



**New Brunswick
Association for
Community Living**

**Association du
Nouveau-Brunswick pour
l'intégration communautaire**

Bill 114: Child and Youth Well-Being Act

Recommendations for Amendments to
Support the Well-Being of Children, Youth,
and Families with a Disability

The New Brunswick Association for Community Living

Submitted: June 7th, 2022

Introduction

The New Brunswick Association for Community Living (NBACL) is a provincial charitable organization that leads in the creation of opportunities for people with an intellectual or developmental disability to live full and valued lives in all aspects of society. NBACL delivers essential supports and services to children, youth, and adults with an intellectual or developmental disability and works to build capacity in many sectors to create an inclusive society.

As part of its Family Support Program, NBACL has provided support to parents with an intellectual disability and parents of children with an intellectual disability who are involved in the New Brunswick Child Welfare System.

Executive Summary

The field of child welfare has become increasingly aware of the over-representation of families of children and youth with disabilities and parents with disabilities in child protection cases.

NBACL was pleased to see that Bill 114 allows for the provision of social services to families of children or youth with disabilities and the provision of respite care to the parents of children with disabilities, as these services are critical to support families of children with disabilities. These provisions should help to provide support to families of children with disabilities and help to prevent or reduce their continued involvement with the child welfare system.

However, Bill 114 does not address the issue of providing supports to parents with disabilities, to help reduce their over-representation in child protection cases. We recommend the following changes to Bill 114 before it is passed as law:

1. **Adopt the recommendations of the Child and Youth Advocate to Bill 114**, particularly those recommendations which require respite relief for families of children with complex needs and the recommendation which gives Social Development the authority to require other departments to plan and co-ordinate services for children in care and requiring case planning within 30 days, as is done in other provinces.
2. **Add a section to Part 4 of the Bill (Strategic Interventions and Support Services) to authorize the Minister to provide supports and services to parents with a disability who require assistance with their parental and caregiving responsibilities.**
3. **Create a right to external advocacy support for families with a parent or child/youth with a disability who become involved in the protective system.**
4. **Modify the language of Bill 114 (section 142) to recognize that some adults will require or use accommodations and supports to meet the test of capacity for making decisions.**
5. **Modify section 153 of the Bill (authority to make regulations) to add the creation of guidelines and standards for conducting parental capacity assessments and commit to developing regulations that involve experts and community organizations in the development of standards for parenting capability and the assessment process for parents.**

6. Modify section 74 to ensure that youth with a disability who may require additional assistance are adequately supported in transitions out of care.

Background: Over-Representation of Parents and Children with Disabilities in the Child Welfare System

The field of child welfare has become increasingly aware of the over-representation of families of children with disabilities and parents with disabilities in child protection cases.

Parents of Children with Disabilities

Families of children and youth with disabilities often face additional needs, including challenging behaviour, advanced educational and social support needs, and the need for family support and respite care. Sometimes, when these supports are not readily provided, these families, through no fault of their own, find themselves in crisis situations involving Protective Services.

Children with disabilities are over-represented in provincial/territorial child welfare systems in Canada. For example, in 2011, 17 percent of children in the Manitoba child welfare system were children with Fetal Alcohol Spectrum Disorder (FASD) and in Ontario, 68 percent of children in the child welfare system were considered to be “special needs”.ⁱ Furthermore, a greater proportion of child welfare investigations in which an intellectual/developmental and/or physical disability are noted by the investigating worker remain open for ongoing child welfare services at the conclusion of the initial investigation (39% vs. 25% in 2008).ⁱⁱ

In the past, some families in New Brunswick have felt compelled to give up their children to child custody arrangements (or other protective measures) as a result of lack of external support and have been advised by social workers that this is the best option. This phenomenon is not unique to New Brunswick. For example, Ontario has also reported ‘spikes’ⁱⁱⁱ in the number of parents seeking to place their children with severe disabilities into care because they couldn’t obtain the necessary supports to care for their children at home.

Parents with Disabilities

There is also growing research on the over-representation of parents with disabilities in child protection cases.

In the United States, nearly one-fifth of children who are removed from their parents are removed at least partially because of their caregiver’s disability^{iv}.

In Canada, research has shown that parents with an intellectual or developmental disability face a disproportionately high chance of being involved with Child Protective Services (CPS). Once referred, the chance that the intervention will result in further action such as a guardianship application or the child being placed out-of-home is much higher among parents with an intellectual disability than it is among the general population.^v Based on research concerning the attitudes of persons involved in the child protection system, it seems that stereotypes and mistaken assumptions cause officials to equate the existence of an intellectual disability with idea that these parents are not able to care for their children.^{vi}

The *United Nations Convention on the Rights of the Child* requires state parties, including Canada, to render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities and to ensure the development of services for the care of children.^{vii} In addition, the *United Nations Convention on the Rights of Persons with Disabilities*, which Canada ratified in 2010, requires that state parties “render appropriate assistance to persons with disabilities in the performance of their child rearing responsibilities.”^{viii} The types of assistance rendered should include supports and services that enable families dealing with disabilities to stay together wherever possible.

