

CHILD'S RIGHTS IMPACT ASSESSMENT:

A PRIMER FOR NEW BRUNSWICK

Défenseur des
enfants et de la jeunesse
du Nouveau-Brunswick



New Brunswick
Child & Youth
Advocate

“Mankind owes to the child the best it has to offer “

Geneva Declaration, 1924

**CHILD RIGHTS IMPACT ASSESSMENTS:
A PRIMER FOR NEW BRUNSWICK**

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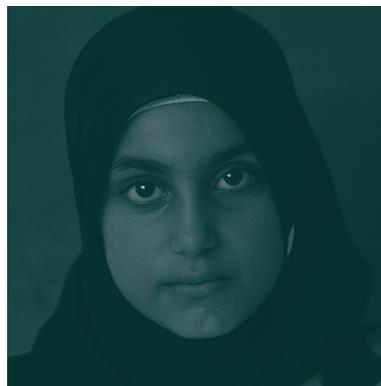
Foreword

Children are not merely citizens of tomorrow, they are citizens today. Children may not vote but they are an important part of our community. They are not human becomings, but human beings, endowed with human dignity and fundamental rights equal to all other persons. All governments have solemnly promised to protect and promote the rights of children.

Since 2006, New Brunswick has been on a steady path of improving child rights implementation and promotion. A significant hallmark in this process of transformation has been the development of Child Rights Impact Assessments (CRIA).

The following CRIA Primer is intended primarily for New Brunswick civil servants and policy-makers who may from time to time be involved in the preparation of Child Rights Impact Assessments. The primer offers you a brief overview of child's rights, how CRIAs can assist in child rights implementation, how the New Brunswick CRIA toolkit was developed and how it works.

Additionally the CRIA primer is meant for other New Brunswick stakeholders who may be interested in learning about how policy decisions are made in New Brunswick to improve child wellbeing and child rights implementation, or how CRIAs can help ensure accountability in our province in terms of our human rights obligations to children. Finally, our goal is also to share the NB model for CRIA with the broader community of CRIA practitioners in Canada and around the world. We undertake this with the hope that our experience can inform approaches elsewhere, and that we in turn can improve our practice through expert exchanges with policy-makers and child rights experts in other jurisdictions.



Part 1: Context

Child's rights—An Overview

The United Nations Convention on the Rights of the Child (UNCRC) was adopted by the UN on November 20th 1989. The UNCRC is the first international instrument to incorporate the full range of rights, from civil and political, to economic, social and cultural, in recognition of the special developmental needs of all children globally. It is also the most widely ratified human rights treaty in United Nations history, with 196 of 197 State Parties having committed themselves to building a world “fit for children”.

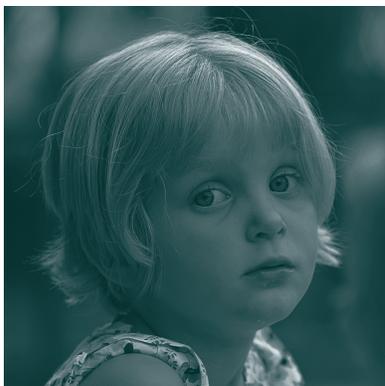
The UNCRC is aspirational in nature; it contains 42 substantive rights that aim to protect and support children in all areas of their lives by providing a comprehensive framework of the basic conditions for a “good” childhood. It has four guiding principles, which are rights in themselves, but also act as interpretive guides in the implementation of the rest of the UNCRC. These principles are: (1) non-discrimination, (2) best interests of the child, (3) survival and maximum development, and (4) child participation in matters that affect them.

The implementation of the UNCRC is monitored by the United Nations Committee on the Rights of the Child. In many of its Concluding Observations, the Committee has noted that the general measures of

implementation for the UNCRC are:

- Plans and strategies;
- Coordinating mechanisms;
- Law reform and judicial enforcement;
- Child's rights impact assessments;
- Awareness-raising, training and education;
- Making children visible in budgets;
- Monitoring and data collection;
- Independent human rights institutions for children;
- Ratification of other standards.

