



PRINCE EDWARD ISLAND

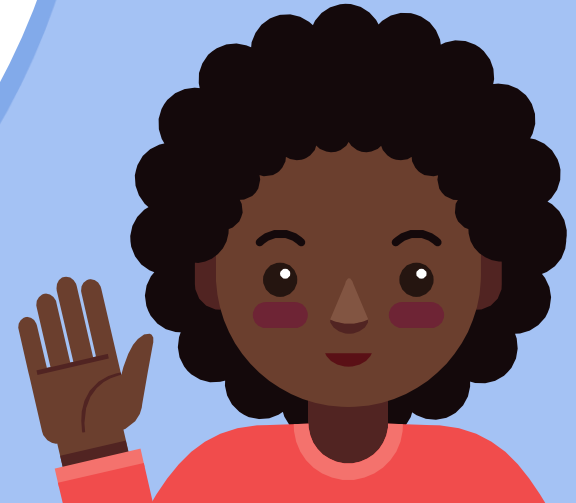
*Child and Youth*  
**ADVOCATE**

# The United Nations Convention on the Rights of the Child: Through Multiple Lenses

March 2021

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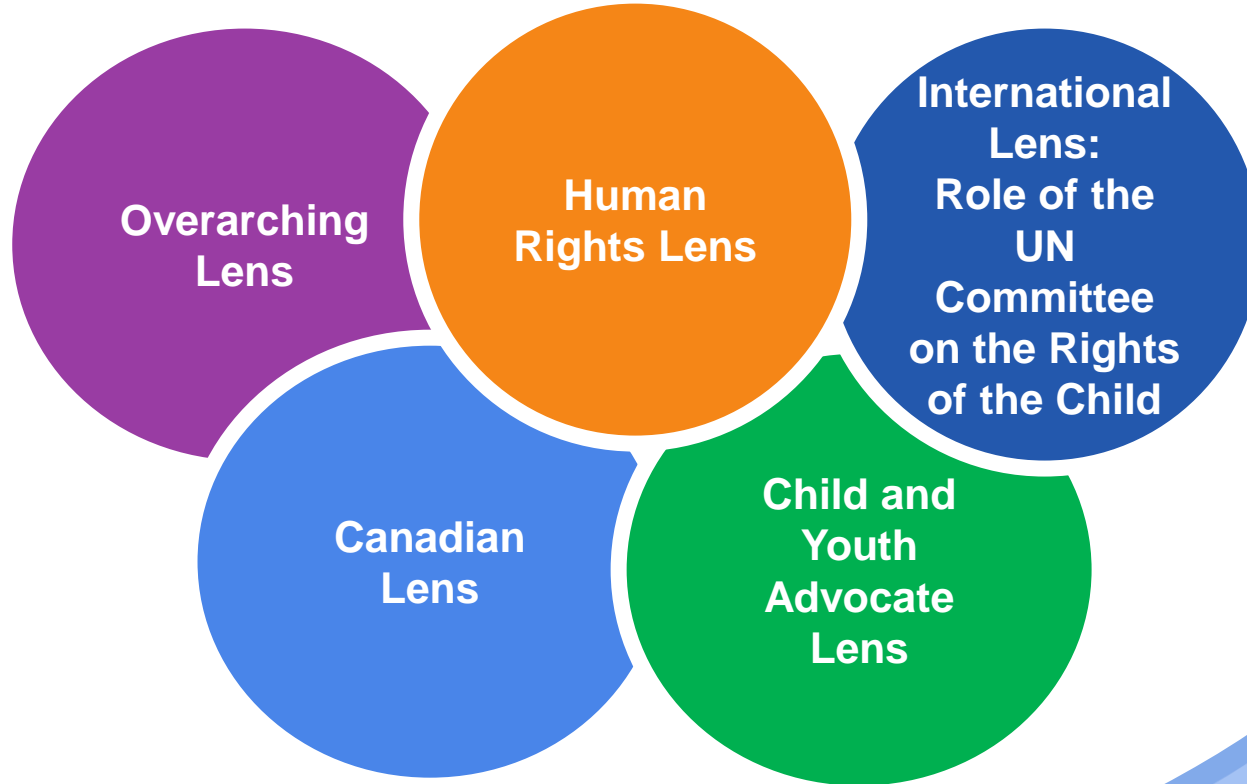
**We acknowledge we are meeting on the traditional territory of the Mi'kmaq people who have occupied this land for thousands of years.**

**The Office of the Child and Youth Advocate is committed to working collaboratively with all Indigenous children, youth and their families.**

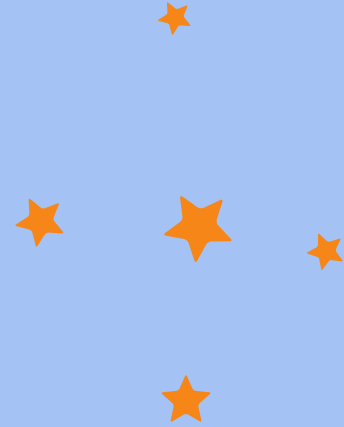
**We acknowledge the harms of our colonial past and we are committed to improving relationships in the spirit of truth and reconciliation.**

**We appreciate the opportunity to live and learn on these traditional lands in mutual respect and peace.**

# The United Nations Convention on the Rights of the Child: Through Multiple Lenses



**United Nations  
Convention on  
the Rights of the  
Child:  
The Overarching  
Lens**



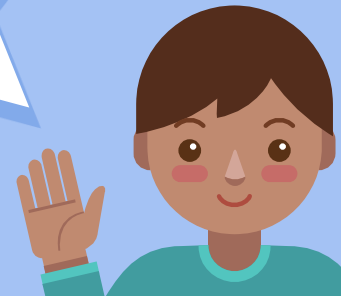
# The Convention: Overview

- First legally binding international instrument to recognize and incorporate the full range of children's human rights – consists of 54 articles and a Preamble
- Confers upon children additional special rights due to their developmental vulnerabilities
- All levels of government share a duty to implement Convention rights
- Serves as a global standard for assessing the treatment of children and the fulfilment of their fundamental human rights
- Applies to children under the age of 18 unless the child attains their majority earlier under applicable law (article 1)



