

Bringing in more voices: A comparative analysis of  
Canadian provincial child welfare legislation as it relates  
to the United Nations Convention on the Rights of the  
Child

by

Yaffa Elling. BA, Concordia University; MA, McGill University

A thesis submitted to the Faculty of Graduate Studies and Research  
in partial fulfilment of the requirements for the degree of  
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Bringing in more voices: A comparative analysis of  
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to the United Nations Convention on the Rights of the  
Child

Submitted by Yaffa Elling, BA, MA

In partial fulfillment of the requirements for the degree of  
Master of Social Work

Professor Karen Schwartz, PhD., RSW

Thesis Supervisor

Professor Diana Majury, PhD.

External Examiner

Hugh Shewell

Director of the Department

Carleton University

May 20<sup>th</sup>, 2010

Abstract

Do Canada's provincial and federal child welfare acts and practices satisfy the conditions of the *United Nations Charter on the Rights of the Child* (UNCRC), which Canada ratified in 1991 (Canadian Coalition for the Rights of the Child, 2003, P. 3)? This study is an exploratory comparison of Canada's provincial child welfare legislation (n=12), to examine how these policies and practices afford children in care six major rights of citizenship, namely: equal treatment regardless of age, identity, family and cultural access, mobility, liberty and due process, the right to legal recourse and financial support.

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This thesis is dedicated in loving memory of Naomi Kidston who experienced and survived nearly every bureaucratic and legal difficulty possible during the 19 years she spent in the care of child welfare. She was exceptionally strong, sweet, smart and vivacious, and will never be forgotten. Naomi was brutally murdered at the age of 26.

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## Introduction

The concept that children have human rights has evolved significantly in the last one hundred years, on an international level and within Canada. Over time, Canada has signed several international and national agreements with the goal of establishing fundamental freedoms for all citizens, including children. Canada passed the following agreements over a period of several years, namely: the *Geneva Convention on the Rights of the Child* (GCRC) in 1924, the *United Nations Declaration on Human Rights* in 1948, the *Declaration of the Rights of the Child* in 1959, and the *UN Convention on the Rights of the Child* (UNCRC) in 1991.

The UNCRC addresses child welfare in at least four ways. First, the UNCRC asks that its signatory states create standardized laws that guide child welfare intervention and their limits (UNCRC, 1989, A.4A.40.4). Secondly, the UNCRC defines children's rights to receive child welfare support because they are citizens and as they require special measures to ensure their safety (UNCRC, 1989, A.20.1, A20.1, A20.2, A20.3, A.25). Third, the UNCRC suggests that children have the right to engage in procedures related to their care plan while receiving aid from child welfare (A.9.2, A.12.1 &2). Lastly, the UNCRC mandates signatory states to have national standards of child welfare legislation and practice that are continually evaluated and revised in order to uphold the rights as citizens children have under the UNCRC (UNCRC, 1989, A 3.3, A.19.1&2, A.4. 1-6). The question of whether or not child welfare services in Canada comply with the UNCRC provisions will be explored through examination of historical and current evidence of the changes in child welfare legislation, recent relevant studies, and case examples from literature and my own professional experience.

The differences in how children in care can access their UNCRC rights give us an idea of how they may be affected by the five major oppressions, often identified by anti-oppressive theorists: “exploitation, marginalization, powerlessness, cultural imperialism, and violence” (Young, 1990, in Dumbrill, 2003, p. 102). A brief discussion of these oppressions is included to address the argument that the UNCRC needs to guide all Canadian child welfare legislation. Secondly, I will argue that it is important that Canadian jurisdictions adhere to the principles and provisions of the UNCRC when designing child welfare systems. My arguments will draw on the Final Report of the Standing Senate Committee on Human Rights (2007) and other child rights advocacy bodies in Canada (Canadian Coalition for the Rights of Children, 2003; Chamberland & Dufour, Septembre, 2003; Farris-Manning & Zandstra, 2003). Children are particularly vulnerable to: homelessness (Brannigan, Gibbs, Van Brunschot, 2004; Finlay & Kerr, 2006; Serge, Eberle, Goldberg, Sullivan & Dudding, 2002), loss of culture and access to family (Aitken, 2002; Bennett, 2003; Trocmé, Knoke, Blackstock, 2004; Wilkes, 2002), poverty (Chau, Fitzpatrick, Hulchanski, Leslie, Schatia, November, 2001; Hebert, February, 2008; Tweddle, September, 2005; Whittred & Kendall, May, 2007), high incarceration rates (Finlay, 2003; Fush, D., Marchenski, Mudry, 2006; Gardener & MacDonald, Fall, 2005; Rutman, Hubberstey, Feduniw & Brown, 2005), and powerlessness to participate in their own care (Mitchell, 2005, National Youth In Care Network (NYINCN), 2005; Reid & Dudding, 2006; SEYSO, 1998; Save the Children Canada, 1998; Snow & Finlay, 1998). Identified herein are also some of the difficulties in implementing the UNCRC in Canadian child welfare systems (CCRC, 2005; Canadian Coalition for the Rights of the Child, 1999; Final Report of the Standing Senate

Committee on Human Rights, 2007; International Institute for Children's Rights and Development, 2005; International Save the Children Alliance, 2000).

Canada does not have a federal child welfare act nor has it implemented a national database examining outcomes for children in care (Canadian Coalition for the Rights of the Child, 1999), thereby limiting our knowledge of how accessible UNCRC rights really are for these children. As a result, it is important to begin with a comparison of provincial child welfare laws to examine whether or not they meet the UNCRC standards. Provincial legislation provides a gateway through which many of the rights established in the UNCRC can and could be addressed and realized in a pragmatic way. Provincial governments are mandated to act on behalf of children whose parents cannot, for whatever reason, provide for their care in an adequate way. Consequently, to evaluate the conformity of laws, in Canada, with the UNCRC provisions requires turning to examine *child protection and child welfare laws across provincial and territorial jurisdictions.*

The UNCRC (OHCUN, 1989) explicitly established rights for children. These rights include:

- freedom from discrimination on the basis of age, ethnicity, sexuality, religion (UNCRC, 1989, A.1 & 2)
- an identity as an individual and through family (UNCRC, 1989, family- A.9.2 &3) (identity- A7.1, A. 7.2, A8.1 &2, A.21.a, A.22.2);
- cultural access, mobility within nations of which they are citizens (UNCRC, 1989, mobility- A.10.1 &2) (UNCRC, 1989, culture- a.4, a.14.1,A. 20.3, A.23.1, A. 29.1. b & C., A. 30, A. 31.2),

- liberty and due process (UNCRC, 1989, A.16.1, A.37. a, b, &c, A.39, A.40.1, 2 &4),
- recourse within legal systems (UNCRC, 1989, A. 2.1, A.12.2, A.16.1 &2, A.19.2, A.25, A.37.d);
- financial support and safety (UNCRC, 1989, A.23.2, A.24.1 &2; A.26.1 &2, A.27.1, 2. & 3; A, 28.1.b; A.32, 1; A.34. a, b, &c).

Similarly, the UNCRC (OHCHR, 1989) makes explicit certain rights children should have as citizens, which include the right to:

- a nationality (A.7.1 &2; A.8.1),
- know one's birth parents and family (A.21.a, A.22.2),
- preserve cultural associations (A,29, 1. A &b; A.30; A.31.2),
- be raised by their own family (A.5; A.9.3) and
- be treated in such a way where their opinions and decisions concerning their well being are taken into account if the state must intervene for their welfare (A.9.2).

Based on the frameworks above, I have derived a number of rights themes which are especially important to children involved with child welfare. These themes align with the UNCRC tenets, identified above. They are: equal treatment regardless of age, identity, family and cultural access, mobility, liberty and due process, the right to recourse and financial support. Under each of these themes is an exploratory comparison of the progress each province has made towards meeting the standards of the UNCRC.

In conclusion, I propose four frameworks for guiding implementation of the UNCRC into all Canadian child welfare legislation. The first is the use of anti-oppressive

theory to guide child practices and research on youth in care (Darlymple & Burke, 2006; Feduniw, 2009; Ife, 2001; Kundouqk [Greene] & Qwul'ish'yah'maht [Thomas], 2009; Lister, 2008; Parada, 2004). The second is to adopt some of the innovative policies and practices of First Nations child welfare agencies and organizations (Feduniw, 2009; Parada, 2009; Pennell, 2009; Strega, 2009; Walmsley, 2009). The third is to adopt different innovative legal tools and forms, such as the unified family court systems to promote the rights of children in care (Goldberg, 2004; Schwarz, 2004). The final framework is to implement federal legislation that coordinates, streamlines and investigates provincial child welfare practices and policies (Dudding, 2007; Williams, 2005), and which establishes a transparency between agencies and the public in order to make them more accountable (Final report of the Standing Senate Committee on Human Rights, 2007).

## Chapter 1

### Children's human rights discourses and how they are linked to Canadian child welfare

“The ‘cared for’ may often find themselves at the mercy of the ‘carers’ who control them, a process often leading to the denial of citizenship rights through social exclusion” (James, Curtis & Birch, 2008, p 85). Children in the care of Canada’s child welfare systems are some of the most vulnerable citizens, particularly as they have little or no political power over the institutions which govern them. They have no input into laws, policy and practice which directly affect their lives. Most of what is written about how children in care are affected by child welfare legislation is written from the perspective of social workers or other professionals, with commentary from adult family members, but rarely from the children themselves. For example, in the research, children’s rights are often associated with women’s rights, however what is usually ignored are questions about inherent conflicts between children and their parents, e.g. when the mother is the abuser? Historically, parental rights have a long history of superseding the rights of the child. This trend has continued through the systematic failure of child protection agencies to build into their structures mechanisms which allow children to make informed cogent decisions and to give critical the child welfare interventions they might benefit from.

### Human Rights Discourses regarding children

There are at least three global questions we must ask ourselves concerning Canada’s child welfare legislation, in order to understand how children’s rights are perceived. First, how do we conceive of the rights of the child, as an individual or as accessing rights through their caregivers, whether family, community or the state? The second is who is

responsible for the child and the protection of their rights? Is the child considered: an individual, part of a group (e.g. family and extended kin), a community member (e.g. member of a band, cultural, religious or regional group), or a citizen of the state itself? Due to age and cognitive abilities children have special protections, but are these affected by who has “ownership” over the child. This begs the question who does own the child—the family, the community, the state or is the child independent? At what age do we consider a child to be an individual, a family member who has rights within the family, a community member and finally a state citizen? Third, what material and economic provisions are in place to maintain and advocate for the rights of the child, particularly those provided by child welfare? The debate is which model of child rights best supports the rights of children in care: social welfare (state responsibility), liberal (family, extended kin, and community responsibility) or liberationist (the child should have full access to their rights and the authority to exercise them).

There are at least two models of human rights movements. The first defines the boundaries between individual freedoms and the actions of the state to maintain order in society. Some of these rights are described as being “negative” or rights which the state cannot take away (Sykes, 2006, 138). Negative rights for children in care entail some of those which are laid out in the UNCRC, such as the right to a name, nationality, protection from physical and emotional harm, etc. Inherent in this view is that children hold rights independently of their caregivers, whether these care givers are family, community or the state. This is a hyper-liberationist view of children’s rights. The second is the notion that people have “positive rights” which the state should afford them, and views rights as the equivalent of needs. These include the right to participate in society and to be entitled to a

standard of living which denotes some measure of equality among citizens, financially, physically and emotionally (Sykes, 2006, 138). Positive rights for children in care might also include: access to lawyers and legal recourse, due process, the ability to move within the state of which they are a citizen, etc. The latter are set out in international charters. However, under Canadian legislation, both federal and provincial, such rights are rarely set out in a detailed way for adults, let alone for children (Fortin, 2008). Positive rights for children in care are really only addressed through child welfare legislation, if at all. Inherent in the idea that people have rights which can be exercised is that there are coordinated local practical resources (e.g. community and government agencies) and stable financial backing (funding for families, children, and communities) available to sustain these rights.

Positive and negative rights tend to be viewed on a continuum from the perspective of the right of the caregiver, family, community, or the state (e.g. to protect the public from harm). The dilemma is that infants, toddlers and school aged children may not have the cognitive and emotional ability to ask for some or all of their rights to be protected, promoted or to contest family, community and the state, if these rights are violated. The government of Canada, the federal state, has a dual role in protecting children and in creating legislation that abides by the tenets of the UNCRC, as it signed this accord. The family has a role in protecting the child and preserving the child's position and well being within the family. The community has a role in preserving the child within the community as a member and possibly a citizen but may not necessarily afford the child any other rights as a citizen. If other rights are afforded to children in care (e.g. to be protected, have access to school and socio-cultural supports outside of the family), they are specified and

governed by provincial laws and local practise. The individual rights of the child are therefore obscured by compounding lenses of the rights of the family, the community and the state's willingness and capacity to create legislation and institutions to protect these rights.

#### Protectionist vs. liberationist views of children's rights

Historically children have been viewed in ways that have seriously hampered their progress towards obtaining human rights. There is a tenuous continuum between protectionist thinkers who feel that the best interests of children ought to be determined by adults and the liberationists who believe that children should be able to determine their own "best interests" and have the same rights as adults (Bandman, 1999, p. 24). On that continuum there are at least four views of children's rights, which will be discussed below: protectionist, family preservationist, community preservationist and liberationist.

Protectionists believe the child's right to safety and security is paramount. Theirs' is a conservative stance, in which they take a negative view of the ability of the child to advocate for themselves and their developmental capacity to understand their own needs regarding safety and security. In this view, the state operates under a "risk management model" (James, et. al, 2008, p.89), and gives adult professionals, kin and community an obligation to intervene for the safety of the child. They may also feel a strong moral obligation to intervene on behalf of children's safety. They believe that conferring too many rights to children may be a "burden" of responsibility, given their level of development (Liebel, 2008).

The family preservation model asserts that children have rights that are secondary to their family's wishes. This model is meant to be holistic, but is also inherently

protectionist. It allies itself with the idea that adults understand that what is in “the best interest of the child” is to keep them in the family, and the best interest of the family unit must be considered paramount (Altstein & McRoy, 2000.p. 15-16). This model also assumes that this is what a child wants but does not address the right of the child to make decisions about what kind of family unit they would like to be a part of.

The community preservation model is protectionist in that it allies itself with the idea that the adult leaders of the community, in conjunction with the family, understand what “is in the best interest of the child”. The community preservation model, in North America, is primarily seen in First Nations child welfare, but may also be seen in cultural, linguistic or religious groups (i.e. Hassidic Jewish communities, Francophone communities, etc.). This model is based on what is in the best interest of the child, the family, the community and what will preserve culture (Walmsley, 2009, p. 106-7). The problem is that cultural practices may violate the human rights of the child (i.e. religious education, cults, etc.). First Nations world views tend to look at the interdependence of the needs of the child and the community, therefore considering both “the rights of the Indigenous child to his or her community rather than the rights of that community to the child” (Sinclair, et al, 2004; Lynch, 2001, p. 529). This view leans more towards a liberationist view of children, although it is undermined by ambiguities and problems arising from concerns with children’s autonomous rights. After all what constitutes the definition of a community is generally defined by adults.

“...The dangers of using the ‘best interests of the community’ to inform ‘the best interests of the child’... include: the obvious physical, emotional and psychological dangers of leaving a child in a potentially abusive environment; the danger of ‘freezing’ culture and community; the danger of elevating collective rights at the expense of denying individual rights; the danger to First Nations and Aboriginal communities of submitting their interests to the definitional power of

the courts; the danger of removing a child from the family to which s/he is bonded and comfortable; the danger of imposing an identity on the child when the very role of rights and 'the best interest of the child' is to make space for people(s), particularly children to conceive of and create their own identities" (Lynch, 2001, p. 506).

Liberationists see children as individuals that can interact in their own care to varying degrees depending on their developmental capacity. They believe that children should be encouraged to develop skills to independently advocate for themselves, beginning with education about their rights (Bandman, 1999; Mitchell, 2005). Liberationists view children's rights as being as important as adult rights, and that children should be viewed as independent and full citizens of the state. They believe that although "...notion(s) of childhood as an incomplete state persist. We need to engage children as fully participatory members of society not as adults "in becoming" (Finlay, 2006, p. 1). Theirs' is a radical view of children's rights wherein the needs and wishes of the child should determine the kind of care they receive. Liberationists believe that children should be empowered to participate in decision making. Of course there are problems with this model for children who are: very young, experience developmental or learning delays, living with mental illness, or who are newcomers or have linguistic or legal barriers –i.e., those who are not citizens. Also some children may not want this kind of liberty and may feel safer if family or adults are in control of their rights.

This tenuous continuum between protectionist and liberationist views of children's rights is influenced by three traditions in the recognition of all human rights. The first is the positivist tradition whereby it is understood that the powerful use their position to coerce others and claim rights in order to insinuate a sense of control over others (Bandman, 1999, p. 51). For children in care, the 'powerful' usually refers to social

workers and agencies. Two examples of the use of power over First Nations children are the creation of the residential school system and later the “sixties scoop” (Indian and Northern Affairs Canada, 2004). First Nations children were taken out of their homes to be raised in environments deemed “appropriate” by the state, whether schools or predominately non- First Nations foster homes. The assumption was that the state had right and a moral obligation to create citizens who would adhere to the state’s definition of a proper citizen. Embedded in this set of beliefs was the idea that First Nations families and communities did not have a right to raise their own children. It was believed that the First Nations families had forsaken the right to parent their children because they could not provide the type of care that those in power deemed to be appropriate. The second tradition is that of natural law whereby it is understood that power over others is a trait that one inherits. This assumes that parents -and in their absence, extended kin- have the right to determine the welfare of the child. Natural law assumptions postulate that access to rights is based on age and the capacity to ‘reason’, and therefore adults are entitled to power over children. The last tradition is the social contract view of rights, wherein it is argued that parties agree on the rules for defining rights and remedies in the event rights are violated (Bandman, 1999, p. 51-2). This recognizes that the state and family work together under rules outlined usually by the state, to decide the welfare of a child. At a deeper level, it recognizes that the needs of children should determine the kinds of rights they have and how they gain access to those rights. The social contract view gives the state power to codify, preserve and grant the rights children can have. This view supports the idea that children should be allowed to voice their needs and define those needs which they feel require protection through the development of rights

legislation. In sum, families operate in the naturalist tradition, and child welfare and state agencies operate under a mix of positivist and social contract traditions. The UNCRC and other rights declarations are shaped predominantly by the social contract formula for the creation and protection of rights.

There are at least two orientations towards rights discourse, that is: the right to have a choice and to voice one's opinion and the right to be cared for (Bandman, 1999, p. 81). The first is liberationist in nature and the latter is protectionist. Combined, these two forms of rights discourses imply the freedom to choose and participate, access to resources, protection, justice, and compensation (Bandman, 1999). The UNCRC has attempted to use this combined formula, but remains focused on the concept of "the best interests of the child". This concept leans more toward the protectionist view of child rights, where "the child is seen more as an object rather than the subject of rights" (John, 1996, p. 8). In practice, protectionism, which advocates for the right to be cared for usually wins out. Judges in child welfare are often forced to choose "the best available outcome" for that moment (Gove, 2005) rather than to holistically address the child's rights in the long term. The problem is that the law is reactive and develops through a process of dealing with single issues at a time (Dalrymple & Burke, 2006, p. 10). There has been recent movement in some Canadian provincial child welfare legislation to adopt a mixture of protectionist and liberationist approaches to child rights, but there is no consistency between provinces. Farris and Manning report "...many jurisdictions have made legislative changes to the definition of a 'child in need of protection'. The definitions have been broadened and made more encompassing, such as the inclusion of emotional abuse as a form of abuse, and the inclusion of 'significant risk of harm' as

criteria for intervention. These changes have contributed to the “interventionist” approach that has been adopted by most child welfare policymakers, and service providers” (2003, p. 6). The ‘interventionist approach’ is focused on safety of the child and is protectionist in nature.

Through comparative analysis of provincial child welfare legislation, this thesis seeks to assess how children’s rights are viewed, regionally, on a protectionist-liberationist theoretical continuum. The difficulty is that access to rights is age based not only in the legislation but in practical terms when considering the child’s cognitive capacity to understand, engage, access and defend the preservation of their individual rights. Therefore, some of the research in this thesis can be seen through many lenses and does not necessarily fit neatly into these separate categories of children’s rights: protectionist, family preservationist, community preservationist or liberationist.

#### Canada’s history and progression towards children’s rights

Dating back at least to Ancient Greece, children, women and slaves were not considered citizens and were prohibited from participating in political decisions. Children have in different eras and contexts been seen as an economic burden rather than as an asset (Alderson, 2008). Canadian child welfare legislation was based upon two 19<sup>th</sup> century ideologies: French Canada regarded children as “property of their parents”, and English Canada through law relied on the concept of “Parens Patriae” or the state as having the right to intervene in families and act as a parent if need be (Sykes, 2006, p.135). Canadian parents’ rights were entrenched in the Constitution Act of 1867, whereby they could send their children to denominational schools and therefore exert control over their cultural and religious upbringing (Sykes, 2006, p.135). Parents’ rights

have been reaffirmed under the *Charter of Rights and Freedoms* (Constitution Act, 1982) concerning religion, health, language of education, all under the assumption that parents will act in the best interests of the child (Sykes, 2006, p.135).

The first indications of state involvement in child welfare in Canada likely occurred during slavery, where both black and first nations 'dependents', were taken into their master's care as children (Trudel, 1960). *The Code Noir* (1685) was perhaps the most important social policy legislation in the New France governing black slaves; however it did not apply to aboriginal slaves. *The Code Noir*, which included 60 articles, was adopted, in its entirety by Lower Canada and Acadia. It provided for the following types of care: minimum food, shelter, and an allocation of warm clothing, medical treatment at the General Hospital of Montreal, baptism, education in Catholicism, etc. This document entrenched slavery into property law. Certain rights were forbidden: freedom of speech, testifying in front of a tribunal, holding public employment, sexual relations with whites, having weapons, and contesting any punishment given to them. Children of mixed race would be confiscated and a fine of 2000 livres was paid by the masters. Aboriginal children of slaves were frequently "adopted" by white families, but it was as if they were the offspring of these families (Trudel, 1960, p. 62). Furthermore, children of female slaves were born into lifelong servitude and remained the property of their master's estate, even if their father was free (Elgersman, 1999; Jack, 1989; Ruby & Brown, 1993; Trudel, 1960). One can infer that these practices likely created a baseline for the inclusion of children and women in Canadian rights legislation.

Canada's involvement in First Nations child welfare was heightened with the *Indian Act*, [*Indian Act* of 1876 in *The Constitution Act*, 1867, s. 91(24)] 150 years ago. As

slaves, First Nations people were not protected by laws, unlike their black counter parts, even though they outnumbered black slaves in New France (Hamilton, 1897; Trudel, 1960). Canada's residential school systems commenced just as the practise of slavery officially ended, in 1834. Under the Imperial Act (Hamilton, 1897, p. 26), many of the children born into slavery were mandated to stay in servitude until their 25<sup>th</sup> birthday (Trudel, 1960). The belief that First Nations peoples could not adequately raise their children may have evolved prior to the residential schools. There is some evidence of Jesuit Aboriginal day schools on the St Lawrence River as early as 1611 (Noriega, 1992, p. 380) and a Franciscan Aboriginal boarding school, in what is now Canada, as early as 1620 (Miller, 1997, p. 39). The residential schools began to open officially in the 1870s (Walmsley, 2009, p.97), and by the 1920s, it became mandatory under an amendment to the Indian Act, to send children, ages 5 to 15, to these schools (Blackstock & Trocme, 2004, p. 4; Indian Residential School Survivor's Society, no date). Many First Nations children's rights to, association with family, to know their culture and language, and mobility were severed. Residential schools began to decrease in number in the 1950s (Sinclair, Bala, Lillies & Blackstock, 2004, p.205) until the last one was closed in 1996 (Walmsley, 2009, p. 98). There is also some evidence that some of the residential schools exploited First Nations children for their labour (Nuu-chah-nulth Tribal Council, 1996). Children's right to recourse was limited through isolation, segregation from family, detention within the school, and lack of access to their communities and culture. The residential school model of child welfare is now widely accepted as a form of cultural genocide and economic segregation (Blackstock & Trocme, 2004; Lynch, 2001; Sinclair et.al. 2004, p.207).

Child Protection for non- First Nations in Upper and Lower Canada

New France's Attendant Begon, in 1726, ordered the church to care for babies of unwed mothers, and within ten years over 360 children were institutionalized in orphanages (Finkle, 2007, p. 35). So began Canada's long history of protecting the anonymity and confidentiality of the parent, while taking away the child's right to mobility by institutionalizing them. Further, this likely impinged on the children's right to know their family of origin. In 1748, ordinances were invoked to improve the conditions under which these children lived. Wet nurses were paid to feed children and foster parents were paid to keep them after 18 months, if any could be found. Perhaps this was the beginning of allotting finances to state chosen caregivers versus directly to children in care and their biological parents. Destitute single women were forced to give up their children (Finkle, 2007, p. 36) as early as the 1700s, which infringed on the right of the child to associate and to know their family.

Church records, from the mid 1800s, in Quebec and Ontario, show that nearly 3 percent of children born were considered to be 'illegitimate' or from poor or widowed mothers. These children were often confiscated by the church to be raised in institutions (Finkel, 2007, p. 70). There are indications that the overwhelming majority were then sent to work as domestics and labourers, as few were ever adopted (Finkel, 2007, p. 46). The House of Industry Act of 1837 created work houses which employed poor children and adults (Finkel, 2007, p. 49), and allowed children to be used as labourers from aged 7 on, until regulations for factories in the 1880s began to appear. This limited the ability of employers to use child labourers under the age of 12 (Finkel, 2007, p.70). In the 1870s most provinces, except Quebec, which did not enact school regulations until 1943, made

school compulsory below the age of 12 (Finkel, 2007, p. 70). Children under 14 were officially banned from factory work in most provinces by 1929 (Barman, 2009). The deplorable conditions for child workers likely sparked the first official closing of child workhouses in 1888, in Ontario, which occurred under *The Act for the Protection and Reformation of Neglected Children* (Finkel, 2007, p. 71).

In 1891, the first Children's Aid Society was formed in Toronto, and, in 1893, Ontario passed the first Canadian law protecting children, *The Act for the Prevention of Cruelty and Better Protection of Children* (Swift 1999). In 1895, the province of Ontario gave powers to volunteer organizations such as Children's Aid Societies to remove children, and in many cases to (re) institutionalize them (Finkel, 2007, p. 71). Child welfare legislation was gradually created over an eighty year period across Canadian provincial jurisdictions. For example, Quebec did not see the need for state run child welfare agencies until 1933, and left responsibility to take charge of children with the church until the 1960's (Swift, 1997, p. 39). The notion that churches were the most socially and morally acceptable places to intervene in child welfare cases was upheld by successive Federal governments. Similarly, the government employed many members of Christian ministries in their residential school systems in an effort to eliminate cultural and linguistic ties between children and their First Nation communities, from 1874 to the 1990s (Indian and Northern Affairs Canada, 2004).

There has been disparity in the length of time it has taken the provinces and territories to create child welfare regulatory bodies to meet the conditions of the UNCRC, in Canada. The first Act "to recognize children as legal subjects" and "to create an authority" in Quebec (the last province or territory to do so) for the "protection of children" was the

*Youth Protection Act* of 1977, recently revised in 2005 and again in 2009 (*Youth Protection Act*, R.S.Q.1977 c. P-34.1). The Federal Human Rights Commission did not incorporate into their mandate a policy of defending the rights of children until 1995 (Swift, 1999), and even today only some provincial human rights acts specifically address this group. This means that only within the last 30 years, have some of the Canadian provinces considered children as citizens who are deserving of human rights beyond the right to be protected.

The origins of the United Nations Convention on the Rights of the Child (UNCRC)

The UNCRC stems from NGO responses to child maltreatment and displacement during war. Other UN Declarations lumped children's rights under the auspices of women's rights, and may have affected the development of the UNCRC. The first such document was *The International Agreement for the Suppression of White Slave Traffic* in 1904; the second, was *The Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others*, in 1949; and the third, was *The Convention on Discrimination in Education and Recommendation on Consent to Marriage*, in 1962 (Flaim, 2004, p. 39).

The UN's involvement in the development of international children's rights charters originated from the initiatives of other organizations. Save the Children Fund of Sweden and the International Council of Women created *The Children's Charter*, in 1921 (Milne, 2008, p. 46) and included it in "...their 1923 Charter of Save the Children's International Union..." (OHCHR, 2007, p.1, Vol. 1). The League of Nations, the precursor of the UN, then adopted this Charter in 1924, which included 6 basic rights. It outlined that children should be given: the basics of life, medical care, priority to be first to receive aid in

crisis, protection from exploitation, protection from discrimination, and the resources to allow them to be brought up to help society (OHCHR, 2007, vol. 1, p. 4).

The International Labour Organization and the League of Nations had initiated the consideration of Children's Rights as a possible addendum to the *International Declaration of Human Rights*, which was later released in 1948. In 1946, member states could not agree on whether to include this, and therefore the newly formed United Nations decided to create a non-binding charter for release at a later date. Poland was perhaps the most proactive country behind this proposal. In 1950, a draft was submitted of *The Declaration of the Rights of the Child* to the UN member states for perusal. In the initial vote, Canada abstained in its passage, ten to one, because it believed that access to free education and medical care was "extraneous" (OHCHR, 2007, Vol. 1, p. 7). This draft outlined concrete rights to: identity, nationality, safety, dignity, protection, culture, education, and to not be discriminated against for any reason including disability (OHCHR, 2007, p. 6 Vol. 1). In 1957, comments from the 21 NGOs and member countries interested in this proposal began to filter into the UN, but Canada gave none (OHCHR, 2007, vol. 1, p. 7). It was again decided that it would become a declaration and not legally binding because not all member states could agree. The declaration added provisions each member state was to follow in order to implement *The Declaration of the Rights of the Child*. This document came into effect in 1959 (OHCHR, 2007, vol. 1, p. 8). The parts of the declaration that were accepted unanimously by all member states were the right to: a name and nationality, social security, food, housing, and medicine. The Soviet Union's proposal for extra state funds for families, mothers who were pregnant,

and state institutions for orphans “...was rejected...”, and instead the UN “...opted for a vague duty to extend special care...” clause (OHCHR, 2007, vol. 1, p. 12).

Chapter 2

The importance of implementing the UNCRC in Canadian child welfare systems

I propose that there are several major issues of national and provincial concern regarding the outcomes for children in care. These outcomes are directly related to whether or not the UNCRC has been integrated into provincial legislation and professional child welfare practices. They include: lowering poverty, reducing rates of incarceration and homelessness for children in care, preserving culture and access to family, and including children in child welfare as participants in their own care. Each issue will be described in terms of recent research and how they relate to the themes of citizenship rights in the UNCRC which are identified herein.

1. Current issues affected by the lack of implementation of the UNCRC on children in care and those who have aged out of care

As of the year 2000, there were approximately 76,000 children in Canadian child welfare systems (Farris-Manning & Zandstra, 2003, p.1). Recent child abuse incidence reporting statistics, indicate that child abuse investigations doubled between 1998 and 2003, but it is unclear if this reflects increased reporting or increased incidences of child abuse ( neglect, sexual, physical, emotional abuse and exposure to domestic violence) (Trocmé, Tourigny, Tonmyr, Fallon, Blackstock, MacLaurin, Barter, Daciuk, Turcotte, Felstiner, Cloutier, Black, 2003, p. 8). What are also missing are statistics on the numbers of various minorities in care, including: First Nations children, children with special needs (either mental or physical disabilities or both) and on the numbers in pre-adoptive care, foster care, kinship, group homes and institutions (Farris-Manning &

Zandstra, 2003, p.3). Approximately 21% of all Canadian (excluding Quebec) child welfare investigations into the various forms of abuse have had three or more previous investigations (Trocome, et. al, 2003, p.55). This draws into question the efficiency of child welfare agencies in responding to, and intervening effectively on behalf of children in need of protection. In a 12 month period, from 1998-2003, 44% or over 45,000 cases investigated by child welfare agencies (excluding Quebec) yearly were retained for further intervention (Trocome, et. al, 2003, p. 56). As of the year 2000, there are some initial statistics noted in the research, concerning the two “minorities” of youth in care: First Nations children and with children with disabilities. Approximately 22,500 First Nations children were in the care of child welfare agencies, in Canada (Bennett, 2003). This means one of every ten status First Nations child is in care (First Nations Child and Family Caring Society of Canada, 2004-5, p. 6). The number of children in care with disabilities is also disproportionately high. A study by Jacobs, in 1999, estimated that in Saskatchewan, up to 50% of children in care have Fetal Alcohol Syndrome (FAS) (Farris-Manning & Zandstra, 2003, p. 9). “The Canadian Association of Community Living (CACL) estimates that more than 60% of children in care have some form of disability”, but specialized supports for these children are severely lacking (CACL, 2003 in Farris-Manning & Zandstra, 2003, p. 9), particularly in rural communities where children often have to be sent to other provinces or the United States to receive appropriate care (Bernard, 2008).

