



PRINCE EDWARD ISLAND
Child and Youth
ADVOCATE

*Promoting the Rights, Interests and Well-Being of Children and
Youth - Learning Together*

An Independent Child Rights Impact Assessment (CRIA)
on the Draft
PEI Child, Youth and Family Enhancement Act

December 2, 2021



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“Where do the child’s rights fit in?” - Youth

Promoting and respecting the rights, interests and well-being of children and youth is a shared responsibility as defined in the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as it affects children and youth.

On November 2, 2021, an amended motion passed unanimously in the PEI Legislative Assembly urging government, in consultation with the Child and Youth Advocate, to develop and share a Child Rights Impact Assessment (CRIA) tool to be used in all policy and legislative development within government and for all completed CRIA analyses to be publicly shared. This motion illustrates significant progress in the actualization of human rights for all Prince Edward Island children and youth. The motion also mirrors the preamble of the PEI *Child and Youth Advocate Act* wherein government committed to ensuring that the rights, interests and viewpoints of children and youth are considered in matters affecting them.

Protecting children and youth from parental harm is a responsibility shared by families, communities and government. In September 2021, government asked Islanders to provide their input for the PEI *Child Protection Act* consultation draft entitled the PEI *Child, Youth and Family Enhancement Act* (CYFEA).

Promoting the rights of children and youth in relation to government legislation is a mandatory role and responsibility of the Child and Youth Advocate. The proposed *Child, Youth and Family Enhancement Act* (CYFEA) is an important law that affects children and youth. To assist the Child and Youth Advocate in the mandatory responsibility to promote the rights of children and youth in relation to government legislation, the Child and Youth Advocate contracted with a national expert, external to government, to conduct an independent assessment of the draft legislation intended to replace or amend the PEI *Child Protection Act*.

The independent assessment of the draft *Child, Youth and Family Enhancement Act* (CYFEA) is a process, as noted, known as a Child Rights Impact Assessment (CRIA). More specifically, a CRIA is a tool for assessing and reviewing the potential impacts of any proposed or existing law, policy, program or particular decision on children and their rights. It uses the UNCRC as the framework to assess these impacts, which can be positive or negative, intended or unintended, direct or indirect, minimal or severe, and short-term or long-term.

The CRIA process requires substantial child rights subject-matter expertise as it examines legislation, policies and other matters from a child rights perspective, without personal opinion. It goes beyond simply relying upon the language in the UNCRC itself, rather, there must be an understanding of how that language has been interpreted in commentaries by the United Nations (UN) Committee on the Rights of the Child, an eighteen person Committee that monitors implementation of the UNCRC.



“I would love for you to include my voice.
It would mean a lot to me. Thank you.” - Youth

The Office of the Child and Youth Advocate commissioned an independent CRIA for several reasons:

- o Child protection legislation is critically important and impacts the most vulnerable and marginalized members of our society. We cannot afford to get this wrong. The children, youth and families of this province deserve our very best efforts to create legislation that will be fair and equitable and recognize children and youth as individuals with human rights to be respected and voices to be heard in matters affecting them;
- o An independent CRIA provides assurance that there is a level of child rights expertise brought to bear in the case of new child protection legislation, especially at a time when we are all learning more about CRIA in this province; and,
- o An independent CRIA provides an opportunity to promote the human rights of children and youth, through public education, by publicly sharing a completed CRIA analysis that serves as a model moving forward for legislators, policymakers, government departments and the public when legislative reform is being considered.

A very important component of a CRIA is the consultation and authentic participation with children and youth as part of the legislative drafting process. Voices and input of children and youth, gathered through the individual advocacy services of the Office of the Child and Youth Advocate, were provided with their consent, as de-identified statements, to the independent expert. Many individual children and youth expressed to our Office that their motivation to share their de-identified feedback was to help make improvements to services not necessarily for themselves, but more importantly to them, for other children and youth.

The following CRIA report is intended to be a helpful contribution to the legislative process by serving as a model of best practice in how to apply a Child Rights Impact Assessment to legislation and to help inform government, community organizations and the public by publicly sharing a completed CRIA analysis consistent with the spirit and intent of the amended motion passed unanimously by all members of the PEI Legislative Assembly on November 2, 2021.

Under section 12(1)(a) of the *Child and Youth Advocate Act*, the Child and Youth Advocate has a legislated responsibility to “represent the rights, interests and viewpoints of children and youth who are receiving or are eligible to receive reviewable services”. It is not the role of the Office to suppress or sanitize their voices and their words for more comfortable public consumption. This is their truth, as communicated to our Office in their own words.

As adults, it is our responsibility to rise to the occasion and hear what children and youth are telling us, what is their norm, and often their everyday experience. These words are critical in understanding the vital importance of a child rights analysis in response to any Bill to replace or amend the PEI *Child Protection Act*.



What follows are the verbatim quoted statements from PEI children and youth, which they have shared with this Office, enabling us to uphold their participatory rights. It is with no identifying information that the Office amplifies what children and youth in PEI have brought forward to date in regards to their experiences within the services of the *Child Protection Act*. These statements have been made to the Office on the basis that their identities will not be disclosed directly or indirectly.

Statements from Children and Youth

About Accessing Child Protection Services:

“I can’t access the records you want me to have.” - Youth

“This is all about what’s most convenient for my parent.” - Youth

“What do you need? A pile of my blood on the floor to help me and believe me?” - Youth

About Being In Care:

“What do you need? A pile of my blood on the floor to help me and believe me?” - Youth

“I’d ask, ‘What are my rights here?’, and management would say ‘You have no rights’”. - Youth

“We’re told to have kindness. But they are not kind to us.” - Youth

“I’ve seen kids almost dragged to be restrained, to be put in their room. They were humiliated while it was happening. Workers would say things like, ‘oh, you’re a big boy now aren’t you’ and ‘what are you going to do about it’.” - Youth

“You don’t have freedom in a group home. Yes, freedom and responsibility go together. We have none.” - Youth

“I only saw my case plan the first time for a little bit. Then never again. I was just told I was moving out on this date. I was to go back to my parent’s. It was as much as I expected. They told me to just call the group home if I had issues with my parent”. - Youth

“I have no idea about the law that oversees my care. I don’t even know what that means.” - Youth

“Management would laugh if we asked about our rights.” - Youth

“There is no support for children in care with disabilities.” - Youth

“We would raise issues about being abused by staff. We’d be told, ‘that’s not true, we read the reports’”. - Youth

“One staff said to me, ‘You don’t care about anyone or anything but yourself’ in response to my self-harm. I was cutting myself. Ya, that’s really a sign all I care about is myself.” - Youth

“They want it like a home, but FORCE rules that we don’t make or agree to.” - Youth

“I was there six or seven months before we had one residences’ meeting. Otherwise, there were no meetings. We have NO voice for change.” - Youth

"I asked if I could write a letter to the Director of Child and Family. Staff said, 'Sure, but they will just rip it up.' I said, 'I should be able to' and staff just said, 'no'. I didn't do it. No one encouraged me". - Youth

"What are we going to do when we leave here and have been so sheltered? We're babied, treated like we're 2 years old. Food is made for us even. I want to make my own." - Youth

"I've been pushed to the wall by a youth worker, pushed to the floor by another." - Youth

"Money is never released to you when you're in care. It's your money. That needs to change." - Youth

"If you got kicked out of school, suspended, for a day, you were put in your room for a week. I had to eat and sleep in my room for a week. The suspension from school was only one day." - Youth

"Staff have a lock on the freezer. They take away the microware and toaster. Does that sound like a home? They take the bread away. At 8:30 pm the kitchen closes. Only bananas are available. There are no utensils. I had to ask for all utensils. It sucked." - Youth

"Staff should listen more." - Youth

"Where do the child's rights fit in?" - Youth

"I arrived at the group home and was told by a Child and Family Worker that I had no rights." - Youth

"We want to be able to look up to people." - Youth

"I would love for you to include my voice. It would mean a lot to me. Thank you." - Youth

"It means a lot that something I said might help people beyond just the people who I told it to." - Youth

"I want you to tell people all of this." - Youth

What follows is a fully disclosed copy of the complete independent CRIA. This independent CRIA demonstrates the culture shift needed for a child rights-based approach to this important legislation in PEI. Simply mentioning in draft legislation reference to the UNCRC, while important, is insufficient to ground and action a child rights-based approach in this important legislation that has the potential to impact a child or youth, or a group of children or youths in PEI.

This CRIA demonstrates that children and youth can no longer remain on the margins of such important legislation, but have the right to be placed at the center of service delivery and decision-making affecting them.





David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

Child Rights Impact
Assessment
of the consultation
draft entitled:
Prince Edward Island
Child, Youth and Family
Enhancement Act
(consultation draft)

Cheryl Milne
November, 2021

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Executive Summary

The government of Prince Edward Island has created a consultation draft of proposed legislation to amend and replace the existing *Child Protection Act*, RSPEI 1988, Cap. C-6.01, called the *Child, Youth and Family Enhancement Act* and referred throughout this report as CYFEA. That legislation provides a scheme for services related to the safety and well-being of children and youth, and in particular in respect of children and youth who might be in need of protection due to child abuse and other forms of maltreatment. The Child and Youth Advocate for Prince Edward Island requested that the David Asper Centre for Constitutional Rights, through its Executive Director, Cheryl Milne, conduct an independent Child Rights Impact Assessment on the proposed legislation.

A Child Rights Impact Assessment (CRIA) draws upon the comprehensive framework of the United Nations *Convention on the Rights of the Child* (UNCRC) to facilitate a systemic process that focuses on the rights, needs and interests of children and youth under the age of 18 (except where noted, the term "youth" refers only to youth under the age of 18) impacted by government actions. According to the Committee on the Rights of the Child, ensuring that the rights set out in the UNCRC are implemented and that the impact on children and youth and their rights is appropriately considered in policy and legislation "demands a continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and youth and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation)" [UN *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child* (arts. 4, 42 and 44, para. 6)]

The CRIA tool chosen to conduct this assessment is one that has been recommended by UNICEF Canada following an extensive literature review of CRIA and a scan of best practices, together with expertise on the application of children's rights in legislative processes. The benefit of this tool is that it is not overly complex or cumbersome, and is grounded in general human rights principles as well as the UNCRC.

The focus of this CRIA is on the terms of the proposed legislation. Many elements of the delivery of services under the legislation will likely be incorporated in regulations which are not available at this time. Background information considered included two government reports: the *2019 Foster Care Review Report* that considered the foster care system in the province and the *2021 Child Protection Act Review* of the Advisory Committee appointed in accordance with s.53 of the *Child Protection Act*. Also included were the voices of children and youth expressed through dialogue during the individual advocacy services provided by the Office of the Child and Youth Advocate. The comments and recommendations that specifically focused on the rights of children were considered in the preparation of this CRIA.



The CRIA references specific articles of the UNCRC that are deemed relevant to the proposed legislation and provides an assessment of the extent to which the UNCRC is supported or negatively impacted by it. Given the focus of the legislation on the best interests and well-being of children, a large portion of the UNCRC is relevant to the impact of the CYFEA. Primarily, the CYFEA fulfills in large measure, the government's obligation to "take appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (UNCRC, Art. 19). The CYFEA also specifically incorporates the UNCRC into the legislation requiring that the CYFEA be construed and applied in a manner consistent with it. This is a significant progressive step for the implementation of children's rights in the province and an approach that is better than simply referencing the UNCRC in a preamble of lesser enforceability.

