

LEGAL BULLETIN  
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New Brunswick's Child and Youth Well-Being Act

## Introduction

The *Child and Youth Well-Being Act* marks a pivotal moment in New Brunswick's child protection measures.<sup>1</sup> This statute represents a comprehensive overhaul of 40-year old provisions in the province's *Family Services Act* and a modernized approach to child protection and adoption.<sup>2</sup> Rooted in the principles of advocacy, early intervention, and holistic well-being, the *Child and Youth Well-Being Act* seeks to ensure the safety and prosperity of children and adolescents across New Brunswick. Spearheaded by the Honourable Dorothy Shephard, Minister of Social Development, the legislation marks an approach that is "child-centered, rather than parent-centered" and prioritizes the interests, protection, and participation of New Brunswick's youth. The legislation also recognizes the diverse needs of families along with the need for "early detection and intervention... in matters where the well-being of a child or youth may be at risk."<sup>3</sup>



## Legislation History

The *Child and Youth Well-Being Act* was introduced with Bill 114 to modernize portions of the *Family Services Act*, which was several decades old.<sup>4</sup> The overarching purposes of the new legislation are to advocate for the welfare, safeguarding, and interests of children and adolescents, as well as fostering the health and well-being of families.<sup>5</sup>

The *Child and Youth Well-being Act* had a stated intention of being "progressive, clear and easy to read and understand."<sup>6</sup> Highlights of the legislation were described by government as:

- Decreasing formality and increasing flexibility for court processes.
- Recognizing the importance of the child or youth's connection to their family, culture, language, religion, faith or spiritual beliefs, and community, especially

for Indigenous children and youth.

- Prioritizing placing children or youth with people they know in their own community if they are not living in the parental home due to protection concerns.
- Increasing decision-making authority for relatives who are caring for a child or youth.
- Improving information-sharing among the department and its partners.<sup>7</sup>

The *Act* also reconciles the definitions of "child" and "youth" to best match the definitions set out in the *Child and Youth and Senior Advocate Act*.<sup>8</sup> It emphasizes the importance of connection to family, culture, language, religion, faith or spiritual beliefs, and community, particularly with respect to Indigenous children.<sup>9</sup> There is also significant focus on the value of kin relationships for children not living with their

<sup>1</sup> *Child and Youth Well-Being Act*, SNB 2022, c. 35.

<sup>2</sup> *Family Services Act*, SNB 1983, c. 16, s. 1.

<sup>3</sup> Government of New Brunswick (n.d.) "New Legislation for the Well-Being of Children and Youth", *Department of Social Development*. [https://www2.gnb.ca/content/gnb/en/departments/social\\_development/promos/legislation.html](https://www2.gnb.ca/content/gnb/en/departments/social_development/promos/legislation.html)

<sup>4</sup> Bill 114, *Child and Youth Well-Being Act*, 1st Sess, 60th Leg, New Brunswick, 2022, (assented to 10 June 2022), SNB 2022, c 35.

<sup>5</sup> Bill 114, *Child and Youth Well-Being Act*, cl (2).

<sup>6</sup> Government of New Brunswick. (26 January 2024). "New Legislation Proclaimed Related to Child Well-Being", *Department of Social Development*. [https://www2.gnb.ca/content/gnb/en/departments/social\\_development/news/news\\_release.2024.01.0029.html](https://www2.gnb.ca/content/gnb/en/departments/social_development/news/news_release.2024.01.0029.html)

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<sup>7</sup> *Government of New Brunswick*, 2024.

<sup>8</sup> *Child and Youth and Senior Advocate Act*, 2016, c 54, s 1.