There are no definite numbers on the length of time children spend in care and under what kinds of child welfare service contracts (i.e.: temporary care or permanent wardship) or the type of residence where they are placed. Perhaps this is due to the fact that time in

care is dependent on: the needs of each child, the circumstances of their family of origin, differences in availability of adoption resources, and so on. Time in care is a variable which thus far has not been well documented in the literature. Overall, about one third of all children in care are permanent wards of the Crown (Farris-Manning & Zandstra, 2003, p.4). The use of various types of residences for children in care and the length of stay in each province are not well recorded and the methods of reporting these statistics vary depending on the province (Farris-Manning & Zandstra, 2003, p.2; Serge, et al, 2002). There are some studies indicating that the use of institutional placements has increased and the numbers of youth in care have also increased dramatically from the late 1990s to 2002 (Farris-Manning & Zandstra, 2003, p.2). Studies of homeless youth who were in child welfare show that many had multiple unstable and institutional placements (Serge, Eberle, Goldberg, Sullivan & Dudding, 2002, p.5). Other studies indicate (with the exclusion of Quebec) that only 13 percent of child welfare investigations in a year lead to placement in informal or formal kinship care, foster care, group homes, or institutional/secure settings (Trocme, et. al, 2002, p. 59).

Recorded outcomes for youth leaving care, regardless of their type of placement order (voluntary or permanent care) and length of time in care, in the research thus far indicate the likelihood of more dismal outcomes for the future than their peers. “Youth who have left care are less likely to finish high school or high school equivalency, and more likely to: self-harm, consider suicide, experience depression, parent at a younger age, receive social assistance, experience homelessness, be gang-involved, experience sexual exploitation, have mental health problems, struggle with substance abuse, experience

unemployment or underemployment, and be incarcerated or have some involvement with the criminal justice system” (Finlay, Greco, Kerr, Erbland & Cooke, 2007, p. 4).

2. Lowering poverty, incarceration and homelessness for children in care

a. Decreasing the numbers of children in care who are living in poverty

The links between children’s rights to financial assistance and safety are very strong. Although poverty is not an absolute indicator that a child will become involved in the child welfare system, once in the system lack of funding may be a predictor of poor outcomes for the child. Low income families often do not have the means to hire appropriate child care and hence, neglect is a more common form of abuse in these families (Blackstock & Trocme, 2004; First Nations Child and Family Caring Society of Canada, 2004-5). There are three main links between poverty and poorer children being taken into care. The first is greater exposure to family violence and neglect, because of greater care giver stress. The second is poor behavioural and scholastic outcomes due to lack of nutrition, stimulation and lack of parental support for the child’s academic progress. Third, the lack of adequate housing and multiple moves or periods of homelessness prevent poorer children and families from obtaining stable social supports for their family and stable school placements for their child (Leischied, Chiodo, Whitehead, Huley, 2003, p.5-6). Poorer families, particularly from reserves and smaller communities, have less access to specialized services for children with disabilities or mental health issues, and lack of transport. They tend to move more often and this can disrupt services and education for the child (Assembly of First Nations, 2006). Amounts given to foster parents, kinship care givers, group homes, institutions and directly to the youth in care who are living independently (i.e.: rooming houses, semi or unsupervised

apartments) are variable, though can generally be described as inadequate (Finlay, et al, 2007, p. 6). Lack of safe and stable housing is a major reason why children, particularly on reserve, enter into the child welfare system (Blackstock & Trocme, 2004, p.17).

Housing problems account for nearly 20% of admissions to child welfare in Ontario (Chau, Fitzpatrick, Hulchanski, Leslie, and Schatia, 2001, p.3). The precariousness of poverty can lead many youth in care to homelessness, before or after they age out, and to poorer outcomes for their future (Reid & Dudding, 2006; Tweddle, 2005). Increased poverty increases pressure on the child welfare systems to stretch already meagre funds towards prevention and intervention strategies. It is unclear if the focus then becomes on funding those clients with the most difficult and complicated problems clients, or on simply trying to maintain subsistence levels for everyone in the child welfare system.

Currently in Canada, approximately one quarter of a million children live in poverty, or nearly one in every nine children, under age 18 (Campaign 2000, 2008 p. 1). This is an increase from one in six children in 2002 (Campaign 2000, 2004, p. 1). Of these children about 20% will become poor adults without early intervention and supports, particularly in the area of education (Laurie, 2008, p.15). Currently, the highest percentage of children who are poor, live in British Columbia, at 20% (BC Child and Youth Advocacy Coalition, 2008, p.2). Most low –income families in British Columbia are working low wage jobs and are approximately \$10,000 below the poverty line for every child they have (BC Child and Youth Advocacy Coalition, 2008, p.15). Surprisingly, Ontario has nearly half of all the Canadian children living in poverty (Campaign 2000, 2008 p. 1). Overall, in Canada, low income families with two parents and children were earning \$9000 below the poverty rate and the numbers of children

counted at food banks was over 300,000 per year (Campaign 2000, 2004 p. 1). In March of 2003, half a million Canadian children were living in homes that were surviving on welfare (Campaign 2000, 2004 p. 6). In total, nearly one third of single parents are living below the poverty line (Campaign 2000, 2008 p. 2). The poverty rates for First Nations and minority children are double that of their Caucasian counterparts, and account for nearly 30% of children with disabilities (Campaign 2000, 2008 p. 1; Duchcarne, Muskego, Muswagon, Paupanekis, Muswagon, Spence, Ramdatt, 2005, p. 3). A main reason First Nations youth are referred to child welfare agencies is because of lack of supervision. Recent research indicates that lack of supervision is directly tied to insufficient funds to hire child care while parents work low income jobs (First Nations Family and Caring Society, 2004-5, p.6). The authors of the Campaign 2000 (2008) report observe, "In 2006, 40.2% of low income children lived in families where at least one income earner worked a full-year, full-time job. Almost two out of three (63.5%) low income children live in families in which parents are forced to piece together various work arrangements including part-time and/or seasonal work in order to get full-time hours" (Campaign 2000, 2008 p. 2).

The current funding regimes for children in child welfare seem to encourage institutional placement, rather than funds for prevention, or family and community based services (Farris-Manning & Zandstra, 2003, p.7). For example, foster parents are taxed on their income as support providers (Farris-Manning & Zandstra, 2003, p.7). Although many youth in care may come from impoverished homes, data from a Montreal study shows that family poverty is only moderately associated with youth homelessness (Serge, et. al, 2002, p. 9). The latter indicates that fundamental flaws within the child welfare

systems and legislation are also contributing to the causes of youth in care being at greater risk for homelessness and exploitation. Regardless, it is clear that certain groups of children require more supports from the child welfare system, particularly in the areas of prevention and financial and emotional aid to families. Although involvement in the child welfare system is not entirely class-bound, children from the lower economic classes seem to have fewer opportunities once in care. A recent Ontario study indicated that two of the ways to reduce the societal and monetary costs of poverty are through the provision of early intervention strategies for at-risk youth and children and appropriate and inexpensive child care for low income families (Laurie, 2008, p.5).

b. Lowering the numbers of children in secure custody, including locked facilities, for legal or placement reasons

“Children and young people with mental health/behavioural needs; intellectual/physical challenges or psychiatric conditions find their way into mandated services such as youth justice and child welfare; the residential care system; or even the streets because they are disconnected from community resources at the time when they are seeking assistance” (Finlay, 2006, p.28).

The link between youth in closed custody, whether charged with crimes or due to lack of appropriate placements, and the child’s right to liberty and due process is multi-faceted in terms of: specific age appropriate services for these youth, psychological and educational outcomes, mobility within the community, homelessness, and lack of the right to due process. “Youth who are in less restrictive placements such as foster homes fare best academically, while those in more restrictive placements such as group homes are less likely to succeed” (NYICN, 2001, p.3). Similarly Serge observes, “One study found that less than 3 percent of those who were homeless had been in foster care, versus 40 percent of homeless youth who had been in residential care. This is an interesting statistic

given the fact that a much larger number of youth in care are accommodated through foster care” (Serge, et. al, 2002, p.12), and not residential care (e.g.: group homes and detention). In some less populous communities, so few services exist for psychiatric care that children are assessed and admitted to adult psychiatric facilities and even prisons for treatment and security reasons (Richard, 2008, p. 54). Some are sent out of province for treatment while others are even sent out of the country for indefinite periods of time (Richard, 2008, p. 54). The Office of Child & Family Service Advocacy Ontario, conducted a recent study on “cross over youth”, who go from child protective custody to the criminal justice system. We must remember that in some provinces the children’s criminal justice residences are generally operated by the provincial child welfare system. There are some very disturbing trends amongst this cohort, at least in Ontario (Finlay, 2006, p.27):

- “Youth experience multiple, increasingly restrictive placements (up to 13 different placements by their 16<sup>th</sup> birthday)”.
- “Group homes were viewed by youth as gateways to custody as they often received their first charge while residing in a group home”.
- “Kids cross over from system to system because services to children are fragmented and not child centred”.

Interestingly, very few cases are sent to child welfare court (7% per year) or for mediation (4% per year) (Trocme, et. al. 2002, p.61). This brings into question the process by which placements are made in various provinces and the rights to legal support and recourse available to children in care.

“Despite the best intentions of child welfare, by the time kids’ mental health issues are identified, many have already turned to drugs or become tangled up in the criminal justice system” (Ian Manion-Ontario Child Welfare Advocate, in Mendleson, 2009, p.

23). Statistics on children in custody for violent offenses indicate a much higher level of: family dysfunction and violence, school difficulties, substance abuse, homelessness, sexual exploitation and child welfare involvement. What is alarming is the lack of psychological and substance abuse treatment children receive while in closed custody or being followed closely by the justice system (Corrado & Cohen, 2002). A 2002 Vancouver study of First Nations children, who had committed serious offenses, indicated that they were incarcerated for longer periods of time than their non- First Nations counterparts. Only 50% of males and 60% of females in closed custody for these crimes had been "...sent for mental health assessment while in custody" (Corrado & Cohen, 2002, p.4). This study indicated a serious lack of intervention with this captive audience for: FAS disorders, conduct disorders, mental health issues, family violence, the effects of sexual and physical abuse, and transition planning into the community (Corrado & Cohen, 2002, p. 4).

In all provinces the youth justice systems of secure custody, residences for protective custody, and treatment facilities for children's mental health are governed by the same ministries. In some provinces, Nova Scotia (S.N.S.1990, C.5, s.1.3 (1) (h) & 16(1) (b& c), Quebec (R.S.Q. 1977 c. P-34.1.s.10 & s. 57.1), Ontario (R.S.O., 1990, C.11.s. 34.6 & s, 93), and British Columbia (R.S.B.C.1996, Ch.46.s.70 & s. 93(1) - see chapter 4, Liberty and due process), all three types of facilities are clearly addressed and mandated under the provincial child welfare legislation. Richard argues that, "We clearly need more capacity in terms of residential options for youths with high-end needs, but by supporting communities and families, we can reduce the pressures for such residential options and the demands on hospital and correctional services currently being made in the

absence of such alternatives” (2008, p. 40). The cost of institutional care for child abuse cases alone is estimated at “\$616,685,247 per year and (sic: overall) costs the social services system \$1,178,062,222 per year” (Bowlus & McKenna, 2004, in Assembly of First Nations, 2006, p. 3). What is not noted in the literature is how much non-intuitional care and treatment for children, who are likely to become cross-over kids, would cost families and the child welfare system. Unfortunately, often parents “...have learned that in order to receive appropriate treatment and placement services, they have to turn over guardianship of their child to the Minister...and give up temporary or in some cases permanent custody of their child, terminating all parental rights; otherwise the placement is not possible” (Richard, 2008, p. 78).

The right to due process is limited by the conditions of these closed custody facilities. There have been many complaints concerning the treatment of children in closed facilities over the years. The “chemical management” of children is common in residential care. Medications to manage behavioural issues these children have are often given without the formal consent of the child, in an effort of staff to maintain order (Finlay, 2006, p. 29; Lambe, 2006, p.10; Richard, 2008, p. 58). “Masked by the use of medications, the life history of the maltreated, neglected or orphaned youth is ignored, denied or negated, leaving the young person in or from the system with a plethora of psychosocial and emotional needs that are untended to when they leave (voluntarily or involuntarily) or age out of the system” (Lambe, 2006, p. 10). A recent film “*Les Voleurs d’Enfance*” (Arcand, 2005) interviewed several youth who had been in the Quebec centre d’acceuil locked facilities. Youth in this film reported that isolation rooms are used regularly for extensive periods of time, sometimes weeks, for the purposes of

behavioural management. In some provinces there seems to be a lack of coordination concerning the regulations of handling youth in detention in regards to "... the shackling, handcuffing and strip searching children and youths with serious mental health conditions and the protocol requiring the video-taping of this process" (Richard, 2008, p. 58).

Although we know these unethical practices exist in adult jails, they are in direct contravention of the YCJA protocols (*Youth Criminal Justice Act*, 2002, c.1). In many cases, these youth are not 'criminals', but lack appropriate housing and supports. Once inside, they may be treated like criminals without the ability to exercise their right to due process.

c. Preventing homelessness and the sexual exploitation of youth

One window to begin to approach the importance of the UNCRC citizenship rights for youth in care is to look at recent research involving street youth (Tweddle, 2005). A conservative estimate of the numbers of youth who are street related in Canada is 45,000 per year (Williams, 2005, p. 51). For example, in a recent national study, from 1999-2003, 56% of street youth were between the ages of 15 and 19 (Public Health Agency of Canada, 2006, p.6) and between 65-70% of all homeless youth surveyed (from ages 15-24) had been in care (Public Health Agency of Canada, March, 2006, p.18). Over 42.2 % had been in foster care and over 46.7% had been in group homes. Alarming 61.9% had been in jail and/or youth detention centres. Although the majority of youth in care are identified as Caucasian, a disproportionate number, 36.3% of those interviewed, were identified as First Nations (Public Health Agency of Canada, 2006, p.6). In Toronto, street youth have very diverse ways of making money, which can put them at risk for exploitation and arrest. This study revealed that of the 360 Toronto area street youth

interviewed: 15% are legally employed, 15% receive welfare, 12% panhandle, 17% squeegee, 10 % are sex workers (equal male and female ratios), 18% steal or sell drugs, and 12% use other means, such as borrowing money (Keenan, Maldonado, O'Grady, 2006, p. 36). Serge et. al. is critical of the link between homelessness and coming into care. These authors note, "The most obvious explanation for the apparent connection between youth homelessness and previous out of home care is that the system fails to help children deal with the problems that were at the heart of their removal from their homes" (Serge, et. al, 2002, p. 3).

A large number of youth in the sex trade, in Canada, come from the very homes that should be investigated by child welfare authorities (Brannigan & Gibbs Van Brunschot, 2004, p. 139). Youth in the sex trade are at the most "risk of injury, exploitation and disease" (Brannigan & Gibbs Van Brunschot, 2004, p. 139). "A significant number of adolescent wards of child welfare agencies will 'run' and end up engaged in prostitution or living on the street" (Brannigan & Gibbs Van Brunschot, 2004, p. 146; Serge, et. al, 2002). We do not know how many youth in care end up in the sex trade, but we can make some inferences from statistics on homeless youth in the sex trade. Conservative estimates are that approximately 32,750 of the approximately 45,000 homeless youth, in Canada, every year have participated in the sex trade at least some of the time (Williams, 2005, p. 51). One of the problems is the age at which we define juvenile versus adult sex worker. For example, the provincial laws set out different maximum ages at which a child may be taken into care and this tends to be used as the standard by which the province determines if the child is able to live independently and one can infer perhaps be more likely to be criminally responsible for sex work, versus seen as being sexually

exploited. In some provinces youth, defined as aged 16 or older, may be able to refuse care or to opt out of care at an even younger age (Brannigan & Gibbs Van Brunschot, 2004, p. 142), and this leaves them more susceptible to sexual exploitation without protective child welfare intervention. Research on the sexual exploitation of youth is lacking in part because there is no clear definition of a sexual act and crime statistics do not address whether or not runaway youth are engaging in trading sexual acts for survival reasons (Brannigan & Gibbs Van Brunschot, 2004, p. 142). Due to cultural and social discrimination, many GBLTTQ youth, may participate in the sex trade to be able to “come out” or because they have been rejected by their families (Serge, et. al, 2002).

Unfortunately, most provinces have tended to divert sexually exploited youth to the youth criminal justice system, except Quebec where they are automatically diverted to social services (Brannigan & Gibbs Van Brunschot, 2004, p. 143). *The Youth Criminal Justice Act* (YCJA) holds youth over 12 accountable for their actions. This means that children can be charged if found working in the sex trade and if they are above the age of 14, the YCJA states that children can consent to sexual acts as long as it is with someone under aged 18. However, youth under 18 can and do sexually exploit other youth. Sexually exploited youth in Canada tend to end up on one or the other side of the “victim- offender” legal dichotomy. This positioning is contradictory to the UNCRC’s view of children in the sex trade as “sexually exploited” (Brannigan & Gibbs Van Brunschot, 2004, p. 143).

Currently, only Alberta, Saskatchewan, British Columbia, Ontario and Nova Scotia have legislation (known as *The Protection of Children Involved in Prostitution Act*) to protect sexually exploited youth. The Act allows for the diversion of these youth to safe

houses rather than to detention (Brannigan & Gibbs Van Brunschot, 2004, p. 147). There are serious problems with the arbitrary detention of sexually exploited youth for their “safety” in either detention centres or “safe houses”. Evidence from a Vancouver study on First Nations violent offenders indicated that these youth are detained arbitrarily and for longer periods of time allegedly for their “safety.” These children spend triple the amount of time in closed custody and double the amount of time in open custody compared to their non- First Nations counter parts (Corrado & Cohen, 2002, p. 3). Further, these acts tend to be used alongside other protectionist acts for the apprehension of youth because they are thought to be abusing substances (McKay-Panos, 2009).

The provision of safe houses only addresses one of the five major steps, outlined by sexually exploited youth themselves. An organization called Sexually Exploited Youth Speak Out (SEYSO), in British Columbia, in 1998, used participatory action research (PAR), to consult with other sexually exploited youth aged 14-25, from Canada and around the world. The other four steps sexually exploited youth have named that would give them access to their UNCRC rights to safety, liberty and access to appropriate child welfare resources include: peer mentoring and harm reduction assistance; “life skills, educational and vocational training”; 24 hour crisis lines to help sexually exploited youth with the aid of “outreach teams”; the provision of counselling; and the commitment of government funding and advocacy to address the needs of sexually exploited children and the causes that lead them into these situations (Save the Children Canada, 1998, 21).

Youth in care need exemplary transition planning, life skills and finances to help them learn to live on their own (Finlay, et. al, 2007; Reid & Dudding, 2006; Rutman,

Hubberstey, Feduniw & Brown, 2005) and, as it is for some Crown wards in Ontario, an extension of benefits up until the age of 24 (Farris-Manning & Zandstra, 2003, p.9; Serge, et. al, 2002). We need to be looking at youth holistically and offering individual and group treatment as well as treatment of the whole family system, while being cognizant of the barriers preventing access to services (Chamberlain & Dufour, 2003; Serge, et. al, 2002). “Youth are identified as being among the most excluded due to a lack of suitable employment and adequate wages, exclusion from government benefits, a lack of political voice (for those under the age of majority), and in some cases, lack of control over a family life that has become “reconstituted” through divorce or remarriage” (Serge et. al, 2002, p. 8). Children in care are far more likely to end up homeless and/or sexually exploited (Sullivan & Dudding, December 2002). One inference that can be drawn is that the lack of access to financial help, appropriate placements and family access is in part creating this homeless class of youth. Youth in care and aging out of care are highly likely to end up in poverty because many become parents very young and/or they experience high school dropout rates five times higher than other Canadian children (Whittred & Kendall, 2007, p. 64). This leads to fewer employment skills and opportunities, low wages, and up to 40% entering directly into adult welfare systems, (Tweddle, 2005, p. 9)

### 3. Preserving culture and access to family

“...The system is not designed to keep children safe from the social and structural problems which pose a profoundly more universal risk to their health, well-being and, indeed, survival than that posed by those parents who are truly unable to safely parent their children. Yet, child welfare continues to intervene as experts only after there has been a perceived parental failure” (The Child Welfare Anti-Oppression Roundtable 2009, p.9).

It would appear that the access of children in care to the six rights of citizenship set out by the UNCRC is colour and culture bound. ‘Minority’ children’, particularly First

Nations, represent the majority of children in care, and yet they seem to have fewer opportunities than their white and urban peers. Our child welfare practices and policies are Western and Northern and may not reflect collectivist cultural needs, the importance of family, nor tribal and religious leaders' traditional involvement in family crisis and decision making. The placement of children into foster care or institutional care may not reflect the values of the child or the family. The family's cultural and religious values may be at odds with those of the child, but it is unclear which of these perspectives is valued more in child welfare legislation. Many collectivist cultures may prefer to use extended kin and friends as supports, or may prefer to seek help outside of their community to avoid feelings of shame (Maiter, Trocme, George, 2004, p. 6). Two groups in particular are cited in the literature as being particularly vulnerable and having less opportunity to access the six rights of citizenship: First Nations and immigrant or refugee children (Blackstock & Trocme, 2004; CRC, 2009). Which children in care are the most vulnerable may differ in different parts of the country, depending on the cultural and racial minorities present. For example, "in an urban centre of Ontario, where the Black population totals 8%, Black youth represent 65% of the youth in group care" (The Child Welfare Anti-Oppression Roundtable, 2008, p.8). Child welfare placement policy seems to fluctuate between being ahistorical and essentialist. The ahistorical western/Eurocentric view of children's culture results in the placement of children in families that do not match the child's culture, gender, religion, race, sexual orientation. On the other hand, the essentialist view of children's cultural identity, accepts the child's biological identity as the most important factor for placement. This view results in the placement of

children with their own “race”, for example placing black children with black families which in no other way represent that child’s multiple identities (Bunting, 2004, p. 142).

The need to address First Nations children and families is particularly acute in Canada. Finlay notes, “Aboriginal children and youth growing up in poverty are more likely to come to the attention of child welfare authorities than their non-aboriginal peers” (2006, p. 13). Approximately 46 percent of Canadian children, who were wards of the Crown in 2000, were First Nations, but this percentage reaches almost 80% in the western provinces and territories (CCPCYA, 2000 in Finlay, 2006). “Child in care data from British Columbia, indicat(es) that 87% of the Aboriginal children in care are First Nations (status and non status) with Métis and Inuit children representing 12% and 1% respectively” (Ministry for Child and Family Development, 2002). Similar figures are reported in Manitoba (Blackstock & Trocme, 2004, p. 10). Between 1995 and 2001, there was a 71.5 percent increase in the number of children living on reserve who came into contact with child welfare system (Trocme, Knoke, Blackstock, 2004, in Finlay, 2006, p.13). “In three sample provinces, one in ten Status Indian children were in care as of May 2005 as compared to just under one in 200 for other children” (First Nations Family and Caring Society, 2004-5, p.5).

There is some evidence that First Nations self government, including control over child welfare and community support services, as well as higher rates of parental employment, coincide with lower rates of suicide (Blackstock & Trocme, 2004, p.24). “First Nation’s female youth are 8 times more likely to commit suicide and males, 5 times more likely than their non-aboriginal peers” (Blackstock Trocmé, & Bennett (2004) in Finlay, 2006, p. 12). “ A recent CBC interview with a chief from two Innu Communities

in Labrador indicated that “nearly one quarter or more of the 800 children in these communities were in foster care and 27 of them had to be placed in therapeutic care in Ontario due to lack of resources at home” (CBC, February 14, 2008). “The failure of the provincial/territorial child welfare statutes to make a meaningful difference in the safety and well being of Aboriginal children supports the need to explore and support culturally based jurisdictional models” (Bennett, 2003, p.5).

The vulnerability of new Canadian children in care is just beginning to be researched. Canada lacks a standardized policy concerning immigrant children and unaccompanied minors. Studies of South Asian families, who are new to Canada, and involved in child welfare, indicated it was essential to the family that the child maintain cultural, linguistic and religious ties and be taught the moral values of those cultures (Maiter, et.al, 2004, p.5). Our current policies and procedures are inconsistent for placement, temporary guardianship, and timely and efficient reunification with family. Child welfare and immigration agencies frequently resort to allowing these children to remain in detention with or without family, sometimes in isolation, for extended periods of time. For example, in the month of “...December 2008, 61 children were detained and 10 were unaccompanied...” (Canadian Counsel for Refugees, 2009, p.3). What kind of access, if any, do these children have to their families? What rights do these children have once they are in Canada? What kinds of care can they, or will they receive, and what are the stipulations to receiving care (i.e. immigration status, time in Canada, etc.)?

#### 4. Children in care as participants in their own care

There is a link between negative outcomes for children in care and the inability to exercise their right to participate in their own care and to access legal recourse. In a

review of positive outcome studies for homeless youth, several commonalities were found. These include: positive and stable placement experiences while in care; the presence of mentors; maintenance of family contact; transition planning; extended “after care” into young adulthood; flexible care plans that youth had some control over, positive extracurricular opportunities, and that resilience is built through ensuring that children are participants in their own care (Serge, et. al, 2002, p. 14). In sum, this review of studies indicates these youth spent less time homeless after leaving care, if some of the provisions above existed while in care. If youth have to stay in care it is logical that keeping them from contact with the street is ideal for obvious safety reasons. Preventative methods for keeping youth from running away from care include: engaging youth in all aspects of their own care, providing meaningful incentives, developing therapeutic relationships and social skills, and limiting the intrusiveness of crisis intervention methods (Finlay and Kerr, 2006, p. 15-16; Finlay, 2007, p.8; Mitchell, 2005, National Youth In Care Network (NYINCN), 2005; Reid & Dudding, 2006; SEYSO, 1998; Save the Children Canada, 1998; Snow& Finlay, 1998). The common essential theme in all of the research regarding children in care is that their outcomes are better in part because the youth can participate in their own care plan.

5. Difficulties in implementing the UNCRC in Canadian child welfare systems

The International Save the Children Alliance has identified at least three major recommendations to the barriers which prevent implementing the UNCRC in Canada (2000, p. 103):

- “The coordination and dissemination of information and programs protecting children’s rights across provincial, regional and local jurisdictions.”

- “Building resources to give rights” , such as “eliminating poverty, racism and sexism”
- “Creating legislation and programs that inject children’s and young people’s voices and participation into the systems of justice, policy making and family and community life.”

The UNCRC is an international law, ratified by the federal government of Canada, but it is the provinces, which govern child welfare agencies. Provincial parliaments play no role in the ratification, of international human rights treaties. This means that treaties like the UNCRC “...are not directly incorporated into domestic legislation, (thereby) bypassing the parliamentary process” (Final Report of the Standing Senate Committee on human Rights, 2007, p. 22). Apparently in order to bypass this error in democracy, “the federal government has adopted a policy of consulting with provinces and territories before signing and ratifying treaties on matters within their jurisdiction” (Final Report of the Standing Senate Committee on human Rights, 2007, p. 22). This begs the question if “consultation” is equivalent to implementation of the UNCRC, or simply suggesting a move towards advocating for the rights of children. Secondly it appears that the federal government cannot enforce the UNCRC’s implementation at the provincial level.

The rights laid out in the UNCRC do not necessarily have “a corresponding remedy” (International Institute for Children’s Rights and Development, 2005, p. 5) in actual practice. Broad based human rights laws tend to be culture and context blind (International Institute for Children’s Rights and Development, 2005, p. 6). Other major issues affecting implementation of the UNCRC are: the lack of: coordination between federal and provincial child welfare agencies, evaluation and monitoring its

implementation, and public and political knowledge of the UNCRC and lack of political will to promote and integrate it (Final Report of the Standing Senate Committee on Human Rights, 2007, p.8; International Institute for Children's Rights and Development, 2005, p. 6-7). Unfortunately, in Canada, the use of the UNCRC seems to be limited to children's rights to health care, education and safe work places. What is overlooked is its application to child welfare (International Institute for Children's Rights and Development, 2005, p. 7). Finally, Canada does not use feedback from child welfare recipients (present and former) to influence child welfare in a systemic way, which is a major part of the UNCRC's purpose: the inclusion of children in their own rights.

The first difficulty in implementing the UNCRC is the lack of federal control, standardization of practices and redistribution of wealth that could encourage the inclusion of children's rights in provincial child welfare. The Canada Assistance Plan (CAP), instituted in 1966, gave Canadians a guaranteed income and redistributed federal welfare to provinces who had agreed to federally standardized social welfare programming. This programming included the principles of minimum wages, unemployment insurance, pensions for the elderly, monies for poor families and women on maternity leave. Quebec opted out of this plan in the 1960s (Finkel, 2007, p. 260). CAP was replaced by the Canada Health and Social Transfer (CHST), in 1996 (Finkel, 2007, p, 292), and with its elimination came the loss of any hope for federal control and enforcement of standards over adult and child welfare. As a result, federal power over social services spending was de-regulated and is now solely the responsibility of the provincial and territorial governments.

In 1989, Prime Minister Mulroney signed the UNCRC, with a promise to improve children's services in protection, advocacy and the accessibility and visibility of their rights to self determination (CCRC, 2005). However, at the same time this government used restrictive fiscal policies to cut health and welfare spending. Canada has yet to entrench the UNCRC into a national human rights policy for children, even if some provinces and territories have ratified it, certain legal responsibilities still rest in federal control (CCRC, 2005, p.3). Provinces and territories are not pushed to fulfill their responsibility to integrate the UNCRC into their child welfare practices due to the lack of federal monitoring, fiscal and legal provisions and the regulation of child welfare services. The only federal support and coordination for children's rights rest in the hands of Health Canada (CRC, 2005, p. 7). "The Convention has no formal complaint mechanism and no effective sanctions it can impose on underperforming governments" (International Save the Children Alliance, 2000, p. 18). Some complaint mechanisms are beginning to appear in certain provinces and territories through the use of ombudspersons and child advocates, either appointed or elected at the provincial level. However, "while some provincial/territorial jurisdictions have officers or ombudspersons dedicated to children, their mandates vary" (CRC, 2005, p. 7). Therefore this international social policy is not enforceable under international or Canadian law. Current Canadian child welfare policies are the only policies to specifically designate and advocate for children's human rights, several of which are vague and at worst, violate certain components of this landmark international human rights legislation.

The UNCRC calls for coordinated legislation, accountability and participation practices. Compliance and the evaluation of compliance with the UNCRC are difficult to

achieve, given that: “currently, Canada has no national statistics on the number of children who are reported to child protection because provincial and territorial child welfare systems collect and report data in different ways” (Canadian Coalition for the Rights of the Child, 1999, no page no.). The UNCRC misses the child’s surroundings and context (i.e., rural/ urban), social and cultural position in society, their ecological position and framework within their family, community and stage of development and assumes there will be means to create programs to address these (CRC, 2005, p. 6-7). Hence, there is a need for federal and provincial participation to develop systematic research to uncover these aspects of a child’s life and situate appropriate programs within the provinces and territories. The UNCRC has been called “culturally blind”, particularly in (CRC, 2005, p. 5) progress on First Nations children’s rights, as a disproportionate number are still in care (Canadian Coalition for the Rights of the Child, 1999). Neglect and poverty are the two key elements in abuse research, but child poverty is not declining and child welfare services have fewer resources to deal with this phenomenon (Canadian Coalition for the Rights of the Child, 1999, no page). “There is insufficient information about how to prevent and treat child abuse and neglect.” Very little research exists that examines the depths of gender, disability and cultures of youth in care, and how these issues may affect how children exercise their rights. “There is little information about the outcomes of existing services. Child welfare systems need better integration of mental health, education, justice and other community service” (Canadian Coalition for the Rights of the Child, 1999, no page no.).

Chapter 3

Method: Comparison of the provincial child welfare acts using six themes of citizenship rights implied in the UNCRC

This chapter compares differences in child welfare legislation regarding six themes of citizenship rights set out in the UNCRC. These are equal access to care and treatment in care regardless of age; identity, family and cultural access; mobility; liberty and due process; financial support, and the right to legal recourse. Each of the themes and corresponding articles of the UNCRC are examined in brief below. The child welfare legislation of each province and territory will be examined, to look for evidence as to how and to what degree these themes are supported in provincial child welfare law.