Where the CYFEA has negative implications for children's rights, is primarily in the lack of child rights protections and provisions to actively facilitate the participation of children and youth in decisions that have significant impacts on them. The CRIA also notes concerns about the general human rights principles of accountability and transparency which would require mechanisms for monitoring the impact of the legislation and a complaint process accessible to children and youth. The government's assertion that the CYFEA is a shift to a prevention model is laudable if it can be demonstrated to be in the best interests of children. This requires continuous review and data collection to ensure the measures are carried out accordingly.

The recommendations of this CRIA include a refocusing on the specific needs of children through a more expansive best interests test and plans that address their individual needs in addition to mitigating the circumstances which have led them to be in need of protection. The right of children to health and educational support, particularly for children with disabilities is a key aspect that requires attention. The CYFEA is also confusing in its approach to services for Indigenous children. While s.7 sets out that the CYFEA is subject to *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada) how this is operationalized for all Indigenous children, including those who are not living on Reserve in the province, is unclear.

In this CRIA report reference has been made to General Comments made by the UN Committee on the Rights of the Child which assist in providing interpretation and recommendations on the proper implementation of the UNCRC. Other resources include similar legislation in provinces and territories across the country to serve as examples of how to incorporate the rights of children and youth through the CYFEA. Finally, reference has been made in a number of instances to *Katelynn's Principle* which was derived from recommendations made in the Inquest into the Death of Katelynn Sampson in Ontario in 2017 (attached as Appendix E). That principle reminds everyone providing services to children to place the child at the centre and to ensure that the child's voice is heard.



Summary Of Recommendations

1. Rights of Children

RECOMMENDATION: A comprehensive child rights section should be added to the CYFEA and include, in consultation with children and youth, the following rights:

- To have their voices heard, including the ability to raise concerns safely, and to have their views given due weight;
- To be informed of their rights in language that is accessible;
- To be free from physical punishment, restraint or detention in locked premises;
- To participate in decisions impacting them, including where they live, how they maintain cultural and familial connections, education and training, and recreational activities;
- To privacy in communications with family, respecting the services provided to them under the CYFEA, and respecting the right to personal property;
- To have a plan of care that focuses on their particular needs and to participate in the development of the plan in accordance with their age and maturity;
- If in the care of the Director of Child Protection, to have the right to an appropriate education, the right to recreational activities and clear rights to health, including supports for children with disabilities, and an appropriate standard of living;
- The obligation on service providers to respect the rights of children in the UNCRC and the legislation.

2. Complaints Mechanism Accessible by Children in Care

RECOMMENDATION: The CYFEA should include an independent comprehensive complaints mechanism accessible to children and youth in care or receiving services under the CYFEA, that includes access to representatives and an appeal process.

3. Coordination with the *Child and Youth Advocates Act*

RECOMMENDATION: The CYFEA should incorporate language that facilitates access by children and youth to the advocacy services of the Child and Youth Advocate. The Office of the Child and Youth Advocate should be a key component to the communication and enforcement of the rights provisions in the CYFEA. Children and youth should be able to freely and privately communicate with advocates in that office and service providers should be required to facilitate this access.

4. Standing in Legal Proceedings and Legal Representation

RECOMMENDATION: Children and youth should have the right to standing as a legal party in proceedings under the CYFEA, along with the right to have legal representation appointed.



5. Views and Wishes of Children and Youth to be Given Due Weight

RECOMMENDATION: In all instances where decisions are being made that impact children and youth, their views and wishes are to be ascertained and given due weight in accordance with article 12 of the UNCRC.

6. Definition of the Best Interests of the Child

RECOMMENDATION: The definition of the best interests of the child should be more comprehensive and include,

- the unique needs of Indigenous children and youth (or specifically incorporate the test in *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada), and including reference to the United Nations *Declaration on the Rights of Indigenous Persons* (UNDRIP) as it affects children and youth;
- children and youth with disabilities; and
- substantive equality rights of children and youth from minority groups.

7. Criteria Articulated for Family Intervention Plans to Include Plan of Care

RECOMMENDATION: Family Intervention Plans must maintain a focus on the best interest and needs of the child or youth. Specific provisions that require the plan to include educational, recreational and developmental considerations should be included along with a clear statement that the plan must reflect the best interests of the child or youth.

8. Periodic Review

RECOMMENDATION: The periodic review provision in the current *Child Protection Act*, should be included in the CYFEA to ensure accountability and transparency. Any periodic review should be provided to the public and include:

- a Child Rights Impact Assessment that seeks out and includes the views of children and youth impacted by the legislation;
- systematic data collection and qualitative assessment of the impacts and outcomes of the services provided to the children, youth and families under the CYFEA.

9. Better Integration of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada)

RECOMMENDATION: The provisions respecting the application of *An Act respecting First Nations, Inuit and Métis children, youth and families* need to specify that all Indigenous children in PEI will be treated in accordance with the principles and standards set out in that federal legislation.

10. Preamble or Statement of Principles

RECOMMENDATION: The legislation to include a statement of principles that clearly situates the child and youth at the centre of decisions and includes some of the key thematic rights of the UNCRC including non-discrimination and the participation rights of children and youth.



About the Assessment Tool

In consultation with the Child and Youth Advocate for the Province of Prince Edward Island, the Child Rights Impact Assessment Tool chosen to complete this independent assessment is a tool recommended by UNICEF Canada. Other tools were considered, but given the comprehensive nature of the proposed legislation, tools that provided a more superficial analysis were deemed inappropriate. This CRIA template was developed by UNICEF Canada following an extensive literature review of CRIA and a scan of best practices, together with expertise on the application of children's rights in legislative processes. The benefit of this tool is also that it is not overly complex or cumbersome, and is grounded in general human rights principles as well as the United Nations *Convention on the Rights of the Child*. Ideally, anyone conducting a CRIA will engage children and youth in the process. This CRIA was informed by dialogue with children and youth currently receiving services of the Department of Child and Family as recorded through the individual advocacy services of the Office of the Child and Youth Advocate.

Cheryl Milne, LL.B, M.S.W., L.S.M. is the Executive Director of the David Asper Centre for Constitutional Rights at the Faculty of Law, University of Toronto. She teaches a clinical course in constitutional advocacy as well as Children, Youth and the Law at the Faculty. Prior to coming to the Centre, Ms. Milne was a legal advocate for children with the legal clinic Justice for Children and Youth. There she led the clinic's Charter litigation including the challenge to the corporal punishment defence in the Criminal Code, the striking down of the reverse onus sections of the Youth Criminal Justice Act for adult sentencing, and an intervention involving the right of a capable adolescent to consent to her own medical treatment. She was the Chair of the Ontario Bar Association's Constitutional, Civil Liberties and Human Rights section, and the Chair of the Canadian Coalition for the Rights of Children and Justice Children and Youth. She is a member of the Steering Committee of the National Association for Women and the Law (NAWL) and the Child and Youth Law Section Executive of the Canadian Bar Association.

The David Asper Centre for Constitutional Rights is a centre within the Faculty of Law at the University of Toronto. It is devoted to realizing constitutional rights through advocacy, research and education. The Centre aims to play a vital role in articulating Canada's constitutional vision to the broader world. The cornerstone of the Centre is a legal clinic that brings together students, faculty and members of the bar to work on significant constitutional cases and advocacy initiatives.

We gratefully acknowledge the research contributions to this report by University of Toronto, Faculty of Law, JD student Madeleine Carswell.



Objectives of the CYFEA

Summarize the objective of the proposal. Who is intended to benefit? What rights will be secured or advanced? What outcomes are intended?

The *Child Youth and Family Enhancement Act* (CYFEA) is proposed legislation to replace the existing *Child Protection Act*, RSPEI 1988, Cap. C-6.01. The *Child Protection Act* supports the provision of services to Island families and communities related to the safety and well-being of children and youth from parental harm. Some examples of these services include mandatory reporting, screening and assessment, investigation, disclosure requests, and extended services regarding the protection and safety of children. The proposed draft legislation was created following province-wide consultations as part of a mandatory five-year review process. The stated purpose of the CYFEA is to promote and protect the safety and well-being of children and youth from parental harm by supporting parents and families to fulfill this responsibility and where possible, empowering interventions on behalf of children and youth by the province and the courts.

As this assessment is not being conducted by the originators of the draft legislation, it can only be based upon what the legislation appears to do on its face, and does not interpret the intended outcomes. The CYFEA provides a child protection regime aimed at responding to allegations of parental maltreatment of children and youth, and thus aims to fulfill the Prince Edward Island government's obligations under the UNCRC to protect children from violence and exploitation, particularly in the home. Where the proposed legislation is in need of adjustment to fulfill other rights in the UNCRC, particularly children's participation rights, is highlighted throughout this report.



Consultations

Has there been any consultation in the development of the proposal? (Note the groups consulted/affected). If so, what have they said?

- ➡ Children
- ➡ Stakeholders
- ➡ Government departments/ministries

The review conducted by the government included public consultation as well as consultation with stakeholders and government departments. There are two government reports which summarize these consultations: the 2019 *Foster Care Review Report* that considered the foster care system in the province and the 2021 *Child Protection Act Review* of the Advisory Committee appointed in accordance with s.53 of the *Child Protection Act*. For the purposes of this CRIA the summaries below focus on the feedback from young people and recommendations that pertain specifically to their rights and is not intended to be a comprehensive overview of those reports. Additionally, in the preparation of this CRIA, the voices and views of children and youth receiving individual advocacy support from the Office of the Child and Youth Advocate were included.

2021 *Child Protection Act* Review - Advisory Committee Report:

The 2021 *Child Protection Act* Review Advisory Committee Report conducted stakeholder and public consultations, but there is no indication in the report that child and youth were specifically consulted in this review. Stakeholders are described as identifying a number of areas that would promote greater recognition of children's rights and better access to services and thus the report does include a number of recommendations that would enhance the rights of children and youth. Those that should be considered in this CRIA include that the legislation explicitly state the rights of children and youth in care; that the definition of the best interests of the child be reviewed with the aim that the definition aligns with other federal and provincial legislation and reports; and that Child and Family Services consider implementing an expert-led Child Rights Impact Assessment. Some of the recommendations that enhance the rights of children and youth have been included in the CYFEA, but many more related to policies and services are yet to be realized including some of the recommendations made in a previous review conducted in 2016.



Foster Care Review Report:

The 2019 *Foster Care Review Report* took an explicitly child rights focus and consulted with children and youth along with other stakeholders. Many of the comments made by children and youth have been echoed in the dialogue between children and youth and the Child and Youth Advocate Office. Positive comments by children and youth include how the foster home gave them a healthy family dynamic and that foster homes provide them with a home that they had never had before. In terms of the voice of children, the report notes that children in foster care were frequently not included in decisions that affected them including case conferences and placement decisions and that their views and preferences were not taken into consideration. Some of the children who did report being listened to and respected reported a better experience in foster care. The children, youth and other stakeholders commented on the need for services and support for youth in care, including for children and youth with unique needs. A particular area of concern noted in the report is the transition into adulthood for youth who have been in long term care. Child rights focused recommendations include involving children in care planning in accordance with Art. 12 of the UNCRC.