<sup>9</sup> Government of New Brunswick. "New Legislation for the Well-Being of Children and Youth", *Department of Social Development*. [https://www2.gnb.ca/content/gnb/en/departments/social\\_development/promos/legislation.html#:~:text=Highlights%20of%20the%20new%20Child%20and%20Youth%20Well%2DBeing%20Act&text=It%20is%20intended%20to%20improve,increase%20flexibility%20for%20court%20processes](https://www2.gnb.ca/content/gnb/en/departments/social_development/promos/legislation.html#:~:text=Highlights%20of%20the%20new%20Child%20and%20Youth%20Well%2DBeing%20Act&text=It%20is%20intended%20to%20improve,increase%20flexibility%20for%20court%20processes)

parents due to protective concerns and an expansion of the circumstances that permit the Minister to engage in early intervention for children and youth at risk of harm.<sup>10</sup>

*“The Child and Youth Well-Being Act is a new piece of legislation dedicated to the protection and well-being of New Brunswick children and youth. This milestone*

*legislation focuses on the interests, protection, participation, and well-being of children, youth, and the health and well-being of families.”*

*- Honourable Dorothy Shephard, Minister of Social Development*

## Child and Youth Well-Being Act: Fixing a Legal “Gap”

The *Child and Youth Well-Being Act* was introduced a bit earlier than planned due to an error that created a “legal void” in New Brunswick’s family law system.<sup>11</sup> When the legislation was initially introduced, a single line had been mistakenly omitted from the bill. The result was a 43-day period between December 13, 2023, and January 25, 2024, when the province’s child protection and adoption laws had no legal effect. How did that happen?

The groundwork for the enactment of the *Child and Youth Well-Being Act* and its relevant regulations began with Bill 9, “*An Act Respecting Child and Youth Well-Being*,” which received royal assent on June 10, 2022.<sup>12</sup> Bill 9 made significant updates to the pre-existing *Family Services Act*, including the removal (or “repeal”) of several of its provisions.<sup>13</sup> Though the new statute was assented to in 2022, it was not given legal effect or enforceability at that time to allow government officials to make any necessary changes.<sup>14</sup> These amendments, however, did not specify a future date for proclamation and therefore, by default, took effect immediately after royal assent. As a result, several provisions of the *Family Services Act* became obsolete *before* replacements for these provisions were given legal authority. While the bill’s provisions to remove existing parts of the *Family Services Act* “kicked in right away” it was “without the passed-but-still-not-proclaimed 2022 law being on the books to replace those sections.”<sup>15</sup> Consequently, there was a 43-day gap in which no child

protection or adoption provisions were in effect in the province.<sup>16</sup> The new Act was proclaimed and came into force at midnight on January 26, 2024 in a rushed effort by the New Brunswick legislature to “close the gap.”

Four days later, the government filed a reference with the Court of Appeal to request an opinion on the matter. In its affidavit, the government disclosed that during the 43-day period, 80 new child protection cases had been opened in the province involving 127 children. Among those, “eleven children were given protective care status, two new foster families were approved, seven kinship placements were approved, and 18 children were taken into provincial guardianship.”<sup>17</sup>

In a decision released on February 12, 2024, the New Brunswick Court of Appeal stated that the legislature’s intention had been “crystal clear” and that “it is simply inconceivable to believe that the legislature of New Brunswick unanimously intended to create a legislative void for child and youth well-being protection and adoption matters.”<sup>18</sup> To suggest otherwise, the court opined, “would be monumentally absurd.”<sup>19</sup> The court thus found that no legal void could be fairly said to have existed. While the Court of Appeal’s decision is not legally binding, it does offer legal direction to family court judges now addressing applications to overturn rulings issued during the 43-day period.

## Family Violence Considerations

Part I of the new *Child and Youth Well-Being Act* includes new and revised definitions for several terms, including child, youth foster parent, newborn, parent, and Indigenous.

*Section 5(2)(g): the Minister must consider “any family violence and the impact on the child or youth, including whether the child or youth is directly or indirectly exposed to the violence”.*

<sup>10</sup> Government of New Brunswick, n.d.

<sup>11</sup> Poitras, Jacques. “Province Scrambles to Fix Legal ‘Gap’ Affecting Vulnerable Children” (2024), CBC News. <https://www.cbc.ca/news/canada/new-brunswick/legal-gap-vulnerable-children-fix-1.7096107>

<sup>12</sup> Bill 9, *An Act Respecting Child and Youth Well-Being*, 3rd Sess, 60th Leg, New Brunswick, 2023, (assented to 13 December 2023), SNB 2022, c 35.

<sup>13</sup> *Family Services Act*, 1983, c 16, s 1.

<sup>14</sup> Poitras, 2024.

<sup>15</sup> Poitras, 2024.

<sup>16</sup> Poitras, 2024.