Each provincial child welfare act is examined through the process of content analysis (Krippendorf, 2004; Weber, 1990) to identify pieces of the legislation which pertain to each theme of the rights of children in care. “Content analysis is a research method that uses a set of procedures to make valid inference from text. These inferences are about the sender(s) of the message, the message itself, or the audience of the message” (Weber, 1990, p. 9). I examined each of the six themes, and their subthemes, to develop an analysis of provincial legislation and to identify its orientation on the protectionism-liberationist spectrum of children’s rights. Through a content analysis, I looked for incongruence and congruence for each of the six themes between provincial child welfare legislation and other legislation (i.e. the *Youth Criminal Justice Act*). I also noted information that is absent and ambiguous when comparing these different pieces of legislation, which may affect their interpretation. Each theme of children’s rights is sub-

divided into subcategories in order to define and explain the main theme. I anticipated that some subcategories, which I have identified as pertaining to a main theme of rights, may be silent in the legislation. Some evidence of movement towards supporting these themes of citizenship is mentioned, from previous legal research (Bala, 2004; Brannigan & Gibbs Van Brunschot, 2004; Goldberg, 2004; MacLaurin & Bala, 2004; Sinclair, Bala, Lilles & Blackstock, 2004). I examined current statistical evidence concerning underlying issues for outcomes of youth in care or who have aged out of care. I used published anecdotes in the literature from former youth in care and family members to give some idea of the how they have “received the message” about their rights.

\_\_\_\_\_ The body of this thesis only includes the original dates of the acts (as cited on CAN Learn II), however, in the first column of every research chart, I have noted the dates when the acts were last amended and in force. The oldest cited version of the child welfare acts is Quebec’s, which was written in 1977 and updated in 2009 (*Youth Protection Act*, 1977 R.S.Q. c. P-34.1 (last amended November, 2009) current version in force since November 19<sup>th</sup>, 2009). The second oldest is New Brunswick, which is recorded as dating back to 1980 and amended in 2008 (*Family Services Act*, S.N.B. 1980, c. F-2.2 (Last amended 2008), current version in force since Jan 5, 2009). Manitoba’s act is cited as being formed in 1985 and the latest amendments in 2007 (*Child and Family Services Act*, 1985 C.C.S.M. c. C80 (amended 2007), current version in force since Apr. 15, 2009). PEI and Saskatchewan’s acts are both dated as of 1988 and 1989 respectively, and the latest amendments are from 2008 (*Child Protection Act*, R.S.P.E.I. 1988, c. C-5.1 (amended 2008), current version in force since Jan. 1, 2009) and 2006 (*Child and Family Services Act*, S.S. 1989-90, c. C-7.2 (amended 2006), current version in force since Sep. 1,

2006) respectively. The Nova Scotia and Ontario child welfare acts are cited as dating back to 1990 and the latest amendment listed as 2008 (*Children and Family Services Act*, S.N.S 1990 c.5 (last amended 2008), current version in force since June 10, 2008) and 2009 (*Child and Family Services Act*, R.S.O. 1990, c. C.11 (amended 2009), current version in force since Dec. 15, 2009) respectively. British Columbia's act is dated from 1996 and there is no later amended version listed (*Child, Family and Community Services Act*, R.S.B.C. 1996 c.46). Newfoundland/ Labrador act is dated from 1998 and amended in 2008 (*Child Youth and Family Services Act*, S.N.L 1998). Alberta's act is cited as dating back to 2000 with the latest amendment in 2009 (*Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12 (last amended 2009), current version in force since Nov 26, 2009). The Yukon's act is dated as of 2008 with no amended versions cited (*Child and Family Services Act*, R.S.Y. 2008, C-22). The North West Territories and Nunavut have the same act and it is cited as dating from 1997 and the latest amendment in (*Child and Family Services Act*, S.N.W.T 1997 (last amended 2004) c. 13). It would appear that most provinces have tried to revise their child welfare statues recently, but it is not clear if there are similar reasons for doing so.

The process I used to analyze the content of each provincial child welfare legislation is composed of eight steps.

1. The first step was a large literature review, much of which is mentioned in chapters one and two of this thesis and weaved throughout this document. From the literature review these six themes of rights for children in care emerged.

2. The second step involved extracting the articles of the UNCRC which are related to each theme.
3. The third step involved the development of grids to represent each of the six themes of the rights of children in care (see appendixes B). Each grid is used to separate information pertaining to each of the six themes into subcategories by province. As each theme is different, the subcategories which can help define them are also different. The subcategories are meant to establish and define the parameter of each theme and are major problems which have been mentioned in the literature I reviewed. These subcategories also include comparison to non- child welfare specific legislation, if appropriate.
4. The fourth step, involved examining each of the 12 provincial child welfare acts (Nunavut and the North West Territories are under the same Act) and other relevant legislation in order to identify articles contained within the laws which pertain to each theme and to record them in their respective grids. I attempted to include the dates the child welfare acts were originally written and when they were last amended to show progression or changes in the legislation.
5. The fifth step involved the review and inclusion of relevant published data and statistics in each of these grids, for example the numbers of youth currently in detention in each province in the Liberty and Due Process grid (see appendix.B.5).
6. The sixth step was the data analysis, where I attempted to assess how well each province and territory meets the UNCRC articles relevant to each theme.

7. The seventh step was the analysis of the aggregate data information to determine which provincial and territorial child welfare legislation best matches the theoretical points on the continuum of child's rights perspectives (protectionist, family preservationist, community preservationist or child liberationist), and defining further what each of these theoretical categories means (see chart 1. below). In this step I used questions to guide my reasoning of where the data falls on the continuum, although this could be debated and the data could fall in more than one category (see table 1., Child Rights Protectionist- Liberationist Theoretical Continuum, p.47). Essentially, I asked the following questions about the data:
  - a. Does the state, the family, the community or the child have a voice in this particular aspect of their care plan?
  - b. If so, which party(ies) have a voice in the care plan and decision making?
  - c. Of the parties who have a say- how many voices are there that can speak for the rights of the child?
8. In the eighth step was the final -analysis. I attempted to indicate which current provincial child welfare legislation best represent anti-oppressive or liberationist, community preservationist, family preservationist and protectionist positions, recognizing that most provincial legislation will contain elements which lie in more than one theoretical perspective above mentioned (see Table 1., Child Rights Protectionist- Liberationist Theoretical Continuum, p.50).

**Table 1: Child Rights Protectionist- Liberationist Theoretical Continuum**

Elements and questions to determine where to place the data on the continuum				
Definitions	Not enough information to determine	Conservative view	Somewhat liberal view	Most liberal view
<p><b>Protectionist/m</b> refers to the state determining what rights children have access to and mainly state determined interventions. Therefore protect the child before all other decisions.</p>	<p>Q.1. Are there any reference to this category or subcategory in the act?</p> <p>Q.2. Are there any references to any party: family, child, community or state having a say?</p> <p>- If not, it is too difficult to determine where the data falls.</p>	<p>Q.1. Are there only one or two references to this category?</p> <p>Q.2. Is the data general i.e. "the best interests of the child are..." determined by the state?</p> <p>Q.2. Does the data only refer to the powers of the state?</p>	<p>Q.1. Are there two or more clear references to this category?</p> <p>Q.2. Is the data specific in terms of what rights the state needs to protect for children in care?</p> <p>Q.3. Does this mention the possibility of consultation with other parties- i.e. other governments or government agencies?</p>	<p>Q.1. Are there clear detailed references to this category?</p> <p>Q.2. Is the data specific: i.e. the state can involve another party? -i.e. family community or child), but the state clearly has the final say? - i.e. states or provinces can work together to determine a care plan.</p>
<p><b>Family preservationist</b> refers to the state protecting and / or determining the rights of the family, rather than the child. This may also mean a. protecting the integrity of the family, even against the wishes of the child and that the family determines the rights the children have access to.</p>	<p>Q.1. Are there any references to this category or subcategory in the act?</p> <p>Q.2. Are there any references to any party: family, child, community or state having a say?</p> <p>-If not, it is too difficult to determine where the data falls.</p>	<p>Q.1. Are there only one or two references to this category?</p> <p>Q.2. Is the data general i.e. "the best interests of the child are..." determined in part by the family?</p> <p>Q.2. Does the data only refers to the powers of the immediate family (i.e. biological mother/ father/ grandparent)?</p>	<p>Q.1. Are there two or more clear references to this category?</p> <p>Q.2. Is the data specific in terms of what rights the family needs to protect for children in care?</p> <p>Q.3. Does this mention the possibility of consultation with other family members- i.e. biological or adoptive?</p>	<p>Q.1. Are there clear detailed references to this category?</p> <p>Q.2. Is the data specific: i.e. the state/family can involve another party?</p> <p>Q.3. Does this mention the possibility of consultation with other NON biological family members- i.e. foster parents, neighbours, or significant adults to the child in care?</p>
<p><b>Community preservationist</b> refers to the community involvement in intervention and determining the access the child</p>	<p>Q.1. Are there any reference to this category or subcategory in the act?</p> <p>Q.2. Are there any references to any</p>	<p>Q.1. Are there only one or two references to this category?</p> <p>Q.2. Is the data general i.e. "the best interests of</p>	<p>Q.1. Are there two or more clear references to this category?</p> <p>Q.2. Is the data specific in terms of what rights the</p>	<p>Q.1. Are there clear detailed references to this category?</p> <p>Q.2. Is the data specific: i.e. the state/family/community can involve another</p>

<p>and perhaps the family have to their rights. Therefore, the community determines what rights the child has access to, whether or not the wants to be a member of the community.</p>	<p>party: family, child, community or state having a say? -If not, it is too difficult to determine where the data falls.</p>	<p>the child are..." determined in part by the community?  Q.2. Does the data refer to involvement in the community? i.e. informing the community of a care plan, allowing the child to consider themselves part of the community?</p>	<p>community needs to protect for children in care?  Q.3. Does this mention the possibility of consultation with other community members?- i.e. counsels or partial specific agency involvement?  Q.4. Does the community have significant powers/ involvement in the care plan? i.e. representing the child in care planning?</p>	<p>party? i.e. mentions specific bands, agencies or treaties  Q.3. Does the data allow the family/child to refuse community intervention?  Q.4. Does the community have sole power over services for child welfare? i.e. First Nations run child welfare services</p>
<p><u>Child liberationist</u> refers to the child having the same access to their rights as an adult by virtue of being a citizen. Therefore the child is involved in decision making about their own case plan.</p>	<p>Q.1. Are there any references to this category or subcategory in the act? Q.2. Are there any references to any party: family, child, community or state having a say? - If not, it is too difficult to determine where the data falls.</p>	<p>Q.1. Are there only one or two references to this category?  Q.2. Is the data general i.e. "the best interests of the child are..." in part determined by the child?  Q.2. Does the data refer to only informing or consulting with the child, vague reference to a right to something (i.e. cultural identity) or a very limited age range to be informed of the care plan?</p>	<p>Q.1. Are there two or more clear references to this category?  Q.2. Is the data specific in terms of what rights the child has be involved in their care plan? i.e. very limited age range (i.e. involvement at 12 or 16 yrs or older)? Q.3. Does this mention the possibility of the child contesting their care plan? i.e. at a specific age</p>	<p>Q.1. Are there clear detailed references to this category?  Q.2. Is the data specific in terms of what rights the child have to be involved in their care plan? i.e. with no age range or below or at the age of 12?  Q.3. Can the child request their own representation?  Q.4. Can the child contest the care plan?- i.e. at any age or no age range specified</p>

The main themes of children's rights will be broken down as follows:

1. The theme of equal access to care and treatment in care regardless of age (see Appendix B. 1) will be divided into categories to identify the differences in the: provincial age of majority; maximum age to enter and opt out of wardship; maximum age to enter into voluntary care; provisions and age range for extended care; and age to legally become a tenant and age to access the adult welfare system. The goal is to examine the cogency of legislation in regard to age and rights to access and opt out of care and compare this to the UNCRC, which defines a child's right to care, as up to age 18. The related UNCRC article this theme is derived from is:

Article 19 (UNCRC, 1989) "... A child means every human being below the age of eighteen years."

2. The theme of identity, family and cultural access will be divided into three separate grids. This theme is the largest and contains a great deal of information which potentially affects child welfare practice and encompasses many UNCRC articles. These three grids will be discussed in a linear way beginning with identity, then family and then cultural access because the UNCRC lays them out in the same linear fashion. These categories and subcategories of rights build upon each other and do not appear to be mutually exclusive. For example, it may be difficult to have access to family or culture if one is not sure of one's identity and does not have access to that information because of a closed adoption. The goal is to examine how simple or complex it is for children, whether adopted or not, to

access their UNCRC rights to identity, family and culture, and to have a choice in their cultural or religious care.

- a. The subcategory of identity (see Appendix B.2.a) is divided into sub categories to identify differences in the provincial legislation concerning rights to: change a child's name; open adoption; closed adoption; the adopted child's access to their adoption record; preserving identity in inter-country adoption; and preserving identity in the case of First Nation adoptees living in non- First Nation families. There are several articles from the UNCRC which encompass this subcategory.

Article 7 (UN 1989) "The child shall be registered immediately after birth and shall have the right... to acquire a nationality and, as far as possible, the right to know... his or her parents."

Article 8.1 "States parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."

Article 16.1 (UNCRC, 1989) " No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation."

Article 16.2 (UNCRC, 1989) "The child has the right to the protection of the law against such interference or attacks."

- b. The subcategory of family access (see Appendix B.2.b) is divided into subcategories, to consider: open adoptions; kinship agreements; access to parents once adoption procedures have begun; family access for inter-country adoptees or new immigrants in care; and First Nations children retaining contact with their bands. The related UNCRC article is:

Articles 9.3(UN 1989) "States parties shall respect the right of the child

who is separated from one or both parents to maintain personal relations and direct contact with both parents...except if it is contrary to the child's best interests.

- c. The subcategory of cultural access (see Appendix B.2.c) is divided into subcategories to consider access children have to First Nations culture, to religious groups, and/or their right to opt out of religious or culturally specific care. In addition, I used statistics and published policy information by province and territory that might indicate the numbers of agencies which offer specific religiously oriented care (i.e. Toronto Catholic Children's Aid Society, etc.), and First Nations culturally specific care. The related UNCRC articles are as follows:

Article 20.3 (UN 1989)"...due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

Article 22 (UN 1989) refers to refugee children who are supposed to "receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments..."

Article 30 (UN, 1989) "In those states in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

3. The subcategory of mobility (see Appendix B.3) is divided into subcategories to examine the limits on amount of time children can spend in foster care settings without being removed, institutional care, and detention centres. A fourth category is the length of placement and mobility of unaccompanied minors. The

fifth pertains to provisions in legislation for decision making concerning the mobility and placement of interprovincial children, such as those with family in more than once province, dual citizens and First Nations bands that cross regional boundaries. The sixth category examines provisions in legislation to find out if runaway and homeless youth can access care outside of their province of origin, and therefore determine which province they would like to live in. The analysis of mobility examines whether or not provincial child welfare policy complies with the UNCRC, especially the demands for: consistency in care, limits on incarceration, and children's right to mobility (or to live anywhere within their country of origin). The relevant UNCRC articles are as follows:

Article 10.1. (UN, 1989) "Applications by a child or his or her parents to enter or leave a State Party for the purposes of family reunification shall be dealt with...in (an) expeditious manner."

Article 10.2 (UN, 1989) "A Child whose parents reside in different States shall have the right to maintain...direct contacts with both parents. "...States parties shall respect the right of the child and his or her parents to leave any country, including their own and to enter their own country..."

Article 15.1(UN, 1989 "States parties recognize the rights of the child to freedom of association..."

4. The theme of liberty and due process (See appendix B.4) is delineated into subcategories to examine the mixing of youth in care and youth who have had contact with the law in the same detention centres; separating youth in contact with the law; the maximum length of time to be in detention, without a legal charge; access to lawyers, and cultural provisions in detention centres. I attempted to find published statistics of the numbers of youth in care in detention centres and differences in gender, to get a better understanding of the current incarceration

rates and differences in gender, but was unsuccessful. Finally the eighth category includes other laws that may conflict with liberty and due process. I tried to note whether these laws are mentioned in the provincial and territorial child welfare acts, such as the *Youth Criminal Justice Act* and the *Safe Streets Acts* of Ontario and British Columbia. This section examines how well the provincial and territorial acts meet the UNCRC articles pertaining to detention of children and access to due process, such as:

Article 27.1. (UN 1989) “The right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”

Article 3 (UN 1989): “States parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health...suitability of staff, as well as competent supervision.”

Article 37.b “...The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

Articles 25 (UN 1989) “The right of the child who has been placed...for the purposes of care, protection or treatment...to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement...”

Article 30 (UN 1989): “...the right of the child to rest and leisure and to engage in play and recreational activities...and to participate freely in cultural life and the arts.”

5. The theme of the right to legal recourse (see Appendix B.5) is separated into subcategories to examine whether there are provisions for a child advocate; Children’s Human Rights Commission, unified family or community counsel courts; and a children’s ombudsman and , if these are named in the legislation,. The fourth sub- category is meant to be an indication of any other recourse

established in the provincial/territorial child welfare laws for children in care such as: mandatory court reviews, mediation and alternative dispute mechanisms. The relevant UNCRC articles are:

Article 2.1. (OHCUN, 1989) “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 12.2 (OHCUN, 1989) “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.

Article 19. 1. (OHCUN, 1989) “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Article 19.2 (OHCUN, 1989) “Such protective measures should, as appropriate, include effective procedures for the establishment... investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

Article 25 (OHCUN, 1989) “States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.”

Article 37.d “(OHCUN, 1989) “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

6. The theme of financial support (see Appendix B.6) is divided into the following categories to examine provincial child welfare legislation for provisions pertaining to: basic amounts allotted for foster care, kinship and family care, institutional care, independent living allowances and the age at which this can be obtained, and extended support for youth in care who are past the age to receive services. I included a sixth category, from provincial adult welfare legislation in order to compare amounts allotted to adults versus those to children in the five categories mentioned above. This is an examination of the provincial legislation for differences in the rights of the child to access appropriate funds to be cared for by others or to appropriately care for themselves. The relevant UNCRC articles are:

Article 26.1 (UN, 1989): "...the right to benefit from social security and social insurance... in accordance with their national law."

Article 26.2 (UN, 1989): The benefits should...take into account the resources and the circumstance of the child and persons having responsibility for the maintenance of the child..."

Article 27.1. (UN, 1989) States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

Article 27.3 (UN, 1989) States Parties...shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing."

Individual agency practices that involve these 6 themes of citizenship are not examined. The goal of this thesis is to address the content of the current legislation and how this legislation spells out the rules for practice. There are individual Canadian child welfare agencies that are more progressive in trying to live up to these themes of

citizenship for their clients. Certainly research on these individual agency practices and how they interpret the legislation could be an interesting follow up thesis to this one.

## Chapter 4

### Discussion of the thematic content analysis of the provincial child welfare acts

As I discuss these findings, it is important to note that my approach to this topic is shaped by a firm belief that children should have the same rights as Canadian adult citizens to: be protected by the state from harm, receive culturally appropriate services and maintain connections with their culture and family without prejudice, mobility within their country of citizenship, the principals of liberty and due process, legal representation and receive financial assistance. My approach is liberationist because of my personal practise with street youth and my life as a former street youth and youth in care. I assume that both the individual liberationist and community preservationist views of children's right are more important than the family preservationist views on child welfare intervention. I believe that children should be able to have a voice in their own care plan and if they cannot (due to age, maturity or disability) that the greater number of voices to represent them in their community, the more likely their rights will be protected and upheld. I make the assumption that these six themes are indications that basic citizenship rights for Canadian children in care are being protected. This assumption is based on my work with homeless youth, most of who are running away from, trying to enter into or aging out of one of the 12 provincial and territorial child welfare systems. However, these themes may not be as important for youth in care who have never been homeless. I am admittedly biased in that I view children's rights as fundamentally separate from the parents, family or even community's rights. Further research with present and former youth in care and their families may reveal that their preferred view of children's rights to

citizenship is less liberationist and more community or family centred.

In the discussion of findings of this research, it is important to remember that this is a look at the current child welfare legislation itself, and not some of the more progressive internal policies and practices of some child welfare agencies. This thesis does not take into account upcoming or proposed changes to legislation, only what is currently in place, as legal changes take a great deal of time to be ratified and then implemented. The following discussion is a snapshot of how the UNCRC six rights of citizenship are accounted for in the current legislation. Legislation provides a current legal standard which shapes the actions of child welfare agencies and their partners. Legislation embodies ideological orientations that shape practice. “Our encounters with clients must be placed in a specific time and place so that we can understand the meaning of these experiences in terms of prevailing ideologies” (Strega & Esquao [Carriere], 2009, p. 16). This discussion is meant to deepen the debate on how we define and use the ideas of protection, family preservation, community preservation, and liberation. These global definitions of perspectives on the rights of children in care are being used because of the breadth of information within these six themes, and across 13 jurisdictions. Child protectionism, family preservationist, community preservationist and child liberationist are all categories which I have chosen in order to filter how children’s rights appear in the legislation. I created these categories after to the legislation was written, therefore it is unlikely that all or parts of any one piece of legislation will fit into a specific category It is important to be cognizant that what constitutes protectionism versus liberationist may also change over time and have different meanings for different ages and cultures of children in care. The goal of this thesis is to better understand how the writers of the law view

rights for children in care, and therefore how the legislation addresses them. Specifically, this thesis examines how many voices exist in the legislation to represent the best interests of the child from the state, the family and extended kin, and the community. The most important part of the analysis of the legislation is to find out the extent to which the child has the right to voice their opinion and therefore to defend their own interests, if they are able to do so.

1. Results:

The results are cited by using the initials of the act and the original date of the act. The date each act was amended is in the limitations section of this paper. It is written this way, as this reflects the way it is written in each act. Parts of the acts that are ``not in force`` are not included. It is extremely important to keep in mind that I am not a lawyer or a law student and my interpretation of the legislation is based solely on the twelve child welfare acts, and not on case law, intersecting legislation or individual agency policy. What I might find confusing or difficult to interpret could be a result of not clearly comprehending the legal jargon used in the legislation and/ or the format it is written. It is crucial, as a social worker, to be able to interpret the legislation which creates the boundaries of my work with street related youth coming from the child welfare systems. Throughout these results it is apparent that I had great difficulty clearly interpreting the legislation and found many areas that appeared to be confusing and in some cases contradictory, particularly when two different laws intersected. This made it more challenging to attempt to categorize the data in the six themes of rights which I created.

a. Age and Receiving Care (Appendix B 1)

“The impact of the [age] regulation is to deny services to a vulnerable group within society on the basis of a prohibited ground of discrimination. This

necessarily raises important questions regarding the validity of the regulation without our provincial Human Rights Code and with the *Canadian Charter of Rights and Freedoms* [1982], particularly the equality provisions of section 15 thereof, and the guarantees of section 7 to “life liberty and security of the person” (Richard, 2008, p. 84).

According to the UNCRC, all children, defined as under the age of 18, should have access to specified rights. There is considerable variation concerning equal access to child welfare and to appropriate treatment while in care. Equal access to care, refers to the ages at which youth are able to access care across Canada, either as a ward or in voluntary care. Treatment refers to any combination of health or mental health care treatment required by a child. Provincial child welfare legislation and institutions across Canada provide a confusing array of ages at which children can receive care, make decisions regarding their care, get into care as a ward or under temporary care agreements, opt out of care, and live independently. Furthermore, in the absence of child welfare provision for youth, in some provinces and territories, there is not always another regional aid agency that will provide aid to persons under aged 18. Legislation has not developed a clear concept or definition of a youth, young adult or a child, and at what age it is still appropriate to receive housing and financial aid from one’s family. Serge and colleagues have argued that:

“The arbitrary nature of youth leaving care at a certain pre-determined age does not necessarily reflect the age at which a youth is developmentally ready to exit, way replicates the experience of leaving the family home. The inflexibility of the care system to serve the needs of youth who have aged out or voluntarily exited care either prematurely or upon reaching the age of majority is often cited as a factor in poor outcomes generally, including homelessness” (2002, p.4).

Provincial and federal legislation are compared in the following ways: age of majority, age to enter wardship, age to leave wardship, age to enter voluntary care, age to leave voluntary care, if there are extensions for children in long term care above the age of

majority, minimum age to rent and minimum age to access the adult welfare system (Appendix B.1: Age and receiving care). This section ends with some of the dilemmas youth trying to access care or enter adulthood face as a result of the variability in provincial and federal legislation.

### Age of majority

The United Nations has recommended that the age defining a child be standardized to 18 across member states, and that community supports need to be put into place for those who are transitioning out of care (Final Standing Senate Committee on Human Rights, 2007). It is important to understand children's rights in terms of how they differ from adult rights yet the age at which children become adults is arbitrary and conflicting across provincial jurisdictions. Currently the federal age of majority is age 18 (to vote, to file taxes, to marry, etc.), and thus the age at which all Canadians should have access to adult social service (Justice for Children and Youth, 2006). However, British Columbia (R.S.B.C., 1996, Ch.46.), Nunavut, the Northwest Territories (S.N.W.T. 1997, c. 13), Nova Scotia (R.S.N.S., 1990, C.5, s.1.), Newfoundland (S.N.L., 1998 cC-12.1 s1) and the Yukon (R.S.Y., 2008 C-22.1) stipulate in their child welfare acts that the age of majority is 19. Ontario uses age 18 as the age of majority to vote, marry, to change one's name and to sign a contract, however this province uses age 19 for allowing youth to buy alcohol, gamble, purchase cigarettes and receive GST back on their taxes (Justice for Children and Youth, 2006; R.S.O. ,1990, Ch. (c.11, s.3 ). I did not obtain information on the ages to file taxes in other provinces, but, it seems likely that receiving returns, and hence income, may also vary by age. On the surface it seems that in all provinces and territories youth aging out of care at 18 or 19 can then begin to use adult social services.

Currently, transitioning out of care has been equated with ‘expulsion’. “Regardless of needs and desires, once a youth hits the arbitrary age, they are required to become independent and self-sufficient, whatever their developmental state of readiness. This process can be impersonal and irreversible...” (Reid & Dudding, 2006, p.2).

#### Age to enter into permanent wardship

The maximum age at which children can enter into permanent wardship, or receive financial and housing support through child welfare provisions varies greatly across Canada. The exception is that most child welfare legislation seems to agree that children with disabilities can enter into wardship and/or voluntary care agreements up to and sometimes beyond the age of majority. It is problematic that this legislation does not define “disability” especially given our increased understanding and recognition of ‘invisible’ disabilities, e.g., learning disabilities, Fetal Alcohol Syndrome (FAS), Autism Spectrum disorders, addictions, Post Traumatic Stress Disorder (PTSD), and depression or anxiety, etc.

The maximum ages at which a ‘child’ can enter into permanent wardship also vary across provincial and territorial legislation. Permanent wardship refers to the director of child welfare having total guardianship and responsibility for the child generally until the age of majority. By entering into wardship, one then assumes child welfare will guarantee financial and housing supports. At the age of 16, children without disabilities cannot be taken into permanent wardship in the following provinces: Newfoundland (R.S.N.L., 1998 cC-12.1 s1.2.c), Nova Scotia (R.S.N.S.,1990, C.5, s.1. 3.1.e), P.E.I. (R.S.P.E.I., 1988, cap C-5.1, p. 2 definitions), New Brunswick (R.S.N.B., 1980,c.F.-2.2.s.1.b), Ontario (R.S.O., 1990, Ch. C.11, s.47 [3]), Saskatchewan (unless under “extraordinary circumstances”

(S.S. 1989-1990, C7.2.s.2.1.d), and Nunavut (R.S.N.W.T.1997, c13.s.1 & 2). In Quebec, it is unclear precisely what the maximum age is to enter into permanent wardship. The age of majority is 18, but the legislation states that at age 14 children can refuse to enter into care (R.S.Q., 1977, P-34.s.1.47). Manitoba (CCSM 1985, Cc.80.s.50.1) and Alberta (R.S.A., 2000 cC-12.c16. s.15. 1.d; MacLaurin & Bala, 2004, p. 147) allow entry into permanent wardship until age 18 and British Columbia (R.S.B.C.,1996, Ch.46.s. 53.1) and the Yukon (R.S.Y., 2008 C-22.s.1) until age 19. Saskatchewan clearly states that at age 16 the child welfare agency needs the consent of the child to be taken into permanent care (HRSDC, 2005; R.S.A., 1989-1990, cC-7.2.s.68.1). On the surface eastern provinces that stop entrance into wardship at age 16 seem to be more liberationist, in the sense that children seemed to be considered independent enough to not need care until age 18. The problem is, as will be discussed below, the legislation does not allow them to access any other forms of financial and housing support. The legislation in Alberta and Quebec is ambiguous as to whether children can enter into permanent care or not until age 18. Ontario's legislation is confusing because the child can only opt out of permanent wardship at age 19, but only enter into it up to age 18 (R.S.O., 1990, C.11s..71). Finally, an example of extreme protectionist leanings is in New Brunswick where the unborn child can potentially be taken into permanent wardship, until the age of majority, at 18 (Bala, 2004, p.36; R.S.N.B., 1980, c.F.-2.2.s.1.b). The UNCRC does not allow for the unborn child to be taken into care, in any of its articles, but New Brunswick does allow this (Bala, 2004, p. 34). It is not clear to me what that means for the mother whether she is taken into permanent custody or supervised while the child is in gestation, or if the child is simply removed upon birth. The former could be viewed as family preservationist in nature, if

the goal is to keep the child in the care of the parent. Most of the child welfare acts state that newborns should not be taken into wardship without the director of child welfare having the intention of putting them up for adoption. All allow for supervision of the mother or temporary measures taken to apprehend newborns if they are perceived to be at risk.

The issue is that children, when they are able to express their own views, need the right to choose and at the very least have their opinions considered if they need to be cared for and would like to enter into permanent wardship. This right is clearly available to them until they reach the age of majority, as stated in the UNCRC (OHCUN, 1988, A. 19). Not allowing 16-19 year olds to enter into permanent custody may be a way for the courts to be more child liberationist and less protectionist towards children who would not want to be forced into care. It may also be a cost efficient way of not taking in youth who are in conflict with their families. The dilemma is that the failure to allow children after age 16 to enter into care might leave them in a vulnerable situation, as exemplified by the following quote from a youth in care:

"I ran away like six times and they finally put me into care. I had to fight and fight and fight for it! I always went to welfare, and I just went and talked to people, people would talk to me and just say 'You don't need to be in care, you need to be at home'. And it's like, 'No I don't'...and they'd always send me home, always send me home, and I'd leave right away because I didn't feel safe (Rutman, Barlow, Huberstay, Alusik & Brown, (2001) p. 12).

Therefore, it may be liberationist to extend the time children can enter into permanent custody so that they may access stable supports. The problem is that "children in care need to be given the option to stay in care longer if that is what they want" (Yukon Health and Social Services, 2005 Policy Forum #2 comment from service user). On the one hand, I have personally worked with hundreds of clients who would have liked to

leave care at a younger age and resented being “held” by the system until the age of majority. On the other hand, I have had several clients, particularly youth between 12 and 17 who really wanted to be in permanent care, either in their province of origin or in another province, so that they could leave difficult family situations and finish school.

Rules for opting out of permanent wardship

The rules for opting out of wardship further obfuscates the question of whether or not children have the right to liberation from care, and if they can actually participate in this process of liberating themselves. Many provinces have several ways to opt out of care. Children can attempt to opt out by: attaining a certain age, applying to opt out, being adopted, meeting contractual limits set out by child welfare agencies, and/ or through marriage. Finally child welfare judges and directors can terminate wardship under the conditions that the child’s situation has changed.

Most provinces use their respective ages of majority as the standard age at which children can leave permanent wardship, with the exception of Quebec and Alberta, where children can opt out and/or refuse permanent wardship at age 14(R.S.Q., 1977, P-34.1.s.47) and 15 (MacLaurin & Bala, 2004, p. 142) respectively. These are the lowest ages in the country and therefore could be seen as reflective of the most liberationist policy. At age 12, children in the Northwest Territories, Nunavut (SN.W.T.1997, c13.1.s.49.1) and Ontario (R.S.O., 1990, C.11.s.64.4.a), can apply to opt out of permanent care. This does not mean that they can refuse to enter into care, but only that they have the right to apply to leave care. Again, this might be seen to be a liberationist policy, in the sense that these provinces allow children to advocate for their own needs. It is not clear in the legislation, if children can receive help through this process or if there are avenues

they can take to seek recourse if their application to opt out is refused. At age 16 permanent wards can appeal to opt out of care in Newfoundland (S.N.L. 1998 cC-12.1 s.1.2.c. & s.43), Nova Scotia (S.N.S 1990, C.5, s.1. and s.48.3), and P.E.I. (R.S.P.E.I. 1988, C-5.1.s.45.2.b). In New Brunswick, Manitoba, British Columbia and the Yukon there are no provisions in the legislation, allowing children to apply to opt out of care at all. Not allowing children the ability to contest their wardship, can be seen as a protectionist policy, in the sense that the state may not agree that the child has the capacity to advocate or determine their own needs. Clearly there are circumstances where children and youth may not have this capacity, but the laws in the last three provinces allow for no flexibility on this issue. How effective these application processes to opt out of permanent care is questionable. I have met almost no youth, out of the thousands I have worked with, that even knew they could apply to opt out of care. Many of these youth likely would have applied, if they had had this knowledge.