Child and Youth Views - Office of the Child and Youth Advocate Summary and the Child and Youth Advisory Committee of the Office of the Child and Youth Advocate

The main themes from the Office of the Child and Youth Advocate's summary of dialogue with children and youth in receipt of individual advocacy while receiving Child and Family Services included: 1) that children and youth feel as though they lack rights, are not being afforded their rights, and are not aware of their rights; 2) that the workers at the group homes are mistreating children and youth both mentally (being unkind to the children) and physically (abusing, injuring, and using excessive force against the children); 3) that there is a lack of mental health supports at the group homes and that children and youth with mental health concerns are not receiving proper treatment; 4) that the homes have strict rules and punishment for children and youth; 5) that overall there are a lack of supports and programming for children and youth; 6) that there is a lack of support and cultural recognition for Indigenous children and youth ; and 7) that there is a lack of support for children and youth with disabilities. The comments of child and youth in this summary were taken into consideration in the preparation of this CRIA but were not solicited as part of the drafting of the proposed CYFEA. The views of child and youth members of the Child and Youth Advisory Committee to the PEI Office of the Child and Youth Advocate, as stated in a letter dated October 21, 2021, addressed to the three political party leaders of the PEI Legislative Assembly, were also taken into consideration for this CRIA report.



Relevant Articles of the UNCRC

The articles in the UN *Convention on the Rights of the Child* that are positively supported by the CYFEA are listed here with reference to the legislative provisions. Some articles are both supported by the legislation in some aspects and not followed in others depending upon the different elements of the rights articulated. Where there is negative impact on the right, or incomplete compliance, additional references are made to General Comments published by the UN Committee on the Rights of the Child and supporting material such as comparative provincial and federal legislation in Canada to provide guidance. For the sake of brevity the UNCRC articles have not been set out in full.

UNCRC ARTICLE	POSITIVE MEASURES IN CYFEA
Article 2: Non-discrimination	The definition of best interests of the child includes consideration of race, colour, sex, language, religion. There are potential negative impacts respecting indigenous children because of the need to specifically address their circumstances in the Canadian context.
Article 3: Best interests of the child	In keeping with Article 3, s.6 of the CYFEA requires that decisions and actions are conducted with the best interests of the child as the paramount consideration.
Article 5: Respecting the responsibilities, rights and duties of parents and members of the extended family in a manner consistent with the evolving capacities of the child	The child's relationship with the parents, other family members and other persons significant to the child is a factor in the best interests test (s.2(1)). The purpose of the CYFEA is stated to promote the safety and well-being of children by supporting parents and families to fulfill this responsibility (s.6(1)). Other sections make provisions for voluntary supports and services to the family or agreements to mitigate the circumstances causing the child to be in need of protection (s. 15, s.17). Agreements for supports and services can be entered into with youth aged 16 and 17 years (s.17). Those youth cannot be compelled to receive services and supports.
Article 6: The inherent right to life and to the maximum extent possible the survival and <u>development of the child</u>	Child's developmental needs are addressed in s. 2 (best interests), s. 3(3) (definition of emotional harm) and s. 14 (investigation of circumstances affecting the safety and well-being of the child).
Article 8: The right of the child to preserve his or her identity	The child's cultural, racial, linguistic and religious heritage along with gender identity are listed as factors in the best interests of the child. Family Intervention Plans require a description of the arrangements made to recognize the importance of the child's identity under s. 4(e)(iv).



UNCRC ARTICLE	POSITIVE MEASURES IN CYFEA
Article 9: Child shall not be separated from his or her parents against their will, except when necessary for the best interests of the child such as in the case of abuse or neglect of the child by parents	s. 3(1) (child in need of protection), s. 3(4) (sexual abuse or exploitation), and s. 30(1)&(5) (application to prohibit contact) are consistent with this article.
Article 16: Right to privacy	Access to personal information and the protection of private information is governed by the legislation. Children 12 and older have the right to access information about themselves. (s.55) Hearings are closed to the public (s.44) and it is an offence to publish information that would identify a child subject to an agreement or proceedings under the Act (s.62).
Article 19: All appropriate ... measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child	CYFEA is primarily concerned with protecting children from these harms as set out in s. 3(1) (child in need of protection), s. 3(2) (physical harm), s. 3(3) (emotional harm), s. 3(4) (sexual abuse or exploitation), s. 30(1) (application to prohibit contact) and s. 30(5) (disposition) of the CYFEA discuss violence, injury, abuse, neglect, exploitation, and sexual abuse Assessment of the appropriate measures is more nuanced and is the focus of both the consultation reports referenced above as well as the recommendations contained in this CRIA. More data would need to be available to assess outcomes. Negligent treatment and maltreatment are not terms used in the CYFEA.
Article 34: Protection of the child from all forms of sexual exploitation and sexual abuse	References in s. 3(1)(f)&(g) (child in need of protection), s. 3(4) (sexual abuse or exploitation), s. 30(1) (application to prohibit contact) and s. 30(5) (disposition) of the CYFEA address sexual exploitation and abuse by a parent.
Article 36: Protection of the child against all other forms of exploitation prejudicial to any aspects of the child's welfare	S. 3(1)(f)&(g) (child in need of protection), s. 3(4) (sexual abuse or exploitation), s. 30(1) (application to prohibit contact) and s. 30(5) (disposition) of the CYFEA address forms of exploitation.
Article 39: Recovery and social reintegration for children who have been victims of neglect, exploitation or abuse.	Section 50 provides for a transition up to age 25 for youth who have been in care by an agreement to provide transitional supports and services to the youth.

The following chart outlines measures that negatively impact the rights listed in the referenced articles as well as instances where the legislation fails to address or adequately protect the rights. Alternative resources are listed to provide additional information about the right in question or examples of provincial and federal legislation where the rights are better addressed.

UNCRC ARTICLE	NEGATIVE MEASURES IN CYFEA	ALTERNATIVE RESOURCES
Article 2: Non-discrimination	The following factors are not included in the definition of best interests of the child: “political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Without a comprehensive child rights section in the legislation, these rights to non-discrimination are not clearly protected.	The principle set out in the federal legislation in respect of substantive equality in the application and interpretation of the legislation, as well as the delivery of all services, serves as a model for ensuring non-discrimination.
Article 3: Best interests of the child	The CYFEA removes from the best interests of the child in the current legislation the following factor: “(f) a secure place for the child and the development of a positive relationship as a member of a family.	The provincial/ territorial legislation that includes a similar provision include North West Territories , Nunavut, Alberta, Ontario, New Brunswick, PEI Current Legislation.
Article 12: Child who is capable of forming their own views the right to express those views freely and their views to be given due weight.	Section 8(2)(a) of the CYFEA requires the Director of Child Protection to “consider the views of the child” but does not ascribe any weight to those views. The factors included in the best interests of the child in s. 2(1) include consideration of the views and preferences of the child, but no weight ascribed to them.	See Ontario (s. 3 & s. 8-15) and British Columbia (s. 70(1)) for legislation that has far more comprehensive child’s rights language <i>UN General Comment No.12 (2009): The right of the child to be heard</i> “The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention.” (para 2) Age alone does not determine the significance of a child’s views. There must be a case-by- case assessment of “due weight in accordance with the age and maturity of the child” (para. 29) Note that Canadian case law supports meaningful participation of children in decisions affecting them and that their views and wishes be given <i>due weight</i> in accordance with their age and maturity in accordance with the UNCRC.

UNCRC ARTICLE	NEGATIVE MEASURES IN CYFEA	ALTERNATIVE RESOURCES
Article 12: Child who is capable of forming their own views the right to express those views freely and the ir views to be given due weight.	Cont'd.	It was noted that adherence to Article 12 gives children “who have to live with the decisions made by others, the ability to share their concerns about the impact of those decisions on their lives”. See <i>A.C. v. Manitoba (Child and Family Services)</i> 2009 SCC 30, [2009] 2 S.C.R. 181. <i>Katelynn’s Principle</i> – derived from the recommendations following the Ontario Inquest into the Death of Katelynn Sampson in 2016 this principle states that the child must be at the centre when they are receiving services and includes the statement that “A child is an individual with rights who must be always seen, whose voice must be heard, and who must be listened to and respected.
Article 23: 1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life ... 3. Recognizing the special needs of a disabled child ...”	There is no mention of disability or children with disabilities in the CYFEA and in particular no specific protections or factors to be weighed in respect of the best interests of children with disabilities or in Family Intervention Plans which ought to ensure their special needs are met.	<i>UN General Comment No. 9: Respecting children with disabilities</i> “According to paragraph 2 of article 23 States parties to the Convention recognize the right of the child with disability to special care and shall encourage and ensure the extension of assistance to the eligible child and those responsible for his or her care. The assistance has to be appropriate to the child’s condition and the circumstances of the parents or others caring for the child.” [para.12] “As for professionals working with and for children with disabilities, training programmes must include targeted and focused education on the rights of children with disabilities as a prerequisite for qualification.” [para. 29] - This is a salient point given the feedback from young people respecting the need for training for staff in respect of mental health. Disability is specifically mentioned in the following provincial child protection legislation: British Columbia - s.70(1); Alberta - s.2(1)(f)&(k) and s.58.1(j); Saskatchewan - s. 56(1)(c)(iii); Manitoba – s. 1(1)(b), 14(1)(b)(i)&(ii); Ontario – s. 1(2)(3)(iii), s. 2(1), s. 62, s. 74(3)(c)(iii), s. 75(3), s. 77.1(1)(c), s. 179(2)(c)(iii), s. 180(9)(b), s. 339(3)(3), s. 339(3)(17) New Brunswick – preamble, s. 1, s. 29.2, s. 31(4), s. 34(1), s. 34(2) Nova Scotia – s. 48(1)(a), s. 75(4)(b)

UNCRC ARTICLE	NEGATIVE MEASURES IN CYFEA	ALTERNATIVE RESOURCES
Article 42: Making the Convention known to children	There are no specific provisions that ensure that children are informed of their rights when they come into care or are receiving services under the CYFEA. A right of access to the Child and Youth Advocate is not set out in this Act.	For example, s. 3 of the Ontario legislation states that all children receiving services under that Act have the right to be informed of their rights. Section 70 of the British Columbia legislation is a similar provision. While they don't specifically state that children and youth are entitled to be informed of their rights under the UNCRC, these more comprehensive rights sections include many of the same rights.
Article 31: "1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."	"Rest", "leisure", "play" and "recreational activities" not included in the rights of children under the CYFEA.	Article 31: "1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."

The following chart lists instances in the CYFEA where children's rights under the UNCRC are impacted in inconsistent or ambiguous ways. In many instances clearer drafting or more expansive sections of the legislation could alleviate any confusion or inconsistent impacts.

UNCRC ARTICLE	MEASURES WITH UNCERTAIN OR AMBIGUOUS IMPACT IN CYFEA	ALTERNATIVE RESOURCES
Article 4: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention."	The CYFEA in s.8 states that it shall be construed and applied in a manner that is consistent with the UNCRC. However, the CYFEA lacks specific provisions that implement key child rights in an operational way.	See Ontario (s. 3 & s. 8-15) and British Columbia (s. 70(1)) for legislation that has far more comprehensive child's rights language. <i>UN General Comment No. 5 (2003): General measures of implementation:</i> "States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance."