Recommendations to Improve the Proposed Child and Youth Well-Being Act (Bill 114)

The proposed *Child and Youth Well Being Act* (Bill 114) will replace the *Family Services Act* as the law governing child protective services if it is passed by the New Brunswick legislature.

NBACL was pleased to see that Bill 114 addresses the rights of children with a disability by allowing for the provision of social services to families of children or youth with disabilities and the provision of respite care to the parents of children with disabilities, as these services are critical to support families of children with disabilities.

However, there are critical issues in the Bill that still need to be addressed before it is passed, most notably **the issue of providing support to parents with disabilities** whose families become involved in the child welfare system. Our recommendations to improve supports for parents with disabilities involved in the child protective process are included below:

1. Bill 114 Should Adopt the Child and Youth Advocate’s Recommendations for Supports to Protect Children in Care

NBACL was pleased to see that Bill 114 allows for the provision of social services to families of children or youth with disabilities and the provision of respite care to the parents of children with disabilities, as these services are critical to support families of children with disabilities.

However, NBACL believes that Bill 114 could have gone farther in protecting the rights of children, including children with a disability, who are involved with the child protective system. We support the recommendations of the Child and Youth Advocate to improve Bill 114. We would particularly like to emphasize the importance of the recommendations of the Child and Youth Advocate which will impact the rights of children with a disability. These are:

- Requiring the consideration of respite or relief care to families of children with complex needs before removing children from the home.
- Ensuring that any refusal of services by older children is automatically reviewed to ensure that the child has been fully heard and alternate ways of delivering services have been offered to the child.
- Giving the Minister of Social Development the authority to require other departments to plan and co-ordinate services for children in care and requiring case planning within 30 days, as is done in other provinces.
- Allowing for reviews to protect a child’s best interests when the Minister terminates a kinship or foster placement or denies a parent access.

- Requiring the Department of Social Development to track and report information on education, health and behavioural outcomes for children in its care.

2. Bill 114 should Address the Need for Support for Parents with a Disability

Bill 114 does not address supports for parents with a disability. NBACL recommends that Part 4 of the Bill 114 (Strategic Supports and Interventions) be revised to allow for provisions of services to parents and primary caretakers with a disability, in the same way that the bill currently allows for provision of services to children or youth with disabilities. NBACL recommends that this revision include the following language:

Services for Parents and Families with Disabilities

The Minister may provide social services, including support and parent-centered planning services, to family members or primary care givers with a disability, to address the support needs of the family or caregivers.

Parent-centered planning for parents with disabilities has been found to be particularly helpful in supporting parents with a disability. This model helps parents set realistic, long-term parenting goals and enlists informal and formal supporters to help parents to achieve these goals.^{ix} This type of support should be provided to all parents and caregivers with disabilities who require it under Bill 114 in order to keep families together in instances where parents and caregivers indicate a dedicated commitment to their children and simply need support. The addition of the language above will enable the Department of Social Development to provide these services where required.

From a program perspective, research on best practices for parents with an intellectual or developmental disability has found that parent-centered planning, education programs, and parenting support groups are effective in supporting individuals with an intellectual or developmental disability. Recommendations on the programs that could be delivered under this legislative authority can be found in NBACL's Brief on Review of the Family Services Act in New Brunswick Focusing on Child and Youth Welfare at <https://nbacl.nb.ca/wp-content/uploads/2020/02/Brief-on-Review-of-the-Family-Services-Act-in-New-Brunswick-Relating-to-Child-and-Youth-Welfare-Feb.-2020.pdf>.

Family Success Story

Recently, NBACL was actively involved with Social Development in a child welfare case in which one parent had an intellectual/developmental disability and the two children also had developmental disabilities which required increased health care.

In July 2020, the two children (ages 7 and 2) were removed from the home and taken into protective care due to insufficient care and neglect.

The transition into care was difficult and the parents tried to maintain a relationship by visiting frequently with the children. Months later, the children were transferred into the care of a grandparent who returned the girls to their previous school and a resource teacher at the school sought out NBACL's assistance for the family in dealing with the issue.

“When the girls first got taken away from us by Child Protection, I thought I was in the wrong and thought I was the worst mom ever. Child Protection had me thinking that we were bad parents and couldn’t meet the girls’ needs, and that they were better off without us,” said the girl’s mother. “Then after speaking with my daughter’s school, health professionals, and the IWK I realized we were not in the wrong, so that’s when I decided to ... fight for the girls.”