Nearly all of the child welfare acts list adoption as a way to opt out of care. To add to the confusion, adoption is not necessarily governed by the provincial child welfare acts, and in many provinces is separate legislation. However, in all provinces, the adoption of children in care is totally governed by the child welfare institutions. In some provinces, provincial children welfare departments also control the licensing of private adoption agencies and policy. Furthermore, provinces vary in the age at which children can decide whether or not they agree to be adopted, as will be discussed in the next section. This way of opting out of care can be seen as either protectionist, in that the state decides for the child the safest family environment to be in or family preservationist, in that children must be within a family in order to thrive.

Odd contradictions seem to exist between child welfare laws and other legislation, which position youth as semi adults who can make some decisions about others, but cannot make decisions for their own well being. For example, youth, in Ontario, at the age of 16 can be substitute decision makers if someone related to them is mentally ill (Ministry of Health and Long Term Care, 2002, p. 25), but they cannot sign a lease. These laws exemplify the complexity of issues that play into the protectionist-liberationist theoretical continuum, where a youth can protect someone else from harm, but cannot act on their own behalf to obtain housing. Technically, youth in all provinces can marry below the age of majority, usually with a guardian's consent. The latter could be construed as a liberationist stance, because the provinces and territories also allow youth to opt out of wardship (appendix B.1), if they are married. However, this could be problematic if the child is coerced into marriage because of cultural or religious issues, or because they are being exploited by another adult. For example, many provinces allow for marriages if the guardian approves and the child is over age 16. In the Yukon, this can be as young as age 15 (*Marriage Act* R.S.Y. 2002, c.146.s.43). In PEI (*Marriage Act* R.S.P.E.I., 1974 (revised 2008) Cap.M-5.s.19.2 [all]) and Saskatchewan (*Marriage Act* RSA, 2000 (last revised 2009) CM-5.s.20.2), a child who is under age 16, who is either a parent or expecting a child, can marry with fewer legal and procedural hurdles. In these provinces, a doctor can recommend to the court to allow a marriage below the age of majority. This seems to be a natural law view of rights, whereby the child is assumed to be an adult if they themselves are having a child, and so should be able to make adult decisions, such as whether or not to marry. However, children in these provinces still may not have rights to other financial, legal and housing supports. In Manitoba (*Marriage Act*,

1995 (last amended 2009), c.M-4.1, s.18) and Nova Scotia (Government of Nova Scotia, 2009), a child under 16 can marry only if the courts approve. The debate is whether the court ruling marriage under age 16 could be seen in three ways: protectionist, possibly exploitative to even consider this option, or liberationist for the child. One of the difficulties I had in deciding where to place different provinces and territories on the protectionist – liberationist continuum was concerning marriage. It appeared to me as coercive and perhaps under family control to allow a child to marry under the age of majority, as all provinces require permission. On the other hand, if the child wants to get married at a younger age, it is liberationist to let them do so, but protectionist to insist on their guardian's consent. It also seemed to be a null clause in the child welfare acts that allow children to opt out of care if they are married, particularly if their guardian is the director of child welfare for that province or territory. It is doubtful that a director, coming from what is presumably a protectionist stance on children's rights, would allow a ward to marry and leave care under the age of majority.

The issue is that the process “should be made easier to rescind permanency” (Yukon Health and Social Services, April, 2004 Policy Forum comment from service user), and from a liberationist perspective should allow the children, themselves, to apply to nullify or alter the measures of permanent wardship. However from a protectionist (and perhaps realistic) point of view, does the child, particularly if they are very young, have the capacity to understand the implications of rescinding permanency and are they able to make an appropriate care plan for themselves? Finally, who would know the best course of action for this dilemma, the family, the community or the state representatives, such as social workers?

Age to enter into voluntary care and length of contracts

All provinces provide for voluntary care for children, but the duration of these agreements vary depending on the child's age, and the child's capacity to participate in the agreement. Generally, it seems easier to obtain a voluntary care agreement if a guardian also asks for one. In some cases it seems that the time limits for voluntary care agreements may help to motivate the family and child to take control over their situation and reunite.

“I would prefer the maximum period a child can be in temporary care to be a cumulative time limit for a child's life. If this were the case, every time a child went home the clock would not be set back at zero. This approach would motivate parents to make the necessary changes to care properly for their children” (Yukon Health and Social Services, May, 2004 Policy Forum comment from service user).

This approach of providing time limited temporary care agreements can be seen as a family preservationist model of child rights, where the optimal goal is to return the child to the family. This approach may also be construed as child liberationist, in the sense that the child cannot remain in care for the duration of their childhood, but again the issue is who decides when the terms of these contracts are over.

Young children who enter into care through voluntary measures have different time limits in which they can be in care depending on their age. These limits are informed by both a family preservationist and child protection frameworks. Limits are family preservationist in the sense that the child is either supervised at home under a supervision order, or under voluntary measures outside of the home, and is usually in contact with one or more guardian and family members. The goal is to treat the child, the parent or the family and return the child to their home. “Voluntary measures” or care agreements really refer to the guardian voluntarily accepting these measures. These limits are oriented to

child protection, as it is presumed that young children should not be kept in care indefinitely, and that their development requires long term placement, regardless of whether or not they are returned to their biological family.

There is no indication in the different legislation, until approximately age 12 or 14 (as mentioned above), that children need to be consulted on their opinion about being taken into care under voluntary or supervisory orders. Voluntary measures in Newfoundland (S.N.L., 1998 cC-12.1 s1.2.c. 36. [1&2]) and PEI (CPA, 1988, C-5.1. s.17.5& s.17.6) are three months for 0-5 year olds, but are 15 months for the same age group in Manitoba (CCSM, 1985, Cc.80. s.4. 1[3]) and the Yukon (RSY 2008 C-22 s.61 all). In Nova Scotia 0-3 year olds (SNS, 1990, C.5, s.1.45 [all]) and in BC (RSBC1996, Ch.46. s.6 & s.6 [7]) 0-5 year olds are allowed 3-6 month contracts for voluntary measures. Whereas, in Québec, 0-2 year olds can be under voluntary measures for up to 18 months (RSQ 1977, P-34.1.s.53.0.1). Children 0-6 years old in Alberta (RSA 2000 C-12. cC-12 s.33.1.[a &b]), receive measures of six months, and in Ontario (RSO, 1990, C.11. s.29 [6]), the same age group has voluntary measures that are up to one year. Two to five year olds in Quebec can have a maximum of 24 months of voluntary measures (RSQ 1977, P-34.1.s.53.0.1). Five to 12 year olds receive very different voluntary measures: 4months in Newfoundland (SNL 1998 cC-12.1 s1.2.c. 36. 1&2), 3 months in PEI (RSPEI, 1988, C-5.1. 17.5& 17.6), 24 months in Manitoba (CCSM 1985, Cc.80. 41(1&2) , 18-24 months in the Yukon (RSY C-22s.61 [all]) and 6-18 months in British Columbia, for children ages 5-13 (RSBC1996, Ch.46. [6] &6[7]). Contracts for children over age six seem to be more equal across the country. In Nova Scotia ages 6-12 can receive 12 month contracts, in PEI and Quebec, ages 6-18 can receive 12 month contracts, in Ontario ages

6-12 can receive 24 months and in Manitoba ages 12-18 can receive 24 months. In Alberta ages 6-16 can receive 9 month contracts. British Columbia and the Yukon have confusing legislation, where in BC youth ages 12-19 receive 6-24 month contracts and youth 13 can receive 6-18 month contracts for voluntary measures. In the Yukon, children 5-12 can receive 18-24 month contracts for voluntary measures but legislation allows 12 to 16 to receive 36 month contracts.

In sum, the voluntary measures for young children seem to either be very protective of infants and toddlers or very protective of 5-12 year olds. It is interesting to note the variability and arbitrary ages used by the various provinces to determine the length of voluntary measures, and the process of determining the length of these measures is not explained in the laws. An assumption can be made that the shortest contracts are family preservationist because the goal is to return the child as soon as possible to their family of origin. Therefore Newfoundland, Alberta, PEI, Nova Scotia and British Columbia appear to have the shortest contracts, so it can be inferred that family preservation model of care is more prominent in these provinces for young children. A second assumption is that those provinces with the longest possible contracts for voluntary and supervisory measures are more protectionist in nature because the child can potentially be withheld from the family for longer periods of time. The inference is that for younger children, Quebec, the Yukon, and Manitoba utilize a more protective model of voluntary care. I found the legislation of British Columbia to be confusing due to different time frames for 12 year olds and 13 year olds, the older the child the more protectionist the law becomes. Ontario, Saskatchewan and New Brunswick appear to take

a middle ground between family preservationist and protectionist as they use approximately one year voluntary measures.

There are several assumptions one can make about the variability in the length of time that voluntary measures are used with the youngest children. The shorter the time duration allowed for voluntary care the more the model is family preservationist as authorities attempt to return the child sooner to their guardian. This could be understood as expressing a concern to strengthen bonding with the guardian. The longer terms of voluntary care and a younger age, may be seen as more protectionist in nature, where the state intervention is for treatment of the child or family and that the youngest children are the most vulnerable and must be protected from family, in the case that they are removed under a voluntary measure. It could also be seen as family preservationist in that the child and family can receive more supports in the most formative years so that they may be able to be independent of child welfare services later on. The older the child the opposite assumptions might be true. Whereas those provinces and territories with shorter contracts for older children and/or who allow children to determine whether they want voluntary measures or give them the right to opt out may be seen as more liberationist, in that they allow these youth choices. Longer contracts may come with other stipulations that could limit a youth's rights, such as: not being able to leave the province (mobility), being seen as a runaway if they try to leave voluntary measures, etc. On the other hand longer contracts, for children who have the right to apply to receive voluntary measures may be more child liberationist in that sense that it gives them more stability in one or more dimensions of their life (financial, housing, familial, education, etc.) The real determining factor is that legislation which involves the children as participants in their care plan and

the right to choose to opt in or out of voluntary measures are the most liberationist, those that allow parental control of these issues are the most family preservationist, and those which allow state control are the most protectionist. The assumption can be made that children under a certain age are still viewed as incapable of determining their own safety and risk factors, and making appropriate decisions about their needs. This essentialist view of children ignores individual capacities and supports the natural law view that adults, by virtue of age and experience, will most often make the appropriate choices for children.

Great disparity exists across provincial laws for enabling youth access to child welfare. The terms for voluntary care agreements for older children, where applicable, tend to be shorter than for 5-12 year olds. In Newfoundland (S.N.L. 1998 cC-12.1 s.11.2) and PEI (R.S.P.E.I. 1988, C-5.1. s.14.1) children ages 16-17 can have 6 month contracts and in Saskatchewan (CFSA 1989-1990, cC7.2.s.10[1 &3]) up to one year for voluntary care. Nova Scotia, New Brunswick, Ontario and Alberta have contradictory legislation where the legal ages are between ages 18 and 19, but voluntary agreements do not necessarily go up to these ages in the law. This leaves voluntary measures up to the discretion of the agency and workers. The current law does not include 18-19, even though 19 is the age of majority in this province. In Ontario, youth ages 16-18 have to apply for voluntary measures themselves (R.S.O., 1990, C.11.s. 26, & s.29 [2], & 31), but legal age is 19. However, at age 16, in Ontario, student welfare through adult social services is an option for financial aid. In New Brunswick (S.N.B1980, c.F-2.2.s.48.4.d) and Alberta (RSA 2000C-12. cC-12 c16 s33.1[a &b]), youth up to age 16 can have 1 yr or 9 month contracts, respectively. However, the legislation also states they can receive it

“to the age of majority”, which is 18. So it is unclear to me when voluntary measures become unavailable to these youth. British Columbia (R.S.B.C.1996, Ch.46.s.11 & s.12.2 [all]) and the Yukon (RSY 2008, C-22s.16.3 &16.4[all]) have perhaps the most liberationist view of youth rights. In these provinces, youth ages 16-19 can have 6 month contracts with voluntary care measures even if they are already parents, expecting a child or would like to make an agreement for child welfare care for their own children. There are two forms of agreements for voluntary measures in the Yukon, one is for support services for oneself and the other is for up to 12 month contracts for youth and children with special needs. These are the only provinces that specifically mention the needs of young parents. Manitoba does not allow for voluntary measures and supports for young parents or those who are expecting (CCSM, 1985, Cc.80. s.15 (1); 18). Voluntary care agreements are contradictory in this province, as children over the age of 14 can receive them “for behavioural problems”, or can receive them up to age 18 for disabilities and illness (CCSM 1985, Cc.80.s.14 [1] &s.14 [3]). Who determines the differences between ‘behavioural problems’ and behavioural issues related to disability or illness is not clear. In Manitoba the guardian of the child can apparently terminate the voluntary care agreement if the guardian leaves the province (CCSM1985, Cc.80.14 [5]). This legislation is the most inconsistent in terms of leaving service gaps that children can easily fall through. The Northwest Territories, Nunavut and New Brunswick seem to have the most consistent legislation with the most consistent time frame for voluntary care agreements. The NWT and Nunavut (R.S.N.W.T.1997, c13.s.5.4, s.47.3 & s.30.3) have 6-12month contracts for voluntary measures for children ages 0-18, and New Brunswick (SNB1980, c.F-2.2.s.48.4.d) has one year contracts up to age 16, although another section of the

legislation indicates that contracts can be in place “to the age of majority” which is 18, so once again I found it difficult to decipher. The only legislation that meets the criteria of the UNCRC appears to be the NWT and Nunavut in terms of age ranges.

In most provinces, youth can opt out of a temporary agreement at age 16, except in Quebec where it is at age 14 (R.S.Q. 1977, P-34.1. s.47.2). At this time, only Ontario allows a 16 year old to receive student welfare, if they are going to school or receiving employment training (Ontario Ministry of Community and Social Services, 2009). Whether or not these adult welfare provisions are as comprehensive as those received while in the care of Ontario child welfare is a question worth researching. The other provinces allow the child to be responsible for themselves at age 16, except Nunavut, which, after a recent ruling, is now age 18 (CBC, April 30<sup>th</sup>, 2009). There are provisions for youth over age 16 to receive extra supports in most provinces. Prior to 2004, as noted by Bala, only the provinces of Nova Scotia, Ontario, Newfoundland and Saskatchewan (2004, p. 36) allowed for supports for children in voluntary care agreements, even though the UNCRC (OHCUN, 1989, A.19) clearly states they should have access to care up until age 18. The UNCRC presents a more liberationist view of children’s rights to voluntary care measures, because it assumes that children at any age have a choice to receive care. One Yukon Service user commented that: “Some teens may need to move in and out of care, on an as needed basis, for a few years. There should be some elasticity regarding the length of time youth can have an agreement for extended care and support” (Yukon Health and Social Services, May, 2004 Policy Forum). Youth may therefore have a difficult time becoming independent because provincial tenancy acts, and policies of

companies who provide major life necessities (e.g. banks and utilities) may not allow those under 18 to access their goods and services without an adult to co-sign.

Not only is there no federal standard age in Canada in which children and youth have a right to receive care, there is no federal or often provincial standard protocol to place children in care or to help them exit care with the emotional and financial tools they need to survive.

New Brunswick's child advocate stated:

"Youth aged 16 to 18 or 19 (depending on the age of majority) are "...told by social services that because they are not of the legal age to enter into a contract they cannot enter into a lease arrangement. Similarly, if they leave home and no community residential care facilities are open to them because of their age, they often cannot obtain a fixed address and without a fixed address, they cannot apply for income assistance" (Richard, 2008, p. 85).

An end result of this, in my personal work experience, is that these children are more likely to become homeless and to be involved in illegal activities in order to survive.

Provinces determine access to youth protection and by doing so, discriminate not only with respect to who will qualify for support, but regarding who can be refused, and potentially detained as a 'runaway' if they leave that province to acquire care elsewhere.

The failure to provide consistent age related services across Canada has been identified by Farris-Manning and Zandstra, who state: "In some jurisdictions, children are the age of 16 and are not eligible for child protection services" (2003, p.8; Piper, 2008).

#### Extensions of Care Agreements

There has been a recent move to extend some access to care and support by some child welfare agencies beyond the age of majority for crown wards, but this is not standard practice. Lack of extended supports prevents many youth in care from finishing high school, which is a core predictor of transitional success for youth in care (NYICN,

2001; Reid & Dudding, 2006, p.12). These youth are more likely to experience homelessness, particularly if they did not have long term family oriented placements (Serge, et. al, 2002, p.4). The legalities of access to care are more complicated, with unborn children. For example, the UNCRC does not allow for the unborn child to be taken into care, in any of its articles, but New Brunswick does allow this (Bala, 2004, p. 34). Age of majority is technically a provincial matter, but conflicts with the federal age of majority, of 18 for marriage, voting, paying taxes and accessing all the rights and responsibilities of many services such as banks and under the provisions under the *Criminal Code*. Clark states “thus there is no one age of majority for all purposes of Canadian law” (2007, no page no.). This poses an even more interesting dilemma for children in provinces where crown wardship ends at age 19 (British Columbia, New Brunswick, Nova Scotia and Ontario- in Swift 1999), and yet the child under federal law can vote, and technically should be able to leave care if they want to at age 18. This can be interpreted as age based discrimination, which is prohibited under the Charter of Rights and Freedoms (Constitution Act, Schedule B, S.7; Richard, 2008, p. 84).

Extensions of child welfare supports for youth in care are variable depending on the province and by age. The Yukon, British Columbia and Ontario have the most progressive extensions, with the Yukon being the most progressive. The Yukon and Ontario both allow extensions of care to go up to age 24 for crown wards. In a study of child welfare practices in Ontario, this province allows for extensions up to age 24 only if provisions are made for the child before the age of 16 (Bala, 2004, p.36). The Ontario legislation itself is confusing because there are no age limits for extensions of care mentioned, therefore, the age of 24 might be a discretionary practise based on an age

limits and subject to change because it is not specified in the law (RSO, 1990, C.11. s.71[1 &2]). The Yukon's legislation stipulates that the youth can apply for these extensions at any time after leaving care, and therefore does not have to remain in consecutive care (R.S.Y. 2008C-22.17 [all]). This is the most liberationist view of child rights, in that it recognizes the needs for flexibility in care planning and that the state in supporting youth transitioning into adulthood. These extensions also allow the youth to pursue higher education, that they otherwise may not be able to fund themselves. British Columbia allows for extensions forwards, those in voluntary care, those receiving addictions treatment and those who are pregnant or have children up to the age of 24. This is the most comprehensive of all the child welfare acts because it allows four categories of youth to access supports. Extensions of supports for youth in care could be seen as protectionist if they have to be consecutive, giving the youth no choice in staying in care, if they need help at a later time, and more liberationist if they are flexible and youth can return to care supports if need be.

It is also family preservationist in the sense that this legislation demands that the director of child welfare make case plans for youth transitioning out of care with the family and the child. (RSY 2008C-22.s.18 [all]) What if the child welfare organization and the family do not have the same case plan in mind as the child? From the legislation it appears that the family has more say. Newfoundland (S.N.L. 1998 cC-12.1 s11.3 HRSDC, 2005), Nova Scotia (S.N.S. 1990, C.5, s.48.1.a), PEI (R.S.P.E.I. 1988, C-5.1.s.46 [1, 2 &3]; C-5.1.s.14.3.b) and New Brunswick (S.N.B., 1980.c.F-2.2.s.49.5; HRSDC, 2005) allow for extensions of care for permanent wards and children with disabilities up to the age of 21. New Brunswick does have a caveat in the legislation that

states the extension could go up until age 24, but it does not specify under what circumstances that decision would be made, or if it is the same circumstances as for allowing extensions of care to youth up to the age of 21. These provinces only allow for supports if the child is pursuing higher education. Quebec only allows for extensions of foster care provision and tutorship for children with disabilities up until the age of 21(R.S.Q. Ch. P-34.1.s.70.1). This extension is protectionist in nature, as it assumes that these children cannot care for themselves. Quebec has no legislative provisions for children who are wards or receiving voluntary measures. Manitoba (CCSM 1985, Cc.80.s.50 [2]) and Saskatchewan (S.S.1989-1990, cC7.2.s.56 [1 &3]) only mention extensions of care for children who were wards up until the age of 21 and does not mention extensions for children with disabilities. Alberta (R.S.A. 2000 cC-12 s.57.2. [1 & 2 &3]; R.S.A. 2000 cC-12.s.57.3) says that it offers post child welfare care support, on six month contracts, and the law has no age limit. However, the HRDC says that these extensions for children in voluntary or permanent care can have services up until age 20(HRSDC, 2005). Nunavut and the North West Territories only have extensions of care up until the age of 19 for children who were wards or until the age of 16 for those in voluntary care (R.S.N.W.T.1997, c13.s.2n & s.6[1 ,2 &3]). This legislation is perhaps the most restrictive, and is neither liberationist nor protectionist, as it leaves the child in financial limbo.

In sum, those provinces which allow extension of care for permanent wards, those in voluntary care and those children with disabilities are the most liberationist, in that they allow children the flexibility to live independently with special supports. In other ways these provisions also express protectionist principles in that they recognize that these

youth may be living in more precarious situations than children from intact families who were never in care. Those provinces and territories which provide supports only for permanent wards beyond the age of majority are more protectionist in nature, in that they recognize their role in support services for children who were in their sole custody. One can also infer that these policies are more child liberationist for the youth under voluntary care, as they seem to consider them adults once their contracts are finished. The problem is whether extended services are viewed as an obligation or as a responsibility to former children in care, and if the cost of providing extensions of care is significantly different than adult social service provisions. Those provinces/ territories which allow for no extensions of care beyond the age of majority, can also be assumed to be more liberationist because they now consider these youth adults and capable to making their own decisions or being a part of the decision making process for their care plan. However, the latter two groups of provinces/ territories are less child liberationist in nature if they do not allow children to access adult welfare supports, thereby allowing them some financial independence and perhaps access to other aid programs. Nunavut and Quebec have no mechanism for children under the age of majority to access adult welfare. Therefore they are not really liberationist in that the children who are not longer in care have no support system at all. A child welfare recipient warned that:

the "... maximum age of care should be 19 with provision for 21-24. (This is) especially important when Social Assistance can only start at 19. (The) department should be advocating for (the) child's best interest for 5 years after they reach 19 years of age. (It is) important to look at the developmental age of child and realize a 19 year old may be functioning at a 13 year old level" (Yukon Health and Social Services, April, 2004 Policy Forum comment from service user).

Age to enter into a tenancy agreement

The age at which youth can sign a lease in individual provinces varies despite the federal laws that generally refer to the federal age of majority, which is 18, as the appropriate age to engage in contracts. Each province and territory has its own residential tenancy act, and has been examined in this thesis to determine at what age youth can actually house themselves. This is important in the prevention of homelessness and in supporting the child's own ability to transition out of care smoothly. The ability to sign a lease prior to the age of provincial/ territorial majority can be seen as more liberationist in nature as it allows youth to live independently regardless of whether they are in the care of child welfare. All provinces but three have no age limit in their rental laws. Quebec's law is confusing because there is no age limit mentioned, but it does mention the person has to be an adult (*An Act Respecting the Regie du Logement*, 1892, (amended last 2003) Q.R. S-8.1). My personal experience in working with homeless youth in Montreal, for the past 15 years is that for all practical purposes those under 18 cannot rent, except a room, and there are almost no rooming houses. The only option is supervised housing through community organizations where they do not have government regulated leases.

Saskatchewan allows minors to rent, however they stipulate clearly that the youth has no protection from any actions of the landlord and neither is the landlord protected from any actions of the youth ( i.e. destruction of property)(*Residential Tenancies Act*, 2006 (last amended 2008), R.22-0001.s.4). This kind of legislation works in favour of no one. If the tenancy act does not protect either party, it would seem less likely that landlords would rent to someone under the age of majority. Lastly British Columbia does specify that youth can rent, (although no age is stipulated in the legislation), and that they and the

landlord are both protected under the law (*Residential Tenancies Act*.S.B.C. 2002 (last amended) c.78.3). The latter is perhaps the most child liberationist, as it specifies that youth can rent, whereas, youth attempting to rent in those provinces and territories with no age limit, may be more vulnerable to landlords who would could technically refer back to contract law to evict them.

#### Age to Receive Adult welfare/Social Services

Youth eligibility for adult welfare can be viewed as more liberationist because then the youth has the opportunity to be more financially secure. The assumption is that they are adult enough to manage their own money and lives. Surprisingly, there are two provinces in Canada which do not have age limits on receiving social assistance, the Yukon (*Social Assistance Act*. R.S. 2002 (last amended 2009) c.205.7.1) and Manitoba (*The Employment and Income Assistance Act*. 1998 CCSM c. E98.s.5 [all]). Nor do these provinces have any other stipulations for receiving aid such as school attendance. Therefore according to the criteria above, they are the most liberationist. Nova Scotia (Nova Scotia, Community Services, 2008), New Brunswick (*Family Income Security Act*. O.C.95-470.4.9) , PEI (Prince Edward Island Department of Social Services and Seniors (September, 2009) and Ontario (Ontario Ministry of Community and Social Services, directive. 3.5-1 ,May, 2009) allow access to adult welfare supports if the youth is 16 or over, cannot live with their family of origin and are attending school or training programs. Ontario may also require that the youth has a liaison with an adult. This obligation is protectionist in nature, as it assumes the youth may require the supervision of a social worker or other professional, however in the long run may be viewed as more child liberationist as youth may have more opportunities if they have higher levels of education.

Nunavut and the North West Territories allow only person over age 19 to access adult social services, but they do allow 16 to 19 year olds access to these supports if the youth is working and housed. These provinces are more protectionist in nature because they require that youth, unlike an adult recipient, be proactive, and in some ways assume that they may need the supervision of a social worker. There is a liberationist element in this legislation, because allowing access to financial supports and can potentially aid the youth to become more fully independent as adults. Alberta will allow someone 16 or older to access adult welfare as long as they are living with a partner who is aged 18 or older, otherwise they have to wait until the age of 18 (*Income and Employment Supports Act: Income Supports, Health and Training Benefits Regulation 2004 (last amended 2008) AR. 60/2004. s.1[1]b*). This is interesting legislation as it assumes the person is an adult and can have access to social services if they are in a partnership by common law or by marriage. Again, protectionist assumptions can be found as the Act is written in such a way as to insinuate that the youth will be taken care of by someone older than themselves, if they are living together. Saskatchewan will only allow access to adult welfare service for those under age 18 if they have a disability (*The Saskatchewan Assistance Act. 1978, 9- last amended in 2008, R.S.78/66.s.c.1.ii, &78/66.s.4.1*). This is liberationist for persons with disabilities but leaves those who are able bodied and under the age of majority without supports. Disability is not defined in this Act. Quebec (*Emploi Quebec, Jan.2009*) and Newfoundland (Newfoundland/ Labrador Department of Human Resources, Labour & Employment 2009) only allow those over the age of 18 to access adult welfare, and British Columbia only allows those youth 19 or over (*Employment Assistance Act, June, 2007, 3.2.1.1*) to access adult welfare. However, Quebec requires

that persons under the age of 21 also prove that their family will not support them financially and/ or require that the youth present proof that they were under the care of child welfare prior to that age of 18, which can be viewed as a breach of confidentiality (Emploi Quebec, Jan.2009). Quebec, Newfoundland and British Columbia can be viewed as more protectionist in that they do not allow persons under the age of majority any access to supports. The assumption is that the person will be either cared for by the provincial child welfare system or the family.

In sum, the provinces that already provide extensions of care and/ or voluntary care agreements until the age of majority with no breaks in between this assistance and adult social welfare assistance can be seen to be the most liberationist. Some may argue that the provision of adult social services to these youth might create or contribute to a cycle of dependency on the adult welfare systems and therefore the contribute to an ongoing cycle of poverty. This may be the reasoning behind those provinces which allow no access to adult welfare prior to the age of majority. It is relatively new that provinces are allowing adult social service supports prior to the age of majority, with the exception of Ontario. Most provinces stipulate that the youth must be participating in some form of training or higher education program, which is a return to the distinction of the deserving versus the undeserving poor. This could represent t a protectionist view of children's rights that the youth need supervision and aid to transition into adulthood, or it could be viewed as child liberationist, in that is gives youth a window of time and financial supports to work through this transition. A child welfare user stated: "in Ontario when child turns 16 (the child welfare agency) didn't take them into care, but entered contract agreement/case plan. (It is )interesting to look at this in Yukon as it is difficult to apply

(an)Act here to 16+, particularly in communities” (Yukon Health and Social Services, April, 2004 Policy Forum comment from service user).

Summary section a. Age and Receiving Care

It is hard to determine which act is the most liberationist with respect to age criteria and services and which is the most protectionist as the child welfare legislation. The legislation appears to have many conflicting principals and effects depending on the age, emotional and intellectual capacity of the child and the actual resources available to children under other laws and community services. For example, the Yukon and British Columbia seem to have the most comprehensive plans to allow children access to care supports in a continuous fashion, which can be seen as more liberationist. However, the specification of the ‘right’ of the child to opt out of wardship is missing in both these provinces. This omission seems more protectionist as it presumes that those in authority know what is best for the child, and does not allow the child to contest what is happening in their own life. These two provinces also allow for voluntary care agreements and extensions of care for children who have or are going to have children. B.C. even allows extensions for children who need substance abuse therapy. In the Yukon, it is easier to access adult welfare, than in B.C. according to the legislation. The other provincial legislation fall somewhere in between-where older children may or may not have access to supports, but also have the right to apply to opt out of wardship. Nunavut, the Northwest Territories, Alberta and Manitoba seem to be the most restrictive in terms of offering supports to older children, and the length of the temporary care agreements, these provinces however, allow younger children to leave wardship earlier. This can be seen as more liberationist or it can be seen as leaving children to fend for themselves. Quebec and

Manitoba seem to have the largest gap where the family preservationist thinking allows parents to cancel voluntary care agreements. In Québec, children can refuse care at age 14, the youngest age, but there are no other supports until the age of 18, making this province in some ways the most child liberationist and in others the most family preservationist. The child does not have to enter care, but without other supports has no other option but to rely on family or fend for themselves without adult welfare support services. In my professional experience, many teens 16 or older, cannot enter into care agreements, and end up in precarious situations because access to adult welfare supports and housing, in practice (versus in the legislation) is very difficult to obtain. The age of 16, seems to be the age at which most provinces and territories allow youth to: work full time, decide to opt out of high school and to apply to marry. It seems that this magical age still governs the kinds of child welfare supports we as a society are willing to give, as the rules in most provinces and territories for child welfare and adult social services begin to change at this time in a child's life. We are however extremely inconsistent across the country, in using an older age of majority such as 18 or 19 to determine the age at which children can be responsible enough to drink, gamble, vote, etc.

Finally, the child welfare legislation does not meet the requirements of the UNCRC which clearly state that children are not adults until the age of 18, and prior to that they have the right to receive aid. Those provinces which do have age 18 as the age where youth protection services end seems to contradict themselves particularly in the area of voluntary care support measures potentially ending before the child legally becomes an adult. The UNCRC implies that youth, beyond age 18, should be able to access all adult social services in their country of origin.

b. Identity, family and cultural access

The UN recognizes the right of a child to have an identity, access to their family of origin and hence and to maintain links with their linguistic, cultural and religious communities, as fundamental building blocks of the self. These are particularly imperative in a society, such as Canada, which refers to itself as multicultural. In Canada, the children in care have access to their identity, their family of origin and their culture can become complicated. Some factors that complicate this section of research are the child's self identification with cultural and religious values (versus the family's), language, regional access to linguistic, cultural and religious communities, as well as the child's right to confidentiality. I assess how well our child welfare legislation meets the UNCRC specified rights to identity, family and culture.

To understand access to one's identity, we first have to look at how confidentiality for biological parents is handled, particularly for adopted children. Confidentiality is labelled as "privacy" under the UNCRC (OHCUN, 1989, A.16). Secondly, it is also necessary to examine family access for children in long term care (including adoptees), across provinces by looking at whether or not provinces have legislation that allows for: closed adoptions, open adoptions, kinship agreements for custody, provisions for First Nations children to stay within their communities, and special provisions for immigrant children. Lastly, this section attempts to look at differences in provincial legislation that provide for culturally appropriate care in child welfare. Provincial legislation will be compared on the following dimensions: provisioning for First Nations children, provisions for religious groups, provisions allowing children to opt out of religious or cultural care,

the actual number of agencies with religious care service options and the actual number of agencies with service options for First Nations communities.

b.1. Identity (Appendix B 2. 1)

“Identity-whether ethnic, national, cultural, sexual, or racial- is a very personal and, at the same time, a very collective matter. Individuals often have deeply personal understanding of their identity, and these understandings may change depending on the context or their age”. (Bunting, 2004, p. 141)

To understand children’s right to know their identity it is necessary to look at provincial legislative provisions affecting: changing children’s names, open adoption, closed adoption, the right to access adoption records, and preserving the identity of immigrant and First Nations children in the adoption process. Public adoptions, in Canada, are handled by the provincial and territorial child welfare systems, and these systems usually outline and regulate best practices for private agencies, as well as license them.