UNCRC ARTICLE	MEASURES WITH UNCERTAIN OR AMBIGUOUS IMPACT IN CYFEA	ALTERNATIVE RESOURCES
Article 6: “1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.”	Criteria lacking for Family Intervention Plans which would ensure maximum development of the child through a tailored plan of care that focuses on the child.	
Article 12: The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child.	While there is no age restriction on a child’s ability to be represented by counsel, the CYFEA does not confer party status, or its equivalent, to a child in court proceedings. It also does not ensure legal representation, leaving it to the discretion of the court.	For example, children are parties to proceedings under Quebec legislation and are entitled to notice and the right to participate as if a party in Ontario. <i>UN General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1):</i> “In particular, in cases where a child is referred to an administrative or judicial procedure involving the determination of his or her best interests, he or she should be provided with a legal representative” [p. 11]
Rights and Freedoms of Children in Care: the following articles are not included in the CYFEA because there is not a clear and comprehensive section that deals with children’s rights in care or when receiving services. Article 13 – freedom of expression Article 14 – freedom of thought, conscience and religion Article 15 – freedom of association and peaceful assembly		
Article 18 – both parents have common responsibilities for the upbringing and development of the child	Child’s developmental needs/ capacity are mentioned in s. 2(1)(b)&(g) (best interests), s. 3(3) (emotional harm), s. 14(1)(a)&(i) (investigation of circumstances) and s. 14(2)(i) (Powers of Director, investigation). Upbringing of children is mentioned in s. 2(1)(k) (best interests).	

UNCRC ARTICLE	MEASURES WITH UNCERTAIN OR AMBIGUOUS IMPACT IN CYFEA	ALTERNATIVE RESOURCES
Article 20: “1. A child temporarily or permanently deprived of his or her family environment, ... When considering solutions, due regard shall be paid to the desirability of <u>continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.</u> ”	The CYFEA provides comprehensive measures for special protection and assistance to children who cannot live at home and therefore generally complies with this Article. Areas of improvement include better rights protections as well as including “continuity” & “ethnic background” as factors in their best interests. Consistent with this article religious, cultural and linguistic factors are listed.	“Continuity” is included in the best interests sections of North West Territories, Nunavut, BC, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and PEI current legislation. Ethnic background is listed in Ontario legislation under best interests test.
Articles 24 (right to health), 25 (periodic review), 28 (education)	Without provisions that specifically refer to the particular needs of the child or youth in care the Family Intervention Plans, defined in s.4, risk not meeting the requirements of these articles. Access to healthcare, including timeliness, is an issue for children and youth in care as articulated by children and youth consulted, and should be included explicitly in the CYFEA. Regular review of these plans and children’s needs are also not clearly set out in the CYFEA.	<i>Katelynn’s Principle:</i> A child should be the forefront of all service-related decision making.
Article 27: “1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development ...”	CYFEA s. 2(1)(b) includes: physical, mental, emotional and developmental needs; while s. 2(1)(i) includes: cultural and religious heritage . “Spiritual” and “moral” are not terms used in the CYFEA. Family Intervention Plans contemplate supports for parents to mitigate the circumstances causing a child to be in need of protection including for reasons of neglect. Criteria are lacking which would ensure maximum development of the child through a tailored plan of care that focuses on the child.	

Indigenous Children and Families

The CYFEA states that the application of the Act is subject to the exercise of inherent jurisdiction and legislative authority by an Indigenous governing body, a coordination agreement with the government and *An Act respecting First Nations, Inuit and Métis children, youth and families (Canada)*. It is unclear how the federal legislation governs the operation of the Act when a child does not live on reserve. For example, do the provisions in respect of the best interests of the child from the federal legislation apply? Are the orders that a court could make or agreements that the Director can enter into with families governed by the placement provisions of the federal legislation? Without clarity the following articles might be impacted by the CYFEA provisions.

MEASURES WITH UNCERTAIN OR AMBIGUOUS IMPACT IN CYFEA

Article 3: Best interests of the child	The CYFEA removes from the best interests of the child in the current legislation the following factors: “(j) if the child is aboriginal, the importance of preserving the cultural identity of the child”. It is not clear whether the federal legislation displaces the CYFEA with respect to the test for the best interests of indigenous children.	<i>UN General Comment No. 11: The rights of indigenous children</i> “The application of the principle of the best interests of the child to indigenous children requires particular attention.” (para 30) See also the <i>UN Declaration on the Rights of Indigenous Persons</i> (UNDRIP).
Article 5: responsibilities, rights and duties of the parent ...	The CYFEA is missing language about Indigenous families. If it is the intention of the legislature that the federal legislation be the applicable scheme in respect of all indigenous families, this is not clearly established instrumentally in the CYFEA.	<i>UN General Comment No. 11: The rights of indigenous children</i> “States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families ...” (Para 46) “Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations ...” (para 47)
Article 30: Specific rights of minority and indigenous children to culture, community, language and practices	The CYFEA does not include specific language to address the unique rights of Indigenous children and youth.	<i>UN General Comment No. 11: The rights of indigenous children</i> “The specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights” (para 5)



Groups of Children Affected

Children with Disabilities The CYFEA does not discuss children with disabilities in the Best Interests section, or any other section, of the legislation. The following provincials and territories have sections of their legislation that discuss children with disabilities and require attention to their special needs: BC, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Nova Scotia.	Children of Minority Groups The CYFEA does not discuss other Children of Minority Groups in their Best Interests section. The UN Comment #11 on Indigenous Children also states: “The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups ... (para 15).
Indigenous Children As noted above, Indigenous children have been left out of the Best Interests section of the CYFEA but the legislation purports to be governed by the federal legislation. The UN Committee on the Rights of the Child has made clear that Indigenous children need special measures for equity. Further, reversing the harms and promoting the rights of Indigenous children to their culture and history is important.	Future Generations While the research on the intergenerational transmission of child abuse is not conclusive, many studies have shown these links. Therefore, prevention is a key goal in respect of future generations as well as children currently identified through child protection services. In addition, reversing the harms and promoting the rights of Indigenous children to their culture and history is important for future generations.



General Human Rights Principles

In this section of the assessment tool, general human right principles that are inherent in international human rights law are applied to the child rights context. In addition to the principle that all human rights are universal and are to be applied equally are the principles that human rights are to be applied and implemented progressively and with transparency and accountability. In addition there is recognition that there are entities and people who are duty bearers (e.g. governments) that are obligated to respect, protect and fulfill children's rights, as well as responsibility holders (e.g. parents and caregivers) who support children as the rights holders.

A. Progressive Realization/Non-retrogression

Does the proposal advance children's rights or is it regressive (e.g. repeals or diminishes an established rights, reduces investment that affects fulfilment)?

Progressive:

- The CYFEA incorporates the UNCRC in s.8 and requires that the legislation be construed and applied in a manner consistent with UNCRC. This is an important progressive step toward the fulfillment of the government's obligation to implement the UNCRC.
- When reasonably possible, the Director of Child Protection is required to consider the views of the child when making a decision or taking an action under the CYFEA and is required to explain to a child in a manner appropriate to the child or youth the reasons for and implications of the decision or action. However, the Director of Child Protection is not required to give due weight to the views and wishes of the child or youth.
- The CYFEA establishes that the best interest of the child is to be the paramount consideration.
- There is no minimum age threshold for the court to order legal representation for a child subject to child protection proceedings.
- The CYFEA recognizes the inherent jurisdiction and legislative authority of the Indigenous group, community or people to which the child belongs, and in accordance with coordination agreements with Indigenous governing bodies in PEI and *An Act respecting First Nations, Inuit and Metis children, youth and families* (Canada).
- The CYFEA permits youth aged 16 and 17 years to enter into agreements for supports and services and makes it clear that their consent is required. Agreements to provide transitional supports and services to a young person up to age 25 for youth who have been in care until age 18 fulfills an important gap for that age group.



Regressive:

- Best Interests of the Child – The CYFEA removes “a secure place for the child and the development of a positive relationship as a member of a family” as a listed factor. There is no clear rationale for this change.

The provincial/ territorial legislation that includes a similar provision include North West Territories, Nunavut, Alberta, Ontario, New Brunswick, PEI current legislation.

- Preamble regarding the basic rights of children -- The current PEI legislation states:
“AND WHEREAS children have basic rights and fundamental freedoms no less than those of adults, and a right to special safeguards and assistance in the preservation of those rights and freedoms; ...
AND WHEREAS children are entitled, no less than adults, based on their developmental capacity, to be heard in the course of and to participate in the processes that lead to decisions that affect them; ...
AND WHEREAS the rights of children, families and individuals are guaranteed by the rule of law, intervention into the affairs of individuals and families should be governed by law so as to protect those rights and preserve the autonomy and integrity of the family wherever possible;”

The CYFEA has removed these statements and removed any language indicating that children and youth have rights.

- The removal of the requirement of a periodic review is a regressive aspect of the legislation. See Appendix E for jurisdictional comparison.

Progressive/Regressive:

- Best Interests of the Child – Indigenous Children

The CYFEA removes direct references to the cultural and community needs of indigenous children and families. While the CYFEA states in s.7 that its application in respect of an Indigenous child is subject to the exercise of inherent jurisdiction and legislative authority by an Indigenous governing body, a coordination agreement or the federal legislation, it is unclear how this is intended to be carried out, especially for children who live off Reserve and/or are members of communities that are situated outside of the Island. It is unclear what sections of the federal legislation would apply to the actions of the Director of Child Protection under the CYFEA.

Special considerations for Indigenous children are included in the Best Interests considerations of the following provinces/ territories: British Columbia, Alberta, Ontario, Quebec, Newfoundland and Labrador, PEI current legislation

- Family Intervention Plan

The legislation requires the Director of Child Protection to develop a Family Intervention Plan, which is a plan of services and intervention proposed to mitigate the circumstances causing a child to be in need of protection. This could be considered progressive by mandating prevention services and supporting parents to look after their children (Art.5). However, it removes the requirement of a plan of care that focuses on the needs of the child and has removed the language requiring a description of “services, programs or other intervention provided to a child or youth based on an assessment of the needs and best interests of the child.”



B. Universality

Does the proposal include all children, even with targeted or differentiated inclusion of some groups of children who need special measures for equity? IF not, is this justifiable?

Indigenous Children

As noted above, Indigenous children have been left out of the Best Interests section of the CYFEA but the legislation purports to be governed by the federal legislation. The CRC has made clear that Indigenous children need special measures for equity. See UN Comment #11 on Indigenous Children: “The specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights” (para 5).

Children of Other Minority Groups

The CYFEA does not discuss other Children of Minority Groups in their Best Interests section. The UN Comment #11 on Indigenous Children also states: “The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups and the Committee may decide in the future to prepare a general comment specifically on the rights of children belonging to minority groups” (para 15).

Children with Disabilities

The CYFEA does not discuss children with disabilities in the Best Interests section, or any other section, of the legislation. The following provincials and territories have sections of their legislation that discuss children with disabilities and require attention to their special needs: BC, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, and Nova Scotia. Ontario’s legislation is the most comprehensive.

C. Accountability/Transparency

Does the proposal include mechanisms to support accountability and transparency, such as independent child-focused monitoring, regular public reporting and an appeal process?

- The CYFEA does not include a provision that provides for the involvement of the Child and Youth Advocate.
For example, the BC Legislation states that children have the following rights under s. 70(1): “(m) to privacy during discussions with a lawyer, the representative or a person employed or retained by the representative under the *Representative for Children and Youth Act*, the Ombudsperson, a member of the Legislative Assembly or a member of Parliament; (n) to be informed about and to be assisted in contacting the representative under the *Representative for Children and Youth Act*, or the Ombudsperson”
- Children under 16 cannot seek a review of an order for custody or guardianship. The appeal provision (s.40) does not state who has the right of an appeal. Given that the legislation does not make it clear that children and youth have party status, this would suggest they do not have appeal rights.
- The draft legislation does not contain a provision requiring periodic reviews of the legislation. See Appendix E for jurisdictional comparisons.