Canada ratified the UNCRC in December of 1991, after extensive consultation with the provinces to ensure nationwide adherence. The Canadian government took the lead in the drafting of the UNCRC, and worked tirelessly to promote its early ratification. In 2013, the province of New Brunswick became the first province in Canada to implement mandatory Child's rights Impact Assessments (CRIA) on all cabinet policy and legislative decisions.



Child's rights Impact Assessment (CRIA) - Background

What is CRIA?

Impact assessments are instruments used to avoid unintended consequences. They provide evidence of the effects of a particular decision and often can be used to identify reasonable alternatives that better protect the interests of the affected population. Child's rights Impact Assessment (CRIA) is a tool that identifies, analyses, and evaluates all potential direct or indirect effects that a policy, legislation, or other government decision-making process may have on the rights of children and youth¹. These assessments highlight the effects of a policy or legislative decision on the best interests of children, and ensure that the UNCRC is properly implemented in domestic policy.

Why use CRIA?

Children are rights-holders under the UNCRC, but they are also the only sector of the population with no voice in government. With no right to vote, children have no direct opportunity to influence policy and decision-making. Children under the age of 18 also represent 25% of the population in Canada, meaning that one quarter of Canadians are effectively silenced in our democracy. Moreover, a substantial number of the decisions made

have effects on children: from changing public transportation routes that limit the accessibility of rural youth to necessary resources, to reforms in educational curriculum, to determining who is responsible for providing healthcare needs to First Nations children, to a myriad of other issues. All levels of government in Canada have a role to play in the protection of child's rights.

CRIA is one of many tools that can be used by governments to remain accountable for their obligations to children. By engaging in a systematic review of a policy or piece of legislation with a child's rights lens, CRIA provides a structured process whereby decision-makers can make informed changes that take into account all of the potential positive and negative effects on children in a way that meets their best interests. CRIA also makes decisions more transparent and accountable, as a properly completed CRIA will most often forewarn decision-makers of any negative consequences of their actions, and provide them with an opportunity to mitigate the potential harm well in advance. As such, the use of CRIA improves the quality of public policy decisions, and contributes to better outcomes for children and youth.

¹ Lisa Payne, "A Children's Government in England and Child Impact Assessment" (2007) 21 Children & Society 470, 471. Laura Paton and Gillian Munro, "Child's rights Impact Assessments: The SCCYP Model", CCYP/2006/3 available at: http://www.sccyp.org.uk/uploaded_docs/children's%20rights%20impact%20assessment.pdf

How was CRIA developed?

There are other impact assessment processes that have been used in policy-making for many years. Some of the better-known models include environmental impact assessment, health impact assessment, privacy impact assessment and business impact assessment. All of these processes differ, but in the main they all serve as methodologies to ensure that policy-makers turn their attention to important aspects of policy-making that might otherwise be easily overlooked. The impact assessment process ensures that proposed policy changes will not have unforeseen consequences or unintended negative impacts on certain sectors of society or in relation to competing public policy priorities.

Child's Rights Impact Assessment dates back about twenty years and was first developed by the Flemish parliament in Belgium. Following its adoption there, Scandinavian countries and commonwealth jurisdictions have followed suit and the UN Committee on the Rights of the Child has routinely been recommending this process to State Parties under the UNCRC for the past ten years. In North America, there has been little uptake since the US is the only nation in the world not to have ratified the Convention on the Rights of the Child. All the same, some municipal governments have developed CRIA processes, or alternatively, child impact assessment processes.

In some countries the CRIA mandate is conferred upon an external oversight body, such as a Children's Commissioner, Ombudsman for Children or Child and Youth Advocate. In these processes

the Child Rights Impact Assessment is carried out on new policy or new legislation once they come into effect and the external watchdog's role can be to bring forward recommendations to correct perceived negative impacts. This is called *ex post facto* CRIA analysis and is the preferred model in Scotland, Sweden and England. The other model commonly used is the *ex ante* CRIA analysis, which places the onus of impact assessment on the policy-maker. In this way, CRIA informs the policy decision, from the earliest stages of policy-making. This is the CRIA model used in Wales and Flanders and recommended in Western Australia.