Two members of NBACL advocated to child protection on behalf of the family, ensuring their need to be reunited was heard.

Once the children were returned home in October 2021, an NBACL Family Support Facilitator continued working with and providing supports to the family. The NBACL facilitator and the family remain in touch most weekdays and the NBACL facilitator provides a range of necessary supports from issues with the family’s apartment to school closures and online learning.

Though the impact of the separation is still evident in the girls, the family is ultimately receiving the support they need and will remain intact because of it. The girls appear to be well taken care of and are able to remain with their parents, while their parents receive the supports they need to fulfill their parenting roles.

3. Bill 114 should Create a Right of External Advocacy Support to Families with a Disability in Navigating the Protective Care Process

The protective care process is not a simple or easy process to understand. Families undergoing the process are often subject to a bewildering array of requests and requirements during a very stressful time. There is no support in place for families undergoing the protective care process prior to the critical point where the family faces a court proceeding on custody.

NBACL believes that Bill 114 should include a right and source of funding for independent advocates to support families in the protective care system when a parent or child in the family has or is considered to have an intellectual or developmental disability. Advocates should be made available throughout the entire Child Protective Services process. This includes support in understanding the process and interacting with Child Protective Services during family visits and investigations.

Advocates should be trained to communicate effectively with persons with an intellectual or developmental disability and should be prepared to assume the following roles:

1. Helping parents voice their views and ensuring that they are properly considered;
2. Helping parents understand information related to child and youth protection interventions;
3. Recording and keeping track of information discussed during any meeting with Child Protective Services, case conferences, settlement conferences, or any court proceeding where a lawyer is not present and explaining it to the person they are supporting; and
4. Explaining the roles of everyone involved to the individual being supported in the Child Protective Services Process.

4. Address issues of Legal Capacity and Parenting Capability

4.1 Bill 114 should Adopt Statutory Language that Recognizes that Some People Require Accommodations and Support to Have Capacity to Make Decisions

The issue of legal capacity has been a subject undergoing review in multiple provinces in recent years with more openness on the parts of provinces and territories to allow for supports to individuals to make autonomous decisions even if they do not meet the common law test of legal capacity which is the ability to understand and appreciate a decision and its foreseeable consequences.

The language of Bill 114, as proposed, provides that an individual is only considered capable if they are “able to understand the information that is relevant to making the decision and able to appreciate the reasonably foreseeable consequences of the decision or lack of decision.”^x

The adoption of this language in the *Act* will prevent an individual who may use supported decision-making practices from being considered “capable” for the purpose of Child Protective Services. New legislation on adult decision-making is under development and government is considering avenues for “supported decision-making” to facilitate greater access to decision-making supports to meet the legal test for capacity.

NBACL recommends that the definition of capacity in the *Act* be altered so that it will recognize that some people make decisions with accommodations and support. We recommend the following subsection (2) be added to section 142:

A person’s capacity to make decisions may include or involve accommodations or supports as required

4.2 The Regulations to Bill 114 should Outline Assessment Criteria for Parenting Capability and Guidelines to Assess Parents.

NBACL recommends that, following the passage of Bill 114, the Department initiate a joint government and community committee to develop a set of criteria against which psychologists conducting capacity assessments should assess parenting ability. These criteria and guidelines for assessment should be included in the regulations to Bill 114.

Standard Definition of Good Parenting

The measurement of good parenting should be based on competencies in the areas of: basic care, security, routine, stimulation, and education.^{xi} Experts in the field should be consulted in determining a fair standard that continues to reflect the goal of protecting the best interest of the child. Dr. Marjorie Aunos, Director of Professional Services at the West Montreal Re-adaptation Center, is an expert on best practices for conducting parental capacity assessments where the parent has an intellectual or developmental disability, and may be a valuable asset to contact with respect to this initiative.

Guidelines for Conducting Capacity Assessments

NBACL recommends that regulation-making authority in Bill 114 include the development of guidelines and standards for conducting parental capacity assessments. Following the passage of Bill 114, we recommend that the government create a set of guidelines for psychologists conducting capacity assessments that embody the philosophy of “parenting with support.”^{xii} The guidelines should be designed to ensure that capacity assessments are geared towards determining the supports necessary for the parent to achieve a pre-determined standard of good parenting which is based on competencies rather than inherent characteristics.