Name changing

Whether or not a child can have a say in the changing of the name they were given at birth to that of the adopted parent’s name, is generally governed by age and in some cases several pieces of conflicting legislation. In fact, as noted below, in some provinces it is the child welfare act which governs the changing of a child’s name and in others it is the adoption act or other legislation. The right to preserve and know one’s birth name may help a child identify their cultural, linguistic and religious background and is essential in terms of obtaining identification records when they are older. Therefore, the right to be involved in the process of changing one’s name can be seen as child liberationist as it gives the child, who is old enough to express their opinion, the right to choose their

identity. Allowing the family to choose the name can be seen as family preservationist, as handing down names may be linked to inclusion in the family, preserving family history, cultural and linguistic heritage. Court ordered name changes or the refusal of the court to recognize a child's opinion on the changing of their name can be seen as protectionist. The court may not want the child to identify or be identified by a family member who may be dangerous to them, particularly if the name is common in a community or rare and easily identifiable.

Overall, the legislation across Canada appears to be more protectionist or family preservationist and does not allow much participation from the child in the changing of their name. Manitoba (*The Adoption Act*, 1997 C.C.S.M.c. A2.30 [3]), Quebec (*Civil Code* 1991, c. 64, a.Ch. 2. Div. 1&2. Sec. 576), Nova Scotia (1990, C.5, s.1.78.2) and the Northwest Territories and Nunavut (*Adoption Act* S.N.W.T. 1998 c.9.35) state that the adopted child's name changes automatically, although Manitoba and Quebec allow the adopting parents to choose to change the child's name, otherwise it is court ordered. These provinces can be seen as the most protectionist in that the child has no say in the changing of their name regardless of their age. Manitoba and Quebec can be viewed as more family preservationist as they allow the adopting parents to choose and perhaps the parents will take into consideration the wishes of the child. The standard age at which children can refuse their names to be changed seems to be age 12, in Newfoundland (*An Act to Provide for Change of Name*, S. N. L., May, 2009, s. 5.1 of Ch. C-8.1; *Adoption of Children Act* S.N.L. 1999 (last amended 2009)A-2.13.s.26.2[a &b]), Saskatchewan (*The Adoption Act*, 1998.c-A5.2.29(2)2), Alberta (R.S.A.2000, cC 12 s.70.4 &5), BC (*Adoption Act* RSBC.c.5s..36), Yukon (R.S.Y. 2008C-22. S.124.2.a), and Ontario. Ontario's law

allows the court to overrule a child's choice on changing their name even past the age of 12 (R.S.O. 1990, C.11.s.153 [1]). British Columbia (Adoption Act R.S.B.C.c.5.s.36) and the Yukon (R.S.Y. 2008, C-22. S.124.2.b) allow a child over age 7 to be consulted on this matter, but the child does not have final say on the name they will be given. Interestingly Newfoundland/. Labrador state a child age 5 or over has to be counselled on the effect of an adoption order (*Adoption of Children Act* SNL 1999 (last amended 2009)A-2.s.13.f7.di) but has no say in their name change until they are "competent" at age 12 (*An Act to Provide for change of Name*, S.N.L., May, 2009). This province actually has an Act for changing names which states the child's wishes at age 5 need to be ascertained, but given the provisions, their wishes have no effect until age 12 within both the adoption act and the child welfare act. We can assume that the younger children are consulted on the changing of their name, the more child liberationist the legislation is. However the process by which the child's view is taken into account and how much weight their opinion holds is unclear in the legislation. Therefore one can infer that prior to the age of 12, either state protectionism or the preservation of the adopted family's view is more important than that of the child, the child's right to consent or refuse to their name changing, at age 12 in the above mentioned province, can be seen as a liberationist view of children. The exception to this is Ontario, which allows the court to overrule the child's decision and therefore this legislation can be seen as more protectionist. PEI has no information about the changing of a child's name in either the child welfare act (R.S.P.E.I.1988 cap C-5.1) or the adoption act (*Adoption Act* 1988 R.S.P.E.I (last amended 2006) capA-4.1.s.2.1), and so it is impossible to determine where this province lies on the protectionist- liberationist continuum on the child's right to change their name. New Brunswick is the most

liberationist in that it allows a child, at age 12 to consent to have their name changed, but stipulates that their views must be taken into account regardless of age (S.N.B. 1980, c. F.-2.2.s.85(5)).

### Open adoptions

Open adoptions or ‘open agreements’ refer to contracts whereby some or all information about the biological family can be shared with the adopting family and/or the adoptee. This may take various forms from regular visits and involvement in extended kin networks to indirect contact, such as through letters. Open adoption for the purposes of this thesis also includes the right of foster parents to adopt their charges and access to siblings, extended kin or significant adults. Open adoptions can be viewed as being more family preservationist for the biological family and more child liberationist in that it may result in the child having more supports in their life, particularly if they are a permanent ward. As one service user said: “I favour the option of open adoption. Anything that would promote a child to have contact with family. This needs to be in legislation. Move to open access for children that move into the permanent system” (Yukon Health and Social Services, 2005 Policy Forum #2).

In general the acts protect the right to confidentiality of the biological parent. There is no specific information on open agreements in Alberta or Québec. Alberta’s act states that a person with continuous custody of a child for 3 months can apply to adopt (R.S.A. 2000, c. C-12 s. 56[1]). In Quebec, it is also possible for a child over 14 to request information about their biological parent if the parent agrees and this could eventually constitute an open agreement (*Civil Code of Quebec*, S.Q. 1991, c. 64, Div IV s. 583). PEI states that openness agreements are possible but the legislation has no further details

(*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 2[c]). Only the director of child welfare or the agency can apply for open agreements in the Northwest Territories/ Nunavut after the adoption is complete (*Adoption Act* S.N.W.T. 1998 c.9.s.36.2). Saskatchewan only allows the adopting parent to apply for an open agreement with the biological parent (*The Adoption Act*, 1998.c-A5.2.s.15.1 &2). I found the legislation for this province is difficult to understand because it also states that anyone can apply to adopt the child (*The Children's Law Act*, 1997.c-8.2.s. 6.1-[all]), therefore could there be an open agreement with the biological and foster parent, if the foster parent adopts the child?

The following acts are more family preservationist. In New Brunswick, only the adopting parent can apply for an open agreement with the relative or significant adult of the child (S.N.B. 1980, c. F-2.2 s. 90.01[1]). In the Yukon, open agreements can be initiated by biological and adoptive parents and biological relatives if both the biological parent and the child over age 12 agree (R.S.Y. 2008, C-22.s.137 [2 &3]), but they must register first with the Director to determine what information will be exchanged (R.S.Y. 2008, C-22.s.138). The same is true, without necessarily having to register in: British Columbia (*Adoption Act* 1996, R.S.B.C.c.5.s.59 [all] & s.60), Nova Scotia (S.N.S. 1990 c.5 s. 78A [1 & 2]), and Manitoba (*Adoption Act*, 1997 C.C.S.M., c. A2 s. 33(1) [all]).

Only Ontario allows crown wards or children in temporary care to apply for an open agreement which can include siblings and their band, at age 12 (R.S.O. 1990, c. C.11 s. 145.1[1]). However the Ontario court can apply for the agreement, with or without the child's consent, if they are below age 12 (R.S.O. 1990, c. C.11 s. 145.1(3) [all] & s.145.2 [8]), and the court, the child welfare director or the biological parent can terminate this agreement regardless of the view of the child (R.S.O. 1990, c. C.11 s. 145.2 [1]). This

seems to be family preservationist in nature but may violate the wishes of the child under age 12. Newfoundland allows openness agreements to be created before or after the adoption agreement is signed (*Adoption Act* S.N.L. 1999 c. A-2.1 s. 43). British Columbia is the most liberationist in that it allows a child to consent or refuse an open agreement at any age (*Adoption Act* 1996, R.S.B.C.c.5.s.59 [all]).

Foster parents being able to apply to adopt their foster children can be seen as a kind of open agreement, whereby the foster family may have had years of experience with both the biological family and with the child. The Northwest Territories/ Nunavut (S.N.W.T. 2008, c.8.s. 62.3), and Saskatchewan (S.S. 1989-90, c. C-7.2 s. 2(1) (j) [ii]) clearly state that foster families cannot adopt their foster child, however this may be possible in Saskatchewan if the biological parents are dead (*The Adoption Act*, 1998.c-A5.2.13.2). Nova Scotia's Act (S.N.S 1990 c.5 s.68 (1) (f) [vi]) states that foster parents are not allowed to adopt, but it also says that a person who has had control/care of the child for 24 months can apply to adopt (S.N.S 1990 c.5 s. 70A [1]). I found this part of the Act difficult to decipher as to whether or not a foster parent can adopt the child. I was even more confused by the various parts of the Act referring to foster parents and open agreements, as to whether adoption is possible if the foster home is a kinship care situation, where the child's foster parent is someone from their extended family. This will be addressed in the next section. Foster parent are only allowed to adopt their foster children in Manitoba (*Adoption Act*, 1997 C.C.S.M., c. A2 s. 41) and Ontario (R.S.O. 1990, c. C.11 s. 144(1) [a]). Foster parents having the right to adopt can be viewed as both family preservationist for the foster family and child and child liberationist in that it gives the child the potential for a more stable life. This issue was expressed in more detail

by a child in care: “I stayed because I wanted to get adopted and never felt the need to leave - there is stability here and I never had to move out. They should find homes a kid can go to and stay, not get moved around. It is good to have adoption and closure as soon as possible (at a young age)” (Yukon Health and Social Services, May, 2004 Policy Forum comment from service user).

### Closed adoptions

Closed adoptions are allowed in all provinces : Newfoundland (*Adoption of Children Act* SNL 1999 (last amended 2009)A-2.13.27 [all]); Nova Scotia (S.N.S. 1990 c.5. s. 78.(1)(b) & s. 78(5) & s. 80[1 &2]); PEI (R.S.P.E.I. 1988, c. C-5.1 s. 21[1]); New Brunswick (S.N.B. 1980, c. F-2.2 s. 85(2)[a]); Quebec (*Civil Code of Quebec*, S.Q. 1991, c. 64, Div IV s. 582); Ontario (R.S.O. 1990, c. C.11 s. 162[2]); Manitoba (*Adoption Act*, 1997 C.C.S.M., c. A2 s. 31(1) & 45[1]); Alberta (R.S.A. 2000, c. C-12 s. 72[1]); Saskatchewan (*The Adoption Act*, 1998.c-A5.2.6 & s.29.1.12); British Columbia (*Adoption Act* 1996 RSBC.c.5); the Yukon (R.S.Y. 2008, C-22.126) ; the Northwest Territories/ Nunavut (*Adoption Act* S.N.W.T. 1998, (last updated 2008)c.9). Closed adoption can be viewed as a more protectionist view of a child’s right to access their biological family and/ or more family preservationist for the adopting family, whereby the child becomes a full member of this family. Close adoptions might also been seen as liberating for children whose biological family is harmful to them and the child might finally have a stable placement out of the child welfare system. Most provinces allow for the child’s opinion to be heard concerning whether or not they want to be adopted, which can be seen as more child liberationist, except for the Yukon and New Brunswick, although the later does allow the child to contest the adoption order (S.N.B. 1980, c. F-2.2

s. 89(2)[a]). Ontario allows the child's views to be considered regardless of age (R.S.O. 1990, c. C.11 s. 152.3[all]). In British Columbia (*Adoption Act* 1996 RSBC.c.5.s.6.1.e) and the Northwest Territories/Nunavut (*Adoption Act* S.N.W.T. 1998 (last updated 2008),c.9.s.7.[4 &5]) the child's views can be considered at any age, but require their consent at age 12 (*Adoption Act* S.N.W.T. 1998 (last updated 2008),c.9.s.23).

Newfoundland allows for a child's views to be considered at age five and consent at age 12 but they can revoke this consent at age 16 (*Adoption Act* S.N.L. 1999 c. A-2.1 s. 7(d)[i& ii]). Quebec requires the child who is age 10 or over to consent to adoption, but this legislation is confusing because it then states they can refuse at age 14 (*Civil Code of Quebec*, S.Q. 1991, c. 64, Div I s. 549). Nova Scotia (S.N.S. 1990 c.5 s. 74[1]), Alberta (R.S.A. 2000, c. C-12 s. 59(1) [b]), PEI (*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 22[a]) and Saskatchewan (*The Adoption Act*, 1998.c-A5.2.s.4.3.b.ii.B) require the consent of children aged 12 or over. Nova Scotia, however also requires a child's spouse to consent to their adoption (S.N.S. 1990 c.5.s. 74[2]). PEI allows a child aged 12 or older to appeal the adoption order (R.S.P.E.I. 1988, c. C-5.1 s. 3[d]). The Northwest Territories states in its child welfare legislation the child can contest a permanent order, but it is not clear if this includes an adoption order (S.N.W.T. 2008, c.8.s.49.1), but this is not in the adoption act.

From a more liberationist standpoint, children can access a lawyer in the Northwest Territories (*Adoption Act* S.N.W.T. 1998 (last updated 2008),c.9. 23) and Saskatchewan (*The Adoption Act*, 1998.c-A5.2.4.3.b.ii.B) in regards to an adoption order and can be part of the adoption hearing in Alberta (R.S.A. 2000, c. C-12 s. 68[2]). The biological parent does not have to be told that their child is being adopted, and it would

appear that this most likely applies to children who are crown wards. The later is more protectionist in nature, but might also be seen as being family preservationist for the adopting family, so that the biological parent cannot intervene in the process.

#### Right to Access Adoption Records

Confidentiality is related to “equal treatment regardless of age”. Confidentiality can be a problem for youth in care, depending on the practice of the child welfare agencies. The UNCRC guarantees children the right to confidentiality (UNCRC, 1989, A.16). The Final Standing Senate Committee on Human Rights recommended the following: “...consideration of access to a biological parent’s identity and of the benefits of identity disclosure vetos...”, and “... that Assisted Human Reproduction Canada review the legal and regulatory regime surrounding sperm donor identity and access to a donor’s medical history to determine how the best interests of the child can better be served” (Final Standing Senate Committee on Human Rights, 2007). Vetoes refer to the capacity of the parent; the director of child welfare and in some cases the child to refuse disclosure of their identifying information in the case of adoptions.

Under current Canadian privacy and confidentiality laws, all adult citizens have the right to see their medical and professional files, but is this true of child welfare agencies? Depending on the agency it is often more difficult for youth to access their own files, than for adults to access their files. Child welfare files are supposed to be available to them at the age of majority but in practice, this does not usually happen or information is obfuscated to protect the identity of other people named within, including biological family members. Most youth I have worked with are unable to access their full child welfare files, and are sometimes even told that the information has been destroyed. This

issue can also be problematic especially if adoptees or children in care are trying to find their family of origin or a foster parent or sibling. More importantly, the information that someone has been in child welfare may stay on agency records for many years, even past the age of majority, but children in care are usually not told this as they age out. It is not clear why there are registries to keep the names on file indefinitely. The retention of such information is a violation of adult privacy under the Federal Privacy Act (1980-81-82-83, c. 111, Sch. II. 12.1. a&b). There appear to be few limitations on provincial powers to overrule a child's access to their records, which in turn can have the effect of limiting that child's right to self determination and safety, even as a young adult, This is particularly difficult for a former youth in care to obtain proper legal identification if their name has been changed more than once, as has been the case of some of my clients. Age guidelines established in the UNCRC specifying conditions for access to support and confidentiality until the age of majority are generally ignored. The logical incongruities of existing age based policies have been identified by youth in care. A response by the Ontario Association of Children's Aid Societies (OACAS) to changes in the provincial privacy act laid out some of the major dilemmas in the protectionism- liberationist continuum between the child welfare agencies right to control a child's records and the child's right to decide what happens to their records while in care and when they leave care. OACAS argued that in order to protect children they needed to maintain long term files beyond the time the child leaves care in case they need legal justification for apprehension of the child or other children in the home. They also argued that they should not be bound by only being able to obtain and exchange relevant medical information, but should be able to determine holistically what kinds of information can be exchanged. They were against

the idea of 16 years olds having the right to control who could and could not distribute their information, including child welfare agents' access to the information because the child may be a risk to themselves. Alternately, this could mean the child's records are kept indefinitely, the child has no control over who sees their information, and that information is shared in quantities and details that are excessive without the child's knowledge. For example a youth in the Yukon made the following statement:

“If we are saying that children are able to consent to adoption at age 12, then why aren't they ready for their birth family information until age 18?” (Yukon Health and Social Services, 2005 Policy Forum #2 comment from service user).

The right to access one's adoption records prior to or after aging out of child welfare has many benefits for children in care from a liberationist stand point. If children can find biological family members it might increase their placement options and overall contact with their culture, religion, racial and linguistic heritage. After aging out of care, being able to know one's family of origin identity, particularly where their name has been changed several times aids them in obtaining identification. These records might also prove useful in obtaining multiple citizenships and other benefits, for example if the child qualifies to be a status Indian or for other benefits related to their cultural background. Lastly, accessing one's records is essential particularly if it is related to health matters.

In sum the legislation seems to be more protectionist in nature as it protects the biological parents' and extended family's identities rather than allow the child to access their own files or those of their biological family. This makes sense if members of the child's biological family are deemed dangerous for the child to be around or if very traumatic circumstances have occurred in the family that might be “harmful” for the child. What is emotionally harmful for one person may not be for another. The state determining

this is more protectionist than it is liberationist, in that in most cases the child who is adopted does usually get to choose. Secondly, if the files are opened the information that is shared is often up to the discretion of the director of child welfare, and so may be limited.

Nova Scotia (S.N.S 1990 c.5) and Saskatchewan (*The Adoption Act*, 1998.c-A5.2.24. 4 ,[all]) can be seen as the most protectionist, in that both provinces allow the adoption files to only be opened at the discretion of the minister of child welfare, regardless of the adoptee's age. Children who reach the age of majority can access some or all of their files in the Northwest Territories/ Nunavut, British Columbia, the Yukon and Manitoba. However there are age related conflicts in the release of this confidential information which again lean towards the protectionist view in which the state determines what information is "potentially harmful" and the right to the parent's anonymity is paramount. The Northwest Territories and Nunavut are the most protectionist in that adoptees cannot see records until age of majority (*Adoption Act* S.N.W.T. 1998 (last updated 2008), c.9.s.64.1.a), except for medical reasons or to prove they are First Nations (*Adoption Act* S.N.W.T. 1998 (last updated 2008), c.9.s. 67). The records can be held, with no disclosure to the adoptee, for 119 years after the biological parent was born (*Adoption Act* S.N.W.T. 1998 (last updated 2008), c.9.s.50.2). The Yukon does not allow access to adoption records until the child is aged 19, and the adoptee has to pay a fee to access their record (R.S.Y. 2008, C-22. S.136, s.140 & s.140.2). British Columbia allows the adoptee to release their information at age 18, one year before the age of majority, but their biological parents cannot release their information until the adoptee is age 19 (*Adoption Act* 1996 (RSBC.c.5.s. 65 & 66). Manitoba allows an adult to access their

record, especially concerning their cultural, linguistic and religious heritage (*Adoption Act*, 1997 C.C.S.M., c. A2 s. 3[f]). Similarly, in Alberta, the adoptee can ask for their adoption information if they are over age 18, but their biological parent cannot until the adoptee is age 18 and 6 months (R.S.A. 2000, c. C-12 s. 74.2[2]). Information on any other person's record, other than the biological parent, are not allowed to be viewed, and the minister reserves the right to withhold all the information if it is deemed potentially harmful for the adoptee (C.C.S.M 1985. c. C80 s. 76[5 &6]). The adoptee does have the right to appeal the decision to withhold information (C.C.S.M. 1985c. C80 s. 76 [21]).

The legislation in PEI, Quebec, Ontario, New Brunswick and Newfoundland all allow the adoptee to access their records if they are under the age of majority, which could be viewed as more child liberationist and potentially family preservationist (for the biological family). I found the legislation in Newfoundland to be confusing because the child welfare act stipulates a child aged 12 or more can apply to obtain and exchange information with their biological parent including why they were removed unless it is deemed harmful (S.N.L. 1998 c. C-12.1 s. 68 & s. 69). However, the adoption act states they have to wait until age 19 (*Adoption Act* SNL 1999 c. A-2.1 s. 41). Quebec allows children to have a "summary" of their file at age 14, and it is not clear what this might include, however the parents can veto this. The parents can share information about their biological child if the child is under age 14 (R.S.Q. 1977c. P-34.1 s. 72.5), but it appears that the child does not have a right to exchange information about the parent.

Furthermore, in this province, the adoption records can be sealed for 5 years beyond the time the child is in care or if they are no longer in care, until the child reaches age 8. The reasoning behind this is not clear in the legislation. PEI allows a minor or (*Adoption Act*,

R.S.P.E.I. 1988, c. A-4.1 s. 51.1) an adult adoptee to apply for a reciprocal search of information, if the biological parent approves, otherwise the anonymity of the parent is protected (*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 2[e &f]). Exceptions might be made if the parent is deceased (*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 49[all]), or to exchange non-identifying medical information (*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 42.2). In New Brunswick, a minor can get non-identifying information if the biological parents have agreed, especially in medical cases (S.N.B. 1980, c. F-2.2 s. 92[5]). Non-identifying information can be shared between adult adoptees, adult siblings of adoptees and birth parents, if all parties register for this exchange (HRSDC, 2009). In Ontario, a child over 12 has right to their records except counselling records and their parent/ guardian have the right to the child's records, if child is under age 16 (R.S.O. 1990, c. C.11 s. 184(1) [all]), but the service provider may withhold assessments (medical, psychological and counselling records) regardless if the child is under 16 or over 16 (R.S.O. 1990, c. C.11 s. 185[all]). A very protectionist statement exists in Ontario's legislation whereby the child welfare act regarding the disclosure of adoption files supersedes the rules of The Freedom of Information and Protection of Privacy Act (R.S.O. 1990, c. C.11 s. 165[5]).

Secondly there is a protectionist element in every province, where the adoptee cannot access the files if the parent or family has vetoed this right and or a "no contact" order was put in place. Alberta (R.S.A. 2000, c. C-12 s. 74.2[4]), Newfoundland/ Labrador (*Adoption Act* S.N.L. 1999 c. A-2.1 s. 50(2) (a) & s. 51[3]), and British Columbia (*Adoption Act* 1996 (RSBC.c.5.s. 65 & 66) all allow both parties, the adoptee and the biological family to veto access to their identifying information on the adoption record. This can be seen as both child liberationist and child protectionist, in that it allows

the child to determine if they want to be contacted. In the Yukon if there were any vetoes or no- contact orders the files remain sealed until two years after the biological parent's death (RSY 2008, C-22.143[all]).

Preserving identity for international adoptees

There is very little information in this section. In general, Quebec's legislation appears to be the most child liberationist in its protocols for following the Hague Convention on Inter Country Adoptions and the most protectionist in evaluating the safety and competence of adults applying to adopt a child, as this province requires psychological evaluations (R.S.Q. 1977c. P-34.1 s.71.4 [2]). The use of the Hague Convention protocols is also mentioned in the legislation in New Brunswick (S.N.B. 1980, c. F-2.2 s. 64), Quebec (*Civil Code of Quebec*, S.Q. 1991, c. 64, Div I, s. 565), British Columbia (*Adoption Act* 1996 RSBC.c.5. s. 50 to 57) and Newfoundland, and the latter also mentions following the rules set out in the UNCRC (*Adoption Act* S.N.L. 1999 c. A-2.1 s. 33(a) (b) & s.. 40[1&2]).

Cultural considerations on adoption placements are listed generally in Alberta (R.S.A. 2000, c. C-12 s. 58.1[d]), British Columbia, Newfoundland (*Adoption Act* S.N.L. 1999 c. A-2.1 s. 3(2)[f]), Nova Scotia (S.N.S. 1990 c.5 s. 3(2)(g &f) & s. 88(2)[e]), and Saskatchewan (*The Adoption Act*, 1998.c-A5.2.3.a &c), making them the most child liberationist in terms of trying to pass on the family of origin's cultural heritage to the child. In terms of a child's right to access their family of origin, very little information exists in the laws. Ontario's legislation states that the child cannot make an application to access their birth parent (R.S.O. 1990, c. C.11 s. 160(1) [all]), which is less liberationist for the child who may want to find their biological family. British Columbia's law states

that information about the biological family must be disclosed to the adoptee, once they reach adulthood (*Adoption Act*. R.S.B.C. 1996, c.5. s. 56). The maintenance of family of origin relationship is recognized in Alberta, if the child is adopted by family (R.S.A. 2000, c. C-12 s. 101). Information cannot be exchanged between families, if the adopting family is not related, until all of the requirements for the adoption to take place are met (R.S.A. 2000, c. C-12 s. 103).

The results are mixed concerning legal issues and inter-country adoption, as it is not clear if the rules on intra provincial adoptions also apply to inter-country adoptions. This section focuses solely on the caveats in the legislation that specifically apply to inter-country adoptions. PEI [*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 56.1] and Alberta (R.S.A. 2000, c. C-12 s. 62[3]) stipulate that a child must be legally entitled to live in Canada before being adopted here. The legislation in PEI also states that the minister must approve for a child born in the province to be adopted out of the province (*Adoption Act*, R.S.P.E.I. 1988, c. A-4.1 s. 5). Previous adoption orders made outside of Canada are recognized in Nova Scotia (S.N.S. 1990 c.5 s. 86) and the Northwest Territories after 1998 (*Adoption Act* S.N.W.T. 1998 c.9.39). The child's right to consent to being adopted is not mentioned in any act, except Alberta. Here the child must be aged 12 to consent to be adopted and can obtain access to legal counsel (R.S.A. 2000, c. C-12 s. 95(1) & (2)[all]). This is a more liberationist stance on the child's right to choose to be adopted. The biological parent's right to consent to the adoption is only clearly laid out in Nova Scotia (S.N.S. 1990 c.5 s. 74[10]) making this legislation the most family preservationist. The consent of the jurisdiction to authorize a child to be adopted into a province is clearly stated in the legislation for the Yukon (R.S.Y. 2008C-22.s.135.2) and Newfoundland

(*Adoption Act* S.N.L. 1999 c. A-2.1 s. 33 [a &b]), making these laws the most protectionist in terms of the child's safety. Only Manitoba (C.C.S.M. 1985, c. C80 s. 83), Alberta (R.S.A. 2000, c. C-12 s. 95(1) and (2) [all]) and Quebec (R.S.Q. 1977 c. P-34.1 s.71.4 [2]) legislation clearly state that these provinces are responsible for inter country adoptions, which again can be seen as child protectionist and family preservationist in terms of ensuring that children are adopted from their families legally.

Preserving identity for First Nations and other cultural groups

The preservation of identity for First Nations children and those from other cultural groups can be assessed first by examining global caveats addressing language, culture, religion, and race. All of the acts mention the preservation of one or more of these facets of identity in general ways. Only the Northwest Territories (*Adoption Act* S.N.W.T. 1998, c.9.s.3.c & s.18.6), Manitoba (*The Adoption Act*. 1997 C.C.S.M.c. A2.3.f; C.C.S.M.c.CC.c80.s.10 & s.11) and Newfoundland (S.N.L.1998 c. C-12.1.s.2.1) have legislation specifying the preservation of these multiple identities in terms of adoption placements. Generally all of the information focuses on First Nations cultural preservation. Consultation with the bands on child welfare plans is listed in Saskatchewan (S.S.1989-1990, cC-7.2.s. 61 [all]; *The Adoption Act*, 1998.c-A5.2.s.3.a &c; *The Adoption Act*, 1998.c-A5.2.s.29(3).3.c), British Columbia (R.S.B.C. 1996 c.46.s.1.1; RSBC 1996 c.46.s.3.b & s.3.2; *Adoption Act* 1996 R.S.B.C.c.5.s.37.7) the Northwest Territories (*Adoption Act* S.N.W.T. 1998,c.9. s.18.6) and the Yukon (R.S.Y.2008 C-22. s.98.2), however Alberta and Nova Scotia's laws state the band is "notified" of the child welfare procedures. These acts are clearly more community preservationist because the legislation requires that child welfare agencies consult with the bands. I found it difficult to discern

from the individual child welfare acts what kind of involvement the First Nations communities in Newfoundland/Labrador have, as the Act simply states that the Inuit Land Claims Agreement must be followed (S.N.L.1998 c. C-12.1.s.2.1). Bands are clearly in charge of adoption and/or social service provisions for First Nations children on reserve (and possibly off reserve, but this information was hard for me to discern by looking solely at the legislation) in Manitoba (C.C.S.M.1985, c.C.80.s.10 & 11; C.C.S.M.c.CC.c80.s.77 [2]), Ontario (R.S.O. 1990, C.11.141.2 [1&2]; .S.O. 1990, C.11.s. 162. (3) d), the Yukon (R.S.Y. 2008, C-22.s. 98.2. a), British Columbia (where several bands are named) (R.S.B.C. 1996, c.46.3.b & 3.2; *Adoption Act* R.S.B.C.1996, c.5.s.7.1 [all]), Nova Scotia (S.N.S.1990, C.5, s.68.11 & 12; S.N.S.1990, C.5. s.1.78.4) and Quebec (only the Cree are mentioned) (*Civil Code* 1991, c. 64, a. Ch.2 Div.1 &2, s. 37.5). Only three provinces state that the parent and/or child can refuse to consult with their band on child welfare issues. In the Northwest Territories/Nunavut (*Adoption Act* S.N.W.T. 1998 c.9.18.6 &7)) and in British Columbia (*Adoption Act* R.S.B.C.1996, c.5.7.2) the child over age 12 can refuse or their parent can refuse, if the child is under age 12. In the Yukon children seem to have the right to refuse consultation with their band at any age (R.S.Y. 2008, C-22.s. 98.3 [a&b]). Ontario (R.S.O. 1990, C.11.141.2 [1]) and Nova Scotia (S.N.S.1990, C.5, s.68.11 & 12; S.N.S.1990, C.5, s.1.78.4) lay out clear time limits giving bands the opportunity to consider the child welfare plan, although Ontario (R.S.O. 1990, C.11.141.2 [12]) allows the bands to contest these and come up with their own plan. The child's right to associate with their band is not clearly stated in the legislation. Alberta allows a child can get proof of their status (R.S.A.2000, cC 12. s.74.4 [1 &2]). Manitoba (C.C.S.M. 1985c. C80. *Declaration of principles*), British Columbia (*Adoption Act*

R.S.B.C. 1996c.5.37.7), and New Brunswick (S.N.B. 1980 c. F.-2.2.85(2)c-) all have references to the child maintaining their rights as a First Nations person, do not make direct reference to the child being able to have contact with their band.

### b.2 Adoption and Family Access

Do children have rights under current child welfare legislation to maintain contact with family and extended kin? External factors that engender resiliency for youth in care are: “close relationships with parents, authoritative parenting (i.e. warmth, strength and high expectations), socio-economic advantages, extended supportive family networks...” good schools, academic success, positive extracurricular activities and bonds to other adults in the community (Manning, 2008, p.16). Another issue is that “...many youth [in care] who continue to have relationships with their birth parents and extended birth families have better outcomes...” (Reid & Dudding, 2006, p.7). This issue is especially important for children who have been adopted or are long term wards of the crown and who are forced to live in institutional settings, most often because there is a lack of foster care placements (Final Standing Senate Committee on Human Rights, 2007). For example, placing siblings in separate homes and institutions without frequent visitation rights is common (Tweddle, 2005). A second example is that children in institutions are forced to give up their pets. This is cruel to both the child and the animal, and it may decrease the child’s ability to form strong bonds with others (Ascione, 2005). There is no legislation governing the issue of children in care maintain relationships with their family pets. What are the provincial legislative rules that govern contact with family members who have been in contact with the law, cults or hate groups? Evidence from US studies on children aging out of child welfare indicate that they have significantly higher rates of

depression, behavioural problems, addictions and post traumatic stress disorder. It is hypothesized that the lack of stable emotional attachments and family links may be a core cause (Manning, 2008, p. 12).

To understand the way that legislation protects or fails to protect a child's links to their family, the provincial legislation has been compared with a view to examining: children's rights to kinship agreements, no access custody orders, other cultural placement rules (includes adoptions), family access for inter-country adoptees and children's ability to maintain links with their First Nation.