# The Convention: Overview (Continued)

- Covers civil, cultural, economic, political and social rights
- Doesn't consider the child as an isolated individual – but as a member of a family and community
- Minimum standards - don't affect any laws of a State Party which are “more conducive to the realization” of children's rights (article 41)
- Aspirational document - described by Nelson Mandela as *“that luminous living document that enshrines the rights of every child without exception to a life of dignity and self-fulfilment”*



# The Convention: Origins

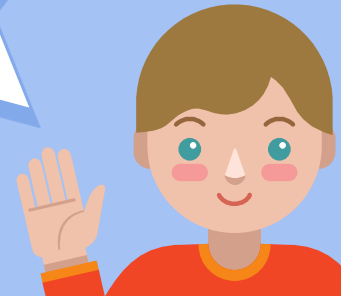
- History of children being only marginally included in general human rights texts and instruments
- Long-standing assumption that children lacked rationality, autonomy and capacity - “human becomings” instead of “human beings”
- Convention seen as necessary to refute negative assumptions about children – new focus on the inclusion and recognition of children as rights-holders
- Impetus for Convention was led by Poland and supported by the earlier work of Dr. Janusz Korczak (the ‘father of children’s rights’)



# The Convention: Origins (Continued)

Earlier attempts to establish protections for children in human rights instruments before the Convention was adopted, included:

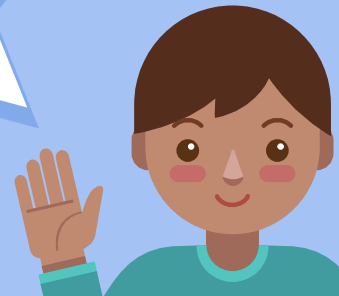
- **Geneva Declaration of the Rights of the Child** – adopted by the League of Nations (1924) – influenced by the rise of fascism across Europe
- **Universal Declaration of Human Rights** – adopted by the United Nations (1948) – influenced by the atrocities of the Second World War
- **Declaration of the Rights of the Child** – adopted by the United Nations (1959) – influenced by demonstrated shortcomings in the Geneva Declaration of the Rights of the Child - some members failing in their efforts to have these rights set out in a Convention, which would be legally binding upon all ratifying nations





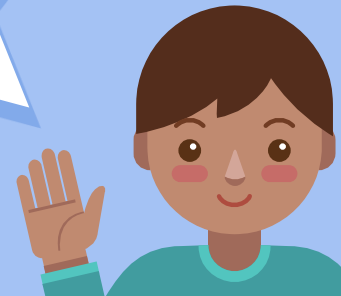
# The Convention: Why it is Necessary?

- Children are a unique and vulnerable population with evolving capacity
- Children have a limited voice in government decision-making – they can't vote
- Children don't have the same ability as adults to know and assert their rights
- Children's rights can conflict and with be treated as subordinate to adult rights



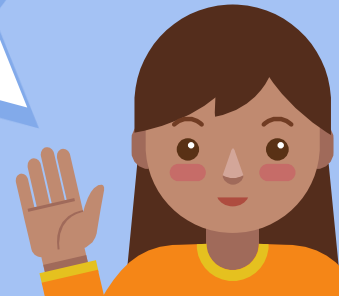
# The Convention: Why it is Necessary? (Continued)

- Children have limited access to legal remedies and complaints mechanisms
- Children are disproportionately affected by adverse conditions (e.g. poverty, homelessness, exposure to family violence)
- Children are among the heaviest users of public services but suffer the most from their fragmentation
- Virtually no such thing as a child neutral law or policy – every area of government policy affects children to some degree



# The Convention: Adoption and Ratification

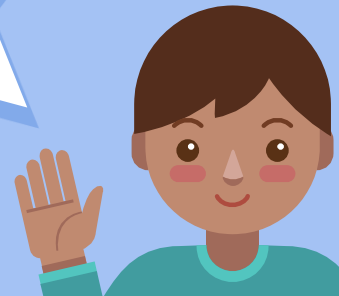
- Adopted by UN General Assembly on November 20, 1989
- Most quickly and widely ratified human rights instrument in history – close to universal ratification
- Three Optional Protocols adopted by UN General Assembly:
  - Optional Protocol on the involvement of children in armed conflict (2000)
  - Optional Protocol on the sale of children, child prostitution and child pornography (2000)
  - Optional Protocol on a communications (complaints) procedure (2011) – came into force on April 14, 2014



# The Convention: Clustering Rights

## The '3 P's':

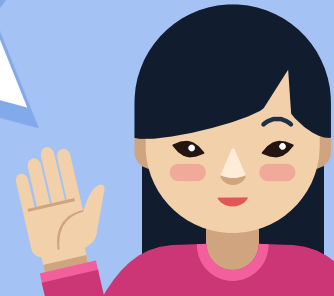
- **Protection rights** – include protection from all forms of child abuse, neglect, exploitation and abuses of children in the criminal justice system
- **Provision (survival and development) rights** – include rights of children to adequate food, shelter, clean water, formal education, primary health care, leisure and recreation, and cultural activities
- **Participation rights** – include rights of children to be heard and to have their views given due weight according to age and maturity, as well as rights to information and freedom of association



# The Convention: Clustering Rights (Continued)

## The Four Guiding or General Principles:

- **Right to non-discrimination** in the provision and exercise of all Convention rights (article 2)
- **Right to have the best interests of the child treated as a primary consideration** in all actions concerning children (article 3)
- **Right to life, survival and maximum possible development** (article 6)
- **Right to express views freely and have those views respected** in all matters affecting children (article 12)





**The right to be heard**

**The right to a childhood**

**The right to be educated**

**The right to be healthy**

**The right to be treated fairly**

# The Convention: Modes of Implementation

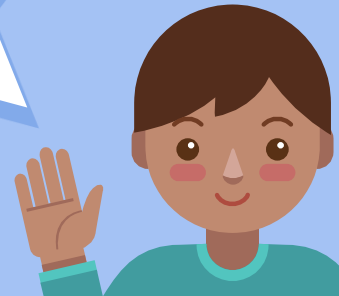
**The Convention can be implemented through various means:**

- Creating the legal basis for rights (legislation, regulations, government directives, court/tribunal jurisprudence and through complaint mechanisms)
- Establishing interdependent child-sensitive governance mechanisms (General Measures of Implementation)
- Developing policies, programs and practices that implement child rights provisions (Child Rights-Based Approach)



