version of the Child Rights Indicators Framework. The funding for this initiative should flow through government's Interdepartmental Working Group on Children and Youth."¹⁰
26. CRIF data is used by some New Brunswick government Departments regularly to inform their CRIA work and their policy development. However, in the opinion of the NBOCYA, the New Brunswick government is a far distance from meeting this obligation: "It is essential not merely to establish effective systems for data collection, but to ensure that the data collected are evaluated and used to assess progress in

⁹ See most recent version: Office of the Child and Youth Advocate, *State of the Child Report 2019*, November 2019. ISBN: 978-1-4605-2381-0. Page 40. <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

¹⁰ Office of the Child and Youth Advocate, *State of the Child Report 2018*, November 2018. ISBN: 978-1-4605-1630-0. <https://www.cyanb.ca/images/SOC-2018-Report.pdf>

implementation, to identify problems and to inform all policy development for children.”¹¹

27. The overarching challenge for the government in terms of data analysis is the lack of available data. Many aspects of child rights are not measured in New Brunswick. In some respects the province has been losing data capacity. For example, the Department of Education’s school-leaving survey no longer reports on male and female data. The reason for this is that some youth identify as non-binary in terms of gender. However, it is well understood that in schools females may face discrimination in a multitude of ways that males typically do not, and *vice versa*. Without providing female versus male data, potential discrimination will be invisible in the statistics. In 2017 the Child Rights Indicators Framework showed that females had lower levels of: feeling respected at school; opportunities to take courses in the skilled trades; school sport participation; believing that teachers showed a positive attitude toward healthy living; and feeling that school helped the develop positive attitudes toward physical activity. Meanwhile, males had lower levels of: thinking that good grades or even coming to class on time were important; participation in school activities; and planning to go to postsecondary education. These and other differences are now statistically lost due to the Department of Education’s decision to stop tracking this data, and consequently there are new challenges in ensuring that educational services provide equal opportunity between males and females.
28. Starting in 2013 the NBOCYA has collaborated with Dr. Ziba Vaghri of the University of Victoria on the proposal of several research grant proposals culminating in 2015 with the award of a \$1.2 million Project Scheme Grant from the Canadian Institutes for Health Research (CIHR) to develop GlobalChild, an online platform and data monitoring tool to assist State Parties with their data collection and reporting process to the Committee on the Rights of the Child. Since 2015, the NBOCYA has supported the research project through participation in its Indicator Development Team (IDT) and has hosted meetings of Dr. Vaghri’s steering Committee and IDT in New Brunswick. New Brunswick plans to pilot the GlobalChild tool in the coming months and will, as circumstances permit, file an addendum to this report updating the committee on the progress of that pilot prior to Canada’s appearance before the Committee early in 2021.

Making Children Visible in Budgets

29. The NBOCYA has recommended to government that it create a children’s budget: “Government should create an annual ‘children’s budget’ to identify the proportion of overall budget allocated to children. Specific budget lines should target particular groups of vulnerable and disadvantaged children.”¹² Meetings have been held with the Auditor General and former Comptroller for the Province to discuss models and ways in which a

¹¹ UN Committee on the Rights of the Child’s “General Comment No. 5: General measures of implementation of the Convention.”

¹² Office of the Child and Youth Advocate, State of the Child Report 2017, November 2017. ISBN: 978-1-4605-1915-8.

https://www.cyanb.ca/images/State_of_the_Child_Reports/State_of_the_Child_Report_2017.compressed.pdf

children’s budget for New Brunswick could be developed, but Government officials have not formally responded to the Advocate’s recommendation.

Training and Capacity-building

30. Child Rights Education Week (CREW) is an annual national event taking place during the week of November 20th – New Brunswick founded this event and has continued celebrating it each year. CREW’s purpose is “to promote, educate the public about, and engage Canadians in activities and conversations that highlight children’s rights” and “CREW celebrations have had the effect of raising broad-based awareness across Canadian communities about the collective duty we have to ensure that the UN Convention on the Rights of the Child (UNCRC) is reflected in our laws, policies, and practices in government, community and in the home.”¹³
31. Every year the NBOCYA releases the *State of the Child Report* which evaluates progress and identifies issues in relation to implementation of UNCRC obligations by the government of New Brunswick. The *State of the Child Report* is a resource for government decision-makers and policy developers, a tool for anyone working to improve the lives of children and youth, and an educational resource and accountability mechanism to measure implementation of child rights.
32. Since 2012, the International Summer Course on the Rights of the Child has provided a unique opportunity for professionals to advance the children’s rights agenda and to strengthen and expand expertise. Available to any person and/or professional with an intentional interest in children’s rights, the summer course helps to strengthen national capacities to defend the rights of all children. This has been made evident by the growing participation of institutional actors such as child and youth advocates, lawyers, professionals in the fields of health, education, early childhood studies, and social work, and many others.
33. The Course Steering Committee has identified the need for more accessible training to complement this course in the form of online training, education, webinars, and manuals, that can be used to inform a child rights approach practically and directly into one’s work. Funding proposals are being developed through the Groupe de recherche interdisciplinaire en droits de l’enfant (GRIDE) to support this development.
34. Training in child rights was provided to the highest levels of the civil services and policy professionals within government in 2013 as part of the CRIA initiative. Training within government ranks has been sporadic since that time. An online child rights training module is in development for Integrated Service Delivery (ISD) staff training.
35. The NBOCYA offers child rights training within professional programs at universities and to various professional organizations.

Cooperation with Civil Society

¹³See: <https://www.cyanb.ca/en/education/crew-national>

36. Government has a duty to inform, cooperate and collaborate with civil society in furtherance of child rights. While the NBOCYA is of the opinion that this general measure of implementation of the UNCRC is lacking in New Brunswick and that a provincial Child Rights Commission on the model of the Belgian national commission would be a welcome development. Some progress has been made. NB Champions for Child Rights was established in 2013 and incorporated in 2016, as a provincial network of child and youth serving agencies, associations and organizations, across the public sector and non-profit sectors. The Network's mission is to further child rights implementation across civil society.
37. From 2013 to 2015 Champions Board members participated in and co-lead the intersectoral Stakeholder Table and the working group that developed the Strategy for the Prevention of Harm to Children and Youth in implementation of Article 19 of the UNCRC across New Brunswick. This provided an opportunity for academics and community leaders to come together quarterly over 18 months to meet with deputy Ministers, Ministers, government officials and young people with lived experience of harm to develop a provincial strategy to protect the Child's right to a life free from violence.
38. It is hoped that this experience will nurture the opportunity to develop more sustained and institutional mechanisms for coordination of efforts between government and civil society in the implementation of child rights.