D. Proper Roles

Does the proposal support the proper roles of duty-bearers, rights-holders and responsibility-holders?

DUTY-BEARERS

(Government and public authorities): primary duty/obligation to respect, protect and fulfil children's rights?

The CYFEA is weak on establishing the obligations of the Director of Child Protection and service providers to protect and fulfill children's rights. While family intervention plans are required, there is no obligation to involve the children and youth in the development of the plans and no clear criteria focusing on the needs of the child or youth. There is also no obligation to ensure that children in the care and guardianship of the Director of Child Protection have access to the Child and Youth Advocate, which is a key mechanism to protect children's rights. The obligation of the Director of Child Protection in respect of children and youth in the care and guardianship of the Director of Child Protection to respect, well-being, dignity and the protection of their rights is not clearly articulated. For example, provisions that are lacking include,

The right of the child to be free from physical punishment;
Restrictions on the use of physical restraint and locked premises.

RIGHTS-HOLDERS

(Children and youth): support children to claim their rights, participate and be protected from undue risk in doing so?

The CYFEA does not have any sections that support children to claim their rights, to participate in decision affecting them and to be protected from undue risk in doing so. The provinces with the most comprehensive legislation regarding child rights are Ontario, British Columbia and Quebec. The Northwest Territories, Nunavut, Manitoba, New Brunswick, Nova Scotia, and PEI's current legislation all also have sections that mention child rights.

While the draft legislation contemplates judges' orders for the legal representation of children in court proceedings, it does not clearly state the status of children in these proceedings or the criteria for ordering representation. *B.J.G. v. D.L.G.*, 2010 YKSC 44 says all children have the right to be heard in all judicial processes without exception, information provided by children on a wide range of relevant topics can lead to better decisions, and if children want to participate then options for how they can best participate need to be considered.

RESPONSIBILITY-

HOLDERS (e.g. parents, NGOS) Support the capacity of rights-holders and duty-bearers?

The CYFEA contemplates voluntary supports and services to the child, parent or family, when the child is determined not to be in need of protection as well as agreements with parents for supports and services to permit a child to remain in the custody of a parent when the Director of Child Protection determines that the child or youth is in need of protection. Family Intervention Plans are required when a child is found in need of protection and are weighted in favour of providing supports to mitigate the circumstances causing the child or youth to be in need of protection.



Adaptations

What adaptations or measures could avoid, minimize or mitigate any negative impacts for which groups of children?

Definition of Best Interests of the Child – for Indigenous children

The CYFEA does not include specific considerations for Indigenous children within the best interests of the child section. While the Act states to be subject to the federal legislation, indigenous children who are not clearly under the jurisdiction of the federal legislation could fall through the cracks. This could negatively impact Indigenous children whose best interests ought to be considered. UN Comment #11: Indigenous Children and their Rights under the Convention emphasizes the special measures that should be taken for Indigenous children. This is supported by Articles 2, 3, 5, 12, 20(3) and 30 of the CRC. The CYFEA should be expanded, providing specific best interests considerations for Indigenous children.

Definition of Best Interests of the Child – for children from minority groups

The CYFEA does not discuss the best interests of minority children. This could have a negative impact on children from minority groups whose best interests are being assessed. Article 2 of the UNCRC (Non-discrimination) states that children should not be discriminated based on their, or their parents', "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." The best interests of the child portion of the CYFEA should be expanded to include various other forms of discrimination, including: "political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Section on Rights of the Child – for all children and youth

The CYFEA does not provide children and youth with special guarantees of their rights or clear mechanisms to learn about or exercise them. This has a negative impact on all children and youth under the legislation. Article 4 of the CRC provides that State parties implement the rights of the child. This is later affirmed by UN Comment #12: The right of the child to be heard. The UN makes clear that consideration of the best interests of the child cannot be satisfied if the child does not have the right to be heard (UN Comment #12 – para 74). One of the main takeaways from the Office of the Child and Youth Advocate's dialogue with children and youth in group homes is that many do not feel as though they have rights, or that their rights have been respected. The CYFEA should be amended to include a specific section on the rights of the child, as has been done in various territories and provinces.

Section giving party status – for all children and youth

The CYFEA does not give children party status in the legal proceedings to which they are subject. This negatively impacts children. Party status, or its equivalent, is granted to children and youth in the following provinces/ territories: Saskatchewan, Ontario, and Nova Scotia. The CYFEA should include a section that affords children and youth party status in any proceedings affecting them.



Adding a statutory review period to the CYFEA

The CYFEA does not have a statutory review period. The Northwest Territories, Alberta, Ontario, Quebec, Newfoundland & Labrador, Nova Scotia, and Prince Edward Island's current legislation all have a statutory review period of 4 or 5 years. The CYFEA should add a statutory review period, to ensure that the interests of children and youth are adequately considered in the future. The legislation should mandate the involvement of the Office of the Child and Youth Advocate in the review.

Preamble or Statement of Principles

While the CYFEA is required to be construed and applied in a manner consistent with the UNCRC, specific provisions guaranteeing some of the key thematic rights of the UNCRC such as non-discrimination and the participation rights of children would provide stronger support for the implementation of specific rights. A statement of principles could also consider incorporating the language of *Katellynn's Principle* that places children at the centre of all services provided to them and acknowledges their right to be heard.

What adaptations or measures could maximize any positive impacts for which groups of children?

More Comprehensive Definition of Best Interests of the Child – for all children and youth

The CYFEA is not comprehensive enough when compared to the other provinces/ territories. Article 3 of the UNCRC outlines the best interests of the child. UN General Comment No. 14 elaborates on this, outlining additional factors that should be considered when assessing the best interests of the child.

Family Intervention Plans – to include plans for services and support to children and youth

The elements of the Family Intervention Plans under the CYFEA focus on prevention and support services for parents and families. However, the requirements of a plan of care for children and youth placed in the custody and guardianship of the Director or another person have been removed. Equivalent terms should be explicitly added to the Family Intervention Plan or the original Plan of Care be reinstituted.

Application of An Act respecting First Nations, Inuit and Métis children, youth and families

The integration of the federal legislation with provincial child protection needs to be more detailed and use consistent language to ensure no confusion about its application. Children and youth who are not members of the Indigenous group, community or people who fall within an Indigenous governing body located on the Island risk falling through the cracks without clear language as to how the federal legislation applies to them.



Remedies for Rights Violations

What remedies exist or should be provided if this policy results in rights violations?

Access to the Child and Youth Advocate

Part 3 of the *Child and Youth Advocate Act* RSPEI 1988, c C-4.3, provides a right to children and youth receiving services or in the care of a facility (broadly defined) to communicate with the Child and Youth Advocate. The role of the Child and Youth Advocate includes

- (ii) representing the rights, interests and viewpoints of children and youth who are receiving or eligible to receive reviewable services; and
- (iii) assisting children and youth to initiate and participate in case conferences, service reviews, mediations or other processes in which decisions are made about the provision of reviewable services (s.12(1).

However, it is unclear from the CYFEA whether children and youth have the right to participate in the processes listed. The language and rights within the CYFEA should be consistent with the *Child and Youth Advocate Act*.

Independent Review Mechanism for Violation of Rights While in Care or Receiving Services

There is no complaint mechanism specific to children and youth within the CYFEA to provide the opportunity to review decisions being made by the Director of Child Protection in respect of services and placement. There is a general review mechanism under s.11 which allows for a request in writing to review a decision of a Director of Child Protection within 30 days of the decision. The only other review mechanism pertains to the correction of records. The CYFEA should establish a complaints procedure accessible by children for alleged violations of their rights under the CYFEA with recourse to the assistance of the Child and Youth Advocate in the proceedings.

Right of Appeal

As the CYFEA does not clearly give party standing, or its equivalent, to children and youth in child protection proceedings, it is unclear whether they have appeal rights even if represented by counsel appointed by the Court. Standing for children and youth needs to be clarified.

UN General Comment No. 12: The right of the child to be heard (2009)

“If the right of the child to be heard is breached with regard to judicial and administrative proceedings (art. 12, para. 2), the child must have access to appeals and complaints procedures which provide remedies for rights violations. Complaints procedures must provide reliable mechanisms to ensure that children are confident that using them will not expose them to risk of violence or punishment. “ [para. 47]



Evidence

What evidence and data do you have? What do you need to know?

There is limited data available on outcomes for children and youth receiving child protection services in the province. The 2021 *Child Protection Act Review: Advisory Committee Report* provides the following statistics made available by Child and Family Services for the province:

Table 1: Child Protection Statistics

CHILD PROTECTION STATISTICS ⁵					
	2016/17	2017/18	2018/19	2019/20	2020/21
Child Protection Reports Received ⁶	2497	3227	3801	3763	3861
Child Protection Investigations Opened ⁷	2028	1811	1969	1993	2143
Children who Received Child Protection Services in Their Own Homes ⁸	696	675	631	612	704
Number of Children in the ACP ⁹	N/A ¹⁰	100	200	222	211 ¹¹
Number of Care Providers in the ACP	N/A	80	167	168	166 ¹²
Children in Care ¹³	193	192	177	176	176
Focused Intervention Services to Parents ¹⁴	608	615	579	592	636
Extended Service ¹⁵	13	15	14	13	13

Data collection throughout Canada has been a concern raised by the UN Committee on the Rights of the Child in repeated periodic reviews of Canada's compliance with the UNCRC. As child welfare services fall within the provincial jurisdiction, this falls to the individual provinces as an obligation under the UNCRC. In the *Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)* the Committee urged Canada to take all necessary measures to implement better data collection procedures. The Committee noted with concern the limited progress made to establish a national, comprehensive data collection system covering all areas of the Convention (para 20). They suggested that "data be disaggregated by age, sex, geographic location, ethnicity and socio-economic background to facilitate analysis on the situation of all children" (para 21). The Committee also recommended that "appropriate data on children in special situations of vulnerability be collected and analysed to inform policy decisions and programmes at different levels" (para 21).

In their 2016 report, the Prince Edward Island Advisory Committee on the Child Protection Act recommended "that an independent audit of case files, to include assessments, investigations, focused intervention, and children in care, to identify what information is recorded, consistency in recording practices across files, and to inform recommendations regarding enhancements to recording practices be initiated by 31 January 2017." The Committee also recommended that the government "develop an electronic data collection system capturing information from each report made to Child Protection ... such that easily retrievable and analyzable data are available." The Committee also recommended that the government "develop an electronic data collection system capturing information regarding outcomes for children receiving child protection services and children in the care of the Director of Child Protection minimally including data for each of the indicators identified in the National Child Welfare Outcomes Indicator Matrix, namely: Safety ... Well-being ... Permanence ... Family and Community Support." The extent to which this is being implemented remains unclear.

Recommendations

The following recommendations focus primarily on improving the rights of children and youth to participate in decisions affecting them and to ensure that decisions are made in their best interests. A significant number of recommendations have already been made through the previous reviews which pertain to specific services provided to children, youth and families under the current legislation and supporting policies. Many of those recommendations are routed in the right of children and youth to be provided with appropriate care when receiving services as a result of being in need of protection, as well as the right of parents and families to be supported in their obligations toward children in accordance with article 5 of the UNCRC. Except for the recommendation that child and youth rights be made more explicit in the CYFEA, those previous recommendations will not be duplicated or explicitly commented on here.