# The Convention: Impact

- Transformed the status of children and childhood – from “objects of charity” to recognized rights-holders
- Supported advances in services for children (e.g. education, health and justice)
- Provided greater protection from all forms of violence (e.g. more nations prohibiting use of corporal punishment)
- Implemented the principle of non-discrimination to reduce disparities (e.g. laws, policies, services and investments)
- Listened to children’s voices in improving laws, policies and services





# The Convention: Impact (Continued)

- Influenced the development of child-sensitive legislation, policy and practice
- Contributed to the creation of independent human rights institutions for children in over 70 countries globally
- Influenced the development and use of Child Rights Impact Assessment Tools in many countries (and two provinces)
  - (e.g. Norway, Sweden, Belgium (Flanders), Northern Ireland, Ireland, England, Scotland, Wales, New Zealand, Western Australia, New Brunswick, Saskatchewan)
- Stimulated child rights-based advocacy and partnerships

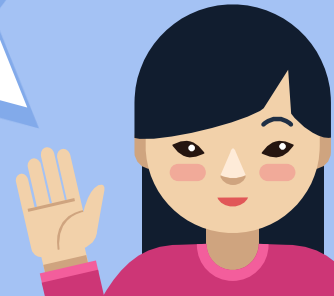


**United Nations  
Convention on  
the Rights of the  
Child:  
The Human  
Rights Lens**



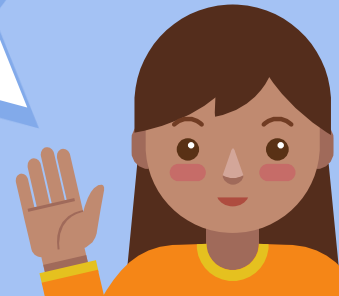
# What are Human Rights?

- Human rights are a set of internationally agreed, legally binding norms and standards to which all individuals, including children, are entitled in order to survive and develop to their fullest capacity
- Human rights provide the legal and ethical basis for legislative and policy development work and are codified in international Conventions, Declarations and Guidelines
- Every single person, regardless of their age, has human rights and all levels of government have a duty to make sure that those rights can be accessed, are respected, and can be fully exercised
- In claiming human rights, everyone also accepts the responsibility not to infringe the human rights of others



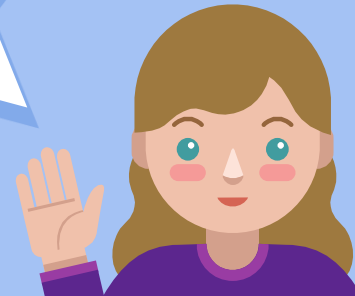
# Turning the Page: From Needs to Rights

- A human rights-based approach requires an understanding of the difference between a ‘need’ and a ‘right’
- A **‘need’** has specific characteristics:
  - An aspiration that may be valid or imperfectly and paternalistically perceived by others
  - Lacks an obligation on the part of government to provide or protect it
  - Satisfaction of a need can’t be enforced
- A **‘right’** has specific other characteristics:
  - Entitlement arises solely from being a person
  - Enables every person to live with dignity and be treated with respect
  - Can be enforced and entails an obligation by government to honour it and provide for its implementation



# Children's Rights as Human Rights

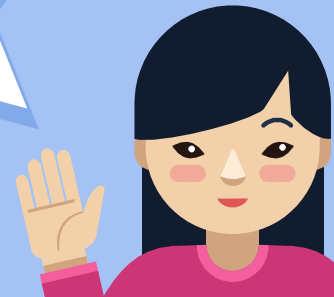
- Children are individual rights holders and are entitled to recognition of their rights as human rights – they don't have to earn their entitlement to human rights
- A **child rights-based approach** in the context of caregiving and protection has been defined as one that *“requires a paradigm shift towards respecting and promoting the human dignity and the physical and psychological integrity of children as right-bearing individuals rather than perceiving them primarily as ‘victims’”* (CRC Committee, General Comment 13 (2011) on The right of the child to freedom from all forms of violence)
- Children are not property or passive recipients of charity but empowered actors in their own development



# Characteristics of Human Rights: Applicable to Children

Children's Human Rights within the Convention are:

- **Universal** – They apply to all children regardless of age
- **Indivisible** – They are all equally important and no one right is inferior to another
- **Inalienable** – They are acquired at birth and can't be taken or given away
- **Interdependent** – They are all connected and can't be realized in isolation



# The Human Rights Framework: Types of Stakeholders

## **Rights-Holders**

They have the claim or legal entitlement to a right (e.g. all children from birth to 18)

## **Duty-Bearers**

They have the primary duty to respect and provide for children's human rights (e.g. governments at all levels and public institutions, such as hospitals and schools)

## **Non-State Responsibility Holders**

They have a secondary responsibility for children's rights because of their relationship to the rights-holder (e.g. parents, teachers, child-serving organizations, independent Child and Youth Advocates)

## **Capacity Supporters**

They are actors who can assist the rights-holders, duty-bearers and responsibility holders by building their capacity to fulfill their roles (e.g. businesses, foundations, researchers, media)



# The Human Rights Framework: Obligations of Government as Primary Duty-Bearer

## **Duty to Respect**

Make sure that actions are in compliance with the provisions of the Convention and refrain from interfering with the Convention rights of others (e.g. refrain from imposing fees for children to access medical services)

## **Duty to Protect**

Put in place mechanisms to prevent infringements of Convention rights by other actors (e.g. enacting policies that aid in the prevention of child abuse / bullying)

## **Duty to Fulfil**

Take legislative, judicial, policy, budgetary or other measures to promote the full realization of Convention rights (e.g. budget allocations to regions where higher rates of child poverty)