International Cooperation

39. The International Summer Course on the Rights of the Child, held annually at l'Université de Moncton for the past eight years, has brought renowned child rights experts from around the globe to speak and to engage with participants. These opportunities for dialogue and exchange have lead to various informal and formal cooperation projects and informed New Brunswick's child rights advocacy with the Francophonie. Beyond the Summits of Heads of States and Governments, child rights are also promoted internationally by New Brunswick through its membership in Francophonie networks, including the NBOCYA's work in l'Association des Ombudsmans et Médiateurs de la Francophonie (AOMF), l'Association Francophone des Commissions Nationales des droits de l'Homme (AFCNDH) and l'Association Francophone des autorités de protection des données (AFAPDP). New Brunswick's collaboration in relation to the development and piloting of GlobalChild also has provided important opportunities and prospects for international cooperation.

Independent Human Rights Institutions for Children

40. New Brunswick created, in 2006, a sub-national independent human rights institution for children in line with the UN Principles relating to the Status of National Institutions (Paris Principles), with a legislated mandate. The New Brunswick *Child, Youth and Senior Advocate Act* mandates an Advocate similar to the role of Children's Commissioner in many other countries, with broad powers of access to information and investigation, as well as independence from any government Department. The NBOCYA

receives and acts upon complaints from children and concerned adults, and is mandated to ensure the rights and voice of children are respected.

41. The NBOCYA's mandate encompasses children under the age of 19 impacted by any government action, including within systems of education, child welfare, health, criminal justice or labour regulation. The Advocate's mandate in New Brunswick is not limited to designated services, nor to certain categories of children or youth. The mandate is to defend the rights and interests of all children, to advise government on the furtherance of those rights and to educate New Brunswickers concerning child and youth rights and interests.

Respect for provisions more conducive to the realization of the rights of the child as contained in ratified international law treaties (Article 41)

42. Canada is a State Party to the *International Covenant on Civil and Political Rights*, Article 10(2)(a) of which states: "Accused persons must be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons." Children aged 12-17 inclusive in New Brunswick are not segregated from each other based on their status of either accused or convicted. They are detained together.

Making the Convention known to adults and children (Article 42)

43. Beyond the NBOCYA's own efforts, the Province of New Brunswick does not have a provincial strategy to make the UNCRC widely known to adults and children. For instance, the UNCRC does not form part of the education curriculum.

Making reports under the Convention widely available (Article 44)

44. Canada's reports to the UN Committee on the Rights of the Child are not disseminated in any broadly purposeful or comprehensive way in New Brunswick, and nor are the Committee's Concluding Observations to Canada. This situation is far from unique to New Brunswick. The federal government's efforts in this area are paltry and no province or territory to our knowledge has stepped forward to close this gap. Education being a constitutional mandate of the Provinces and the Treaty Power being with the Federal government, some cooperation among governments would be very welcome. But the NBOCYA submits this is just one further illustration of the challenges inherent in implementing human rights treaties in federal dualist states.

PART III DEFINITION OF THE CHILD

45. In New Brunswick a child is anyone under the age of nineteen, as per the *Age of Majority Act*.¹⁴ Under the *Family Services Act* a child is defined as a person actually or apparently under the age of majority and includes an unborn child.¹⁵ Under Canada's *Criminal Code*, a child becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not: (a) it has breathed; (b) it has an independent circulation; or (c) the navel string is severed.¹⁶ Canadian courts have also repeatedly declined to recognize any legal status or rights to a human foetus on the view that such legal developments require legislative action.
46. Although a child is defined as any person under the age of nineteen in New Brunswick, a child may refuse child protection services at the age of sixteen,¹⁷ is capable to consent to medical treatment at the age of sixteen (and younger if the child understands proposed treatment and potential consequences),¹⁸ and stops being a child at the age of eighteen for criminal justice purposes.¹⁹

PART IV GENERAL PRINCIPLES

Article 2

47. Indigenous children within New Brunswick continue to face discriminatory funding within the child welfare and education systems (funded by the federal government) compared to their non-Indigenous counterparts (funded by the Provincial government). New Brunswick's Child Rights Indicators framework disaggregates data by binary gender, by LBGTQ+ status, by immigration status, by indigenous status, by social condition (using food insecurity as a marker), by ability status, and by official language group. Across almost all indicators the children most at risk and most often deprived of their right to equality are LBGTQ+ children and youth and children in poverty.

Article 3

48. The principle of the best interests of the child as a primary consideration in all actions concerning children is recognized in New Brunswick law in the context of child protection, living in government care, adoption, and child custody matters under the

¹⁴ Age of Majority Act, RSNB 2011, c 103, <<http://canlii.ca/t/lccp>>

¹⁵ Family Services Act, SNB 1980, c F-2.2, <<http://canlii.ca/t/543sx>>

¹⁶ Criminal Code of Canada, R.S.C., 1985, c. C-46, s. 223(1). <http://laws-lois.justice.gc.ca/eng/acts/C-46/section223.html>

¹⁷ Family Services Act, SNB 1980, c F-2.2, <<http://canlii.ca/t/543sx>>

¹⁸ Medical Consent of Minors Act, SNB 1976, c M-6.1, <<http://canlii.ca/t/52m20>>

¹⁹ Youth Criminal Justice Act, SC 2002, c 1, <<http://canlii.ca/t/544ls>>

Family Services Act.²⁰ Canada's Youth Criminal Justice Act and Divorce Act, which are federal statutes also adopts best interests of the child standards, as do Canadian Immigration laws. However, much more work could be done to extend the best interest of the child principle to all aspects of provincial law affecting children.

The right to life, security and maximum development (Article 6)

49. Both cognitive and social development are significantly dependent on mental fitness (having a positive sense of how one thinks, feels and acts). In New Brunswick, 87% of children in grades 4-5 have moderate to high levels of mental fitness, but this number drops to 79% for grades 6-12. Resilience to handle adversity is also essential for healthy development. Only 73% of youth here report having moderate to high resilience levels. A sense of autonomy (in essence, having the capacity to make some decisions for oneself) is another important aspect of child development. Only 54% of children surveyed in grades 4-5 report high levels of autonomy.²¹ On the topic of infanticide, the Advocate published in 2009 a report on *Protecting Vulnerable New-Borns* and was successful in recommending against law reforms that would allow infanticidal parents to abandon infants at local fire-halls, based upon similar safe-haven laws in the United States.