1. Rights of Children

RECOMMENDATION: A comprehensive child rights section should be added to the CYFEA and include, in consultation with children and youth, the following rights:

- To have their voices heard, including the ability to raise concerns safely, and to have their views given due weight
- To be informed of their rights;
- To be free from physical punishment, restraint or detention in locked premises;
- To participate in decisions impacting them, including where they live, how they maintain cultural and familial connections, education and training, and recreational activities;
- To privacy in communications with family, respecting the services provided to them under the CYFEA, and respecting the right to personal property;
- To have a plan of care that focuses on their particular needs and to participate in the development of the plan in accordance with their age and maturity;
- If in the care of the Director, to have the right to an appropriate education, the right to recreational activities and clear rights to health, including supports for children with disabilities, and an appropriate standard of living;
- The obligation on service providers to respect the rights of children in the UNCRC and the CYFEA.

RATIONALE: The CYFEA lacks a comprehensive set of provisions that operationalize the rights of children and youth receiving services or in the care of the Director of Child Protection. Simply stating that the CYFEA shall be construed and applied in accordance with the UNCRC, while a progressive step, is insufficient to ensure that children are aware of their rights and that individuals carrying out the obligations of the Director in caring for and providing services to children fulfill their duty to respect, protect and fulfill children's rights guaranteed under the UNCRC. *UN General Comment No. 4: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, makes it clear that measures are required to ensure that children are made aware of their rights and have mechanisms to seek to have them enforced.



2. Independent Complaints Mechanism Accessible by Children and Youth in Care

RECOMMENDATION: The CYFEA should include a comprehensive independent complaints mechanism accessible to children and youth in care or receiving services under the CYFEA, that includes access to representatives and an appeal process.

RATIONALE: While the CYFEA has a complaints mechanism respecting decisions made by the Director, a more comprehensive rights section requires appropriate enforcement mechanisms to ensure that children and youth can effectively complain when their rights are infringed or ignored. As described in *UN General Comment No. 5 (2003): General measures of implementation*, to enable children to seek remedies for the breach of their rights there ought to be “effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance.” The current complaints provision is inadequate.

3. Coordination with the PEI *Child and Youth Advocate Act*

RECOMMENDATION: The CYFEA should incorporate language that facilitates access by children and youth to the advocacy services of the Child and Youth Advocate. The Office of the Child and Youth Advocate should be a key component to the communication and enforcement of the rights provisions in the CYFEA. Children and youth should be able to freely and privately communicate with advocates in that office and service providers should be required to facilitate this access.

RATIONALE: Part 3 of the *Child and Youth Advocate Act* RSPEI 1988, c C-4.3, provides a right to children receiving services or in the care of a facility (broadly defined) to communicate with the Child and Youth Advocate. The role of advocate includes

- (ii) representing the rights, interests and viewpoints of children and youth who are receiving or eligible to receive reviewable services; and
- (iii) assisting children and youth to initiate and participate in case conferences, service reviews, mediations or other processes in which decisions are made about the provision of reviewable services (s.12(1).

4. Standing in Legal Proceedings and Legal Representation

RECOMMENDATION: Children and youth should have the right standing as a party in proceedings under the CYFEA, along with the right to have legal representation appointed.

RATIONALE: Article 12 requires that children be given the opportunity to be heard in any judicial and administrative proceedings affecting them. UN General Comment No. 14: The right of the child to be heard (2013) makes explicit that, “the child will need appropriate legal representation when his or her best interests are to be formally assessed and determined by courts and equivalent bodies.” (p.11)



5. Views and Wishes of Children to be Given Due Weight

RECOMMENDATION: In all instances where decisions are being made that impact children and youth, their views and wishes are to be ascertained and given due weight in accordance with article 12 of the UNCRC.

RATIONALE: The legislation needs to reflect the right of children to have their views be given due weight in accordance with Article 12 of the UNCRC. At present the CYFEA only requires that their views be considered as a factor in the best interests of the child and when the Director is making a decision in relation to a child. *UN General Comment No. 12: The right of the child to be heard (2003)* states, “by requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age.” As *Katelynn’s Principle* states, “according to their age or maturity, each child should be engaged through an honest and respectful dialogue about how/why decisions were or will be made.”

6. Definition of the Best Interests of the Child

RECOMMENDATION: The definition of the best interests of the child should be more comprehensive and include the special needs of Indigenous children (or specifically incorporate the test in the federal legislation), children with disabilities and the substantive equality rights of children from other minority groups.

RATIONALE: The best interests of the child is a comprehensive set of factors that is a central animating theme of the UNCRC. The test reflects and should include other rights in the UNCRC including non-discrimination and the right to participate in decision. As stated in *UN General Comment No. 14 (2013): The right of the child to have his or her best interests taken as the primary consideration*, “The concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.”

7. Criteria Articulated for Family Intervention Plans to Include Plan of Care

RECOMMENDATION: Family Intervention Plans must maintain a focus on the best interest and needs of the child. Specific provisions that require the plan to include educational, recreational and developmental considerations should be included along with a clear statement that the plan must reflect the best interests of the child.

RATIONALE: The family intervention plans, defined in s.4 of the CYFEA, focuses primarily on mitigating the circumstances causing a child or youth to be in need of protection. This focus on prevention and supporting families to care for their children is a laudable objective. However, the requirements focused on the child or youth placed outside their parents’ custody leave out many elements that focus on the child’s particular needs. While this might be left to regulations, the provision risks diminishing the focus on the child or youth. As stated in *Katelynn’s Principle*, “The child should be at the forefront of all service-related decision making.”



8. Periodic Review

RECOMMENDATION: The periodic review provision in the current *Child Protection Act*, should be included in the CYFEA to ensure accountability and transparency. Any periodic review should be provided to the public and include:

- a Child Rights Impact Assessment that seeks out and includes the views of children and youth impacted by the legislation;
- systematic data collection and qualitative assessment of the impacts and outcomes of the services provided to the children, youth and families under the CYFEA.

RATIONALE: General human rights principles require transparency and accountability on behalf of governments. In the child rights context this means independent child-focused monitoring as well as regular public reporting. Given the shift in focus to prevention services in the objectives of this legislation, the government of Prince Edward Island should facilitate evaluation of the approaches and services provided to ensure better outcomes for children. The Northwest Territories, Alberta, Ontario, Quebec, Newfoundland & Labrador, Nova Scotia, and Prince Edward Island's current legislation all have a statutory review period of 4 or 5 years.

The most recent review of the PEI *Child Protection Act* (with the exception of the Foster Care System Review) did not clearly delineate any consultation with children and youth. *General Comment No.5 (2003): General measures of implementation* states, "If consultation is to be meaningful, documents as well as processes need to be made accessible. But appearing to "listen" to children is relatively unchallenging; giving due weight to their views requires real change. Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights."

9. Better Integration of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada)

RECOMMENDATION: The provisions respecting the application of *An Act respecting First Nations, Inuit and Métis children, youth and families* need to specify that all Indigenous children and youth in PEI will be treated in accordance with the principles and standards set out in the federal legislation.

RATIONALE: This incorporation of the federal legislation is a progressive measure that seeks to further the rights of Indigenous children in the province. Clarity is essential to ensure that it operates as intended and that no children fall through the cracks.

10. Preamble or Statement of Principles

RECOMMENDATION: The legislation to include a statement of principles that clearly situates the child at the centre of decisions and includes some of the key thematic rights of the UNCRC including non-discrimination and the participation rights of children.

RATIONALE: While the CYFEA is required to be construed and applied in a manner consistent with the UNCRC, specific provisions guaranteeing some of the key thematic rights of the UNCRC such as non-discrimination and the participation rights of children would provide stronger support for the implementation of specific rights. A statement of principles could also consider incorporating the language of *Katellynn's Principle* that places children at the centre of all services provided to them and acknowledges their right to be heard.



APPENDIX A CHILD RIGHTS IMPACT ASSESSMENT (CRIA) WORKSHEET

1. Summarize the objective of the proposal. Who is intended to benefit? What rights will be secured or advanced? What outcomes are intended?		
2. Which articles of the Convention on the Rights of the Child are most relevant?¹		
Articles supported (+)	Articles negatively affected (-)	Articles uncertain in impact (?)
3. Which groups of children may be affected?²		
Groups of children positively affected (explain)	Groups of children negatively affected (explain)	Groups of children for which there may be mixed impacts (explain)
4. What impacts might there be on future generations of children?		
5. General Human Rights Principles		
4(a): Progressive Realization/Non-retrogression Does the proposal advance children's rights or is it regressive (e.g., repeals or diminishes an established right, reduces investment that affects fulfilment,...)?		

¹ Some articles may be supported in some ways and negatively affected in others.

² Please note that there may be different benefits or impacts for different groups of children, such as by gender/gender identity, age, location, race, First Nations status, migrant status, disability (types of disabilities), socioeconomic status, family structure, whether they reside outside of Canada, children living in institutions, children in care, children of incarcerated parents, and so on.

<p>4(b): Universality</p> <p>Does the proposal include all children, even with targeted or differentiated inclusion of some groups of children who need special measures for equity? If not, is this justifiable?</p>
<p>4(c): Accountability/Transparency</p> <p>Does the proposal include mechanisms to support accountability and transparency, such as independent, child-focused monitoring, regular public reporting and an appeal process?</p>
<p>4(d): Proper roles</p> <p>Does the proposal support the proper roles of:</p> <p>DUTY-BEARERS (Government and public authorities): primary duty/obligation to respect, protect and fulfil children's rights?</p> <p>RIGHTS-HOLDERS (Children and youth): support children to claim their rights, participate and be protected from undue risk in doing so?</p> <p>RESPONSIBILITY-HOLDERS (e.g., parents, NGOs): support the capacity of rights-holders and duty-bearers?</p>
<p>6. What adaptations or measures could avoid, minimize or mitigate any negative impacts/for which groups of children?</p>
<p>7. What adaptations or measures could maximize any positive impacts/for which groups of children?</p>
<p>8. What remedies exist or should be provided if this policy results in rights violations?</p>

9. What other evidence and data do you have? What do you need to know?		
10. Has there been any consultation in the development of the proposal? (Note the groups consulted/affected). If so, what have they said?	Children	<input type="checkbox"/>
	Stakeholders	<input type="checkbox"/>
	Government departments/ministries	<input type="checkbox"/>
11. What recommendations should be made? (Is the proposal the best way of achieving its aims? Should other alternatives, including the do-nothing option, be considered? If so, what are those alternatives? What mitigating or optimizing recommendations can be made? What additional documentation ³ or evidence, if any, is needed?)		

³ If this were a more comprehensive CRIA process, UNCRC Committee guidance documents – such as the Committee’s General Comments and Concluding Observations to Canada - would also be considered. Other human rights treaties including UNDRIP, CERD and COPD would also support consideration of differential and potentially inequitable impacts on children.

October 21, 2021

Hon. Dennis King
Hon. Peter Bevan-Baker
MLA Sonny Gallant
Hon. George Coles Building
175 Richmond Street, P.O. Box 2000
Charlottetown, PE C1A 7N8

Dear Premier and Leaders of the Official Opposition and Third Party,

Re: **Concerns for *Child Protection Act* review process and draft legislation.**

We are writing to you with a time sensitive topic, recognizing the Legislative Assembly is now back in session. Our hope is that you are able to share this letter with every Member of the Legislative Assembly (MLA) within your respective Parties.