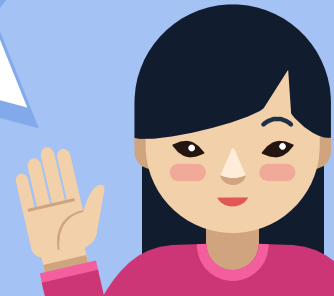


**The  
International  
Lens:  
The Role of the  
UN Committee  
on the Rights of  
the Child**



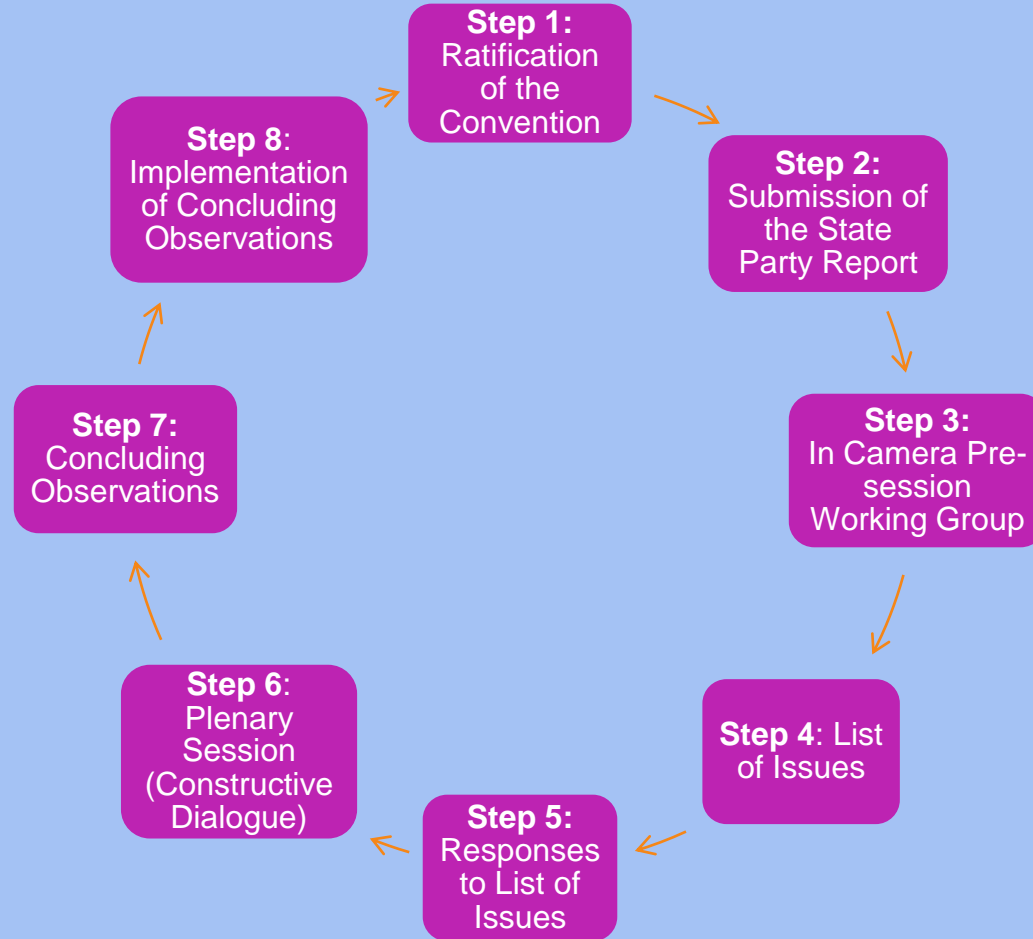
# The UN Committee on the Rights of the Child: Composition

- A body of 18 independent experts of high moral standing and recognized competence in the field of human rights who meet in Geneva
- Committee established under article 43 to “*examine progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention*”
- Consideration given to equitable geographical distribution and principal legal systems in selecting members
- Members are elected for a term of 4 years and may be re-elected
- Serve in their personal capacity



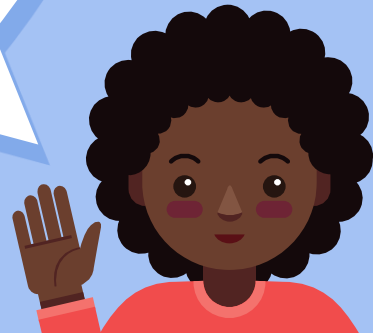
# The UN Committee on the Rights of the Child: Monitoring and Reporting

## Cycle of Steps



# The UN Committee on the Rights of the Child: Concluding Observations

- All State Parties are obligated to submit periodic reports to the Committee every 5 years on their progress in implementing Convention rights – including “any factors and difficulties, if any, affecting the degree of fulfillment” of their obligations (article 44)
- The Committee examines each report and addresses its concerns and recommendations to the State Party in the form of Concluding Observations using a clustering of standard thematic categories
- Concluding Observations have been relied upon by Canadian Courts in interpreting and applying specific provisions of the Convention



# The UN Committee on the Rights of the Child: Clustering Rights in Concluding Observations

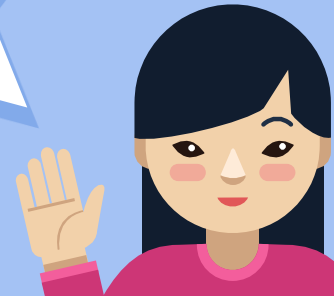
## The Eight Clusters used by the UN Committee on the Rights of the Child:

- General Measures of Implementation
- Definition of the child
- General principles
- Civil rights and freedoms
- Family environment and alternative care
- Health and welfare
- Education, leisure and cultural activities
- Special protection measures



# The UN Committee on the Rights of the Child: General Comments

- Provide in-depth analysis and interpretative guidance regarding the wide spectrum of rights in the Convention by examining specific articles or addressing relevant thematic topics
- Provide authoritative direction to State Parties regarding their obligations as duty-bearers under the Convention
- Important interpretative and advocacy tools for understanding the full import of the language used in the Convention – General Comments have been relied upon by Canadian Courts in interpreting and applying specific provisions of the Convention



# The UN Committee on the Rights of the Child: List of General Comments

2001

- The aims of education **(No. 1)**

2002

- The role of independent human rights institutions in the Protection and Promotion of the Rights of the Child **(No. 2)**

2003

- HIV/AIDS and the rights of the children **(No. 3)**
- Adolescent health and development in the context of the Convention on the Rights of the Child **(No. 4)**
- General measures of implementation of the Convention on the Rights of the Child **(No. 5)**

2005

- Treatment of Unaccompanied and Separated Children Outside Their Country of Origin **(No. 6)**

2006

- Implementing child rights in early childhood **(No. 7)**
- The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment **(No. 8)**

2007

- The rights of children with disabilities **(No. 9)**
- Children's rights in juvenile justice **(No. 10)**

# The UN Committee on the Rights of the Child: List of General Comments (Continued)

2009

- Indigenous children and their rights under the Convention **(No. 11)**
- The right of the child to be heard **(No. 12)**

2011

- The right of the child to freedom from all forms of violence **(No. 13)**

2013

- The right of the child to have his or her best interests taken as a primary consideration **(No. 14)**
- The right of the children to the enjoyment of the highest attainable standard of health **(No. 15)**
- On State obligations regarding the impact of the business sector on children's rights **(No. 16)**
- The right of the child to rest, leisure, play, recreational activities, cultural life and the arts **(No. 17)**