Article 12

50. The New Brunswick *Family Services Act* includes as a factor within the definition of the "best interests of the child" "taking into consideration the views and preferences of the child, where such views and preferences can be reasonably ascertained."²²
51. Nevertheless, decisions are taken which have an impact on children's lives within the context of child welfare (under the *Family Services Act*) without an attempt to ascertain the views of the child. The NBOCYA continually encounters such situations.
52. Moreover, in various court and administrative matters decisions are routinely taken without the opportunity for a child to be heard. The law does provide careful safeguards in relation to how a child victims testimony is collected and presented in court. However, outside of the Moncton Judicial District, children are not regularly provided independent legal counsel in child protection matters. Children are rarely provided independent legal counsel in routine custody matters. Judicial interviews of children are a practice frowned upon by both the Bench and the Bar.
53. There are also at times legal impediments to hearing the views of the child. For example, under the New Brunswick *Education Act*, students under the age of nineteen are prohibited from appealing a school suspension.²³ Section 24(4) of that *Act* proclaims: In accordance with the regulations, the parent of a pupil or an independent pupil may, where the pupil is suspended from attendance at school under this section for more than five school days in a school year, appeal the most recent suspension from attendance at

²⁰ Family Services Act, SNB 1980, c F-2.2, <<http://canlii.ca/t/543sx>>

²¹ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

²² Family Services Act, SNB 1980, c F-2.2, <<http://canlii.ca/t/543sx>> retrieved on 2020-02-25

²³ Education Act, SNB 1997, c E-1.12, <<http://canlii.ca/t/544ms>> retrieved on 2020-02-25

school.” That *Act* provides the following definition in section 1: ““independent pupil” means a pupil who has attained the age of nineteen years or is living independently of the parent of the pupil.”

PART V CIVIL RIGHTS AND FREEDOMS

Preservation of the child's identity (Article 8)

54. Preservation of identity is an especially critically important child rights issue in New Brunswick in terms of Indigenous children and immigrant children. In the New Brunswick Child Rights Indicators Framework statistics regularly show that both Indigenous and immigrant youth are more likely than their peers to feel that learning about their culture is important to them. The history of official and unofficial government policies of assimilation have had severely deleterious effects on the preservation of Indigenous culture, but the desire for preservation remains.

Freedom of expression (Article 13)

55. Schools of course play an integral role in fostering expression. Unfortunately, one in every three (33%) students in middle and high school don't think that expressing their views in class is important.²⁴

Freedom of thought, conscience and religion (Article 14)

56. New Brunswick does not have data that reflects religious freedom among young people. School-based surveys collect statistics on the percentage of youth who have been victims of comments about race, religion or personal features, but these different aspects of identity are conflated in the question, and we cannot know the percentage related only to religion. The province could be better at measuring, for example: students' experience with religious accommodations in schools; the importance of religion in their lives; any experience with religious indoctrination; and their tolerance for different spiritual beliefs and practices as well as agnosticism and atheism.

Freedom of association and peaceful assembly (Article 15)

57. No data is available in regard to freedom of assembly.

58. Freedom of association is promoted through a multitude of school groups yet nearly two of every three (63%) middle and high school students don't think that it is at all important to be involved in student council or other similar groups. Just over one in ten (11%) participate in any club at school.

²⁴ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

Protection of Privacy and Reputation (Article 16)

59. Clear guidance on privacy rights is not comprehensively enshrined in laws, regulations, policies or practice standards in New Brunswick. The exceptions to this are few, but more recent policies have tended to note privacy rights. For example, the Department of Education and Early Childhood Development has a policy on school searches which notes: “Although the school administration has the right to proceed with searches and seizures, student’s rights to privacy are not extinguished by virtue of being on school property. The Department of Education and Early Childhood Development recognizes that the student’s human and legal rights need to be balanced with the school personnel’s responsibility to maintain a safe, secure and positive learning and working environment.”²⁵
60. The NBOCYA has found that in all situations in which we are consulted about privacy rights it is apparent that government professionals have not been provided adequate and clear guidance by their respective management structures. This is true within health, education, child welfare and criminal justice systems.

Access to information (Article 17)

61. Civic participation levels reflect access to information – and statistics on youth intention to vote reflect a remaining challenge. Nearly a quarter (22%) of New Brunswick’s graduating high school students report that they have no intention of voting in any elections when they reach voting age.²⁶

The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37(a))

62. The Department of Public Safety in 2019 ended its practice of unilaterally using handcuffs and shackles on all children transported by Sheriff Services within the youth criminal justice system.
63. The NBOCYA has recommended to government to end solitary confinement at the youth detention and secure custody facility. Since 2011 the Province’s sole closed custody facility for youth provides quarterly Behaviour Management Review Board (BMRB) meetings to update the NBOCYA and now provides monthly reports on any use of solitary confinement or other containment measures or use of restraints within the facility. All indicators show marked declines in use of such practices since this reporting structure has been put in place, and yet the policy of solitary confinement continues for children aged 12-17 inclusive. Even when not isolated in the segregation cell. Some youth are at times detained in a separate unit where no other youth is placed as a measure of harm avoidance, but this still results in a form of solitary confinement, and these

²⁵ Province of New Brunswick. Department of Education and Early Childhood Development. Policy 712: Search and Seizure. September 2nd, 2016. <https://www2.gnb.ca/content/dam/gnb/Departments/ed/pdf/K12/policies-politiques/e/712A.pdf>

²⁶ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

measures have been used for extended periods for youth suffering from serious mental health conditions.

64. The NBOCYA welcomes the Committee’s recent work in relation to General Comment 24 and regrets to report that neurodevelopmentally delayed youth and youth with FASD diagnoses continue to be charged and sentenced to closed custody sentences in New Brunswick.