We wish to recognize that there are good people who have worked hard to try to reflect on the issues important to children and youth in consultations and on the Child Protection Act Review Advisory Committee. However, we are exceptionally shocked that the actual draft legislation:

- has taken away the mandatory 5 year review of Child Protection legislation;
- does not address what we as a committee raised to the consultants during their feedback session with us;
- has been rushed in such a way that a wide range of children and youth have not had the opportunity to be heard about legislation that can completely change the course of our lives.

We call upon each of you:

- To independently meet with us. We are willing to do this during an evening or weekend knowing you are in the Legislative Assembly. We know that if you hear directly from us, you will gain a better understanding of how this legislation can oversee and control the lives of children and youth;
- To create more and better opportunities for you all as Leaders and MLAs to hear directly from children, youth, their families, and experts in the community about how the *Child Protection Act* has impacted their lives, what actually needs to change, and how the draft legislation does not currently meet these needs.

BDC Place – Suite 500, 119 Kent Street
Charlottetown, Prince Edward Island C1A 1N3
902-368-5630

voiceforchildren@ocyapei.ca www.childand youthadvocatepei.ca

Take the time to do this right: have a Standing Committee examine this draft legislation and listen to children and youth directly.

This is important. This is about the right for children and youth in PEI to be safe. This is about our right to participate in decisions made about us.

We look forward to each of your replies.

Sincerely,

The Child and Youth Advisory Committee of the PEI Office of the Child and Youth Advocate

Shauna Bjornson
Miyako Kenny
Mia Grace Payne

Shaylee Bjornson
Sarah Knockwood

Joëlle Blanchard
Sam Ledwell

Appendix C - Voices of PEI Children and Youth through individual advocacy services of the Office
of the Child and Youth Advocate

Statements from Children and Youth

Compiled October 24, 2021

About Accessing Services:

“What do you need? I pile of my blood on the floor to help me and believe me?” – youth

“Where do the child’s rights fit in?” - youth

“If I’m not abandoned, then define run-away.” – youth

“I can’t access the records you want me to have.” – youth

“This is all about what’s most convenient for my parent.” – youth

“Can you investigate if money meant for me was actually spent on me?” – youth

“What’s the biggest concern of CPS investigating then? Does this have to end with me rocking on the floor hurting myself?” - youth

About Being In Care:

“I’d ask, ‘What are my rights here?’, and management would say ‘You have no rights’”. – youth

“I have no idea about the law that oversees my care. I don’t even know what that means.” – youth

“We’re told to have kindness. But they are not kind to us.” - youth

“I’ve seen kids almost dragged to be restrained, to be put in their room. They were humiliated while it was happening. Workers would say things like, ‘oh, you’re a big boy now aren’t you’ and ‘what are you going to do about it’.” – youth

“You don’t have freedom in a group home. Yes, freedom and responsibility go together. We have none.” - youth

“We’re no different than any other child. Call us normally. I would get mad, and hate it, how we were treated differently.” – youth

“My time in a group home wasn’t the greatest. They need more programs. There’s a lot of corruption.” – youth

“House Rules aren’t really rules. I’ve lived in a house before. Never had rules like that.” – youth

“Management would laugh if we asked about our rights.” – youth

“We would raise issues about being abused by staff. We’d be told, ‘that’s not true, we read the reports’”. – youth

“We need more support to process life, figure out life like others. Children in care are kept on a short leash.” – youth

“One staff said to me, ‘You don’t care about anyone or anything but yourself’ in response to my self harm. I was cutting myself. Ya, that’s really a sign all I care about is myself.” – youth

“They want it like a home, but FORCE rules that we don’t make or agree to.” – youth

“I asked if I could write a letter to the Director of Child and Family. Staff said, ‘Sure, but they will just rip it up.’ I said, ‘I should be able to’ and staff just said, ‘no’. I didn’t do it. No one encouraged me”. – youth

“What are we going to do when we leave here and have been so sheltered? We’re babied, treated like we’re 2 years old. Food is made for us even. I want to make my own.” - youth

“Staff have a lock on the freezer. They take away the microwave and toaster. Does that sound like a home? They take the bread away. At 8:30pm the kitchen closes. Only bananas are available. There are no utensils. I had to ask for all utensils. It sucked.” – youth

“I arrived at the group home and was told by a Child and Family Worker that I had no rights.” – youth

“Staff should listen more.” – youth

“It needs to be less about the greedy needs of staff. We have no amusement. They are greedy about our time. We have to do everything with them. We can’t go to parks and zoos, events, normal kid stuff.” - youth

“I’ve been pushed to the wall by a youth worker, pushed to the floor by another.” – youth

“One kid jumped over a couch. Staff grabbed them by their sweater hood and choked them.” - youth

“I make plans for kid to go do stuff. Staff say no. Pottery was declined. Deep Sea fishing was on the list. It didn’t happen. We can only go to the grocery store. We ask for weeks to go to the movies.” - youth

“Christmas dinner was respectful.” – youth

“We’re forced to ask to go in our own kitchen for a cup of water.” – youth

“A younger child said they were vegetarian. They were told to eat a hot dog. Staff grabbed their arm and left bruises. That kid got destroyed.” - youth

“You can’t do stuff normal teens do. You can’t jump off Basin Head.” - youth

“Consequences were that you had to stay in your room for a day – or more” – youth

“When I was in hospital, my worker only came to see me a few times.” - youth

“I reacted when my rights weren’t being respected. They gave me such a small place to be in.” – youth

“I was pushed twice by staff. When I fell back, I almost hit my head.” – youth

“Tyne Valley is notorious for putting hands on kids. One swear word and you’re grabbed by the arm and put in a room. They need to get some shit re-done.” - youth

“Even TV watching, it’s all filtered to PG. And you have to have someone with you. Video games are the same.” - youth

“Back in 2016 there were some Management changes that were good.” – youth

“If you got kicked out of school, suspended, for a day, you were put in your room for a week. I had to each and sleep in my room for a week. The suspension from school was only one day.” – youth

“I saw a kid ask for more food – broccoli – and staff told them it was ‘not their portion size’. Shouldn’t we have more broccoli?” - youth

“There’s not a lot of activities. Staff picked old people stuff, like golfing and going to a café. No one wanted to. Kids weren’t asked what we wanted. We can’t even put a toe in the water of a stream ‘cause there’s no lifeguard.” - youth

“I’ve heard restraints.” – child

“We’re not allowed in the kitchen.” - youth

“Tyne Valley Group Home was a shit hole. People do crack and coke out back – vaping everywhere – it’s not safe for the rest of us.” – youth

“They restrain you or just call the police.” – youth

“Sometimes there are 3 or 4 staff holding you down.” - child

“Staff know residents are smoking weed in their rooms. Five and six year olds see this. It’s a negative vibe.” Youth

“I was there six or seven months before we had 1 residences’ meeting. Otherwise, there were no meetings. We have NO voice for change.” – youth

“If we brought things forward, it was always, “no, you can’t do that”. – youth

“We asked and found out the brick walls were because in the late 80s this was a young offender facility. So basically, I’m in a jail.” – youth

“There would be treats for some kids only: ‘Sundaes on Sunday’ for kids in the Honours Program only”. – youth

“I was never taken seriously, no. I don’t know why. Staff say it’s not our role, rules come from higher up, just do it.” – youth

“Now I don’t want to be a Youth Worker. I’d rather help kids in a school or something.” – youth

When asked if staff work in their best interest: “Some did, some just did paperwork.” – youth

“I only saw my case plan the first time for a little bit. Then never again. I was just told I was moving out on this date. I was to go back to my parent’s. It was as much as I expected. They told me to just call the group home if I had issues with my parent”. – youth

“The law overseeing me was never explained to me.” – youth

“I haven’t been told anything about the Child and Youth Advocate Office.” – youth

“My friend left the group home and walked for six hours to the next town. You do what you have to. They are Indigenous. They didn’t have their culture respected. They had been abused. Staff didn’t understand them as a person.” – youth

“Care is never ideal for any kid. A lot of my experience was bad, some good moments.” – youth

“Everything depends on who’s in the house at the time. Every personality clashes. You have no idea about them. So many different age ranges – you can’t have a relationship with them. It’s harder to do things.” – youth

“Your opinions NEVER matter! None of your opinions matter!” – youth

“PEI group homes are awful.” - youth

“There are definitely issues with staffing. Not personalities. They don’t know – older staff don’t know things. Young staff can connect. Now the Youth Worker course at Holland College is different. They *all* need training to improve on themselves.” – youth

“For a while, none of the staff understood me. It made it worse.” – youth

“They never listened to me and made it worse.” – youth

“It’s always the hospital. They don’t know how to deal with any of it. So they just take you to the hospital all the time.” – youth

“Dr. Roach’s training helped the staff – some of them.” – youth

“Some staff don’t take any bother to learn, and they work with different people every day. Would make me super mad.” – youth

“I am not really included in decisions about me. It got really bad when COVID started.” – youth

“No one listened to me because of COVID, it was worse. It was only my psychologist that helped me be heard.” – youth

Do you think staff acted in your best interests? “I think that’s what they thought – but NO. All my life, I could never make the decisions for me.” – youth

“You couldn’t do anything. During COVID, other friends could go out for drives. We couldn’t even do that. It made no sense.” – youth

“If we went out during COVID, we had to go have a shower and change our clothes. But staff went to the same place with us and just washed their hands.” – youth

“I told my worker a while after someone took me to a hotel in their van. Staff didn’t do anything.” - youth

“Staff need receipts and documents for everything. I’d be made to get a receipt, but they don’t. It would make me mad ‘cause it was embarrassing.” – youth

"I'm not allowed a phone." – youth

"The 72 hour room is a big deal." - youth

"BOOM – random people are there, taking care of you. And you're switching schools right in the middle of the year." – youth

"I would love for you to include my voice. It would mean a lot to me. Thank you." – youth

"I want you to tell people all of this." – youth

"It means a lot that something I said might help people beyond just the people who I told it to." - youth

What can be improved?

"We want to be able to look up to people." – youth

"Every child should have a home." - child

"We want more consistency in our lives." – youth

"Don't put your hands on the kids who have trauma." – youth

"Do staff know we have rights?" - child

"There is no cultural development in the group homes. Sometimes one poster about something on a window. But staff need supports from other professions – like the Native Council – to lead in a good way in life." – youth

"Resources have to be easy to read, and encourage the youth workers to give it to us when we arrive. This Know Your Rights booklet would have helped!" – youth

"Stop the random ideas from staff – we're barked at to just get up and go 'cause they want a coffee somewhere." – youth

"I want routine." – youth

"There are no supports for older youth in Foster Care." - youth

"At times there are low staff in group homes. Two people just doing paperwork. You can't do anything... go outside, get food, watch TV, because you have to be supervised. We need more staff." – youth

"We need to have animals, pets. They are therapeutic. We've gone through some shit." – youth

"Beech Group Home has an open kitchen. At least you can cook there." – youth

"Money is never released to you when you're in care. It's your money. That needs to change." - youth

"If we had a Registered Nurse, we'd be able to treat more people right at the group home – give us our meds. If we are hurt when restrained by staff, an RN could treat them." – youth

"I've seen blood on the walls, self-harm, kids cutting themselves. People don't want to be in group homes. We need Mental Health Professionals and nurses." – youth

"There is no supports for Mental Health." - youth

“We need close proximity to a doctor. Group home staff call ambulances a bunch of times. Ambulances cost \$150 each time, costs the group home money. I’ve seen ambulances take 2 hours to get there.” – youth

“We never have a medical exam when we enter care. No, never.” – youth

“There is no support for children in care with disabilities.” - youth

“Reports at group homes are only written up for big incidents. I’ve never seen notes or reports about my care. I never thought I could ask. They never gave anything out. I never got a copy of any report about me.” – youth

“Reports in group homes are not written every time they are needed.” – youth

“There are no specialty trained foster parents to deal with mental health, trauma, disabilities.” - youth

“Fire all the staff and start new. Unfortunate that can’t happen.” - youth

Appendix D – Provincial and Territorial Comparison

PROVINCIAL/ TERRITORIAL STATUTORY REVIEW PERIODS

The following chart outlines the provinces/ territories that have statutory review periods. If it says “N/A” we could not find a statutory review period in the legislation.