2014

- The right of the child to be protected from harmful practices **(No. 18)**

2016

- On public budgeting for the realization of children's rights **(No. 19)**
- On the implementation of the rights of the child during adolescence **(No. 20)**

2017

- On children in street situations **(No. 21)**
- On the human rights of children in the context of International Migration: General principles **(No. 22)**
- On the human rights of children in the context of International Migration: State parties' obligations in particular with respect to countries of transit and destination **(No. 23)**



# The UN Committee on the Rights of the Child: List of General Comments (Continued)

2019

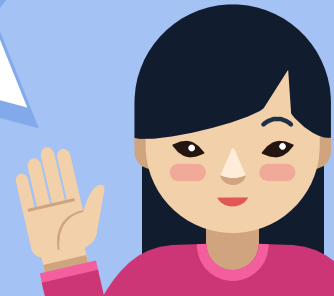
- On children's rights in the child justice system (**No. 24**)

2021

- On children's rights in relation to the digital environment (**No. 25**)

# The UN Committee on the Rights of the Child: General Measures of Implementation

- Refer to a series of ‘good governance’ measures identified by the Committee that don’t concern any specific Convention right and don’t explicitly appear in the Convention – interdependent and apply at the provincial level as well
- Intended as the necessary infrastructure to support the implementation of all Convention rights (the “how” of implementation, instead of “what”)
- Article 4 provides that all *“State Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention . . .”*
- General Comment No. 5 (2003) has identified a series of General Measures of Implementation that ratifying nations are obligated to institute in legislation, policy and practice

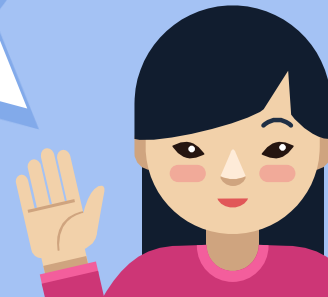


# The UN Committee on the Rights of the Child: List of General Measures of Implementation

- National action plans and strategies
- Coordinating mechanisms
- Law reform and judicial enforcement
- Child rights impact assessment (law, policy, administrative decisions)
- Awareness-raising, training and education
- Resource allocation and “making children visible in budgets”
- Monitoring and data-collection
- Statutory children’s rights institutions
- Participation of civil society
- International cooperation
- Ratification & application of other relevant international standards

# The UN Committee on the Rights of the Child: Primary Outcomes

- Concluding Observations and recommendations adopted by the Committee in respect of individual State Parties
- General Comments issued interpreting language of specific articles in the Convention or addressing relevant thematic subjects
- Recommendations adopted by the Committee following 'Days of General Discussion' (e.g. Digital media and children's rights)
- Global Study reports issued after extensive research and study (e.g. on violence against children)
- Recommendations adopted by the Committee following the review of an individual or group complaint for an alleged violation of Convention rights (e.g. under the Third +Optional Protocol)



**The UN  
Convention on  
the Rights of  
the Child:  
The Canadian  
Lens**



# Overview

- Ratified by Canada on December 13, 1991
- Subject to 2 reservations – best interests as paramount consideration in adoption (article 21) and separate detention of children from adults (article 37)
- 2 Optional Protocols ratified:
  - Optional Protocol on the involvement of children in armed conflict (2000)
  - Optional Protocol on the sale of children, child prostitution and child pornography (2005)
- BUT Optional Protocol on a communications (complaints) procedure (2011) came into force on April 14, 2014 – not yet ratified by Canada



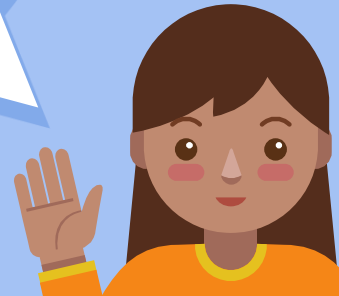
# Overview (Continued)

- 3 sets of Concluding Observations directed to Canada – 1995, 2003, and 2012 – many recurring themes and recommendations
- Canada has submitted its periodic Report to the UN Committee on the Rights of the Child and is scheduled to appear for its Dialogue with the Committee in January 2022
- Canada maintains that there is no need to fully incorporate the Convention into Canadian law since:
  - It made sure that its laws, policies and procedures were in compliance at the time of ratification
  - It has made sure that there is continued compliance after ratification



# Legal Status of the Convention in Canada

- The Convention has not been generally incorporated into Canadian Law
- No enabling legislation has been enacted in Canada making the Convention part of our domestic law – but this should be required in a dualist legal system with distinct areas of federal and provincial jurisdiction (CRC Committee)
- The Convention has been incorporated into legislation on a sectoral basis in a few specific cases (e.g. The *Youth Criminal Justice Act*, *PEI Child and Youth Advocate Act*, *Ontario Child, Youth and Family Services Act*)
- Even where the Convention hasn't been incorporated into Canadian law, it can still be used as an interpretative tool to assist in clarifying applicable legislation, including the *Canadian Charter of Rights and Freedoms*





## Commentary on the Convention by the Supreme Court of Canada

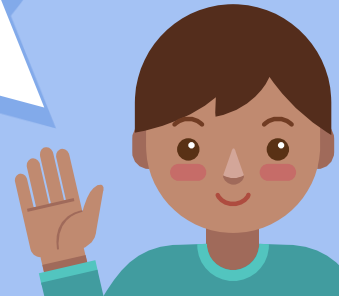
- “[T]he Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified”: *Slaight Communications Inc. v. Davidson*, [1989], 1 S.C.R. 1038, at page 1056
- “The Convention on the Rights of the Child describes ‘the best interests of the child’ as a primary consideration in all actions concerning children (Article 3). It then sets out a framework under which the child’s own input will inform the content of the ‘best interests’ standard, with the weight accorded to these views increasing in relation to the child’s developing maturity”: *A.C. v. Manitoba (Director of Child and Family Services)*, [2009] 2 S.C.R. 181, at para. 93

## Commentary on the Convention by the Supreme Court of Canada (Continued)

- *“Children’s rights and attention to their interests are central humanitarian and compassionate values in Canadian society... [T]he values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review”*: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999], 2 S.C.R. 817, at paras. 67, 70
- *“It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result”*: *R. v. Hape*, [2007] 2 S.C.R. 292, at para. 53