PART VI FAMILY ENVIRONMENT AND ALTERNATIVE CARE

65. **The right of government assistance to parents in supporting children’s rights and evolving capacities (Article 5)** In New Brunswick, the Department of Social Development is mandated under the *Family Services Act* to investigate reports of suspected child abuse and neglect. For children who are not assessed to be in immediate risk of harm, the Department will offer parents and guardians “Family Enhancement Services”, which involves providing services to improve and assist parents in the care of the child. In addition to the provision of services the social worker and the family will work together to resolve the issues present and ensure the safety and security of the child through an Immediate Response Conference, Family Group Conference or Child Protection Mediation.²⁷
66. The government states that “Services provided are based on the best interests of the child and, wherever possible, are focused on keeping the family together.”²⁸

The right of recognition of equal parental responsibilities for the best interests and development of the child, assistance from government to parents, and the right of the child to access child-care services (Article 18)

67. The majority of parents in New Brunswick require childcare from family or paid services. The number of available childcare placements has increased each year it has been measured by the Child Rights Indicators Framework. Nevertheless, in New Brunswick we know that there are often long wait lists for, and shortages of, quality childcare provision. And when parents who need childcare cannot find or afford it, they are deprived of career opportunities, in Canada’s poorest province. The NBOCYA has advocated for a universally accessible, educational, affordable and rights-respecting childcare system. New Brunswick’s neighbouring provinces of Prince Edward Island and Quebec have government-funded universally accessible childcare systems. Recent new investments by government in this field, to professionalize and formally accredit a greater number of early childhood learning centres, to reduce the cost of day-care services for low-income families and to increase the overall number of day-care spots available are encouraging. But sustained and measured progress will be needed to put New Brunswick early learners on an even playing field with their nearest peers in Canada.

The right not to be separated from parents (Article 9)

²⁷ See: Government of New Brunswick.

https://www2.gnb.ca/content/gnb/en/services/services_renderer.200767.html

²⁸ See: Government of New Brunswick.

https://www2.gnb.ca/content/gnb/en/services/services_renderer.9355.Child_Protection.html

68. The guiding principles of the practice standards for New Brunswick Child Protection Services state that the safety and well-being of children are the paramount considerations, but also that a family is the preferred environment for the care and upbringing of children. Moreover, the legislation governing child protection services, children in government care, and provisions relating to parental separation and the custody, access and support obligations of parents for their children declares in the Preamble that “the family exists as the basic unit of society, and its well-being is inseparable from the common well-being...”²⁹ This approach conforms not only to Article 9, but to best practice in child welfare. Nevertheless, there is some concern in New Brunswick. Statistics have shown that New Brunswick has among the lowest per capita number of children under government care in Canada. As much as this adheres to the right of a child not to be separated from their parents, the NBOCYA has concerns stemming from its caseload that children who have been abused or neglected and are at risk of continued harm sometimes remain in their parents’ care longer than is in their best interest. A report on a situation of criminal neglect of five children raised grave concerns about New Brunswick’s child protection system and its failure to remove children in situations of severe neglect.³⁰
69. A further concern is the length of time children are separated from parents without legal permanency in the form of guardianship status pursuant to the *Family Services Act* or adoption. By law children may remain in the custody of government for a maximum of twenty-four months without return to parents, full legal guardianship under the government, or adoption. Twenty-four months is believed to be too long in the opinion of the NBOCYA, yet the legal timelines are breached regularly, with the result that children remain in the legal limbo of government custody without permanency for three, four or more years.
70. The NBOCYA’s next report, *We Are what We Live*, to be released in April 2020 will focus on the need for reform of the province’s child welfare system and is calling for an important child rights based reform in this area.

Protection from all forms of violence (Article 19)

71. A fledgling Interdepartmental Working Group on Children and Youth, helmed by government’s Executive Council Office, was created to operationalize the province’s strategy relating to Article 19. The Committee was established by the Executive Council Office in 2015 with a mandate to oversee the implementation of the Strategy for the Prevention of Harm to children and Youth, to monitor the province’s Child Rights Impact Assessment tool and training program, and generally to coordinate services to children and youth across government. The Committee met on a quarterly basis for three years. In the spring of 2018 the provincial stakeholder table was reconvened and confirmed the need for the Strategy to be renewed with newer longer commitments, the earlier action

²⁹ Family Services Act, SNB 1980, c F-2.2. <http://laws.gnb.ca/en/ShowPdf/cs/F-2.2.pdf>

³⁰ New Brunswick Child and Youth Advocate, Government of New Brunswick. “Behind Closed Doors: a Story of Neglect,” January 2019. <https://www.cyanb.ca/images/PDFs/Behind-Closed-Doors.pdf>

items in the plan having been substantially completed ahead of schedule. Data monitoring showed that the Strategy was having a positive impact to the extent that the vast majority of the indicators retained were trending in the right direction. However, following the change of government in November 2018, the Committee has only met twice on an ad hoc basis at the invitation of the NBOCYA. The NBOCYA is recommending the Committee replacement by a new more broadly based and permanent, legal structure for coordination of services to children and youth and child rights implementation.

72. In 2019 amendments to regulations under the *Education Act* were proposed by the Minister of Education and Early Childhood Development which would have removed conscientious exemptions for mandatory vaccination of students. The proposed bill was abandoned but the risk of infectious disease remains. The most recent statistics show that only 76.4% of children entering kindergarten met immunization requirements.³¹ To effectively prevent the spread of a contagious disease such as measles within a population, more than 95% of the population needs to be immunized.³² The NBOCYA produced a Child Rights Impact Assessment on the proposed bill.³³

The right to special protection and care for children deprived of a family environment (Article 20)

73. The NBOCYA has concerns related to situations it sees such as children in the government's care in New Brunswick facing multiple moves, between foster home placements, group homes, and specialized placements, having to change schools repeatedly and lose connections socially. However, the government has recently provided legal sanction to kinship care, which is a positive step in ensuring continuity in the child's upbringing when deprived of the parental environment.
74. An overarching concern in terms of protection and assistance is government's serious data deficit. The New Brunswick government does not collect, monitor and analyze sufficient data in order to assess the efficacy of the child welfare system. As just one example, government does not know how many youth in its care are also incarcerated or facing criminal charges, at any given time.

Adoption (Article 21)

75. The NBOCYA is informed by social services that adoption is the most frequent request of children in government care, yet only a small minority of these children will be adopted. The Department of Social Development does not have data readily at hand as to the number of children who are adopted out of temporary care (custody) or permanent care (guardianship) per year for most recent 5 years.