### Kinship Agreements

“There are times when a family cannot look after a child, but in these situations the child should not be cut off completely from the family "like the parent died"(Yukon Health and Social Services, April, 2004 Policy Forum comment from service user).

Kinship agreements refer to keeping the child within the extended family and/or with significant adults in their community. The benefit of this from a child liberationist view is the child is able to remain in contact with their family and to know about aspects of their heritage. From a family preservationist view, the extended family and sometimes the community can stay intact. Kinship agreements recognize the child as a member of a group. These placements may also be an inexpensive option rather than transferring the child into institutional care. In general the use of kinship care agreements is mentioned more in the literature about child welfare practises than it is in the acts themselves. The distinction between foster care and kinship care is not clear in any of the acts and therefore neither are the rights afforded to caregivers in these two kinds of care agreements.

Manitoba, PEI and Quebec are the only provinces which make no clear reference to kinship or extended family care agreements. PEI (R.S.P.E.I. 1988, c. C-5.1 s. 28(2) & 31[8]) mentions placing the child in emergency situations with extended family. The only act which explicitly uses the term “kinship care” is Newfoundland (S.N.L. 1998 c. C-12.1 s. 62.2), although there are other acts that refer to extended family care and they are the New Brunswick (S.N.B. 1980, c. F-2.2 s. 1[d]), the Northwest Territories/Nunavut (S.N.W.T. 1997,c.13 2.i), Saskatchewan (S.S. 1989-90, c. C-7.2 s. 53[a]), Ontario (R.S.O. 1990, c. C.11 s. 57[4]), Alberta (R.S.A. 2000, c. C-12 s. 14(1)(all) & (2)[all]), Saskatchewan (S.S. 1989-90, c. C-7.2 s. 53[a]), and Nova Scotia (S.N.S 1990 c.5 s. 42 [3& 3.b]). The preference to place the child within the family is clearly stated in Newfoundland (S.N.L. 1998 c. C-12.1 s. 62.2), Nova Scotia (S.N.S 1990 c.5 s. 42 [3 & 3b]) and Alberta (R.S.A. 2000, c. C-12 s. 14(1) (all) & (2) [all]). Access to siblings, while the child is in permanent care is clearly stated in British Columbia (R.S.B.C. 1996, c.71.b), New Brunswick (S.N.B. 1980, c. F-2.2 s. 1[d]), and Nova Scotia (S.N.S 1990 c.5 s. 44(3) [a]). The preference to place children with extended family, particularly siblings is more family preservationist. The latter two provinces also state this is possible for children in temporary care. Few of the acts actually mention seeking the consent of the child for these placements specifically, except Alberta (R.S.A. 2000, c. C-12 s. 29[d]). It can be assumed that the same consents that apply to children in temporary orders or permanent orders also apply in these cases (see Chapter 4 Section 1 Age and Receiving Care, pages, and Appendix B.1 Age and Receiving Care). The child’s right to remain in the community is clearly stated in Saskatchewan (S.S. 1989-90, c. C-7.2 s. 53[b]), Nova Scotia (S.N.S 1990 c.5 s. 42(3) & s. 44(3)[b]) and Alberta, (R.S.A. 2000, c. C-12 s. 2(i) &

[ii]), and this legislation can be viewed as more community liberationist in that the child is seen as a citizen of the community. Only British Columbia stipulates that if possible the child should remain in the same school (R.S.B.C. 1996, c.71.c), and this can be seen as both community preservationist for the child's peer group, as well as liberationist for the child to maintain links with their peers. Perhaps the most child liberationist acts are those that allow for the parent to be removed and the child to remain at home, and this is possible in New Brunswick. (S.N.B. 1980, c. F-2.2 s. 33(a) & [b]) and Alberta (R.S.A. 2000, c. C-12 s. 29[f]). This later practise is best stated in a quote from a youth in care interviewed for a National Youth In Care research project:

“Being placed in a stranger's home with little more than a garbage bag of belongings compounds the barriers for adjustment. While some social workers, judges or foster parents may attempt to explain to them that they have been removed from their families “for their own good”, they typically feel that they are being punished for the abuse they have suffered. After all, it is not the parents who are removed from everything that is secure and known, it is them” (Lambe, 2006, p. 18).

#### No Access Custody Orders

When children are apprehended from situations that are or might become dangerous to their well being the guardian and child may have a no access order. In some cases this may mean that although the guardian has no involvement in the child's life, they can still have some form of contact with the child. It may mean that guardians are allowed some input into the care plan, which is the case in New Brunswick (S.N.B. 1980, c. F-2.2 s. 55[4]). These orders are complicated and may hinder the child's ability to access their immediate family (parent, grandparents, and siblings) and or their extended family, as a preventative measure. These orders are protectionist in nature, however can be viewed as possibly child liberationist if the child wants to be placed and protected from

their guardian. They may also be viewed as family preservationist if the child and guardian can still remain in contact. The child's right to access the guardian parent is not consistent in the laws. PEI, the Yukon, the Northwest Territories/ Nunavut, British Columbia list nothing specific stating that children can access their parent under these conditions, but several of these laws imply it is possible because of the review process. Concerning access to their extended family, children with no custody access orders generally have the same rights as listed above in the section on kinship agreements in some provinces. New Brunswick (S.N.B. 1980, c. F-2.2 s. 129[3]), Quebec (R.S.Q.1977 c. P-34.1 s. 4), Ontario (R.S.O. 1990, c. C.11 s. 59[1.2]), Manitoba (C.C.S.M. 1985, c. C80 s. 78(4.2[c]), and Nova Scotia (S.N.S 1990 c.5 s. 44(1)[b]) explicitly include the possibility of visits with extended kin, making these laws the most family preservationist. However, access orders can be terminated, particularly if the guardian is a threat to the child's well being and development, and this is stated in all of the Acts. As stated in the Access can cease completely in most provinces, if the child is adopted (see Open Adoption subsection, pages 94-97). Only Alberta (R.S.A. 2000, c. C-12 s. 31(4)[all] & s.55 [1]) and Manitoba (C.C.S.M. 1985 c. C80 s. 78(3)[all]) seek the consent of the child over age 12 to agree to access with their guardian, making them the most child liberationist legislation. Manitoba also allows the child to apply for access to their parent/guardian (C.C.S.M. 1985 c. C80 s. 78(3) [all]). The review of time limits on no custody access orders is variable. Ontario has no time limit for reviews (R.S.O. 1990, c. C.11 s. 59.1). Newfoundland (S.N.L. 1998 c. C-12.1 s. 21.4) and Manitoba (C.C.S.M. 1985c. C80 s. 20[3]) allow for reviews of these orders in six months, However, Manitoba does not allow for a second review until a year after the first one, and then only if the parent/ guardian can ask for this

review (C.C.S.M. 1985 c. C80 s. 36 [9]). I found Saskatchewan's legislation to be contradictory as it states that reviews can be applied for in six months, which can be seen as more liberationist, but that no more than a maximum of 24 months can pass before a review is made (S.S. 1989-90, c. C-7.2 s. 16[8]). To keep the child in care with the potential of two years between reviews seems to be quite long and appears to be a more protectionist stance on their rights. This province also states that 16-17 year olds can ask for a review (S.S. 1989-90, c. C-7.2 s. 16[9]). Saskatchewan's law states that "anyone can appeal a no custody access order, but this it was not clear to me if the child can, and if so at what age (S.S. 1989-90, c. C-7.2 s. 16(5) [all]). These four provinces are more family preservationist in nature in that they do allow for a review process to see if the family can remain in contact with each other.

#### Other Cultural Rules on Adoption and Placement

This section is discussed in more detail below in the Culturally Appropriate Care section (pages 116-124). Culturally specific rules on placement are very general in the Acts, loosely noted in the preamble of every act as: "it is in the best interests of the child to maintain" all or some of the following parts of their heritage: cultural, linguistic, racial and spiritual. Quebec is the only province that does not elaborate on any aspect of this, which is surprising given its special status in Canada as the French province. Religion is mentioned as being important to consider in placement in British Columbia (R.S.B.C.1996, c.3(c) & 4(1) e), the Northwest Territories/ Nunavut (*The Adoption Act* S.N.W.T. 2008, c.9, s.3. & 7.2), Saskatchewan (S.S. 1989-90, c. C-7.2 s. 4[c]) Nova Scotia (S.N.S 1990 c.5 Preamble of Act), PEI (R.S.P.E.I. 1988, c. C-5.1 Preamble & s. 21(1)[i]) and New Brunswick (S.N.B. 1980, c. F-2.2 s. 1[g]). Language is mentioned as

being important to preserve in Ontario (R.S.O. 1990, c. C.11 s. 2[1]), the Northwest Territories/ Nunavut (*The Adoption Act* S.N.W.T. 2008, c.9.s.3. & 7.2), Manitoba (C.C.S.M. 1985 c. C80 s. 2(1) (h) & 7(1) [m]), Nova Scotia (S.N.S 1990 c.5 Preamble of Act), and PEI (R.S.P.E.I. 1988, c. C-5.1 Preamble & s. 21(1) [i]). Only Ontario mentions French language specific services (R.S.O. 1990, c. C.11 s. 2[1]). British Columbia (R.S.B.C.1996, c.3(c) & 4(1) e), Manitoba (C.C.S.M. 1985 c. C80 s. 2(1) (h) & 7(1) [m]), Nova Scotia (S.N.S 1990 c.5 Preamble of Act), and PEI (R.S.P.E.I. 1988, c. C-5.1 Preamble & s. 21(1) [i]) also mention the importance of considering racial heritage in placement. British Columbia (R.S.B.C.1996, c.2.e), the Northwest Territories/Nunavut (*The Adoption Act* S.N.W.T. 2008, c.9.s.9.3.c) and Saskatchewan (S.S. 1989-90, c. C-7.2 s. 53[b]) all mention the involvement of the community in preserving the child's heritage, which make them the most community preservationist laws in this category. Ontario (R.S.O. 1990, c. C.11 s. 56[f]) and Nova Scotia (S.N.S 1990 c. s. 3(2)(h) & s. 20[e]) explicitly state placements should be culturally appropriate and making these laws the most family preservationist laws, as they attempt they promote passing on the heritage of the family to the child. Nova Scotia's law also mentions that culturally appropriate placements should apply to temporary and permanent custody situations (S.N.S 1990 c. s. 39(8) [d]). Alberta's legislation also advocates for culturally appropriate placements and suggests that whomever the child is placed with should help instruct the child in some or all of these facets of their culture (R.S.A. 2000, c. C-12 s. 2[n]).

Family Access for Inter-country Adoptees

There were no other findings to report in this section. The information in this section is exactly the same as what is in the section above under Identity, in the subsection titled Preserving Identity for Inter-country Adoptees (pages 99-101).

First Nations Children Contact with Bands

The information in this section is essentially the same as that listed in the Identity section above under Preserving Identity for First Nations children (pages 101-102). The only difference is that Ontario clearly states the children, particularly crown wards should be placed with extended family in their band, within their First Nation or in another First Nation home (R.S.O. 1990, c. C.11 s. 57(5) & s. 61(1) [d]). The Northwest Territories/ Nunavut legislation also states that the measures taken should support preserving the integrity of the family and community, which can be seen as attempting to place the child within the community or at least maintain contact with their band/nation (S.N.W.T. 1997, c. 13.58.1[all] & *Adoption Act* S.N.W.T. 1998 (last updated 2008) ,c.9 .3.c).these Acts are therefore the most community preservationist, in that they attempt to preserve the child's right to remain in contact and/or within their community as a citizen of that community. However, this does not mean the child is consulted on this matter.

b.3 The right to receive and/ or refuse culturally appropriate care

Dumbrill states that, "Child welfare protects privilege by removing the children of those marginalized within society rather than examining the structural inequalities that disadvantage these families..." (Dumbrill, 2003, p.106). Although Aboriginal Child and Family welfare systems are gaining recognition in the western provinces, and Jewish Family services exist in Montreal (Les centres de la jeunesse et de la famille/ Batshaw

youth and family centres, 2009), there are few other specialized cultural services for children in care. Specific cultural services for gay and lesbian youth, refugee youth and youth from communities with disabilities (Bennett, 2003), particularly the Deaf (Tweddle 2005) are also lacking. One study of social workers and staff in child welfare agencies in Western Canada, revealed that the majority of these staff do not reflect their clients' sex, sexual identify, ethnicity, languages, religions, class or race (Fallon et al, 2003 in Strega & Esquao [Carriere], 2009, p. 19). Children may not have a say if they would prefer to be in a placement associated with their respective culture or religion. Some provincial service provision protocols have tried to place children with families who can provide similar cultural and religious role models, but this may not be what the child wants (Hudson & Mackenzie, 2003). The UNCRC and most of the provincial legislation allows for the child to have a say in their plan of care. Most foster and adoptive care protocols have a priority to keep children in one culture, if it exists, but do not address how they will create appropriate support systems for children from other excluded or mixed cultural and religious communities. How many agencies actually have culturally or religiously appropriate care, and how well these care options accurately reflect the population's needs is unknown and virtually absent in the research.

“One of the most progressive movements is the Manitoba Aboriginal Justice Inquiry Child Welfare Initiative which will allow residents of Manitoba to chose which of four culturally based child welfare authorities they wish to be serviced by (Northern First Nations, Southern First Nations, Métis, or Mainstream). In this province where over 70% of the children in care are Aboriginal, 86% of families are choosing their culturally based authority.”(personal conversation with Elsie Flette, CEO of the Southern First Nations Child Welfare Authority, 2004) (Blackstock & Trocome, 2004, p.8).

The right for the child to choose their own cultural or linguistic care is not addressed in most of the child welfare acts. Only three provinces, prior to 2004 had

legislation mandating that the child's culture and religion be taken into account for the purposes of placement: New Brunswick, North West Territories and Nunavut (Bunting, 2004, p. 149). Today most child welfare legislation requires finding appropriate placements based on culture, race, language or religion, which is most often addressed in clauses of the acts referring to what is "in the best interests of the child". Most legislation determines what is appropriate cultural care based on what the parent or guardian believes, not necessarily what the child wants. Child welfare has an essentialist view of children in that culture and religion must be genetically understood as the same as the parent's (Bunting, 2004, p. 142). Very little research exists on culture and children in care other than for First Nations children. The effects of cultural placement seem to have only been researched in adoption studies, which tend to indicate that a child's cultural and religious identity changes over time, and is only partially influenced by their family of origin (Bunting, 2004, p. 145)

Culturally appropriate care is assessed by examining the child welfare legislation on the following dimensions: provisions for First Nations control over services, provisions for religious groups, and children's ability to opt out of religious or minority care. I included references to any provincial acts which mention specific cultural child welfare agencies or which give specific cultural communities some control over child welfare measures and decisions.

#### Provisions for First Nations control over services

There are no new findings for this section of the research. All of the information in this section has previously been discussed in the sections above on Identity, in the subsections: Preserving Identity for First Nations Groups (pages 107-109), Adoption and

Family Access subsection: First Nations children having contact with their bands (pages 110-116). Ontario (R.S.O. 1990, c. C.11 Part X [all]; (R.S.O. 1990, c. C.11. 212; R.S.O. 1990, c. C.11. 20.2[2]; R.S.O. 1990, c. C.11 s. 213[all]; R.S.O. 1990, c. C.11 s. 214 & s. 214.25; R.S.O. 1990, c. C.11.216[c]; R.S.O. 1990, c. C.11.223 [a-c]) and British Columbia's (RSBC 1996 c.46. 36(2.1) [e-g]; (R.S.B.C. 1996 c.46. 33.1(4) [c, e, d]; (R.S.B.C 1996 c.46. 34(3) [d-f]; (R.S.B.C. 1996 c.46. 35 (1) [b] );( R.S.B.C. 1996 c.46. 38[1- all]; (RSBC 1996 c.46. 39(1)[c-d.i]); (RSBC 1996 c.46. 49(2) [c-d]); (RSBC 1996 c.46. 54.1(2.[c – e]) Acts are the most detailed in terms of explaining the roles and responsibilities of the First Nations run child welfare agencies and the ministerial funding of them. The Yukon (R.S.Y., 2008 C-22. Preamble) has the only act which was explicitly developed with First Nations communities. Lastly, it is important to note that First Nations services are operated in at least two ways, the first is more state protectionist in that child welfare monies and rules are handed down from the federal government through provincial authorities to the reserves, and this is referred to as "Directive 20-1, established in 1991 (HRSDC, 2002, p. 3). If the First Nation has self governance agreements recognized in the child welfare and provincial legislations, then they can deliver services on and off reserve more easily, however the funds may be coming from various sources.

#### Provisions for religious groups

There is almost no information about the provision of specific religious services to children in care, aside from general statements in the legislation about preserving religious heritage (previously mentioned in Adoption and Family Access: Other Cultural Rules on Adoption and Placement, pages 114-116) Generally the information is oriented toward a family preservationist stance on the right of the parent or family to choose the child's

faith. Only Ontario's act explicitly states that there are different religious services for children in care. In this province, Protestant children cannot be under Catholic services and vice versa, unless there is only one agency in a region (R.S.O. 1990, c. C.11 s. 86[3 &4]). This could be viewed as more family preservationist, if religion is a priority to the family. The province of Nova Scotia (S.N.S 1990 c.5 s.50.2) allows the court to determine the child's faith if there is a question as to what services they should be using. The latter can be seen as being more protectionist because neither the child nor the family has an absolute right to choose their faith.

#### Children's ability to opt out of religious or minority care

There is almost no information about considering the child's wishes to remain in or leave a placement because of their personal cultural or religious views. This seems highly family preservationist and takes the natural law view in most of the legislation where the child's culture and faith seem to be determined by their family origin and not how they self identify. There is nothing concerning multiple identities and placement preferences of the child in the legislation. This is exemplified in a quote by a service user who stated: "caution around recognizing that Canada is multicultural and more than First Nation and non-First Nation. (Services) Need to be more inclusive" (Yukon Health and Social Services, April 2004 Policy Forum comment from service user). Ontario clearly states that the child's faith determined by what the parent's faith is (R.S.O. 1990, c. C.11 s. 86[1]), unless the court can ascertain the child's wishes (R.S.O. 1990, c. C.11 s. 86[20]). Saskatchewan's legislation states that a child's wishes need to be assessed concerning cultural placement, but there is no age listed as to when the child's preferences will be taken into consideration (S.S. 1989-90, c. C-7.2 s. 4[f]).

Number of agencies serving specific religious groups

Only two acts mention specific religious services. Manitoba's legislation mentions Jewish Family services (C.C.S.M1985. c. C80 s. 6.3[a]). Ontario's legislation mentions Catholic Services (R.S.O. 1990, c. C.11 s. 86), but not the actual agency "Catholic Children's Aid Society". Clearly those acts which mention specific services for First Nations groups may have agencies that provide specific spiritual care for children, but this is not clear in the legislation and so is not included in this thesis. As well religious services for First Nations children who do not ally themselves with their cultural spirituality are not mentioned. One of the issues is that some children are from multiple faiths and the acts do not discuss this at all, as stated by a service user below:

"I would be concerned if the act speaks primarily about First Nation groups. I believe all cultures should be considered as well as religious, spiritual groups. Although First Nations may be predominant here, we have lots of other groups to consider" (Yukon Health and Social Services, May 2004 Policy Forum comment from service user).

The lack of information on religious services seems to show a less family and possibly a more child liberationist view of the rights of children in care, if actual agencies to promote their spiritual needs are not listed. The dilemma is accommodating the religious preferences of children and their families, which could lead to segregation of services and clients or inclusion all children under one umbrella service which tends to lead to cultural blindness.

Number of agencies serving First Nations groups

In 2005, there were 125 agencies serving First Nations communities (Bennett, Blackstock, De La Ronde, 2005, no p. #). British Columbia (R.S.B.C. 1996 c.46 & 90), the Yukon (R.S.Y. C-22, 2008-preamble) and Nova Scotia (S.N.S 1990 c.5 s. 36.3) are the

only acts to explicitly mention specific service agencies and bands. British Columbia mentions two treaty agreements and a band bylaw that recognize the right of those Nations to govern their own child welfare services. The Spallumcheen band has a band by-law to govern child welfare since the 1980s. The Selchelt First Nation has had a tripartite agreement with federal government and the province, since 2003, giving them the power to enact their own child welfare laws. Finally, the Nisga'a are recognized as self governing and have total authority over child welfare services and policy (National Collaborating Centre for Aboriginal Health, 2006), p. 3). The Yukon legislation lists the largest number of individual bands, recognizing the different communities, and possible service provisions to each might need to be different. In Nova Scotia, the Mi'kmaq Family and Child Services is the same agency providing services to Métis, Inuit and Innu children in care in NS, and can follow off reserve children for 3 months before transferring to a local agency (Gough, 2006, p.3). Quebec (R.S.Q. 1977, c. P-34.1 s. 26) and Newfoundland (SNL 1998 c. C-12.1.2.1) only mention specific agreements made with large regional groups, the Cree and Inuit respectively, although other Nations exist in these regions. Quebec's act also refers to agreements with "northern communities" but doesn't state what culture or Nations these are (R.S.Q. 1977, c. P-34.1 s. 37.5). In Newfoundland, community workers are employed to assist social workers in child protection cases with Innu through the Labrador/Grenfell Regional Health Authority (Gough, 2007b p.4). It is therefore unclear if an actual agency exists specifically for First Nations children in this province. Ontario's legislation refers in many cases to First Nations control over child welfare services and cost sharing for these provisions, but does not list any nations specifically R.S.O. 1990, c. C.11 s. 1.5 & s.209-211). This legislation

is perhaps the most community preservationist in the sense that the powers given to First Nations communities for child welfare services are many and are very detailed. The Northwest Territories /Nunavut legislation refers to the use of community councils, but no specific bands are mentioned. These councils are actually corporations, and act in First Nations child welfare issues, (R.S.N.W.T. 1997.58(1) [all]). New Brunswick, PEI, Quebec, Ontario and Manitoba have supplementary agreements, not listed in the child welfare legislation. In New Brunswick, there are 11 First Nations Child and Family Service Agencies funded by Federal Department of Indian and Northern Affairs. They work primarily on the 15 reserves but also collaborate with local child welfare agencies in case planning for First Nations children in care (Gough, 2007a, p.2). In PEI, the Mi'kmaq Confederacy of Prince Edward Island (MCPEI) provides services to children on reserve only, and is funded by federal government (Gough 2008, p.3). Quebec has service agreements with the Mohawk through Kahnawake Family Services. I know this because I have worked on cases with this agency. Ontario has six First Nations Child and Family Services, five of which are on reserve one in Toronto (Gough, 2005, p.2). Manitoba seems to have a main agency called the Kinosao Sipi Minisowin Agency (KSMA) Métis service agency. Interestingly, Manitoba also has a review commission, making this perhaps the most community liberationist in practice. The "Aboriginal Justice Inquiry Child Welfare Initiative (AJI-CWI) is a joint initiative of the Manitoba Métis Federation, the Assembly of Manitoba Chiefs, Manitoba Keewatinowi Okimakanak, and the Province of Manitoba"(Ducharme et al., p.4). This agency appears to investigate and make recommendations for better service practices in the province.

The importance of having community run services for First Nations children is essential given the damage done to First Nations cultures by the residential school system. With such a large number of First Nations children in care it is essential to recognize their right and their need to maintain contact with their communities. As one service user commented:

“I grew up in a group home. There were then no programs to help me develop as an aboriginal person. For example, we never went hunting or fishing or to culture camps. I only recall one First Nation worker in my group home. She made a difference to me because she was First Nation” (Yukon Health and Social Services, May 2004 Policy Forum comment from service user).

Summary of Section b. Identity, Family Access and Culturally Appropriate Care

(Appendixes B.2.a-c)

This section is more protectionist and family preservationist in regards to the adopting family than liberationist. One of the most difficult aspects of researching this section on identity, family and cultural access is that many different kinds of legislation govern it and some provisions in one act can contradict or complicate provisions in another act within the same province, particularly in regards to adoption measures. Some provinces have separate adoption acts, acts to change a person's name, provincial privacy acts, etc. Overall, Nova Scotia, New Brunswick, Alberta and the Yukon legislation on adoption appears to be governed mainly by the child welfare acts, whereas the other provinces and territories use adoption acts and child welfare acts which guide the rights of adoptees. It appears as the layers of legislation multiply, so do the inconsistencies in the child's right to their identity, family and cultural access. It is clear that if child welfare agencies across Canada are to be responsible for the management of adoption and foster care placement, it would be more efficient and less contradictory to have all of the

provisions for the above sections in only the child welfare legislations. Finally, a major concern is the child's limited ability to choose their identity, their name, to access their records and their family. The latter is particularly important because there are so few standards listed in these acts regarding access to bands, interprovincial and inter-country biological family and supports from extended family within each province. Several sub categories I defined originally can be combined, such as: information on the child's or First Nations community's access and involvement with each other, the information on inter-country adoptees as there is so little and the information on cultural placement rules. Initially, I thought there would be more details in each of these sections, but much of the data I found for these subcategories is repetitive and general.

c. Mobility

Mobility issues for youth in care are twofold: first having a choice of placements which potentially allow access to family, and second having stability in their foster, adoptive or residential care placements.

Problems arise when children are unable to cross provincial borders to seek contact with kin and/or help from agencies which are willing to provide services to them that are unavailable in their province of origin. The age at which youth in care can qualify for independent living, varies by province, as do the transition services to facilitate this process (see Age and Receiving Care, pages 62-89 and appendix B.1). For example, all provinces except Quebec and Manitoba have provisions for independent living, under the age of majority. Ontario (Ontario Ministry of Community and Social Services, 2009) has provisions through child welfare or adult welfare services for many years and more recently several other provinces do to, with varied requirements. PEI's legislation allows

for the support of minors through the adult system and does not list an age limit (Social Assistance Act, R.S.P.E.I. 1988, c. S-4.3 s. 1(g) [ii]). Nova Scotia (S.N.S 1990 c.5 s. 5.1.1 and s. 5.10.1,) provides services for youth aged 16-18 through the child welfare system. New Brunswick (New Brunswick Regulation 95-61 under *The Family Income Security Act*. O.C. 95-470 s. 4.9), The Northwest Territories/Nunavut (Government of the Northwest Territories., 2007.2.c, p. 114) and Alberta explicitly have programs for youth to receive adult welfare services, generally beginning at age 16. However, in Alberta, the youth must be residing with an adult over age 18 (*Income and Employment Supports Act: Income Supports, Health and Training Benefits Regulation 2004* A.R. 60/2004. (last amended 2008) s. 1(1) [b]).

The ability to be on child welfare or adult social service funding and to live independently is essential in the prevention of youth homelessness with “hard to house” children in care. These may be youth who have behavioural issues or who simply do not fit into available placements because they are not deemed to be at “enough risk” to take into care. One problem, in my experience, is that youth seek support outside of their home province because there are not appropriate placements available for them. Although the UNCRC legally enables them to cross provincial borders and to receive social service supports, they cannot do so without the permission and transfer of care from their child welfare director. The same is true of children who are dual citizens of the US and Canada, and First Nations youth, who are technically allowed to live in the US. Children may also be seeking adequate placements if none are available in their home province. Youth in care may also wish to cross provincial or national borders in order to live with a family member or close friends so they can return to a stable setting. Often the youth who

“runaway” from care have inappropriate placements and/ or are considered too difficult to manage in foster care and residential setting like group homes (Whalen & Cantin, 2007, p. 85). The lack of supports may be the catalyst for these youth to end up in the cycle of homelessness, where they are more at risk for every kind of abuse, and of simply disappearing. If the child is already homeless and their term in care is over, the question is why can they not seek social service aid elsewhere in the country?

Mobility becomes an issue when children are shipped between institutional, group and foster homes. Children lack a sense of stability both physically and psychologically and can experience multiple losses without time to grieve them. Recent United States research indicates that foster children who have experienced multiple placements are more likely to have difficulties: obtaining employment, completing their education, creating stable relationships, coping with mental and physical health problems, and problems with the law (Manning, 2008, p. 9). They may feel that they can be evicted at any point in time, and that every move has the potential to break relationships, often disrupting school placement and academic progress, as well as friendships and involvement in community activities (Reid & Dudding, 2006, p.13). Only three provinces (Ontario, Manitoba and Alberta) extend some powers to foster parents to decide how long they can keep a youth in their care and in developing their plan of care (MacLaurin & Bala, 2004, p. 134). Alberta (Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 s. 52[1]) is the only province that clearly allows foster parents to adopt their foster children. The average child in care moves six times a year (Herbert, February, 2008). In order to explore the differences in provincial legislation concerning the rights of children in care to mobility, I

tried to uncover some provincial and statistical data on the numbers of children in these different settings, but the information was scarce.

"I was passed around a lot due to some of the families got sick, financial problems, too many kids of their own....I was always trying to fit in somewhere. I got a lot of rejection. People just saying 'Move on, go to another group home, go to another foster home'. That's pretty brutal." (Rutman, et al., 2001, p.13- youth in care)

Another complication for children and the right to mobility involves unaccompanied minors, who may also fall under the auspices of child welfare agencies. There seems to be a trend in detaining refugees and unaccompanied minors for arbitrary amounts of time. "The only place in the Immigration and Refugee Protection Act where trafficked persons are mentioned is in the regulation which includes having been trafficked as a factor in favour of detention, including for children. There is nothing in the law to protect the rights of trafficked persons specifically" (Canadian Counsel for Refugee, 2009, p. 4).

The following dimensions of provincial legislation compare the limits on the length of time spent in each of the following settings and conditions of placement: foster care, institutional/ non-detention, detention, unaccompanied minors and refugee children, interprovincial children and dual citizens, and for homeless/ runaway youth. The time limits for temporary and permanent care agreements laid out in chapter 4 section 1 (Age and Receiving Care, pages 59-84 and appendix B.1) are the most clearly explained portions of the acts that relate to mobility between placement options for children. There is very little in the legislation or written about mobility, except in terms of multiple placements and the amounts of time children are held while awaiting protection and review hearings and maximum time allotted in secure placement. Published anecdotes

from children in care, parents and child welfare professional are used to give a better sense of the discrepancies between provinces.

Limits on Foster Care (time and conditions)

The conditions of foster care are ill defined in the legislation in general as they relate to several dimensions: such as the number of children in the home, if it is run by a parent or by staff such as group home, and emergency versus long term foster care. Legislation in the Yukon and Quebec does not make any distinction between foster care and group homes, as group homes are not even mentioned in these acts. The Yukon defines foster care as “out of home care” (R.S.Y. C-22.s. 1 & 165[all]), and sections of this legislation include institutional care, rehabilitation and group homes under the rubric of foster care. Quebec uses the term “compulsory foster care” but does not define the difference between this and regular foster care (R.S.Q. 1977, P-34.1. s.62; RSQ 1977, P-34.1.s.64). It is important to children to have stable care givers who understand their role, as a parent or as a staff member. One service user explained this by stating: “Before kids are put into homes, they should go for visits and sleepovers. Don’t just put them in there, let kids warm up to the home and caregivers.” (NFLD youth in care -Office of the Child and Youth Advocate province of Newfoundland and Labrador, 2009, p.57). Furthermore the conditions of the placement may not seem like a home to some children. Rules and conditions of placements are not at all explained in the legislation. One child stated their discomfort by saying: “Some of my placements broke down because I ran back home to see my dog. People did not understand how important this dog was to me.” (NFLD youth in care -Office of the Child and Youth Advocate province of Newfoundland and Labrador, 2009, p.57). There are no general rules about outings, socialization, and contact

with the school or within the community listed under any of the legislation in foster care or institutional care. This problem is exemplified by one child's statement: "The one piece of advice I would give is to try to let the kid in care have a normal life. Kids in care should be able to babysit and have sleepovers with their friends. As a child in care I couldn't do these things. That made me feel I wasn't normal...." (Yukon Health and Social Services, July, 2004 Policy Forum comment from service user). The lack of distinction between placements and of an explanation of basic conditions in the legislation can be seen as more protectionist oriented, as the aim is to keep the child safe. A more child liberationist approach would include, keeping the child safe and comfortable with sibling, pets and access to the normal activities of children's lives.

The preference to place siblings together is only clearly laid out in the legislation in Nova Scotia (S.N.S. 1990, C.5.s.20[b&e]), Newfoundland (S.N.L. 1998 c. C-12.1.s.9 (f&h ); S.N.L. 1998 c. C-12.1.s.62[1]) and British Columbia (R.S.B.C.1996, Ch.46.s.71(2) [all]). What is not stated in any of the legislation is the number or gender of the children allowed in different types of foster homes, nor the maximum number of siblings. The maximum number of children in foster care at any one time is clearly defined in Manitoba (C.C.S.M. 1985c. C80. Definitions section) and the Northwest Territories/Nunavut (R.S.N.W.T. 1997 c. 13s.67), but even this information is incomplete because it does not define length of stay, consideration of different children's specific care needs, and the combination of ages or mixing of a group of siblings with other foster children in one home. Manitoba allows for a maximum number of four foster children unless they are siblings, in which case no maximum number is given (C.C.S.M. 1985c. C80. Definitions

section). The Northwest Territories/Nunavut allows a maximum of three infants under the age of one year old for no more than a 24 hour period (R.S.N.W.T. 1997, c. 13 .s.67), but does not state if there can be children of other ages housed in the same placement at the same time. One service user stated: "...There is more stability when you keep siblings together" (Yukon Health and Social Services, May, 2004 Policy Forum comment from service user). A greater number of foster children in a home may result in overcrowded conditions and the greater likelihood a child might run away from these conditions.