In line with best practices, the guidelines should ensure that psychologists conduct assessments that: 1) involve direct in-home observation; 2) chose tools that have often been used with an intellectual disability where possible, 3) examine the support role of extended family and support workers and assess ability to parent in that context, 4) identify parenting strengths and areas for improvement as well as possible supports, 5) identify environmental or health stressors that may be influencing the parent’s ability or desire to learn effectively, and 6) provide only the results of the assessment and not a determination or opinion that the person in question is able to parent.

5. Address the Issue for Transition out of Care for Youth with a Disability

5.1 Bill 114 should Ensure that Youth with a Disability are Adequately Supported in Transitions out of Care

Some youth, including those with an intellectual or developmental disability, will require assistance with the transition planning process. Such assistance should be identified as a legislative requirement. NBACL recommends that a new subsection be added under (Plan to Transition out of Care) section 74 to ensure that youth with a disability who may require additional supports in their transition out of care are adequately supported in the establishment and implementation of transition plans. NBACL recommends that the addition include the following:

Plan to Transition out of Care

74(3) The Minister may provide additional support or assistance to youth with a disability to be fully engaged in planning for transition out of the care of the Minister.

Conclusion

Research has overwhelmingly shown that families of children with a disability and parents who have disabilities are over-represented in child protection cases, both in Canada and throughout the world.

The recommendations included in this brief will help to provide additional supports to families of children or youth with a disability and families where parents have a disability so that these families are supported in the ways they should be to provide a loving and supportive home environment to their children.

References

- ⁱ Inclusion Canada, Inclusion of Canadians with Intellectual Disabilities, A National Report Card, 2011, page 4: https://inclusioncanada.ca/wp-content/uploads/2018/05/Report-Card-2011-ENG_0.pdf#:~:text=%E2%80%A2%20Children%20with%20disabilities%20are%20over-%20represented%20in,17%25%20-%20FASD%2C%20Ontario%2068%25%20-%20%E2%80%98special%20needs%E2%80%99%29.
- ⁱⁱ Aline Bossian, Rhadha MacCulloch and Nico Troeme, Canadian Child Welfare Research Portal, Maltreatment-Related Investigations Involving Children and Youth with Disabilities in Canada in 2008: https://cwrp.ca/sites/default/files/publications/en/Children_with_Disabilities_133E_1.pdf
- ⁱⁱⁱ Inclusion Canada, Inclusion of Canadians with Intellectual Disabilities, A National Report Card, 2011, page 4: https://inclusioncanada.ca/wp-content/uploads/2018/05/Report-Card-2011-ENG_0.pdf#:~:text=%E2%80%A2%20Children%20with%20disabilities%20are%20over-%20represented%20in,17%25%20-%20FASD%2C%20Ontario%2068%25%20-%20%E2%80%98special%20needs%E2%80%99%29.
- ^{iv} DeZelar, S., & Lighfoot, E. (2018) Use of parental disability as a removal reason for children in foster care in the U.S. *Children and Youth Services Review*. Volume 86, pp. 128-134. DOI:10.1016/j.childyouth.2018.01.027
- ^v Fledman, M., McConnell, D. & Aunos, M. (2012) "Parental Cognitive Impairment, Mental Health, and Child Outcomes in a Child Protection Population". *Journal of Mental Health Research in Intellectual Disabilities*, Volume 5 pages 66-90.
- ^{vi} New Brunswick Association for Community Living (2020). Brief on Review of the Family Services Act in New Brunswick Focusing on Child and Youth Welfare: Relating to: Parents Who Have an Intellectual or Developmental Disability, page 2. <file:///O:/Senior%20Management/Policy%20Briefs/14.%20Brief%20on%20Review%20of%20the%20Family%20Services%20Act%20in%20New%20Brunswick%20Relating%20to%20Child%20and%20Youth%20Welfare-Feb.%202020.pdf>
- ^{vii} United Nations Convention on the Rights of the Child, Article 18: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>
- ^{viii} United Nations Convention on the Rights of Persons with Disabilities, Article 23: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-23-respect-for-home-and-the-family.html>
- ^{ix} Center for Advanced Studies in Child Welfare: Practice Notes: Issue 36, Winter 2020: Parent Centered Planning for Parents with Disabilities: <https://casw.umn.edu/wp-content/uploads/2020/11/PN36-WEB508.pdf>
- ^x Bill 114: Child and Youth Well-Being Act, as proposed for the 1st Session , 60th Legislature of New Brunswick: https://legnb.ca/content/house_business/60/1/bills/Bill-114.pdf, Section 142.
- ^{xi} Aunos, D.M. (Performer). (2013) July 17). *Assessment for Parents with Learning Difficulties and Their Children*, Montreal Quebec.
- ^{xii} Tarleton, B., Ward, L. & Howart J. (2006) *Finding the Right Support? A review of issues and positive practice in supporting parents with learning difficulties and their children*. London: The Baring Foundation.