³¹ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

³² World Health Organization, Bulletin: Vaccination greatly reduces disease, disability, death and inequity worldwide. <https://www.who.int/bulletin/volumes/86/2/07-040089/en/>

³³ NB Child and Youth Advocate's Child Rights Impact Assessment (CRIA) on Bill 39 An Act Respecting Proof of Immunization presented on Wednesday August 28, 2019. <https://www.cyanb.ca/images/PDFs/Bill-39-CRIA-8-28-2019.pdf>

Periodic review of placement and treatment (Article 25)

76. Pursuant to regulations under the Family Services Act, government must develop a plan of care for each child in the care of the Minister of Social Development.³⁴ The case plan for a child in care is reviewed every six months and more frequently based on the child's needs, according to the Department of Social Development's practice standards. There is no recognition of the child's Article 12 rights in relation to review of placement or treatment within New Brunswick law or practice standards.

Rehabilitation and reintegration of victims of abuse, neglect or cruel and unusual treatment (Article 39)

77. There is no provision in New Brunswick law stipulating an obligation to provide rehabilitation services to child victims of abuse, neglect or maltreatment. New Brunswick's Child Victims of Abuse and Neglect Protocols include mention of the Trauma Counselling Program, provided through the Department of Public Safety's Victim Services branch and allowing up to ten counselling sessions; the NBOCYA has had to advocate for access of children to this program, for example when a child has been the victim of sexual abuse in a different province yet resides in New Brunswick and the Department has refused to pay for counselling. In the NBOCYA's opinion, the lack of a Child Rights Impact Assessment as a decision-making tool in general operations of the civil service creates bureaucratic obstacles that violate the child's rights.

PART VII BASIC HEALTH AND WELFARE

The right of mentally or physically disabled children to special care and assistance to promote his or her dignity, self-reliance, individual development and fullest possible social integration (Article 23)

78. The statistics for children with disabilities are discouraging. 29% of graduating high school students with disabilities in New Brunswick do not feel respected in their schools. Furthermore, 36% of youth with disabilities don't think expressing their opinion in class is important. Only 30% feel they are treated fairly in their communities and only 25% know where to get help in their communities. Only 39% have friends who support them in difficult times. 23% don't feel safe at school. While 59% don't think an adult at school will do something in response to a bullying complaint, 38% say they have recently been bullied and 41% say they have recently been socially excluded. Only 46% say their family stands by them in difficult times. Twice as many (8%) smoke daily compared to the general youth population (4%). A third (33%) have tried cannabis. 45% say they

³⁴ New Brunswick Regulation 91-170 under the Family Services Act. <http://laws.gnb.ca/en/ShowPdf/cr/91-170.pdf>

have had symptoms of anxiety recently, and 45% also say they have had symptoms of depression recently.³⁵

79. An important gap in mental health services is the lack of a Centre of Excellence for Children and Youth with Complex Needs, to which government committed as part of a Network of Excellence for Youth with Complex Needs. The NBOCYA was asked by government to draft a Child Rights Impact Assessment on the location of the proposed Centre, after serious concerns were raised about the first-chosen location. Subsequent to that, the New Brunswick government decided that the Centre will be built in a new location. The Centre is to play a pivotal role in a Network of Excellence that would ensure: an acute care facility for temporary observation and stabilization of youth at risk of harming themselves or others, with a model of supervised step-down placements in community and reintegration planning and clinical case-management supports; research and innovation to translate clinical best practices in the field to provincial practice as efficiently and effectively as possible; coordination of efforts with the Integrated Service Delivery teams in promoting one child-one record case-management; statistical monitoring and evaluation of the system; local therapeutic foster homes with clinical supervision; supports to primary care physicians; supports to mobile mental health crisis units; supports to community Youth Justice Committees; clinical supervision and direction to local Autism Centres; guidance and counselling to families; public information and educational services; and advocacy for local improvements to the mental health system for youth.

The right to the highest attainable standard of health (Article 24)

80. New Brunswick's rate of hospitalizations of children and youth for mental diseases and disorders is nearly 50% higher than the Canadian rate. This is concerning, especially as the rate has been increasing in New Brunswick over the past five years. What is also of significance is that the rate of hospitalizations for mental diseases and disorders of New Brunswick female children and youth is 85% higher than New Brunswick male children and youth. The rate of hospitalizations for depressive episodes is 244% higher, and for stress reaction 210% higher, for female than for male children and youth in New Brunswick. Several physical health indicators also remain troubling for our province's children and youth. Only 23% of children and 22% of youth meet the recommended daily physical activity levels. More than a third of New Brunswick children in kindergarten to grade five are overweight or obese. While 4% of youth smoke daily (over 10% of Indigenous youth and youth living in poverty do), 11% smoke at least occasionally (21% and 25% of Indigenous youth and youth living in poverty, respectively), and 31% of children live with someone who smokes.³⁶

The right to social security (Article 26)

³⁵ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

³⁶ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

81. The government changed the program for provision of social assistance to youth. At the age of sixteen, children can refuse child protection services in New Brunswick.³⁷ The Youth Engagement Services program provides funding to eligible youths (those who cannot remain in the parental home due to abuse or neglect) for housing and living expenses, while providing supports to help these youths succeed. This is an excellent program, and it continues to be improved to respond to problems that have been identified by youth and those advocating for them. Nevertheless, some homeless youth may be unaware, unwilling or unable to access this program. There is a requirement of residency in the province for three months prior to eligibility- this deprives children coming from other provinces or countries from accessing social security. Children must also be Canadian citizens or have permanent residency. They must also have lived outside the parental home for a minimum of three months, a requirement that the NBOCYA has determined to be enforced homelessness. Children accessing this program must also have their place of residence approved by government social workers.³⁸

The right to an adequate standard of living (Article 27)

82. The statistics for youth living in poverty compared to the general youth population are very telling: 25% versus 46% who eat breakfast every day; 69% versus 58% who consume a sweetened beverage daily; 13% versus 4% who smoke daily; 33% versus 16% who live with someone who smokes. It is little wonder that only 48% of youth living in poverty see their health as being very good or better.³⁹

PART VIII EDUCATION, LEISURE AND CULTURAL ACTIVITIES

The right to education directed toward the fullest possible development of mental and physical abilities, and respect for human rights (Articles 28 and 29)

83. The Child and Youth Advocate recommended some years ago a universally accessible, educational, affordable and rights-respecting childcare system for the pre-school years.
84. The 2019 New Brunswick State of the Child Report commented on data found in the Child Rights Indicators Framework, as follows: “The main findings from the 2019 CRIF in terms of the right to education and the quality of its enjoyment by children in New Brunswick are that educational outcomes are generally improving, but there has also been some slippage on important indicators of resiliency among learners. We also continue to note a deepening divide between boys and girls, with girls continuing to outperform their male peers across almost all indicators. The data disaggregation reveals however that the widest disparities and greatest vulnerability among learners is among LGBTQ+ students

³⁷ Family Services Act, SNB 1980, c F-2.2. <http://laws.gnb.ca/en/ShowPdf/cs/F-2.2.pdf>

³⁸ Province of New Brunswick.