Time limits on foster care are clearer when examining the length of temporary and permanent care agreements (see Age and Receiving Care, pages 62-89 and appendix B.1). Time limits on foster care and institutional care are less clear when the children are awaiting court decisions. Quebec is the only province to use the term "compulsory foster care" and the reference again is vague as to whether this means in a foster home with two parents or in an institution or treatment center. In "compulsory foster care" a children can be held 30-60 days maximum, but then the legislation also states the child can be held until the end of the school year. The latter can be seen as more child liberationist in the sense that it allows the child to stay in the same school setting. None of the other child welfare laws refer to specific limits on foster care, only the voluntary or permanent agreements for care. The time fames children can be held during protection investigations and the court hearing process are quite variable (see Table 1. Emergency Custody Placement Limits Appendix C.1). The legislation is not specific on the rules of appropriate placement during these processes, but it is clear that they can be housed in foster care or institutional care. I added up the total maximum number of days from being

held at apprehension to the maximum limits on court proceedings, including the potential for adjournments if they were listed in the acts. The Yukon (R.S.Y. 2008 C-22.

46[2]) and Alberta (R.S.A. C-12. s. 7[3]) have unspecified time limits on holding children in custody between the emergency investigation and the court proceedings. Emergency placements that are shorter can be seen as more family preservationist because they allow the child to return home, or more child liberationist because the child is not in care.

However, the shorter duration may not allow for an in-depth investigation and may therefore leave the child at risk.

Emergency placement durations are inconsistent across provinces (see Appendix C. Table 1. Emergency Custody Placement Limits). The shortest possible emergency care placements are in Quebec – 2 days (R.S.Q. 1977, P-34.1s.46) and British Columbia- 2 to 7 days (R.S.B.C.1996, Ch.46.s.25 (1) [a]; R.S.B.C. 1996, Ch.46. s.34[1]). Newfoundland (S.N.L. 1998 c. C-12.1.s.47-[all]), PEI (R.S.P.E.I. 1988, c.C-5.1.s.45.2. [b]; RSPEI 1988, c.C.5.1s.15 [1]) and the Northwest Territories/ Nunavut (R.S.N.W.T. 1997, c. 13s.9(c) & s.11(3)[c]) allows an assessment to take place within 72 hours, and the latter up to 15 days (R.S.N.W.T. 1997, c. 13.s..16(2) [c]). Nova Scotia's (SNS 1990, C.5.s.39 [1 & 2]) legislation stipulates a child can be held for emergency assessment for 5 days and Alberta's (R.S.A. 2000 C-12. s. 7[3]) stipulates just 3 days. The longer "emergency plans are in Saskatchewan- 10 days (S.S.1989-1990, cC-7.2.s.2.17 [4]); S.S.1989-1990, cC-7.2.s.20 (1) [a]), Manitoba- 14 days (C.C.S.M.c.C80.s.44 [4]) and New Brunswick 30 days (S.N.B. 1980 c. F.-2.2.s.49 (2) 1). The shorter the placement, the more liberationist it may be, as it restricts the child's movement less. It may also be considered more protectionist, if the child is in danger to themselves and needs emergency services, but

does not want the help. Manitoba (C.C.S.M.c.C80.s.44 [4])) has the shortest duration, two weeks, during which a child can be potentially held in foster or institutional care while awaiting a court ruling. Quebec's law is a maximum of 32 days in total (R.S.Q. 1977, P-34.1s.46; R.S.Q. 1977, P-34.1.s.79). The longest potential duration is in Alberta- 74 days (R.S.A. 2000 C-12. s. 7[3]; R.S.A., 2000cC 12 s.26.2.a; RSA, 2000cC 12 s.21.6 [all])) and PEI where a child can be held for 180 days (R.S.P.E.I. 1988, c. C-5.1.2[a]) while awaiting court rulings. New Brunswick has the longest time children can spend in emergency care while the investigation is ongoing, at 30 days (SNB 1980, c. F.-2.2.s.59.3). Most legislation states that this time is counted toward the cumulative time the child spends in care. The longer durations can be seen as being child protectionist and the shorter ones as more child liberationist, in that the investigation and court process is faster. The numbers for emergency placement limits are not the same for secure treatment orders, which will be discussed under the sub-section below on Limits on Compulsory Treatment (pages 127-130).

The review of placements can be seen as child protectionist, in that the state is ensuring the safety and well-being of the child, or family preservationist in assessing the need for placement or possibly child liberationist if the child can have a say in their placement options. The review of placements in foster or institutional care is limited in the legislation. This differs from reviewing a voluntary or permanent care contract because those contracts may include multiple measures of intervention and possibly multiple placements. The Yukon (RSY 2008 C-22.s.186 [1 &2]) and Newfoundland (S.N.L. 1998 c. C-12.1.s.76 [1]) clearly states that placements should be reviewed after one year. The Northwest Territories/ Nunavut (R.S.N.W.T.1997, c. 13.s. 20.2) allow for the review of

the placement every three months. Ontario (R.S.O., 1990, C.11. 34.6 [a]) has a mandatory review process within 45 days of the initial placement that will last more than 90 days, and then reviews every nine months afterward. The latter legislation can be seen as the most comprehensive in terms of protectionism (ensuring the safety of the child), family preservation (the continuing need for out of home care) and liberationist (regular contact with the child to assess their comfort in the placement). Only three provinces explicitly state that foster parents are allowed to be part of the appeal process for placements.

Manitoba has no limits on the time the child has spent in the foster home before the foster parent can be part of or file for an appeal (C.C.S.M.c.C80.s.51[4 &5]). PEI (RSPEI 1988, c. C-5.1.s.1(s) ii) and Ontario (RSO, 1990, C.11. s.61.7.1 [all]) also explicitly allow this, after the child has lived in the foster home for one or two years respectively. The involvement of foster parents in the review process can be seen as more family preservationist from the perspective of the child because the foster parent might be recognized as a stable family figure to the child. However, the involvement of the foster parents in an appeal may, or may not be family preservationist for the biological family, depending on their relationship.

#### Limits on Institutional Care- Non Detention (time and conditions)

The results in this section are essentially the same as the information on Time Limits in Foster Care listed above. Group homes and other kinds of non-detention settings (training centres, etc.) are ill defined in the acts. Alberta and the Northwest Territories/ Nunavut use the word “group home” in their legislation. Ontario defines them as not being foster homes, detention nor secure treatment facilities (R.S.O., 1990, C.11. s.34 [1]). There are no regulations or rules on the conditions of these settings (number of

children, visits, outings, near the same school, placing siblings together, pets, mixed genders and limits on mixing different aged children, etc.). Ontario's legislation is the only one to stipulate that children in institutional or foster care settings have the right to food, shelter, clothing and to access activities in the community (R.S.O., 1990, C.11.s. 105[1&2])). There is no information on the level of security used in these settings. Only Quebec's legislation stipulates that isolation cannot be used as a form of punishment (R.S.Q., 1977, P-34.1.s.10). Again the conditions of the placement might encourage children to run away or act or behave in ways that might get them transferred elsewhere, even to more secure settings. Guidelines for transferring children to different settings (i.e. from foster homes to group homes or treatment facilities) are not explicit in the legislation. This again goes back to the issue of mobility and children in care often experiencing many placements because they may not be appropriate for their needs. This issue is highlighted further by a child in care:

“Group homes are gateways to jails...that's what they are...they're just stupid...they don't help kids...they just make it worse. You're young and they try to make it like you are old...like you're in a prison...it's stupid...early bedtime...have to make your own meals...lights out and menus...outings you don't want to go to ...staff don't give a shit...limit family visits...community time...they don't give you a chance to be normal.”(quote from a youth interview for the Office of Child & Family Service Advocacy Ontario, study on “cross over kids” in Finlay, 2006, p.28).

### Limits on Detention

The time limits on detention are essentially governed by the YCJA, as will be discussed below in the section on Liberty and Due Process (page155-167 and Appendix B.4). This section of the research examines what is in the child welfare acts themselves regarding limits and conditions of placement in detention. I found this section of the research was very difficult to understand because of the lack of definition in much of the

legislation of the terms open and closed custody. One assumes that closed custody means being in a locked facility, however in my practice some centres are considered open if they allow the children to leave to attend school, and yet some have dormitories that are locked at night and have sections for children who are having behavioural difficulties, such as some of the centre d'accueils (loosely translated as "welcoming centres"), in Montreal. This leads to the question of whether these centres are in fact run by the director of child welfare or not. The child welfare acts of Ontario (R.S.O., 1990, C.11. s.93 (2)3 [all]); R.S.O., 1990, C.11. 51(2)[i&ii]; R.S.O., 1990, C.11. 69[4]), British Columbia (R.S.B.C.1996, Ch.46 s.1[1]; R.S.B.C.1996, Ch.46.s.93[1d]) and Nova Scotia (S.N.S. 1990, C.5.s.3(1)[h]; S.N.S. 1990, C.5. s.16(1) [b]) clearly state the use of detention centres and that they are at least in part governed by the child welfare legislation of these provinces. Ontario (R.S.O., 1990, C.11. s.93 (2)1 [all]; R.S.O., 1990, C.11. s.93 [4]; R.S.O., 1990, C.11. s.100 [1]; R.S.O., 1990, C.11. s.27 [3]), British Columbia (R.S.B.C. 1996, Ch.46.s.70 [3]) and Québec (R.S.Q., 1977 P-34.1.s.2.1) are the only provincial act which mentions that detention centres and placement procedures need to meet the criteria of the YCJA. Ontario's legislation on this matter is the most explicit. A child can only be held for 24 hours while awaiting placement under the YCJA (R.S.O., 1990, C.11.s.46 (2) [all])). Children awaiting a hearing cannot be held in secure detention if the court is adjourned and must be placed in open custody. The exception is where it is believed that the child may commit a crime, miss a court date or be of risk to other youth in a less restrictive setting (R.S.O., 1990, C.11. s.93 (2)3 [all])). This legislation is both protectionist of the public and the child, however does not recognize the child's right to be considered innocent until proven guilty. Ontario's act also allows a runaway child from

an open detention centre to then be held in a secure detention centre, and no time limit is specified (R.S.O., 1990, C.11. s. 93[2]). British Columbia's legislation is written in such a way that it appears that children in detention have a right to a lawyer and to access the ombudsman, however they do not have the same rights as children in care to recreation, cultural instruction, clothing, an interpreter, etc (R.S.B.C. 1996, Ch.46.s.70[3]; R.S.B.C. 1996, Ch.46.s.70[1]). These conditions, if this is really what is meant in the legislation, are not reflective of child liberationist practises. The time limits on detention under the YJCA will be addressed further in the section below on Liberty and Due Process (page 150-161 and appendix B.4). Two provinces clearly state that children are not allowed to be placed with adult offenders, in the Yukon (R.S.Y. 2008 C-22.s.161), and the Northwest Territories (R.S.N.W.T. 1997 c.13s.66). The latter is the only legislation to mention that children in care are not to be held in adult or juvenile detention centres or police stations. I found Quebec's legislation to be lack clarity because it states that children can be held for 48 hours without a warrant, but not placed in a "detention centre" or a police station (R.S.Q., 1977, P-34.1.s.11). It does not specify if this refers to juvenile or adult detention centres, or both.

#### Limits on Compulsory treatment (time and conditions)

In this section, the legislation was examined for compulsory treatment specifically as it refers to secure custody settings. These may include: locked mental health treatment wards, closed settings for behavioural treatment, and possibly internal drug or rehabilitation therapies. One of the major issues regarding the conditions of compulsory treatment is the use of drug therapies as described by Ontario's Child Advocate:

"Youth have reported to the Advocacy Office that they were feeling "over medicated" in residential facilities, not knowing why they were taking medication,

what the medication was intended to do, or being forced to take their medication or face behavioural sanctions. Many reported feeling ‘completely sedated most of the time’” (Finlay, 2006, p.28).

There are far more rules on secure treatment orders for compulsory medical or mental health treatment, in terms of how long a child can initially be held for evaluation and the maximum treatment time allowed before reassessment, notification of the parent or guardian. Other findings regard provisions to allow the child or family to access a lawyer and to apply for reviews of the treatment order. Some acts even include rules for explaining treatment orders to children and families, and allowing children to take a leave of absence from secure treatment settings for humanitarian reasons.

Secure treatment is ill defined in the Northwest Territories/ Nunavut (R.S.N.W.T. 1997 c. 13.s.31 (1 &2) [all])) and Quebec, the latter act uses the term “compulsory foster care” (R.S.Q. 1977, P-34.1.s.62). This can be viewed as potentially protectionist in nature because the lack of a clear definition can potentially lead to the over use of compulsory measures. Nothing specific is mentioned in the Acts for Manitoba, British Columbia, the Yukon, PEI, and New Brunswick. The latter refers to secure treatment orders and placement if the child is self injurious (S.N.B. 1980, c. F.-2.2.s.57[1]). The Northwest Territories/ Nunavut (R.S.N.W.T. 1997 c. 13.s.7(3) [h & i])) and Nova Scotia (S.N.S. 1990, C.5.s. 13(2)[g]) are the only acts which define a specific mental health issue (substance abuse) that might require secure treatment. The lack of definitions about what mental health or behavioural issues that could require secure treatment can also be viewed as more protectionist in nature because although it allows for flexibility, it may also incur the over use of these placements. Secure treatment is by definition protectionist, to protect the child from themselves or others from the child.

There are at least three major issues that this research found in regards to time limits in on compulsory or secure treatment orders. The first is the length of time a child can be held in secure treatment for assessment and treatment. The second is the amount of time it takes to notify the child's guardian. Lastly, the length of time it takes to have the order reviewed by the court is variable across Canada. Some legislation uses the same guidelines as listed above in the section on Limits on Foster Care (see, pages 129-134 and Appendix B.3 Mobility). Alberta's (RSA 2000, cC 12 s.43.1.[4]) legislation stipulate that the parent/guardian must be notified within 24 hours that the child is in secure treatment, and within 48 hours in Saskatchewan (S.S.1989-1990, cC-7.2.s.17(4)[ all]). The latter province also mentions that both the child and parent need to be given a copy of the order (RSA 2000, cC 12 s.43.1 [4]). Ontario mentions a parent must consent or refuse treatment (R.S.O., 1990, C.11. s.27 [2& 4]). but there is no time limits specified in the legislation about notifying them that the child is in secure treatment .The maximum time a child can be held under a secure detention order before the order and hearing are fully processed by the courts is also variable across provinces. Newfoundland's legislation mentions three time limits ranging from 24 hours to five days (S.N.L. 1998 c. C12.1.s.47 [all]; S.N.L. 1998 c. C-12.1.s.32 [2]; S.N.L. 1998 c. C-12.1.s. 33(2) [b]). Saskatchewan allows a child to be held for 48 hours up to seven days (S.S.1989-1990, cC-7.2.s.17 (4) [all]). These shorter time limits can be viewed as protecting the child's right to liberty. Likewise, Alberta's legislation states the child can be held for 3-7 days and allows for an extension, totally a possibility of 12 days that they can be held while a secure treatment order is fully processed through legal channels (R.S.A. 2000, cC 12 s.43.1(3)[ all]). Nova Scotia (S.N.S. 1990, C.5.s.39 [1 & 2]; S.N.S. 1990, C.5.s.55. [1. &1.c]; S.N.S. 1990, C.5.s.55.2

[all]) and Ontario (R.S.O., 1990, C.11.s.46 [1]; RSO, 1990, C.11. s.124 (6) [a & b]) both stipulate the child can be held for five days and within the first 24 hours given information on how to obtain legal counsel. This can be viewed as child liberationist in that the child has the right to legal counsel and to know their rights while under a secure treatment order. However Ontario's law also states that a service provider can use: "intrusive measures" (i.e. drugs and possibly restraints) within the first 72 hours without a review team's input (R.S.O., 1990, C.11.s. 131(6)[dii]). The latter can be viewed as more protectionist, in that although the child may need immediate treatment and a review team may not be present; the child may also not have a say in the interventions used. The problem of restraints and lack of review teams being immediately involved in secure treatment is further explained by Ontario's Child Advocate:

"Over the past fifteen years, the (Office of Child & Family Service Advocacy Ontario) Advocacy Office received numerous complaints from youth and professionals regarding the use of physical restraints either through calls of complaint to the Office or the result of reviews of provincial institutions. Injuries reported due to restraints ranged from scratches, bruises, broken bones and even death. In the 1990's two youth died as a direct result of a physical restraint from staff" (Finlay, 2006, p.26).

The longer the duration of time a child can be held under a secure treatment order that has not been judicially reviewed the more protectionist this measure is. Adults in mental health systems in Canada generally are allowed to be held for 24-72 hours, so it is troubling why children might be held longer. Legislation with no maximum time limits can be viewed as less child liberationist because the time limits become discretionary.

The maximum time duration of a secure treatment order is variable across Canada (see Appendix C. Table. 2 Secure Treatment Order Custody Limits). Quebec (R.S.Q. 1977, P-34.1.s.47.1), Alberta (RSA 2000, cC 12 s.44(1)[2]) and Nova Scotia (S.N.S.

1990, C.5.s.56.4) all allow initial secure treatment orders to last up to 30 days. Ontario (R.S.O., 1990, C.11.s.118 [2]) and Saskatchewan (S.S.1989-1990, cC-7.2.s.35 (1) [c]) allow these initial orders to last for up to 60 days. The Northwest Territories/ Nunavut and British Columbia's legislation allow for initial treatment orders of up to six months (R.S.B.C.1996, Ch.46.s.7. [4]), and the latter extended up to 12 months (R.S.Y. C-22.s.12[3]). I found the Yukon's legislation to lack consistency on the time limits, but it would appear that secure treatment orders could last up to 12 months. If the child is particularly sick the longer the treatment order, the more it might help them. The longer children can be held under a secure treatment order, the more child protectionist the law can be considered. Nova Scotia's legislation provides maximum limits on renewals of secure treatment orders, but it is not clear if these also include the initial assessment period before the order was fully authorized. It seems as though potentially a child can be held in secure treatment for 130 days, in this province (S.N.S. 1990, C.5.s.55.[1. &1.c]; S.N.S. 1990, C.5. s.39[1 & 2]); S.N.S. 1990, C.5.s. 56[3 &4]). Ontario is the only other province to have limits on extensions of secure treatment orders, up to a potential of 180 days (R.S.O., 1990, C.11. s.124 (6) [a & b]), but this province also states a secure treatment order can remain in place past the child's 18<sup>th</sup> birthday if it was commenced before this date (R.S.O., 1990, C.11. s.118 (4); R.S.O., 1990, C.11.s. 199[3]). The latter can be seen as more protectionist, because at age 18 the child has the right to determine their own participation in secure treatment services, and may no longer be under the guardianship of the state. Those provincial laws with no maximum time limits on initial orders or their renewals again can be seen as the most protectionist because the service

provisions become discretionary and could be over used. On the other hand they may be underutilized, which may not ensure the safety and best interests of the child, either.

Those can be seen as more child liberationist, if they include rules to: explain the reasoning behind secure treatment orders and the treatment, review secure treatment orders, provide legal counsel for the child or family and transferring children from different placements. Ontario is the only legislation that clearly states a child aged 16 must consent to treatment, or their parent must consent for them if they are under this age. As well, the Act stipulates that interventions must be explained to the child. Newfoundland (S.N.L. 1998 c. C12.1.s.47 [all]), Nova Scotia (S.N.S. 1990, C.5.s.57[1]), Ontario (R.S.O., 1990, C.11. s.124(6) [a & b]; R.S.O., 1990, C.11. s.128[all]), Alberta (R.S.A. 2000, cC 12 s.49[all]) and the Yukon (R.S.Y. 2008 C-22.s.186[1 &2]) are the only five provinces to allow reviews of secure treatment orders in the legislation. Nova Scotia (S.N.S. 1990, C.5.s.57 [1]) has no time limit on reviews. Alberta (R.S.A. 2000, cC 12 s.49[all]) allows for reviews to take place within 3 days of an application for review and Newfoundland (S.N.L. 1998 c. C12.1.s.47 [all]) allows 5 days, Ontario (R.S.O., 1990, C.11. s.128[all]) is three to six months for the use of isolation and yearly in the Yukon (R.S.Y. 2008 C-22.s.186[1 &2]). The longer the duration between reviews for time limits on secure treatment orders, the less child liberationist the law is, and even more so for legislation that has no review process at all.

#### Restrictions on the placement of unaccompanied minors from outside of Canada

Research for this section found no further information other than what is already in the Adoption and Family Access section (pages 103-109 and Appendix B.2.b). Essentially

there are no specific caveats in the legislation referring to unaccompanied minors from outside of Canada.

Limits on the placement of Inter-Provincial children and dual citizens (time and conditions)

There is almost no information in these acts regarding placement limits and conditions for interprovincial children and dual citizens, aside from what has previously been found in the research on adoption (see Adoption and Family Access, pages 103-109 and Appendix B.2). Interprovincial children and youth refers to those who have guardians in more than one province or are seeking aid from child welfare in more than one province, prior to the age of majority. Specifically, there is vague and very little information on the transfer of these children between provinces or countries and little on taking custody of them. No information was found in the legislation from the Yukon, British Columbia, PEI or Manitoba. The capacity to transfer children between provinces seems to rest solely with the provincial directors of child welfare. Quebec explicitly states that transfers are not allowed (R.S.Q., 1977, P-34.1.s.67), but it is not clear if that also means within other regions of Quebec. The transfer of children to other provinces appears to be possible in the Northwest Territories/Nunavut (R.S.N.W.T. 1997, c. 13 s.94[2 &3]), New Brunswick (S.N.B. 1980 c. F.-2.2.s.130.3), Ontario (R.S.O., 1990, C.11. s.61.4) (in exceptional cases, which are not explained further), Alberta (R.S.A., 2000 cC 12 s.124[all] &s.125), Saskatchewan (S.S.1989-1990, cC7.2.s.60(1) [a &b]), Newfoundland (S.N.L. 1998 c. C-12.1.s.45.2 [a]) and Nova Scotia (only to another family member) (S.N.S. 1990, C.5.s. 71.[a&b]). The Northwest Territories/ Nunavut legislation also mentions transferring children between First Nations (R.S.N.W.T. 1997, c. 13.s.94 [2

&3]). New Brunswick will only take the child if they are already physically present in New Brunswick, there is no custody order in another province and “there is significant evidence it is in the best interest of the child to do so” (SNB 1980 c. F.-2.2.s.130.1 [all])). Alberta’s legislation states that it is possible to keep the same care agreement as what existed in the previous province or country (RSA, 2000 cC 12 s.125). This research found that only the Northwest Territories allows children to be transferred to other countries where they may be citizens or First Nations (R.S.N.W.T. 1997, c. 13.s.94[2 &3]), and therefore potentially able to receive child welfare provisions in those countries. This legislation is the only one to explicitly recognize that some First Nations territories span provincial and federal borders. For example, Akwesasne is a southern Mohawk reserve in New York State, but many families I have worked with from the Mohawk reserves in, in Quebec (Kahnawake or Kanasatake) are related. This is the most family preservationist legislation in that it implies children could be cared for by their families in other jurisdictions, and the most child liberationist in that it expands the choices for the child’s placement options, if they have a say in these decisions and it is their wish to be transferred. The lack of provisions for transferring children between provincial and/ or national jurisdictions can be viewed as more protectionist legislation because although it allows provincial authorities to monitor the child within their jurisdiction, it does not allow the child or family to choose alternate options for placement. The inability of children to transfer into care in another region of Canada or another country may hinder the child’s capacity to receive appropriate placements and services. Legislation that does not allow for transferring children between child welfare jurisdictions is less child

liberationist and possibly less family preservationist if the child's extended family are elsewhere and non accessible as a placement option.

Homeless and runaway children: limits on accessing care while out of province

There are few provisions in legislation concerning runaway children and none specifically mention homeless children and youth.

The only parts of the legislation that might be related to homeless youth refer to "abandoned children", or caveats mentioning that "parents will not provide" for the child. Nearly all of the acts mention that they can intervene in these cases. Only Alberta's legislation explicitly mentions homeless youth and that six month voluntary contracts for services can be made with them (R.S.A. 2000, cC 12 s.57(2)(1) [all]), making this legislation the most child liberationist in allowing youth to leave the street. It can also be seen as protectionist, in that the province recognizes a moral responsibility to protect these children from sexual exploitation. Saskatchewan (S.S.1989-1990, cC-7.2.s.11(a) [iii]), British Columbia (R.S.B.C.1996, Ch.46.s.13(1.1)[ a &b]), the Yukon (R.S.Y. 2008 C-22.s.21(2) [a &b]) and the Northwest Territories/Nunavut (R.S.N.W.T. 1997, c. 13.s.7(3) [n]) all refer to children who are working or being coerced into prostitution as "in need of protection". This is a move toward child liberationist practises, which have been advocated for by SEYSO (Sexually Exploited Youth Speak Out) who stated the following: "We believe that our laws must protect us as sexually exploited children and youth and no longer punish us as criminals" (Save the Children Canada, 1998, p.15). Sex work is a common trade for many homeless youth, and so this legislation, although vague may allow for child welfare services for those children and youth who are both homeless and in the sex trade. However, because there is nothing specific mentioning homelessness,

it is impossible to comment on where these acts fall on the protectionist- child liberationist spectrum. It is more of a protectionist stance to intervene with children in the sex trade, but can also be viewed as liberationist if the child is being coerced into the process.

For runaway children, the only information in the acts refers to detaining them, as a result they could be subject to same time frames in detention mentioned above, while awaiting protection hearings (see section on Limits on Foster Care, page 129-134 and Appendix C. Table. 2 Secure Treatment Order Custody Limits). Manitoba and Newfoundland mention nothing about detaining runaways or the placement of runaways. Some provincial acts mention runaways in general, and it is not clear what kinds of placements they are coming from, nor where they will be placed once apprehended. New Brunswick's legislation allows for the apprehension of runaways or abandoned children (SNB 1980, c.F.2.2.31.5[c]), but there are no time limits on how long they can be detained. British Columbia can hold a runaway child for 24-72 hours, and may then place them with someone the parent approves of if the parent can be found and the child cannot be returned home (R.S.B.C.1996, Ch.46.s.7[4]; RSBC1996, Ch.46.s.26[1]; R.S.B.C. 1996, Ch.46. s.26(2)[b]); R.S.B.C.1996,Ch.46.s.26(3)[b]). The Yukon can detain a runaway or abandoned child for up to 72 hours (R.S.Y. 2008 C-22.s.30 (1) [a] & 31(2) [a]). Alberta's law states that if a runaway cannot be returned home within two days an application for a supervision order, temporary or permanent custody may be filed (R.S.A. 2000 cC 12 s.21(1) [a-c]). Ontario's law states that if a runaway is under the age of 16 and the parent cannot be found within 12 hours, the child will be taken into care (R.S.O. 1990, C.11.s. 43[5]). Saskatchewan mentions no time frames on detaining runaways, but does say that

child welfare agencies can pay to return the child (S.S.1989-1990, cC-7.2.s.7 (5) [all]).

Alberta's legislation also stipulates that it can pay to return a child from another province, and that the guardian must give their opinion on the child's placement options (R.S.A. 2000, cC12.s.21(1) [all]; R.S.A. 2000, cC 12. s.48(2) & (11) [all]). This caveat is not very child liberationist, as the views of the child do not seem to be taken into account. Alberta also states if a child from Alberta is on the run and apprehended in another province, the rules of detention and placement in the province where the child is apprehended are to be followed (RSA 2000, cC 12 s.19[1]). Detaining runaways is protectionist to ensure their safety, and the shorter the duration a child can be detained, the more child liberationist the act appears to be. Returning the child to the home is a more family preservationist stance on child's rights, particularly if the child does not want to return.

The most information in the acts concerns runaways from secure treatment settings or detention centres. In Nova Scotia runaways can be detained if they have left a secure treatment setting up to 72 hours (S.N.S. 1990, C.5.s.59 [3]; S.N.S. 1990, C.5.s.28.1), although another section of the legislation states that runaways can be detained and does not provide a time limit (S.N.S. 1990, C.5.s.29.1.b). Quebec allows children on the run to be detained for up to 15 days if they run away or if it is suspected that they might be a runaway (R.S.Q., 1977, P-34.1.s.35.3). It is hard to tell if this Act refers to runaways from secure treatment or detention centres or both. Ontario's law allows children on the run from secure or open detention to be apprehended and detained for 12 to 48 hours and in both cases will place the child in a secure detention setting once apprehended (R.S.O., 1990, C.11.s. 93[2]; R.S.O., 1990, C.11. s.93 [3]; R.S.O., 1990, C.11.s. 43[5]; R.S.O., 1990, C.11. s.98 [3]). Alberta provides that children on the run from secure treatment

centres can be apprehended and detained but there are no time limits specified (R.S.A. cC 12 s.18 [14]). Again the shorter the duration the child is detained the more child liberationist the legislation is, but if they are returned to detention or secure settings, it is still protectionist, as the child is still detained.

#### Summary of section C. Mobility (Appendix B.3)

Children's rights to move within or outside of provinces to receive child welfare benefits and the limits and conditions of various kinds of placements are not well defined in the legislation.

The majority of the information in this section concerns limits on emergency placement in secure treatment settings, initial protection apprehensions, and the time limits on temporary care agreements (see section 4: Age and Receiving Care, pages 65-85 and Appendix B.1). There is almost no information on limits of being held in detention, as this is governed by the Youth Criminal Justice Act and it does not appear all of the provincial child welfare agencies are in charge of the detention centres. The distinctions between placements in foster care versus group homes are not clearly specified in most of the legislation, and so the time limits are also not clear. No information exists on the maximum number of placements children can be in particularly for those who are under permanent wardship. One service user explained: "Children shouldn't have to go back and forth from placement to placement, between being in care and living with their family. I think the "three strikes" rule should apply to multiple placements" (Yukon Health and Social Services, June, 2004 Policy Forum comment from service user).

The legislation was silent on limits for dual citizens, homeless children, runaways, interprovincial children and unaccompanied minors or refugees. There is absolutely no

information at all about restrictions on placement options for children who are dual citizens, even though the UNCRC clearly states that children have the right to move within and between countries where they are nationals (UNCRC, 1989, A.10.1 &2). Without clear rules allowing movement between nations, these children may be prevented from accessing placements with extended family members or significant adults. This can be seen as not being particularly child liberationist or family preservationist in some circumstances. Granted there are many safety issues with allowing children to cross national borders. There may be benefits to the child from both a family preservationist and child liberationist point of view, if appropriate placements exist within extended family or through child or adult welfare agencies. Very little information exists concerning the procedures for detaining children who cross provinces and slightly more in the legislation about homeless and runaway children. I found it difficult to discern the rules on these procedures, as these children may fall under the category of youth related services for those who are aged 16 to legal age in that province (see section on Age and Receiving Care, pages 62-89 and Appendix B.1). I found it difficult to determine if these services are available to children who had never been in care, or who have come into a province to receive care (whether they had been in child welfare in another jurisdiction or not). In actual practise, most of the homeless youth I have worked with who have tried to cross provincial borders to get aid from a child welfare agency were refused. There is little specific information on mobility within a province, such as children and/or their families making applications to transfer to other service providers or more appropriate placements. This is particularly important when one takes into consideration that children and their

families may need specialized services regarding disability, language, sexual orientation, education, and religion or culture.

a. Liberty and Due process

“The State has an inalienable responsibility to protect and provide for children in institutional care” (Finlay, 2006, p.7).

Liberty and the right to be treated under the same principles of fundamental justice as adults are perhaps the most important of all citizenship freedoms. The recent film “Voleurs d’Enfance” (Arcand, 2005) exposed some of the issues concerning children in detention. Youth in care are often mixed with other youth who have been charged and/or convicted of a crime and are incarcerated for indeterminate amounts of time. They are sometimes held in solitary confinement, and can are often denied recreation and culturally appropriate activities. For example, in Quebec 33% of all youth in care are institutionalized, particularly if they are over 13. Whereas, in Manitoba, 33% of all youth in care are in foster homes. In Nova Scotia, 19% of youth in care live on their own (Swift 1999). How it is poorer provinces with fewer social services can find adequate housing for ‘difficult to place’ youth? The Badgley Report on Child Sexual Assault (1985) was the first major research on the conditions of various kinds of institutional child welfare placements for children in Canada, in particular for detention settings. This report found that there were allegations of physical and sexual abuse in some of these centers, and it revealed that no provincial or federal standards existed for the use of punishment, restraints and isolation rooms. It also identified problems with the review of credentials and police checking of staff (Swift, 1999). Over twenty years later, current studies reveal that present “institutional care has been “... likened to custody with a lack of meaningful

activity, intolerant or disrespectful staff-youth relationships, rigidity of rules, and the over use of intrusive measures such as physical restraints, locked rooms, the removal of possessions, and body searches” (Finlay, et.al, 2007, p.3-4). Currently, public bodies to investigate institutional placements do not exist, aside from the public curator’s office that rarely visits (CCRC, 2003; Finlay, et al, 2007, p.5).