In New Brunswick we have adopted an *ex ante* CRIA model as well, but the Child and Youth Advocate has also engaged in some *ex post facto* CRIA analysis, and is increasingly adopting this process in its Advice to Government functions as a means of improving CRIA practice in New Brunswick.

The province of New Brunswick is the first jurisdiction in North America to have adopted a mandatory CRIA process for all cabinet level policy decisions, having formally implemented this child's rights lens since 2013. This development, alongside the child rights and well-being monitoring through the State of the Child reporting process, the Child and Youth Advocate's rights based mandate for children and youth in New Brunswick, and the Child Rights training undertaken by the Province in partnership with the Université de Moncton have all played a part in making New Brunswick a model jurisdiction in Canada in child's rights promotion and protection.



School suspension
 Détenition Justice
 Physical Health Welfare
 Santé physique
 Bien-être Special Need
 Besoins spéciaux
 Bullying intimidation
 Online safety
 Protection Employment
 Emploi Homelessness
 Sans-abris Addiction
 Incarceration Leisure
 Éducation Education
 Language Language

Equality
 Access
 Mental Health
 Equality
 Your Best Interests
 Intérêt supérieur
 Development
 Développement
 Droit de parole
 Your Opinion Heard
 Freedom of expression

A History of CRIA in New Brunswick

The government of New Brunswick recognizes the importance of child's rights, and the role the UNCRC should play in policy and law-making processes. Thus, in 2012, the Office of the Child and Youth Advocate and the Executive Council Office of the government of New Brunswick brought together a multidisciplinary, interdepartmental working group on Child's rights Impact Assessments. The Working Group was tasked with fulfilling the following three mandates:

1. The development of a CRIA tool for the government of New Brunswick;
2. The preparation and delivery of a CRIA training week for public servants;
3. The development of an assessment and evaluation process for CRIA implementation.

The Working Group, co-chaired by Christian Whalen (Child and Youth Advocate) and Hubert Cormier (Executive Council Office), was composed of departmental representatives from all major child and youth serving departments and divisions: Education and Early Childhood Development; Social Development; Health; Public Safety; Justice; Healthy and Inclusive Communities; Intergovernmental Affairs; and Post-Secondary Education, Training and Labour. The Working Group was also supported with technical expertise and advice from UNICEF Canada. The initial CRIA tool was finalised in February 2013 in time for a full week of training for

Deputy Ministers, senior officials and legislative coordinators in all government departments. Subsequently, the CRIA process was formally implemented for all Cabinet-level policy decisions as of February 23rd 2013. The School of Public Administration and Professor Christine Paulin of the Université de Moncton assisted with the assessment and evaluation component of the Working Group's mandate. The Working Group received the evaluation results of the first year of operations in September 2014, and made adjustments to the CRIA toolkit in response to this preliminary assessment.

In addition to this roll-out, the Child and Youth Advocate's Office partnered with UNICEF Canada, with the University of Ottawa and the Canadian Coalition on the Rights of the Child to sponsor a global CRIA Symposium, Bringing Children in from the Margins, in Ottawa in the spring of 2013. Global experts in CRIA practice came and shared in a rich knowledge exchange with respect to this practice. In October 2015, as a follow-up to this event, UNICEF Canada and other partners at the Symposium launched a global online CRIA community of practice. This web-based knowledge exchange platform allows CRIA practitioners in New Brunswick to consult and exchange on CRIA topics with experts from across Canada and around the world.

Part 2: The CRIA Tool

Underlying Philosophy

The CRIA process is one further illustration of the Province of New Brunswick's principled commitment to human rights enforcement. The CRIA process followed upon the development of a cabinet policy lens for persons with disabilities and it has influenced and informed the Province's approach to gender-based analysis as part of the Cabinet decision-making process. The CRIA process recognizes, however, that children are discrete members of our community with human rights that are specially adapted to their developmental circumstance. This creates distinct obligations on governments and policy-makers that cannot be addressed or encompassed within more general human rights based analysis approaches. Child's rights enforcement demands a dedicated process and effort to ensure that child's rights and well-being are specifically considered in all policy-making.