[https://www2.gnb.ca/content/gnb/en/services/services_renderer.201479.Youth_Engagement_Services_\(YES\).html](https://www2.gnb.ca/content/gnb/en/services/services_renderer.201479.Youth_Engagement_Services_(YES).html)

³⁹ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

and children in poverty. Using food insecure households as a marker of poverty we can see that those children are regularly the most at risk in all school settings, followed closely by LGBTQ+ youth. Aboriginal youth and students with special needs also continue to show some disadvantage compared to their peers, but they are more often within the norm or sometimes outperform their peers on some indicators. Immigrant youth tend in general to fare better. While immigrant youth do report significant challenges in terms of bullying and challenges in adapting to their new surroundings, on most indicators they manage to outperform their age peers, owing perhaps to their supports and expectations within their family households.”

85. The UN Rapporteur for persons with Disabilities visited Canada last year and applauded New Brunswick Inclusive education model. The NBOCYA acknowledged that the rights of children with disabilities to an inclusive education environment is a long acquired right in New Brunswick but is concerned that there are still insufficient accommodations available to students with special needs to optimize educational outcomes for all of these children. We are also calling upon government to create more inclusive learning environments by ensuring that New Brunswick schools are welcoming and positive learning environments for children from low income households, for LGBTQ+ youth for newcomer youth and children from visible minorities as well as indigenous and metis youth.

The rights of children to be provided opportunity for unstructured play, structured recreation, participation in cultural life and the arts, as well as adequate sleep and leisure time (Article 31)

86. Pre-school play statistics in New Brunswick are non-existent to our knowledge, and surely difficult to measure.
87. Involvement in recreational activities positively affects social inclusion, self-confidence, mental health, logical thinking ability, and academic achievement, yet of graduating high school students surveyed last year, only 42% of Anglophone students participated in activities organized by their school and 37% in activities not organized by their school, while the Francophone student numbers were 34% and 28%.⁴⁰
88. Engagement in arts programs fosters creativity, expression, self-confidence, social inclusion, and empathy, yet only 75% of graduating high school students in the province last year said they had opportunities in high school to take courses in the fine arts.⁴¹
89. Nearly two-thirds (61%) of youth don't get the recommended minimum amount of sleep.⁴²

⁴⁰ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

⁴¹ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

⁴² See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

PART IX SPECIAL PROTECTION MEASURES

The right of refugee children to assistance and protection of all rights under the Convention (Article 22)

90. In October 2018, the New Brunswick Office of the Child and Youth Advocate, in collaboration with the youth group East Coast Shaking the Movers, issued a report to the legislative assembly entitled [Defending Child Rights for Refugees and Newcomers](#). The youth participants provided 33 recommendations to the Government of New Brunswick on the rights of refugee and immigrant children as guaranteed by the UNCRC

Their recommendations call for:

- Supports for refugee and newcomer children upon their arrival;
- the Canadian government to accept asylum seekers in the US who have been discriminated due to the American's ban of certain countries;
- additional resources for children to learn English as a second language in school (e.g. providing English Second Language teachers in Anglophone schools);
- support to learn the second official language (either French or English) for all residents of New Brunswick;
- programs to help newcomers learn about Canadian norms while retaining their own culture;
- multicultural groups to integrate Canadian-born youth into some of their initiatives to bridge the gap between them and newcomers to Canada;
- big brother/big sister type programming specific to newcomer youth;
- mental health supports for newcomer and refugee rights and;
- an increase in child benefits, and for federal support to extend to refugee children⁴³

The right of Indigenous and minority group children to preservation of their culture, religion and language (Article 30)

91. The UNESCO Atlas of the World's Languages in Danger still lists the Mi'kmaq language as vulnerable and the Wolastoqiyik language as severely endangered. These are the languages of the two First Nations peoples of New Brunswick.

92. As of 2019, 71% of immigrant youth view learning about their culture to be important, compared to only 58% of the general youth population in the province.⁴⁴

93. In comparison, the francophone official language minority in New Brunswick (32% of the province's population) is faring very well, considering the Province's past assimilationist policies, and yet the demographic weight of the Acadian community continues to decline. Overall however francophone minority children compare very well with their anglophone peers in relation to the indicators in the Child Rights Indicator

⁴³ See: East Coast Shaking the Movers Defending Child Rights for Refugees and Newcomers, 2018, http://www.cyanb.ca/images/Shaking_the_Movers/Shaking-the-Movers-FINAL.-EN.pdf

⁴⁴ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

Framework. They are generally statistically similar, lagging on some measures and surpassing their anglophone peers on others. The francophone youth seem to have higher resiliency factors in relation to connectedness to school, family, community and other aspects of identity, which speaks well to the health of this sizeable minority.

The right to be protected from economic exploitation and from work that may be harmful to health and physical, mental, spiritual, moral or social development (Article 32)

94. In 2016, the Government of New Brunswick made changes to the *Employment Standards Act* for persons under the age of 16 years. These changes were the result of the Department of Post-Secondary Education, Training and Labour undertaking a CRIA process to conform with ILO Convention No. 182, the Worst Forms of Child Labour Convention.

The right to protection from the illicit use, production and trafficking of narcotic drugs (Article 33)

95. The most recent statistics on cannabis use by youth in New Brunswick suggest that a quarter of those in grades 7 to 12 have tried it. What requires special attention are the percentages of Indigenous youth (40%) and youth living in poverty (41%) who have tried cannabis.⁴⁵ Canada's recent legalization of cannabis does not apply to those under age 19, but the effects of legalization on children are as yet unknowable. We would hope that a child welfare, social services, education and public health approach would be taken to this issue rather than a policing one. A child rights approach is one that respects the inherent dignity and worth of each young person and addresses the root causes of behavior rather than criminalizing it.