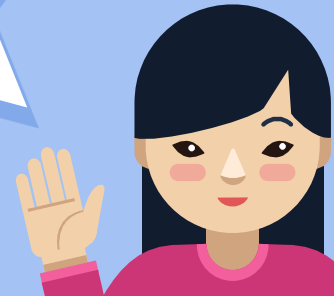
# Progress in Canada

- Federal and provincial laws have been enacted to better protect children
- Expansion of awareness of children's rights
- Formal legal representation for children has been instituted in some jurisdictions
- Legislative amendments have established 'the best interests of the child' as a paramount consideration within provincial child welfare, adoption and child custody legislation



## Progress in Canada (Continued)

- Canadian courts have drawn upon the Convention for guidance in interpreting domestic legislation, including the *Charter*
- Independent statutory children's rights institutions have been established in 10 provinces and 2 Territories
- New Child Rights Impact Assessment tools have been developed in at least two jurisdictions
- The Canadian Bar Association has established a National Child and Youth Law Section with provincial counterparts



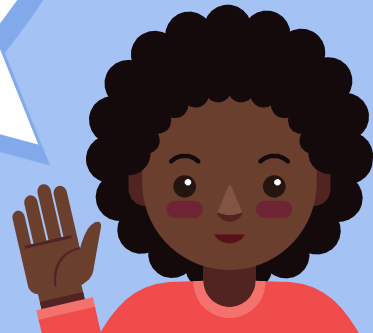
# Challenges in Canada

- Lack of political will – requires elevation in the priority given to children broadly in legislative, policy, administrative and budget decisions
- Lack of public awareness of children’s rights and the Convention – need to create a rights-respecting culture
- Failure to have children’s voices taken seriously and to have consistent and quality legal representation for children across all jurisdictions – a change in culture and stronger continuing legal education is needed
- Convention not fully incorporated into Canadian domestic law – requires enabling legislation



# Challenges in Canada (Continued)

- Failure to sign or ratify the Third Optional Protocol to the Convention – ratification required to establish an international complaints procedure where no resolution has been achieved within Canada
- Resistance to treating Indigenous children in fully equitable manner – necessary to implement the orders of the Canadian Human Rights Tribunal and the Calls to Action of the Truth and Reconciliation Commission
- Fragmented implementation of recommendations in the Calls for Justice in the Missing and Murdered Indigenous Women and Girls Final Report
- Failure to institute sufficient good governance measures to implement Convention rights (e.g. require more widespread use of Child Rights Impact Assessments and the creation of a National Commissioner for children and Youth, as well as an independent counterpart in the Northwest Territories)

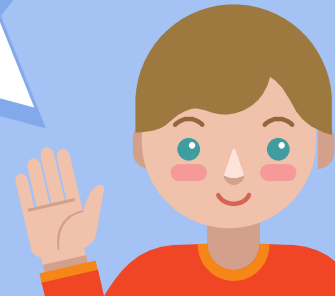


**The Child and  
Youth Advocate  
Lens:  
Some Relevant  
Considerations**



# Independent Statutory Children's Rights Institutions: General

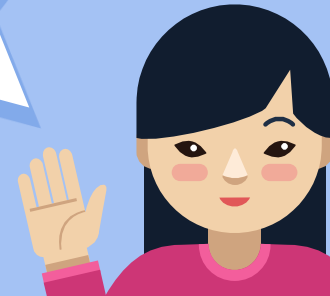
- These bodies go by names, such as Children's Commissioners, Ombudspersons, Representatives and Advocates – one of the UN Committee on the Rights of the Child's General Measures of Implementation
- More than 200 independent statutory children's rights institutions have been established in over 70 countries to independently promote, protect and monitor children's rights
- No National Commissioner for Children and Youth at the federal level





# Independent Statutory Children's Rights Institutions: General

- **Primary Sources for establishing or strengthening functions of a statutory children's rights institution at both the national and provincial / territorial levels:**
  - *The Principles relating to the Status of National Institutions (the Paris Principles) (1993)*
  - *General Comment No. 2 of the UN Committee on the Rights of the Child on the Role of independent national institutions in the promotion and protection of the rights of the child (2002)*



# Independent Statutory Children's Rights Institutions: (Provincial / Territorial)

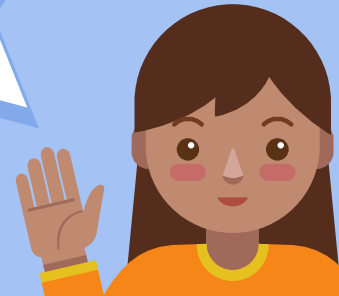
- Independent statutory children's rights institutions exist in 10 provinces and 2 territories – exception is the Northwest Territories
- In only 3 Canadian jurisdictions are these offices not self-standing – Quebec (part of the Quebec Youth Rights and Human Rights Commission); Nova Scotia (part of the Youth and Senior Services Division of the Ombudsman's Office; and Ontario (part of the Ombudsman Office)
- Common objectives and excellent work being done BUT different legislative mandates across Canada – these offices work together through the Canadian Council of Child and Youth Advocates



# Independent Statutory Children's Rights Institutions: Features of Fully Effective Provincial / Territorial Offices

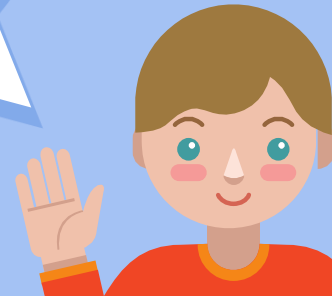
## Features of fully effective Provincial/Territorial Statutory Children's Rights Institution (with regard to CRC Committee's General Comment No. 2, 2002):

- Independence from government
- Created through its own separate legislation
- *“Mandate should include as broad a scope as possible for promoting and protecting human rights”* (extrapolation to a preference for advocacy and investigation jurisdiction over services provided to children from all government ministries)
- Mandate should incorporate the Convention on the Rights of the Child



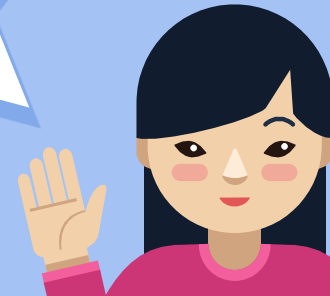
# Independent Statutory Children's Rights Institutions: Features of Fully Effective Provincial / Territorial Offices (Continued)