To do this intentionally and from an evidence-based approach, departmental CRIA analysts are encouraged to complete the CRIA with reference to the data on child rights implementation and well-being contained in the Child Rights and Well-being Snapshot. The New Brunswick CRIA approach blends the UN Human Rights Council human rights and child rights agenda with the World Health Organization's social determinants of health approach, to insist on rights and well-being monitoring and implementation. In this way our policy instruments are constantly striving to improve strength-based and resiliency-based outcomes for children and youth in the Province.

Overview of the Assessment Process

In New Brunswick, as an *ex ante* CRIA model, the CRIA forms part of the Cabinet document process. CRIAs are required to be carried out whenever necessary as part of the Memorandum to Executive Council (MEC). They are summarized in the MEC and may be appended to it, if Cabinet requests to see the full CRIA. In this way, government assesses potential positive and negative effects on child's rights before making any decision, in order to

ensure that government has enough time to address any issue that might arise, and seek out suitable alternatives.

The CRIA process should be undertaken as early as possible in the Cabinet document process; the assessment should begin at the stage of research and initial consultation, as a means of minimizing potential violations of child's rights to the fullest extent possible.

Our CRIA tool follows a simple three-step process:

Step 1: Does your proposed course of action impact, in any way, shape, or form, an aspect of a child's wellbeing?

The first step is an initial screening, which takes place to determine the required depth of analysis needed to fully maximize the benefits of the CRIA process. This step requires the decision-maker to identify any potential impact to a child's, or population of children's, wellbeing using the data in the Child's rights and Wellbeing Snapshot as indicators of the various aspects of child wellbeing that can be affected. If no impact is identified, the assessment ends at Step 1. If any impact, whether positive or negative, is identified, then the decision-maker must continue to Step 2.

As a first step and an initial screening process, it is important that the decision-maker takes a broad and liberal approach to their considerations of potential impacts.

Step 2: Provide full information and detail on the identified impact of your proposed course of action.

Step 2 requires the decision-maker to engage in an in-depth analysis of the potential impacts by identifying which articles of the UNCRC are affected, how they are affected, and what tangible outcomes these effects will have on the rights and wellbeing of children in New Brunswick.

Decision-makers must be mindful of any potential gaps in the analysis at this stage, especially with respect to the information available and its assessment. It is important to recognize that a wide range of decisions will have some form of impact on a child, whether the impact is direct, such as a change of public transit schedules resulting in children being unable to get to school, or indirect, such as decisions not to increase minimum wage, which may cause more low-income families to struggle with food security.

An in-depth CRIA analysis is demonstrated in light of factors such as: the resources allocated to the CRIA; the information available; the extent of the information analyzed; and the amount of consultation undertaken with children, youth and other experts in child's rights, etc.

Step 3: Identify whether the effects of your proposed course of action are positive or negative, and whether there are any alternatives available to address them.

Having completed Step 2, the impacts and the rights outlined above should now be brought together to address how these impacts translate into child's rights promotion or violation. The CRIA writer should:

- Assess potential positive and negative impacts on child's rights: impacts on child's rights extend beyond direct impacts on a particular child or group of children; their rights may be affected by impacts on parents and families, on schools and communities, on child-serving programs and organizations, etc.

- List the group of children that these impacts affect: remember that not all children will be affected the same way by a particular policy or legislative change, and that CRIA requires the decision-maker to wear interdisciplinary lenses in their analysis, which can include a gender equality lens, an LGBTQ/ MOGAI lens, a First Nations lens, and more.
- Assess potential alternatives to the proposal: if negative impacts are identified, assess potential additional measures or alternatives to the proposal that may avoid or mitigate those impacts, and analyze the reasons for or against adopting these measures.
- Once the process has been completed, finalize the conclusions of the CRIA analysis, highlighting the best possible route that the proposed policy or legislation can take to ensure that no New Brunswick child or young person is negatively affected by the change. The final conclusion should note how any impacts on children will be monitored by identifying the relevant indicators and benchmarks that decision-makers will observe throughout the course of implementation.