The right to protection from sexual exploitation and sexual abuse (Article 34)

96. In New Brunswick, the law that protects children from sexual abuse in the home is the *Family Services Act*. The *Family Services Act* requires that any person who suspects that a child (under the age of 19) is being abused or neglected must immediately report those suspicions to the Department of Social Development. This law also applies to suspicions of abuse gathered through a professional practice or within a confidential relationship. The forms of child abuse included in the *FSA* are: sexual abuse, physical abuse, physical neglect and emotional maltreatment.

97. The rate of total sexual violations against children in New Brunswick is 30% higher than the national average.⁴⁶ National statistics show the rate of child pornography incidents in New Brunswick to be higher than the national average.⁴⁷ Work to identify the root causes of this higher incidence, initiated under the Strategy for the Prevention of Harm to

⁴⁵ See: data in 2019 Child Rights Indicators Framework <https://www.cyanb.ca/images/PDFs/State-of-the-Child-Report-2019a.pdf>

⁴⁶ 92 Statistics Canada. "Incident-based crime statistics, by detailed violations – Table 252-0051" <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2520051>

⁴⁷ Statistics Canada. "Incident-based crime statistics, by detailed violations – Table 252-0051" <http://www5.statcan.gc.ca/cansim/a26?lang=eng&id=2520051>

Children and Youth now continues as an action item under the Provincial Crime Prevention Strategy. The analysis to date suggests that this increased incidence of harm is long-standing and not reflective of higher arrest or prosecution standards. This points to the need for a sustained effort to combat the problem of predation on children including very young children.

The right to protection against abduction and human trafficking (Article 35)

98. The Province of New Brunswick uses an AMBER Alert program that engages law enforcement, media broadcasting agencies, and the public in locating abducted children. The program involves the dissemination of up to date information on a child abduction case to the public through media broadcasts. This strategy is intended to solicit help from the public to locate the child and ensure their safe return home. Only a designated member of law enforcement can activate the alert and it can only be used in cases that are considered ‘serious’ child abduction cases.⁴⁸

The right to be free from degrading treatment and punishment, and to be free from arrest, detention and imprisonment unless as a last resort. Upon deprivation of liberty, the right to be held separately from adults, and to maintain contact with family (Article 37)

99. In terms of the right of the child to arrest, detention and imprisonment only be used as a measure of last resort, we note that the average numbers of young persons aged 12-17 inclusive in pre-trial detention, sentenced to open custody, or sentenced to secure custody have all dropped significantly during the past 5 years in New Brunswick. The Department of Public Safety has played the leading role in this improvement, collaborating with government Departments, civil society organizations and the courts. The NBOCYA’s 2017 State of the Child Report had a thematic focus on Youth Criminal justice and reported then that the decline in total admissions to closed custody, as well as the average daily count of inmates, between 2011 and 2016 was close to 80%. This year the number of youth in closed custody at any one time in New Brunswick has ranged between 4 and 13 youth. On most days there have been about 8 or 9 youth in the closed custody unit.
100. In terms of the right of the child to be free from cruel, inhuman or degrading treatment or punishment, the NBOCYA commends the Department of Public Safety in the reversal of its policy of universally shackling and handcuffing all children in criminal justice system transport. The New Brunswick Child and Youth Advocate had been on record in opposition to this practice.⁴⁹
101. The NBOCYA notes that a recommendation to end the use of solitary confinement of children in incarceration has not been accepted by the Department of Public Safety.
102. Further in relation to the right of the child to be free from cruel, inhuman or degrading treatment or punishment, the NBOCYA notes that the New Brunswick *Education Act* prohibits the use of physical punishment of children by teachers but does

⁴⁸See: Government of New Brunswick. https://www.welcomenb.ca/content/gnb/en/departments/public-safety/community_safety/content/crime_prevention/nb_amber_alert.html

⁴⁹Bosse, Norman J. *Solicitor’s Journal*. Canadian Bar Association, New Brunswick. http://www.cyanb.ca/images/Shackling_Our_Youth-EN.pdf

not create a provincial offence or detail the required administrative response for a staff member nor a remedy to a child. The *Early Childhood Services Act* and childcare licensing regulations do not include a prohibition of physical punishment of children in day care settings.

The right to due process in the criminal justice system, and the right to have government promote the youth's reintegration into society (Article 40)

103. While the UN Committee on the Rights of the Child's recent General Comment 24 encourages States parties to set a minimum age of criminal responsibility at 14, and commends those that have higher minimum ages in Canada the minimum age for criminal responsibility is 12. Criminal law is a federal matter in Canada, but the government of New Brunswick could create policy to divert all those under age 14 from judicial processes. Moreover, New Brunswick continues to prosecute children between the ages of 12 and 18 who have neurodevelopmental disorders or disabilities such as autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries. The NBOCYA is of the opinion that this is both a violation of Article 40 of the UNCRC and the purposes and principles of Canada's Youth Criminal Justice Act. The New Brunswick Attorney General should develop a process with detailed guidelines for youth specific pre-charge screening by specially trained Crown counsel with special attention given to identifying neurodevelopmental disorders and disabilities, to divert these children from prosecution. the Office of the Child and Youth Advocate has seen an increasing number of youth with FASD and other neurodevelopment disorders charged in the criminal justice system, and notes with concern the absence of appropriate extrajudicial options for these youth. It is our opinion that instead of providing services for early intervention and support, New Brunswick has been using the courts as a way to address the lack of services for youth with mental health and neurodevelopment challenges in their communities.