Province/ Territory	Name of Legislation	Section in the Act	# Year Review of Legislation
Yukon	Children's Law Act, RSY 2002, c 31	N/A*	N/A
NWT	Child and Family Services Act, SNWT 1997, c 13	s. 88.1(1)	“Within five years after this section comes into force, and every five years after that, the Legislative Assembly or one of its committees shall commence a comprehensive review of the provisions and operation of this Act ...”
Nunavut	Child and Family Services Act, SNWT (Nu) 1997, c 13	N/A	N/A
British Columbia	Child, Family and Community Service Act, RSBC 1996, c 46	N/A	N/A
Alberta	Child, Youth and Family Enhancement Act, RSA 2000, c C-12	s. 131.2(2)	“At least once every 5 years , a comprehensive review must be undertaken of this Act by a committee appointed by the Lieutenant Governor in Council.”

Saskatchewan	The Child and Family Services Act, SS 1989-90, c C-7.2	N/A	N/A
Manitoba	The Child and Family Services Act, CCSM c C80	N/A	N/A
Ontario	Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sch 1	s. 336(5)	“The first review shall be completed and the report made available to the public within five years after the day this section comes into force.”
Quebec	Youth Protection Act, CQLR c P-34.1	s. 156.1	“Not later than 9 July 2010 and subsequently every five years , the Commission must report to the Government on the carrying out of this Act and on the advisability of amending it.”
Newfoundland & Labrador	Children, Youth and Families Act, SNL 2018, c C-12.3	s. 102(1)	“The minister shall, every 5 years , conduct a review of this Act and the principles on which it is based and consider the areas which may be improved.”
New Brunswick	Family Services Act, SNB 1980, c F-2.2	N/A	N/A
Nova Scotia	Children and Family Services Act, SNS 1990, c 5	s. 88A (1)	“The first review shall be completed and the report made avail-

WHETHER THE CHILD HAS THE POWERS OF A PARTY

The following chart outlines the provinces/ territories that give children party status. If it says “N/A” this is because they do not give children party status.

Province/ Territory	Name of Legislation	Section in the Act	Child’s party status
Yukon	Children's Law Act, RSY 2002, c 31	N/A*	N/A
NWT	Child and Family Services Act, SNWT 1997, c 13	N/A	N/A
Nunavut	Child and Family Services Act, SNWT (Nu) 1997, c 13	N/A	N/A
British Columbia	Child, Family and Community Service Act, RSBC 1996, c 46	s. 39 - outlines Parties to proceeding – does not include children	N/A
Alberta	Child, Youth and Family Enhancement Act, RSA 2000, c C-12	N/A	N/A
Saskatchewan	The Child and Family Services Act, SS 1989-90, c C-7.2	s. 29(2)	“Notwithstanding that a child receives notice pursuant to clause (1)(a) and may be represented by a lawyer, the child is not a party to the protection hearing.”
Manitoba	The Child and Family Services Act, CCSM c C80	N/A	N/A
Ontario	Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sch 1	s. 79(6) & s. 210	s. 79(6): “A child who is the applicant under subsection 113 (4) or 115 (4) (status review), receives notice of a proceeding under this Part or has

			able to the public within four years after the day this Section comes into force.”
PEI (current legislation)	Child Protection Act, RSPEI 1988, c C-5.1	s. 58(1)	“The Minister shall appoint an Advisory Committee, in accordance with the regulations to review, every five years , the provisions of this Act and the services performed pursuant to this Act...”
PEI (draft legislation)	Child, Youth and Family Enhancement Act (CYFEA) Consultation Draft	N/A	N/A

*Where N/A: Skimmed document headings, searched “year”, “review”, “statut”, “amend”

Note: Newfoundland & Labrador’s old legislation had a similar provision to PEI’s current legislation

- Section 75(1) of the [Child, Youth and Family Services Act, SNL 1998, c C-12.1](#) stated the following: “(1) The minister shall establish an advisory committee whose function is to review every 2 years the operation of this Act and to report to the minister concerning its operation and stating whether, in its opinion, the principles and purpose of the Act are being achieved.
- It might be worth noting that in their changes to their new legislation they kept the review period but changed it to a 5-year review by the Minister (see above in the chart).

			<p>and, upon request by the child at any stage of the proceeding, the court may order that the child be made a party to the proceeding, where the court determines that such status is desirable to protect the child's interests.</p> <p>(2A) Where the court orders that a child under sixteen years of age be made a party to a proceeding, the court shall appoint a guardian ad litem for the child."</p>
PEI (current legislation)	Child Protection Act, RSPEI 1988, c C-5.1	N/A	N/A
PEI (draft legislation)	Child, Youth and Family Enhancement Act (CYFEA) Consultation Draft	N/A	N/A

*Searched "party", "parties", "status", and "participat" in each piece of legislation

			<p>legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 121 as if the child were a party.”</p> <p>s. 210: “A child is entitled to participate in the proceeding under section 194, 196, 197, 198, 207 or 208 as if they were a party.”</p>
Quebec	Youth Protection Act, CQLR c P-34.1	s. 81	“The child, the child’s parents and the director are parties to the hearing”
Newfoundland & Labrador	Children, Youth and Families Act, SNL 2018, c C-12.3	N/A	N/A
New Brunswick	Family Services Act, SNB 1980, c F-2.2	N/A	N/A
Nova Scotia	Children and Family Services Act, SNS 1990, c 5	s. 37(1)-(4)	<p>s. 37 (1): “A child who is sixteen years of age or more is a party to a pro-ceeding unless the court otherwise orders and, if a party, is, upon the request of the child, entitled to counsel for the purposes of a proceeding.”</p> <p>s. 37(2): “A child who is twelve years of age or more shall receive notice of a proceeding</p>

Appendix E – Katelynn’s Principle

The child must be at the centre, where they are the subject of or receiving services through the child welfare, justice and education systems.

A child is an individual with rights:

- *who must always be seen*
- *whose voice must be heard*
- *who must be listened to and respected*

A child’s cultural heritage must be taken into consideration and respected, particularly in blended families.

Actions must be taken to ensure the child who is capable of forming his or her own views is able to express those views freely and safely about matters affecting them.

A child’s view must be given due weight in accordance with the age and maturity of the child.

A child should be at the forefront of all service-related decision-making. According to their age or maturity, each child should be given the opportunity to participate directly or through a support person or representative before any decisions affecting them are made.

According to their age or maturity, each child should be engaged through an honest and respectful dialogue about how/why decisions were or will be made.

Everyone who provides services to children or services that affect children are child advocates. Advocacy may potentially be a child’s lifeline. It must occur from the point of first contact and on a continual/continuous basis thereafter.





David Asper Centre for Constitutional Rights
UNIVERSITY OF TORONTO

Recommendations

It is the position of the Office of the Child and Youth Advocate that the 10 recommendations as presented in this independent CRIA be given due weight and actioned by government.

Additionally, the Office of the Child and Youth Advocate recommends:

- Government engage in meaningful and robust consultation with the Office of the Child and Youth Advocate by means of a comprehensive briefing on the draft legislation and proposed Bill to replace or amend the PEI *Child Protection Act*, as well as any related regulations and policy changes planned for implementation; and,
- Members of the PEI Legislative Assembly consider taking steps to refer proposed legislative amendments or substituted legislation for the PEI *Child Protection Act* to an all-party Standing Committee for analysis and the opportunity to receive oral and written submissions, which the Office of the Child and Youth Advocate can and will support, by making direct representations itself and most importantly, by facilitating participation from children and youth.

The Office of the Child and Youth Advocate continues to welcome the feedback of children, youth, and their families, on this or any matter pertaining to the rights of children and youth, or groups of children and youths, receiving or eligible to receive reviewable services in PEI.

HOW TO CONNECT

902-368-5630

Toll free: 1-833-368-5630

voiceforchildren@ocyapei.ca

www.childandyouthadvocatepei.ca

Children, youth, and adults do not need any person's permission or referral to connect with the Office of the Child and Youth Advocate. The name of any person contacting the Office is confidential. Children and youth have a right to talk to the Child and Youth Advocate privately and in confidence.

Appendices

MOTION

No. 70

Calling on government to use a Childs' Rights Impact Assessment on all policy and legislative development

Karla Bernard gives notice that she will move, seconded by Steve Howard, the following Motion:

WHEREAS children and youth under the age of 18 make up 20% of the Island's population;

AND WHEREAS they have no agency or voice at decision-making tables or through the vote;

AND WHEREAS the use of a Childs' Rights Impact Assessment (CRIA) reduces harm to children;

AND WHEREAS decision-making processes designed for and by adults often ignore the impacts of policies on children, their rights, and their interests;

AND WHEREAS we should measure success by improvements in the daily lives of children;

AND WHEREAS CRIA is one tool in a toolbox for advancing children's rights which helps identify unintended consequences of policy decisions and raises awareness about impacts for children and children's rights;

THEREFORE BE IT RESOLVED that the Legislative Assembly urge government to develop and share a CRIA tool to be used in all policy and legislative development within government.

Signed by: Karla Bernard

Signed by: Steve Howard

Date: October 21, 2021

Motion 70 - Calling on government to use a Childs' Rights Impact Assessment on all policy and legislative development

The information below is about Motion 70, Calling on government to use a Childs' Rights Impact Assessment on all policy and legislative development, discussed during the 2nd Session of the 66th General Assembly of the Prince Edward Island Legislative Assembly.

General Assembly	66
Session	2
Motion Number	70
Original Motion (PDF)	Calling on government to use a Childs' Rights Impact Assessment on all policy and legislative development
Moved By	Karla Bernard
Seconded By	Stephen Howard
Date of Notice	October 21, 2021
Status	Passed
Date(s) Debated	November 2, 2021

Members who spoke to the motion	Karla Bernard Steve Howard Hon. Brad Trivers Hon. Peter Bevan-Baker Sidney MacEwen
Amended?	Yes
Date(s) Amended	November 2, 2021
Date Passed	November 2, 2021
Additional Information	Amended as follows: That the operative clause be deleted and the following substituted: "THEREFORE BE IT RESOLVED that the Legislative Assembly urge government, in consultation with the Child and Youth Advocate, to develop and share a CRIA tool to be used in all policy and legislative development within government;" That the following be added after the operative clause: "THEREFORE BE IT FURTHER RESOLVED that the Legislative Assembly urge government to publicly share any and all CRIA analyses that are completed."





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