- Special focus on advancing the rights and interests of children who are *“the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education”*
- Power to engage in individual and systemic advocacy (types of advocacy not classified in General Comment)
- Power to conduct individual and systemic investigations (types of investigations not categorized in General Comment)



# Independent Statutory Children's Rights Institutions: Features of Fully Effective Provincial / Territorial Offices (Continued)

- Office must be geographically and physically accessible to all children (should also have child-friendly online capacity)
- Special role to play in facilitating child and youth engagement and amplifying their voices in a meaningful and inclusive manner – more specifically *“in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and all throughout society”*
- Power to engage in public education and *“promote public understanding and awareness of children’s rights”*
- Role in encouraging ratification of relevant international human rights instruments



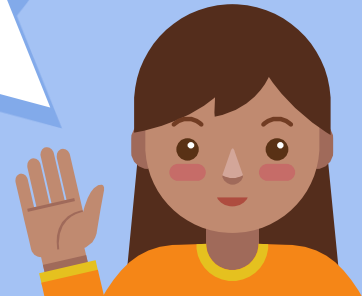
# Independent Statutory Children's Rights Institutions: Features of Fully Effective Provincial / Territorial Offices (Continued)

- Power to receive complaints and use informal methods to address them (e.g. negotiation, mediation, conciliation)
- Power to compel production of relevant documents and the attendance of witnesses to give testimony
- Authority to conduct or contract for relevant research
- Power to engage in public education and *“report directly, independently, and separately on the state of children’s rights to the public and to parliamentary bodies”* (such as Annual and Special Reports although not named in General Comment)
- Ability to act proactively and to direct own agenda (such as ‘own motion’ investigations)



# Independent Statutory Children's Rights Institutions: Features of Fully Effective Provincial / Territorial Offices (Continued)

- Power to “*monitor independently the [government’s] compliance and progress towards implementation and to do all it can to ensure full respect for children’s rights*” (could include ability to undertake/facilitate Child Rights Impact Assessments in relation to government’s adherence to the Convention on the Rights of the Child)
- Right of entry to places of detention and residences for children in government care or custody
- Authority to have private communications and meetings with children
- Power to give expert testimony and seek intervener or *amicus curiae* status in court or administrative proceedings



# Independent Statutory Children's Rights Institutions: Features of Fully Effective Provincial / Territorial Offices (Continued)

- Self-standing office with singular focus on children (not in General Comment)
- Authority to provide advice and make recommendations to government and /or the legislative assembly regarding legislation, policies and programs for children
- Must have *“adequate infrastructure, funding . . . staff, premises and freedom from forms of financial control that might affect their independence”*
- *“Should ensure that composition of Office includes pluralistic representation of the various elements of civil society involved in the promotion and protection of human rights”*

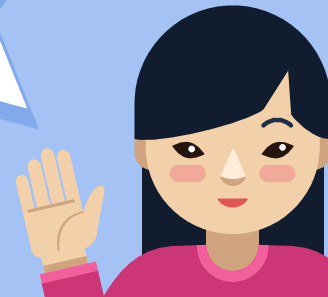




## Legislation Referencing the Convention

### **The *Youth Criminal Justice Act* (2002) (Preamble Excerpt)**

- “*WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and have special guarantees of their rights and freedoms;*”



## Legislation Referencing the Convention

### **The PEI *Child and Youth Advocate Act* (2020) (Preamble Excerpt)**

- *“WHEREAS the Government of Prince Edward Island acknowledges that the aim of the Child and Youth Advocate Act is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child as ratified by the Government of Canada;”*



## Legislation Referencing the Convention

### **The PEI *Child and Youth Advocate Act (2020)* (Advocate's Role and Responsibilities Excerpt, S.12. (1) (c) )**

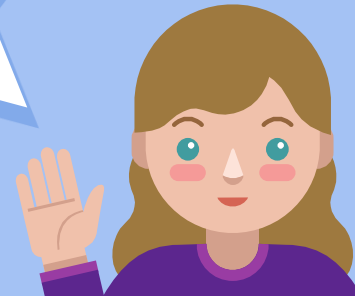
- *“promoting and providing public education and advocacy respecting the rights, interests and well-being of children and youth, the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples as it affects children and youth;”*



# Article 12 of the Convention: The Right of the Child to be Heard

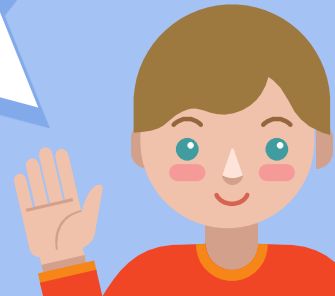
## Article 12 of the Convention:

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



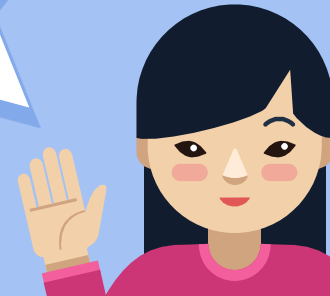
# Concluding Observations of CRC Committee to Canada (2012): Respect for the Views of the Child

- The Committee expressed concern that *“there are inadequate mechanisms for facilitating meaningful and empowered child participation in legal, policy, environmental issues, and administrative processes that impact children”* (para. 36)
- The Committee stressed the importance of General Comment No. 12 (2009) and recommended that Canada *“continue to ensure the implementation of the right of the child to be heard in accordance with article 12 of the Convention”* and that in doing so, it *“promote the meaningful and empowered participation of all children, within the family, community, and schools, and develop and share good practices”* (para. 37)



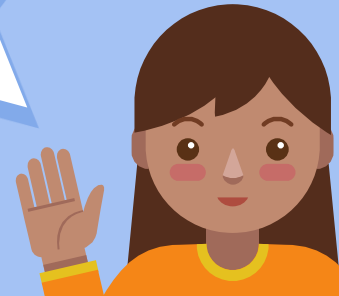
## Concluding Observations to Canada (2012): Respect for the Views of the Child (Continued)

- The Committee recommended that “*the views of the child be a requirement for all official decision making processes that relate to children, including custody cases, child welfare decisions, criminal justice, immigration, and the environment*” (para. 37)
- The Committee urged Canada “*to ensure that children have the possibility to voice their complaints if their right to be heard is violated with regard to judicial and administrative proceedings and that children have access to an appeals procedure*” (para. 37)