104. In 2014, the Department of Public Safety ended their open custody placements in community-based group homes and introduced the following options for open custody: 1) placement at an addictions facility (Portage); and 2) an open custody unit at the secure detention facility.⁵⁰ The second option of an open custody unit within a secure closed facility is not in accord with the principles of the Youth Criminal Justice Act or the Convention on the Rights of the Child. This facility is far from the home communities of the vast majority of youth sent there. There is also a lack of resources and services that are available to youth in this arrangement, as their social workers, mental health workers, and healthcare workers do not follow the youth.⁵¹ More resources should be put into developing community-based programs and resources rather than maintaining a unit at a secure facility.⁵²

⁵⁰ See: Office of the Child and Youth Advocate, *More Care Less Court: Keeping Youth out of the Criminal Justice System*, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

⁵¹ See: Office of the Child and Youth Advocate, *More Care Less Court: Keeping Youth out of the Criminal Justice System*, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

⁵² See: Office of the Child and Youth Advocate, *More Care Less Court: Keeping Youth out of the Criminal Justice System*, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

105. A Youth Justice Committee, as sanctioned by the *Youth Criminal Justice Act*, has the power to hold case conferences for youth, where multiple stakeholders can be brought together to ensure youth successfully reintegrate into their communities. The Committees can ensure that youth have: necessary services and programs; support after they are released from custody; help to participate in extracurricular activities and volunteering; assistance for youth for their transition back to school; and connections to existing services and programs in the community. As beneficial as the committees are, they are currently underutilized, and not promoted effectively.⁵³ General Comment 24 recommends that there should be specialized units in police, and that justice systems be separate from the adult criminal justice system. All workers and professionals involved in the child justice system should receive training on the Convention, and other disciplines specific to youth such as mental health, education, and the YCJA. New Brunswick currently does not have a youth centered child justice system, as there are no youth specific courts or judges with specialized training. Youth are expected to wait with adults as their cases are heard after the adult cases have been brought to the court.⁵⁴ Furthermore, there is a lack of understanding of the YCJA among duty counsel, defense counsel, and prosecutors from across the province.⁵⁵ Youth commonly do not have their own lawyers and are assigned duty counsel, and many have reported not having met or spoken to duty counsel before their first appearance in court.⁵⁶ Access to legal services for low income youth is also difficult to obtain as Legal Aid in New Brunswick is grossly underfunded, leaving youth without a lawyer, and if they are to obtain a lawyer, with one that does not have the expertise on the factors unique to youth criminal cases.⁵⁷ The NBOCYA is of the opinion that New Brunswick should develop youth court services that includes a specific youth court judge, and specially trained youth-specific duty counsel, Legal Aid lawyers, and Crown Prosecutors.

⁵³ See: Office of the Child and Youth Advocate, More Care Less Court: Keeping Youth out of the Criminal Justice System, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

⁵⁴ See: Office of the Child and Youth Advocate, More Care Less Court: Keeping Youth out of the Criminal Justice System, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

⁵⁵ See: Office of the Child and Youth Advocate, More Care Less Court: Keeping Youth out of the Criminal Justice System, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

⁵⁶ See: Office of the Child and Youth Advocate, More Care Less Court: Keeping Youth out of the Criminal Justice System, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

⁵⁷ See: Office of the Child and Youth Advocate, More Care Less Court: Keeping Youth out of the Criminal Justice System, July, 2015. <https://www.cyanb.ca/images/MoreCareLessCourt.pdf>

PART X CONCLUSION

106. On balance the NBOCYA submits that the Province of New Brunswick has made significant strides since Canada's last reporting period in the implementation of child rights. The progress in relation to structural and institutional changes is important and beginning to bear fruit. We note with satisfaction:

- The establishment of an annual training program in child rights at the Université de Moncton;
- The creation and incorporation of a provincial network of child and youth agencies to promote child rights;
- The development of professional networks within the provincial and national bar association to promote child rights and the professional development of lawyers in these practice areas, including an online toolkit for lawyers www.cba.org/childrights ;
- The establishment of a provincial and national child rights education week in November of each year;
- The development of an annual child rights data monitoring report through the State of the Child Report and accompanying Child Rights Indicators Framework;
- The development of a provincial Child Rights Impact Assessment process for all new laws, new regulations, amending legislation and major policy proposals submitted to the Provincial Council of Ministers;
- The adoption of a Provincial Strategy for the Prevention of Harm to children and youth in implementation of Article 19 of the UNCRC;
- The development of an Interdepartmental Committee on Children and Youth;
- The establishment of a Provincial Youth Voice Committee to support the Strategy and Interdepartmental Committee and the Advocate's Office;
- The establishment of a research chair in child and youth mental health with a research axis on the child's right to health;
- The development of a research group on child rights at the Université de Moncton leading the publication of an annual child rights review and organizing colloquia on child rights.

107. All of these structural measures of implementation are beginning to change the culture in New Brunswick, from a needs-based model of intervention to a rights based model, and from a paternalistic, "doing for", caritative approach to a participatory, "doing with" approach. As a result, new investments are being made in areas that were previously the black sheep. Child and youth mental health is a new priority area of spending. At the heart of this mental health transformation is the provincial roll-out of Integrated Service Delivery. This is a multi-sector wrap-around model of intervention in schools with mental health clinical leadership and public safety and child protection participation to identify and provide early intervention supports to children and youth with special needs from birth to age twenty-one. Rates of hospitalization are not yet improving significantly but the rise in prevalence of diagnoses is being met more rapidly and effectively. Massive new investments are being made in early childhood education. Efforts to drastically reduce rates of youth incarceration and youth crime have paid off

handsomely. In 2017 only one indigenous youth was sentenced to a period of secure custody in New Brunswick. The province's long-standing commitment to inclusive education is also paying off and providing all New Brunswick school children of all abilities opportunities to learn along-side one another, in positive supportive learning environments. The Province is already enjoying the social benefits of years of educational programming under this model, but obviously there remains much work to be done.

108. As demonstrated in the pages above, the gaps in implementation of child rights remain daunting. The UN Committee on the Rights of the Child's guidance and advice has been central to the realizations of the change in culture which are underway in our Province. However, so many of the gains made can be easily lost, from one election cycle to another. The NBOCYA would respectfully urge the Committee to reconsider its advice to Canada and to other federal states in relation to the preparation of State Party Reports. The federal Government of Canada cannot shoulder alone the challenge of child rights implementation. Provincial and Territorial governments must be held accountable for UNCRC obligations in the same manner as their federal counterpart. In a confederation such as Canada, Provinces are sovereign governments in their constitutional areas of jurisdiction. Progress in the implementation of Articles 7, 8, 9, 10, 11, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28 and 29 of the UNCRC in Canada depends entirely on Provincial governments. They are the duty-bearers to children in respect of these rights, but they will not be held accountable unless they are directly engaged by the Committee. At the very least the Committee should work proactively with federal states to ensure that proper reporting, data-collection, planning and implementation efforts are happening at the sub-national level. Accountability requires this kind of comprehensive approach to the task and there should be no avoiding it.

Submitted by the New Brunswick Office of the Child and Youth Advocate.

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