The dos and don'ts of CRIA

DO



- Use the data to monitor impacts
- Be impartial and diligent in completing the CRIA
- Involve children and young people in determining impacts
- Start the CRIA at the earliest stage possible
- Actively seek ways of enhancing child rights implementation in support of your policy proposal

DON'T



- Complete a CRIA like it is a checklist
- Use CRIA to unfairly promote your proposed policy solution
- Start the CRIA at the end of your policy development
- Minimize, instead of mitigating, the impacts of your policy on children

Next Steps

Now that a CRIA process has been established, the province of New Brunswick needs to continue its work on child rights education and awareness, in order to ensure that all CRIAs undertaken are meaningful and well-developed. This involves training and awareness on the UNCRC, an expansion of the CRIA community of practice to include municipal and policy-making levels of the New Brunswick government, and the development of online CRIA training tools for provincial officials.

In addition, despite the right of children to participate in matters affecting them, outlined in article 12 of the UNCRC it is rare to see a CRIA that has taken full steps toward consulting or engaging young people in the determination of its impacts. The Child and Youth Advocate's Office can advise and assist in engaging children and youth in policy development in support of decision-makers and their CRIA analyses.

Finally, additional quality control should be undertaken through the ongoing monitoring of the process, and improvement of the CRIA tool based on the feedback received. The Child and Youth Advocate will also be expanding the use of ex post-facto CRIA processes as a means of legislative and policy review in its Advice to Government function.

Want to Get Involved?

Engaging in the CRIA process has many benefits for decision-makers. CRIAs help ensure that a comprehensive perspective of potential impacts has been developed. CRIAs help avoid or mitigate harmful effects on children and prevent unintended negative consequences of policy or legislative initiatives. Finally, they also maximize our ability to develop clear, complete and effective legislation, which will save costs in the long run.

Yet, the most important benefit of the CRIA process is that it is one of few mechanisms that ensure that children and youth are visible in governmental processes. CRIA gives voice to a population that has little to no access to other mechanisms for ensuring their voices are heard in decision-making. Finally, CRIA's potential as a tool for decision-making should be applied in several other contexts, such as municipal and agency policy-making, the non-profit sector, and the business sector.

The Role of the Child and Youth Advocate

While CRIA processes remain a government responsibility shared by all departments and levels, the Office of the Child and Youth Advocate, as a Legislative Officer mandated to ensure that the rights of New Brunswick children and youth are promoted and respected, has an oversight mandate to ensure that the CRIA processes adopted by the Province are implemented effectively and diligently. To this end, the Office of the Child and Youth Advocate is available for:

- Consultation on CRIA processes;
- Consultation on interpretation of human rights documents and treaties as applicable to children and youth; and
- Consultation on how to engage children and youth in CRIA processes.

Further, the Office of the Child and Youth Advocate, in fulfilling its mandate, will carry out independent ex ante and ex post-facto CRIA reviews as part of its Advice to Government function in relation to policy proposals or new legislation, and may conduct departmental audits of CRIA processes from time to time.

Want to Learn More?

1. Sign up for the online CRIA Community of Practice at:

<http://criacommunity.org/>

2. Improve your child rights training and certification at the International Summer Course on the Rights of the Child:

<http://www.umoncton.ca/rightsofthechild/>

3. Check out these models of CRIA from other Child and Youth Advocates or Ombudspersons:

http://www.cypcs.org.uk/uploaded_docs/children's%20rights%20impact%20assessment.pdf

<http://www.ccyp.wa.gov.au/files/resource/Improving%20legislation%20for%20children%20and%20young%20people%20-%20pdf.PDF>

<http://gov.wales/docs/equality-impact-assessments/150223-uncrc-en.pdf>

4. Explore further readings on CRIA at these links:

<http://www.childimpact.unicef-irc.org/documents/view/id/113/lang/en>

<http://resourcecentre.savethechildren.se/sites/default/files/documents/6728.pdf>

<http://erudit.org/revue/rgd/2014/v44/n1/1026401ar.html?vue=resume&mode=restriction>

http://criacommunity.org/wp-content/uploads/gravity_forms/1-1baf9042c4fceeee12b9dcd57a5f0b68/2015/10/Ex-ante-CRIA.pdf

http://www.unicef.org.uk/Documents/Corporate/Children_s_Rights_in_Impact_Assessments_Web_NEW.pdf

5. Consult with the Child and Youth Advocate on CRIA questions you may have:

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