<sup>17</sup> J. Poitras. (12 February 2024). “N.B.’s Top Court Closes Child Protection ‘Gap’ by Saying it Never Existed.” CBC News. <https://www.cbc.ca/news/canada/new-brunswick/new-brunswick-court-closes-child-protection-gap-legislative-er-or-1.7112708> (hereinafter cited as 2024b).

<sup>18</sup> *Reference re Family Services Act and the Child and Youth Well-Being Act*, 2024 NBCA 42, para 47.

<sup>19</sup> *Reference re Family Services Act and the Child and Youth Well-Being Act*, 2024, para 47.

Section 5(2) includes things that the Minister must consider with respect to the **best interest of a child** with a specific mention of **family violence** in subsection 5(2)(g). The *Act* is part of a wider shift in the Canadian legislative framework to acknowledge and recognize the impact of family violence on a child's well-being.

The *Child and Youth Well-Being Act* also underscores the significance of revising statutory provisions to enhance safeguards for children and youth within the province.

## Legislative Reform in Other Provinces

Prior to the introduction of this legislation, New Brunswick was the only province not to have stand-alone child protection legislation.<sup>22</sup> Several provinces have undertaken reviews of their legislation, with many amendments aimed at improving child and youth protective services. For example, Nunavut's *Child and Family Services Act* was amended in 2014 to acknowledge new grounds, including repeated exposure to family violence, for finding that a child requires protective services.<sup>23</sup> In the Atlantic region, Nova Scotia proclaimed a total of 90 amendments to their *Children and Family Services Act*, underscoring a commitment to bolstering statutory safeguards for children.<sup>24</sup> British Columbia's amendments to their *Child, Family, and Community Service Act* exemplify a progressive

The language "the security or development of the child in danger" previously used in the *Family Services Act* (s. 31) was repealed in light of more protective language.<sup>20</sup> The *Child and Youth Well-Being Act* (s. 34) uses the language: "well-being of child may be in danger" to offer broader protection and highlight the importance of early intervention for children who may require protective services.<sup>21</sup>

approach to understanding the complex dynamics of domestic violence.

The revisions added emotional harm caused by living in a situation where there is domestic violence as a ground for children in need of protection.<sup>25</sup> It also highlighted that the presence of domestic violence increases the risk of physical harm to a child.<sup>26</sup>

Both Newfoundland and Labrador and Yukon were also late in implementing revisions to their provincial child protection legislation, with changes only coming into force in 2021 and 2022 respectively, mirroring the delayed reform seen in New Brunswick.<sup>27</sup>

## Conclusion

Reflecting on the implementation of the *Child and Youth Well-Being Act* in New Brunswick underscores the necessity of continuous adaptation and improvement in child protection measures. While the Act represents a significant leap forward in prioritizing the welfare of children and adolescents, the 43-day gap between its royal assent and proclamation highlighted the potential for real and complex vulnerabilities during legislative

transitions. This brief "legal void" also provided a reminder of the delicate balance between enacting new laws and ensuring seamless enforcement to safeguard vulnerable populations, including children, effectively. The *Child and Youth Well-Being Act's* emphasis on early intervention and the recognition of diverse familial and cultural contexts, however, reflects a progressive approach towards child welfare in the province of New Brunswick.

<sup>20</sup> *Family Services Act*, 1983, c 16, s 1, s 31 repealed by 2023, c 36, s13.

<sup>21</sup> *Child and Youth Well-Being Act*, s 34.

<sup>22</sup> Eñano, Katrina. "New Brunswick Introduces Legislation to Improve Child Protection System" (2022), *Canadian Lawyers Magazine*. <https://www.canadianlawyermag.com/practice-areas/immigration/new-brunswick-introduces-legislation-to-improve-child-protection-system/367135>

<sup>23</sup> Government of Canada, "Provincial and Territorial Child Protection Legislation and Policies 2018" (2019), *Public Health Agency of Canada*.

<sup>24</sup> *Public Health Agency of Canada*, 2019.

<sup>25</sup> *Public Health Agency of Canada*, 2019.

<sup>26</sup> *Public Health Agency of Canada*, 2019.

<sup>27</sup> *Public Health Agency of Canada*, 2019.

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