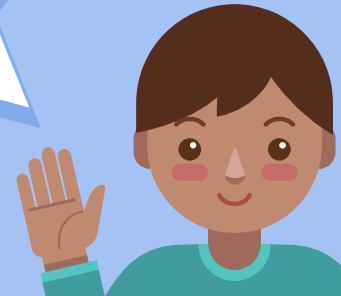
# UN Committee on the Rights of the Child: General Comment No. 12 (Key Points)

- The processes necessary to fully implement article 12 are usually called ‘**participation**’ – emphasizes that “*including children should not only be a momentary act, but the starting point for an intense exchange between children and adults on the development of policies, programs and measures in all relevant contexts of children’s lives*” (para. 13)
- In interpreting the meaning of ‘**shall ensure**’, this is intended to impose “*a strict obligation*” on State Parties, “*leav[ing] no leeway for . . . discretion*”, to “*undertake appropriate measures to fully implement*” article 12 (para. 19)



# UN Committee on the Rights of the Child: General Comment No. 12 (Key Points) (Continued)

- In interpreting the meaning of **‘the right to express those views freely’**, *“freely” means that the child can express [their] views without pressure and can choose whether or not [they] want to exercise [their] right to be heard”* (para. 22). This also requires that *“the child be informed about the matters, options, and possible decisions to be taken and their consequences”* for their expressed views to be more meaningful (para. 25)
- In interpreting the meaning of **‘in all matters affecting the child’**, this language should be *“understood broadly”* and *“the child must be heard if the matter under discussion affects the child”* (para.26)





# UN Committee on the Rights of the Child: General Comment No. 12 (Key Points) (Continued)

- In interpreting the meaning of ‘**capable of forming his or her own views**’, there are a few features to keep in mind:
  - *“There is an obligation for State parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible”* (para. 20)
  - A child is presumed to have the capacity to form and express their views - *“It is not up to the child to first prove [their] capacity* (para. 20)
  - There is *“no [minimum] age limit on the child’s right to express [their] views”* (para. 21)



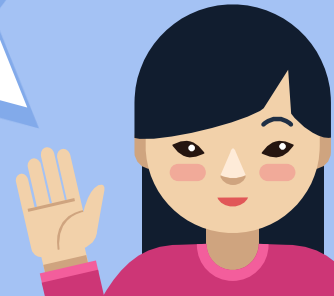
# UN Committee on the Rights of the Child: General Comment No. 12 (Key Points) (Continued)

- In interpreting the meaning of **‘being given due weight in accordance with the age and maturity of the child’**, there are a number of core principles:
  - The *“capacity of the child . . . has to be assessed in order to give due weight to [the child’s] views”* (para. 28)
  - *“The views of the child have to be assessed on a case-by-case examination* (para. 29)
  - *“Simply listening to the child is insufficient”* – the views of the child have to be taken seriously (para. 28)



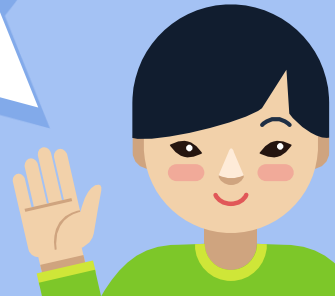
# UN Committee on the Rights of the Child: General Comment No. 12 (Key Points) (Continued)

- “Age alone cannot determine the significance of a child’s views. Children’s levels of understanding are not uniformly linked to their biological age.” There is evidence that “information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child’s capacities to form a view” (para. 29)
- Consideration should be given to “the notion of the evolving capacities of the child, and direction and guidance from parents” (para. 31)



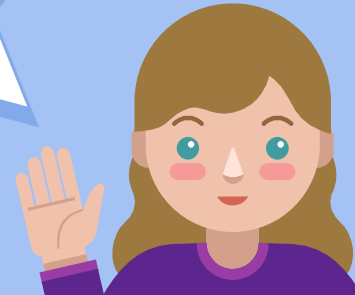
# UN Committee on the Rights of the Child: General Comment No. 12 (Key Points) (Continued)

- In interpreting the term ‘**maturity**’, there are several components:
  - “ ‘*Maturity*’ refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child” (para. 30)
  - “*In the context of article 12*”, ‘maturity’ is “*the capacity of a child to express [their] views on issues in a reasonable and independent manner*” (para. 30)
  - “*The impact of the matter on the child*” must also be considered. “*The greater the impact of the outcome on the child, the more relevant the appropriate assessment of the maturity’ of that child*” (para. 30)



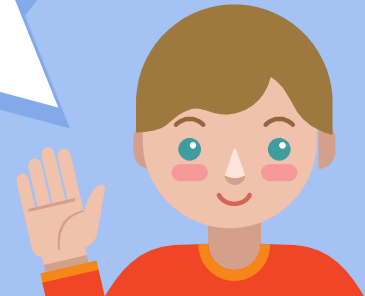
# Child Advocacy Reflections

- Treat the art of advocacy as a lifelong pursuit ('a lifestyle') and as a precious tool that can make a real difference in the life of a child.
- Treat your work as more than a job. It is a privilege and public trust bestowed on few.
- Don't become overly-critical of the actions of government or agency staff. Strive to model the behaviour and fair-mindedness you expect of others.



## Child Advocacy Reflections (Continued)

- Safeguard the Child and Youth Advocate's independence and don't be pressured to follow the agendas of others. This independence allows you to speak out on behalf of the disadvantaged and the marginalized even when others would have you stay silent.
- Remember that children and youth are your clients and that their voices must be heard. They should be empowered participants when decisions are being made about them, and we should do our very best to live up to their expectations to "Say nothing about me without me".



## Child Advocacy Reflections (Continued)

- Stay optimistic and don't let the frustrations of the day overtake you. Celebrate the successes and recognize that advocacy is a journey consisting of incremental progress.
- Don't become distracted by the politics of the day and always continue to put the rights, interests, and views of children first.
- Always stay 'firm' on the issues and 'soft' on the people. Never personalize your struggles or stray from your core values.





PRINCE EDWARD ISLAND  
*Child and Youth*  
**ADVOCATE**

**Thank You**

**The United Nations Convention on the  
Rights of the Child:  
Through Multiple Lenses**

**Prepared by:  
Marv Bernstein  
Child and Youth Advocate/PEI**

**March 2021**