In the United States, children leaving care call themselves “emancipated”, because the quality of placements have decreased so much that getting out of care is likened to getting out of jail (Swift 1999). This silent phenomenon has continued despite the shift from the federal Young Offender’s Act to the Youth Criminal Justice Act [YCJA] (Youth Criminal Justice Act, 2002, c.1.). The Young Offender’s Act incarcerated more youth for longer periods of time, and/ or detained them indefinitely through child welfare agencies until they were remanded to court. The lines between protective custody and criminal custody were substantially blurred under the YOA (Finlay, 2003a). The YCJA has set stricter guidelines of the allowable times to hold children in custody or remand and tries to separate criminal custody from protective custody (YCJA 2002, SCI 39.5). Furthermore, it allows for more alternative measures to be taken, with incarceration as a last resort (YCJA2002, SCI.1 (b) [ii&iii]). Unlike the YCJA, provincial child protection legislation often lacks clear rules limiting the maximum time children can be detained in an institution.

The most recent statistics indicate that, since the creation of the YCJA, approximately 50% fewer youth are sentenced to closed custody in Canada. Alternate measures such as community and intense supervision orders, deferred custody into the community or probation are used more frequently (Statistics Canada, 2006). The number of children that

cross over from child welfare care into youth criminal justice detention is unknown, and there appears to be no statistics on the numbers of these children that experience placement in both the criminal justice system and the child welfare at the same time or concurrently. “On any given day in 2004/2005, there were approximately 13,100 young persons, either in custody or under supervised probation, in Canada. The majority of young persons in correctional services were on probation (87%), while 10% were in sentenced custody, and 3% were in remand” (Calverley, 2004-5, p.1). Of the youth sentenced to custody in 2004-2005, in Canada, 2,245 were in secure or closed custody and 2,194 were in open custody, and 11, 505 were held on remand (Calverley, 2004-5, p. 3). How long youth are held in remand awaiting trial is generally a week, but this depends on the province/territory. The rules for holding youth on remand are officially governed by the YCJA. However, for cross over kids, this may depend on rules outlined in individual provincial and territorial child welfare legislation. Children may be sentenced to a mixture of both open and secure custody and this further complicates the statistics on the time spent in each type of care during and after remand (or awaiting trial) (Calverley, 2004-5, p. 5). What we do know is that approximately one fifth of all youth in the criminal justice system are First Nations and those admitted to secure or open custody are more likely to be 16 years old or older (Calverley, 2004-5, p.6-7). First Nations “children who experience long periods of poverty between the ages of 0 and 5 years or in their early teen years are more likely to convicted of a crime, and 40% of First Nation youth are either wards of the state at the time of conviction or have active files with a child welfare agency” (Assembly of First Nations, 2006, p.3). Open custody is not well defined in the literature, and so it is unclear if these means that these youth are also living in child

welfare placements such as group homes or treatment centres. Over 12,000 youth per year are on probation (Calverley, 2004-5, p. 4) and the numbers of these youth who are also in the care of child welfare is not clear in the literature.

One of the ways that liberty and due process rights for children in care can become obscured is through contradictions among competing criminal justice laws. This research has examined some of these contraindications in the Safe Streets Acts (SSA & SBC) and the Youth Criminal Justice Act (YCJA). The Safe Streets Act (SSA) provincial policy interferes with three improvements of the Federal YCJA (2002, c. 1) which are geared toward lessening the time youth spend in the legal system. First the SSA interferes with restorative justice which often includes treatment for problems such as substance abuse; pre-trial detention in the child welfare system; and the elimination of restrictive custody to incapacitate or deter youth (Barnhorst, 2004, p. 247). The YCJA mandates the court to look for alternatives to incarceration even in the cases of: violent offending, and/or the violation of the conditions of two other non- violent offenses sentences, would be considered a federal felony (trafficking) for an adult, or an indictable offense such as drug offenses (Barnhorst, 2004, p. 247). Secondly the SSA interferes with two goals of the YCJA which are to reduce the number of youth in custody and to reintegrate youth into society. Both of these goals directly contravene the intentions of the SSA, as it allows the police to fine and detain persons for indefinite periods of time while awaiting charges (S.B.C. 2004, Ch. 75.s.5; S.O., 1999. C.8.s.6). Charges under the SSA are considered to be both criminal and municipal violations of the law (S.B.C. 2004, Ch. 75.s.1 & 2 & s. 5.3; SO, 1999. C.8.s.5 (1) a &b). Conditions that can be imposed on offenders can limit their access to areas where there are social services. The access to social services such as

food and shelter might eliminate the need for these people to perform illegal acts to survive. A third goal is to have milder sentencing for young offenders because of their age. There are five principals of the YCJA and only one accords with the principals of the SSA, that is to protect the public. The other four coincide with the *Charter of Rights and Freedoms* (*The Constitution Act*, 1982, Schedule B, sec. 7), on the principles of fundamental justice. The first is the use of restraint, whereby the youth justice system should only be used for the most serious offenders. The second is accountability, or the “use of meaningful consequences” to hold the youth accountable (Barnhorst, 2004, p. 234), but they need to “be fair and appropriate”. The third is proportionality, whereby the punishment cannot exceed the offense, much like the *Criminal Code of Canada* (1985. R.S., c. C-46). The fourth is the provision of rehabilitation. Therefore the “seriousness of the offense” should determine the “degree of intervention” (i.e. substance abuse and behavioural treatment) so as not exceed or under address the needs of the youth offender (Barnhorst, 2004, p. 235). The YCJA aims to be fairer than its predecessor and the *Criminal Code of Canada* (1985. R.S., c. C-46.) by: using more stringent protocols for legal proceedings, lessening the use of the court, increasing the use of restorative justice and banning the use of pre – trial detention within the child welfare system. It also uses the least restrictive sentencing and requires that strict criteria be met if incarceration is warranted. Individual provinces have differing eligibility for extrajudicial measures, the way police intervene is not uniform, and provincial policies can interfere with the administration of the YCJA (Barnhorst, 2004, p. 238).

The SSA clearly targets homeless youth who could benefit from the new YCJA attempts at rehabilitation and reintegration of young offenders. Many of these youth are

running away from or have aged out of child welfare. The lack of use of the measures outlined in the YCJA is, in part, a result of the SSA and similar municipal legislations that target homeless and underhoused youth. The SSA allows for arrest without a warrant if the police officer feels the person may be violating some or part of this act (S.O., 1999; SBC, 2004). Homeless youth are often re-arrested for non-violent offenses and breaches of conditions, and detained indiscriminately while awaiting court. Examples of this, in Ontario, are that the SSA (S.O., 1999) outlaws hitchhiking (Gingrich, 2002-3, p. 158) and aggressive panhandling while intoxicated, on the roads, in bank machines, at pay phones and public transit and the use of “offensive language” while asking for money (Gadd, 2001, p. A15). BC’s SSA (SBC, 2004) is virtually the same, but this legislation also penalizes the improper disposal of drug paraphernalia and warrants police intervention for following someone while panhandling. The homeless or underhoused (i.e. shelter users) are subject to arrest for sleeping in the Montreal subway stations, occupying the benches in parks or being there after curfew, panhandling, and squeegeeing (Bellot, 2007).

Another issue is the mixing of different kinds of offenders in the same settings. The Final Standing Senate Committee on Human Rights recommends that Canada put an end to incarcerating youth with adults and that there is separation for female and male offenders. Further they suggest that alternative and preventative measures become the focus of the Youth Justice system (2007). In some provinces, such as New Brunswick, it is common practise to put youth who have committed grievous offenses with adult offenders, and in some cases in adult psychiatric facilities, because of a serious lack of resources (Bernard, 2007, p. 58- 59).

This section examines liberty and due process rights for children in care, specifically in detention or in contact with the law. The following dimensions encompass the research in this section: mixing youth in care and youth in the criminal justice system in detention centres; provinces with separate youth detention clauses; the average length of time spent in detention without a charge; access to lawyers; actual numbers of youth in detention currently; gender separation and statistics on the genders in detention; and statistics on cultural representation in detention. The provincial acts are also compared with the Federal YCJA and in Ontario and British Columbia with the Safe Streets Acts.

Mixing youth in care and youth in the criminal justice system in detention centres

Only 10 jurisdictions reported youth crime statistic to Statistics Canada, in 2007-8, and this does not include Newfoundland, New Brunswick or the Yukon (Kong, 2009, p.6). The positive outcome of the creation of the YJCA, is that 15% more youth have been given alternative measures, instead of incarceration, since this Act was implemented, in 2003. One of the aspects I found difficult in doing this research was to find out where the youth go if they are referred to “deferred custody” and/or supervision in the community (Kong, 2009, p.6). It is not clear if this means that they may be in the child welfare system under conditions such as probation and what kinds of placements they may be living in as a result. There were no statistics that this research could find, from youth justice statistics in Canada, deciphering the numbers of youth who enter into detention custody and then end up in child welfare, nor the numbers of youth who are already in youth protection and enter into the youth justice system.

This research found that there is only one province/territory that explicitly states that youth in care are not to be mixed with youth in the criminal justice system. The Northwest Territories/Nunavut state that children in care are not to be held in adult or youth detention or a police station (R.S.N.W.T. 1997 c. 13.66). There are some provinces which consider youth who are engaged in the sex trade as “in need of protection”, and one can infer that perhaps these children might be placed under the child welfare system rather than in detention, but the legislation is not clear. These provinces are: Saskatchewan (S.S.1989-1990, cC-7.2.s.11 (a) [iii]), British Columbia (R.S.B.C.1996, Ch.46.s.13 [1.1]), the Yukon (R.S.Y. 2008, C-22.s.30 (1) [a]), and the Northwest Territories/ Nunavut (R.S.N.W.T. 1997 c. 13.s.7 (3) [d]). The lack of provisions to keep these youth separate is not very protectionist because of the potential for contagion, and/or the potential for youth in child welfare to learn criminal skills from youth who have been convicted of crimes. Secondly, youth under child welfare agreements, who are placed in detention may be put at greater risk for physical abuse if they are placed with youth who have committed crimes causing bodily harm.

#### Provinces with separate youth detention clauses

The information in this section is the same as the information in the Mobility section (see above, pages 119-137, Appendix. B.3 and repeated in Appendix B.4). The YJCA clearly states that youth in conflict with the law need to be in separate detention from adults (YCJA 2002 2002.S.C.1.3 (1) [b] separate detention for youth and from children in care (YJCA. 2002. S.C.1. 39[5]).The child welfare acts of Ontario (R.S.O. 1990, Ch.11s. 93(4) ; R.S.O. 1990, Ch. 11s.. 114(3&4), British Columbia (R.S.B.C.1996, Ch.46. 1(1)[a]) and Nova Scotia (S.N.S.1990, C.5, s.1.16(1)b) clearly state the use of

detention centres and that they are at least in part governed by the child welfare legislation of these provinces. The lack of caveats in the law to prevent placement of youth from child welfare into detention centres because there are not enough appropriate placements can be seen as less child liberationist. There is too much potential to place children in detention under temporary orders while awaiting appropriate placements.

Average length of time spent in detention without a charge

The information in the child welfare acts either refers back to standards laid out in the Youth Criminal Justice Act or reflects the time frames already explained in the Mobility section above (pages 125-149, Appendix. B.3 and repeated in Appendix C. Table 1. and Appendix C. Table. 2 Emergency Custody Placement Limits and Secure Treatment Order Custody Limits) particularly concerning the length of time children can be held under emergency measure or secure treatment orders. The YCCA clearly states that: “a youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures” (YJCA 2002.S.C.1. 29. [1]). What happens if the crime is related to mental health or child welfare and criminal matters? Are the youth held in detention or in child welfare? This research found there is no clear answer to this question. The following numbers may or may not apply to children in detention; it depends on whether or not they are held in detention because of lack of placement options or perhaps even behavioural issues. There are no other limits that this research could find in the child welfare legislation. Recent research shows that 56% of youth in detention, in Canada, spend only one week or less in remand, 17% spend 1-6 months and only 1% spend longer than 6 months (Kong, 2009, p.7).

Access to lawyers

Children began to obtain the right to access a lawyer, in some provinces in Canada, for child welfare cases in 1973 (Goldberg, 2004, p. 246). Nearly all provincial child welfare legislation allows children to be represented and seek counsel from a lawyer either appointed for them usually if they are under age 12, or if they ask for one, in most places over age 12. Furthermore the appointment of a lawyer in child welfare cases is complicated if the issues in court are both concerning child protection and youth justice. The YCJA states that a youth justice committee is to be appointed in these matters to “coordinate the interaction” between the justice system and the child welfare systems plans (YCJA, SC 2002, C.1.2(1)[iv]). From the research, it appears that these matters are heard separately, although this is not clear. The YJCA mandates that every young person has the right to legal counsel and to be advised of that right when they are arrested or detained (YCJA, SC 2002, c.1.25.1&2). The court can appoint legal counsel for the child if they do not already have one and are on trial (YCJA, SC 2002, c.1.25.4).

Provincial legislative rules for giving children legal counsel exist in a number of provinces. In Newfoundland (S.N.L. 1998 c.C-12.s.1.7; S.N.L. 1998 c.C-12.s. 53; S.N.L. 1998 c.C-12.s.58) and the Northwest Territories/ Nunavut (R.S.N.W.T. 1997, c. 13.86 [1]).a lawyer can be appointed for the child. In Nova Scotia (S.N.S. 1990, C.5, s.137[1 &2]), Manitoba (C.C.S.M. 1985 c.C.80.s.34[2]) and British Columbia (R.S.B.C.1996, Ch.46.s.39 (4); R.S.B.C.1996, Ch.46.s. 54.1; R.S.B.C.1996, Ch.46.s.60) a child can ask for legal representation if they are over the age of 12. In New Brunswick (S.N.B.1980 c. F.-2.2.s.22.7), PEI (R.S.P.E.I. 1988. cap C-5.1.s.34) and Ontario the court can appoint legal counsel for the child (R.S.O. 1990, Ch. C.11.s.38). In Quebec, a child of any age can

ask for legal counsel or have the court appointed someone to represent them (R.S.Q. 1977, P-34.1.s.78 &s.80).

In Alberta, the court can appoint a lawyer for the parent for secure treatment orders and give the child the contact information for the Child Advocate (RSA 2000, cC 12 s.44[(9)]. The court can also appoint a lawyer to the child for protection hearings (RSA, 2000 cC 12 s.111-2). The legislation in the Yukon has two contradicting articles, one states that the guardian has the exclusive right to determine if the child needs legal counsel (R.S.Y. 2008, C-22s. 31), and the other states the child has a right to counsel and to contact the ombudsman (R.S.Y. 2008 C-22s. 70[3]). If found it difficult to discern from this legislation under what circumstances the child or the guardian could enact their right to ask for counsel for the child. Saskatchewan is the only provincial legislation that does not specify if a child can receive legal counsel and it also says that they cannot be part of the protection hearing in most cases (S.S. 1989-1990, c.C-7.2.s.). It is to be more child liberationist if the legal counsel for the child is automatic, thereby protecting their rights. Those provinces who allow parents to determine access to lawyers in protection cases can be seen as more family preservationist, in that the rights of the parent supersede the rights of the child. The YCJA (2002, SC c.1.25.1&2) is much more liberationist in that the right to legal counsel for youth, is guaranteed for youth justice cases.

The right to legal counsel below the age of 12 is therefore not clear in all provinces for protection issues or if the child is entering into child welfare under the age of 12 because of criminal involvement. Furthermore, if the child is not represented by a culturally competent lawyer or person designated by their community, which is allowed in some protection hearings (see Identity- subsection: Preserving Identity for First Nations

groups, pages 107-109, and Adoption and Family Access- subsection Other Cultural Rules, pages 114-116), the circumstances that led them to come in contact with the law may not be well understood. This is particularly important for cross-over youth to or from the child welfare and justice systems. The legal services the child receives could also be inappropriate, as one child welfare service user pointed out:

“Lawyers in the Yukon seem to have limited cultural knowledge. It seems those with money get better representation. Need more money for family law, just like criminal law cases, and need experienced lawyers. Legal aid is very limited” (Yukon Health and Social Services, 2004 Policy Forum comment from service user). Currently the unified family courts do not hear youth justice and criminal cases (Schwartz, 2004).

This means that there is more potential for inconsistencies in cross-over youth accessing to legal counsel and having their family and structural issues taken into consideration.

#### Actual numbers of youth in detention currently

The numbers of youth in detention at any given time are difficult to distinguish because there are at least three categories of custody statistics that this research found: numbers of children sentenced daily to custody, annual numbers of youth in detention and the annual numbers of youth in remand while awaiting sentencing. There are approximately 25,000 in detention, in Canada, on any given day (Manser, 2007, p. 5). These numbers, and the research findings below, do not include the numbers of youth who are in open custody on probation. The YCJA states that the youth custody and supervision system in each province requires two tiers- one of which has to be the least restrictive involving supervision and one involving detention for major violent crimes (YCJA 2002.S.C.1. 85[1]). See Appendix C. Table 3: Provincial Statistics of Youth held in Various Types of Custody for recent statistics of youth in detention: sentenced daily to custody; in long term custody; on remand, by gender, and by culture.

Daily sentencing to youth custody (2004/5 statistics taken from: Statistics Canada, 2006)

The numbers of youth sentenced daily to custody, in Canada, is not clear as it is not specified how long these youth spend in detention. It is likely that these numbers reflect youth who are both arrested and charged on minor and major charges. Minor charges may be municipal infractions such as those in the Safe Streets Acts: panhandling, squeegeeing, possibly holding small quantity of drugs, sex work, etc. Those detained on major crimes might include various forms of grievous assault, theft over a \$1000, breaking and entering, etc. Data are missing concerning the proportion of youth sentenced per province or territory as a percentage of youth in general in any given province. It is hard to tell if the statistics reflect the likelihood that certain regions have proportionally larger numbers of youth entering the justice system. Again there are no statistics this research could find that examine the number of youth crossing over from child welfare to the justice system or vice versa. This research used statistics from 2004/5 as they seemed to be the most detailed and recent statistics released by a Statistics Canada report in 2006. Across Canada, there are 800 youth held daily in detention (Statistics Canada, 2006).

Number in youth custody (numbers taken from Statistics Canada, 2006/7)

The numbers of youth in custody yearly in Canada are not clear, as the statistics refer to being detained and also being on “supervision” conditions. Deferred custody and supervision are not well defined in the literature. Although it is meant to be an alternative measure to incarceration, it is not clear if this may also mean placement in more restrictive settings within the child welfare placements. It is not clear if supervision means placement in child welfare settings that may have various levels of security or if this is probation and the youth still lives at home or independently. Across Canada, in 2006/7,

there were 5,640 youth in custody, 27 on conditional sentences, and 1,080 in deferred custody/ supervision (Statistics Canada, 2006/7), but other research shows there were 4,457 in secure custody in 2007/8 (only 11 jurisdictions reported findings) (Kong, 2009, p.9). These statistics are especially alarming as First Nations youth make up a total of 33% of all youth sentenced custody, yearly (Kong, 2009, p.6), and this is the single largest identified group of all youth. First Nations youth make up a much smaller proportion of the overall Canadian population. This research used statistics from 2006/7 as reported by Statistics Canada (Statistics Canada 2006/7). Recent research has found that the rate of secure custody sentencing seems to have increased in Quebec, British Columbia and the Yukon, in 2007-8 (Kong, 2009, p.10). Conditional sentencing refers to a youth who has been convicted being released on probation or parole with the condition that if they break their conditions they will enter into closed detention. It is clear from these statistics, that the alternative measures offered by the YCJA to defer to supervision, or to use conditional sentencing are not being used very often. Only Saskatchewan and Nunavut reported using conditional sentencing for 2007/8, in these statistics. Proportionally, it appears that Nova Scotia and Saskatchewan were the provinces which sentenced the largest numbers of youth to deferred custody or supervision. The use of these alternative measures is more child liberationist, in that these kinds of sentences may be more effective in keeping the child within their community, school and possibly home, as well as give the youth opportunities for rehabilitation.

Number in remand (statistics taken from research by Kong, 2009, p.15)

The Statistics on the numbers of youth in remand are very important in regards to the right of the child to due process and liberty. Remand refers to keeping someone in

custody and / or on a supervision order in the community while awaiting sentencing.

Youth I work with call it “dead time”, because they are serving time without knowing how long they will be incarcerated or supervised. This time generally counts toward the time allotted in the sentence once it is handed down by the courts for adults, but I found it hard to ascertain from the literature if this is the same for youth sentences.

Nationally, there was a 19% increase from 2003/4 to 2007/8 increase in the use of remand where more youth were held in remand than in custody, out of the 7 jurisdictions who reported these statistics (Kong, 2009, p.13). First Nations youth are again over represented in this kind of detention. In the justice system, they make up 25% of all youth held on remand in Canada yearly and 22% of all youth held on probation admissions- i.e. breach of conditions (Kong, 2009, p.6). The numbers of youth detained on remand have been taken by a recent study by Kong (2009) (see Appendix C Table 3: Provincial Statistics of Youth held in Various Types of Custody Table).

From these numbers, the use of remand while awaiting sentencing is very high across provinces. Again it is not clear how long the average youth spends in remand detention or in remand in the community and for what kinds of sentences. Remand might be hypothesized to be a situation that could put the youth in the criminal justice system into the child welfare system, which may be more liberationist for them if they are coming from difficult family circumstances that led them to come into contact with the law. Alternately, remand could be hypothesized for children in the child welfare system to be more likely to end up in the youth justice system, which could be seen as more protectionist. This could be positive if there are more opportunities for rehabilitation (i.e. substance abuse) or safety (i.e. if the youth is very young and in the sex trade). However,

it may also be more protectionist in a negative sense where a contagion effect may occur and the youth has more opportunity to get deeper into criminal activity (i.e. join gangs). The other issue is that the youth may be awaiting sentencing for a crime they did not commit, as mistakes do happen when assessing guilt. However, the YCJA clearly states that: “a youth justice court shall not use custody as a substitute for appropriate child protection mental health or other social measures” (YCJA. 2002.S.C.1. 39[5]).

#### Gender separation and statistics on the genders in detention

This research found almost no information on the gender of youth in detention in each province. Nearly all of the statistics are federal comparing males and females on the kind of crime, or these statistics are embedded and obscured in the national statistics on the number of youth in detention (see Table 3: Provincial Statistics of Youth held in Various Types of Custody). This research found no information in any child welfare act about separating genders in detention, nor any provisions for youth who identify as trans or inter-gender and where they may be placed- with boys or with girls.

In 2007/8, female youth made up 17 % of the total number of youth in custody (Kong, 2009, p.11). The most detailed information on the differences between male and female involvement with the justice system are noted in the literature on First Nations youth. “Female First Nations youth make up 35% of all female youth admitted to sentenced custody and 27% of all female youth detained on remand. Male First Nations youth constitute 31% of all male youth sentenced custody and 22% of all male youth detained on remand” (Prison Justice.ca , 2010).

The recent study by Kong assessed if there were increases in the numbers of girls in the youth justice system in Canada, between 2007/8 (Kong 2009, p. 12). This was the

most complete study on girls in the justice system and the most recent which I could find. From this study, Kong listed only information from Newfoundland, the Yukon and the Northwest Territories/ Nunavut, all of which show an increase in the number of girls on remand from 2004/5 to 2007/8 ( Kong, 2009, p. 12). In Newfoundland, from 2004/5 the number of girls on remand was 19% and this jumped to 26%, in 2007/8 (Kong, 2009, p.12). In the Yukon, from 2004/5 there were no girls on remand and this increased to 22%, in 2007/8 (Kong, 2009, p.12). In the Northwest Territories/ Nunavut from 2004/5 there were 13% of girls on remand in detention or on supervision orders, and this increased to 40% , in 2007/8 ( Kong, 2009, p.12). One wonders if this might be an indication that our society is more protective of girls in contact with the law. Clearly from current statistics (see Table 3: Provincial Statistics of Youth held in Various Types of Custody), remand is used more frequently than custody in all areas of Canada that had statistics for this report. It is interesting to note the high numbers for both detention and remand in the Yukon and the Northwest Territories/Nunavut, but it is not clear why they are so high.

#### Statistics on cultural representation in detention

This research found that the only statistics on different cultures of youth in care were numbers on First Nations groups and these were not separated by Nation or linguistic group. No other groups are represented in the data, so there is no way to tell to what extent racial profiling may be operating in the youth criminal justice system. This can be viewed as not particularly child rights liberationist in that it is difficult to tell if certain groups are entering into the justice system because of multiple oppressions, including if there are some minority groups other than First nations children who are over

represented in the cross-over children from care to detention. The statistics are separated for girls and boys, although there appears to be more information on the number of boys in detention, from the statistics that I have read.

Aboriginal youth make up 6% of the youth in Canada who are sentenced daily to detention centres (2006 Census). There were approximately 7,500 Aboriginal youth admitted to either custody or probation in 2005/2006 (Prisonjustice.ca, 2010). One of the major issues in detention for youth and adults are the large numbers of people with Fetal Alcohol Syndrome, a common issue in some First Nations communities, ending up in the justice system (Bowlus & McKenna, 2004; Fush, Burnside, Marchenski, Mudry, 2008; Richard, 2008). If the YCJA is geared towards rehabilitation, this means there needs to be extra provisions in the law for dealing with persons with these disabilities who are convicted of crimes. As one service user stated:

“There also needs to be support for them to access special needs programs. There are a number of programs for FAS but their children have to be assessed. Well, if someone doesn't know the system well enough they can't get assessed and referred to a professional, and the children don't get early intervention. Look at half the people in the penal system, they're mostly fetal alcohol affected” (Yukon Health and Social Services, 2004 Policy Forum comment from service user).

This research uncovered the following statistics on First Nations youth in the justice system (see Table 3: Provincial Statistics of Youth held in Various Types of Custody). Nationally, in 2007/8 First Nations youth accounted for 25% of all youth held on remand, 33% of all admissions to sentenced custody, and 22% of all probation admissions (Kong, 2009, p.6). Nationally, female First Nations youth account for 35% of all female youth admitted to sentenced custody and 27% of all female youth admitted to remand. Nationally, male First Nations youth account for 31% of all male youth admitted to sentenced custody and 22% of all male youth admitted to remand” (Prison Justice.ca ,

2010). Overall, though it would appear that First Nations youth are over represented in custody in the country as a whole and spend more time in remand and custody than other groups of youth.

### Contradictions between the Federal YCJA and the Safe Streets Acts

Arrest and convictions under the Safe Streets Act (SSA) are not separated in the criminal justice statistics that this research examined. Only Ontario and British Columbia have SSAs. The SSAs in both provinces do not have any clauses on the age at which a person can be convicted for violating any clauses in the act (SO, 1999. C.8; SBC 2004, Ch. 75). Therefore it is difficult to say if youth can also be convicted under these acts. In my personal practise, I have known many youth to be arrested and or convicted under violations of these laws. The major conflicts with these acts and the YCJA are: no age ranges for charges under the SSAs, arrest without a warrant (SBC 2004, 75.5; SO, 1999, c.8.6), and sentences in Ontario's SSA are prescribed without alternative measures (SO, 1999, c.8.5 [all]). The YCJA principals on detention for youth emphasise rehabilitation, fair and proportionate sentences to the crime and timely intervention (YCJA 2002.S.C.1.3 (1) (b) [(i) (ii) & (iv)]). Ontario's SSA lists a series of fines and even up to six months jail time for these infractions upon the first and subsequent arrests (SO 1999, c.8.5. (1) a &b).

Furthermore, the YCJA instructs police to consider the following:

“A police officer shall, before starting judicial proceedings or taking any other measures under this Act against a young person alleged to have committed an offence, consider whether it would be sufficient, having regard to the principles set out in section 4, to take no further action, warn the young person, administer a caution, if a program has been established under section 7, or, with the consent of the young person, refer the young person to a program or agency in the community that may assist the young person not to commit offences.” (YJCA, 2002. S.C.1.6[1]).

Summary of Liberty and Due Process:

In my personal work with street youth, the vast majority have been in child welfare and spent some of their time in care in detention. Once in detention, these youth have reported difficulties being placed in less restrictive settings and are more likely to get involved in criminal activity. It is clear that more girls are held on remand than placed in detention. This may reflect gender issues, including a societal protectionist stance toward girls in contact with the law. Perhaps it is seen as keeping them out of trouble by detaining them under remand, or perhaps it is seen as more liberationist and less restrictive if the remand sentence is within the community. Perhaps our justice system sees girls as easier to rehabilitate, or more likely to be coerced into crimes as accomplices than to be a primary perpetrator and therefore will be better protected if detained. Either way it is unclear why girls are so likely to be held on remand. It is clear from the statistics that certain youth from minority groups are much more likely to come into contact with the law, and for First Nations children, also with the child welfare system. Their rights to liberty and due process appear to be less than that of other groups of youth given the statistics. The contradictions between the YJCA and SSA are serious and pose a problem in terms of statistics of youth who are homeless, or how have had inconsistent involvement in the child welfare system. It is unclear from these statistics how these two laws may affect children from child welfare entering into the justice system and vice versa. Furthermore, the use of remand and the existence of the protocols in the SSAs reflect a protectionist stance on children's rights to due process. It can be hypothesized from these statistics that youth may be more likely to be detained much longer than adults

and without the same protections to be proven guilty before having conditions imposed on them.

a. The right to legal recourse

Children in care need both access to child welfare and community services, as well as the ability to voice their concerns about the care they receive (Canadian Coalition for the Rights of the Child, 1999, NYINC, 2007, Save the Children Canada, 1998). One service user stated: “the appeal process needs to be made clear for youth challenging a plan of care.” (Yukon Health and Social Services, June 2004 Policy Forum comment from service user). For children in care, there is significant variability between provincial and territorial legislative provision of: child advocates (including lawyers), access to community councils, access to ombudspersons in child welfare agencies, the presence of children’s human rights commissioners, and other provisions such as mandatory court reviews, and mediation. The goals of these various legal channels include: addressing positions of power, creating accountability, performing systemic reviews of services and practice, and suggesting changes which address structural barriers (The Child Welfare Anti-Oppression Roundtable, May 2009).

“Children’s Advocates across Canada have different authorities as defined by their unique provincial legislation. The Children’s Advocates in Saskatchewan, Manitoba and Newfoundland report to provincial legislatures. The Nova Scotia Children’s Ombudsman reports to the Ombudsman, who then reports to the provincial legislature. In Quebec, the Commission reports directly to the National Assembly. The Advocates in Alberta and Ontario report to their respective Ministers within government. The British Columbia Children’s Officer reports to the Attorney General. Each functions under legislative authority” (Finlay, 2006, p. 4).

A major barrier to the protection of children’s rights is that children’s advocates have little actual legal power. They can “work towards”, “promote” and “engage” or

“advocate” but they cannot necessarily force changes in of child welfare policy. They can perform the following functions: advocate for the respect of children’s rights in our communities and in government practice, policy and legislation; “act as a voice for children who have concerns about provincial government services”; “engage in public education”; and “recommend improvements of programs for children” (Finlay, 2006, p.4-5). How their input is used by policy makers is unknown. Some of the child welfare advocates particularly from Ontario, New Brunswick and British Columbia have been involved in promoting excellent research on the rights of children in care. They also hold varying degrees of legal power therefore, at this time, the results of their efforts to protect the rights of children is not measurable. One suggestion has been made about the variability of these bodies to advocate for children in care: --

I see advocacy and an independent review as two different things. An individual who can advocate to protect a child's rights performs a different function from an independent review of decisions made by public officials. The children's advocate will necessarily be biased because of the role, while the independent review depends upon a neutral, impartial reviewer. Thus I think we need to separate the two functions.” (Yukon Health and Social Services, July, 2004 Policy Forum comment from service user).

Currently child advocates and ombudspersons are present in Newfoundland, Manitoba, New Brunswick, British Columbia, Nova Scotia, Quebec, Alberta and Saskatchewan (Canadian Counsel of Child and Youth Advocate Members webpage, 2010).

This section of the research examines the right to legal recourse for children in care by the following provisions in the child welfare acts: the presence of child advocates, the presence of unified family courts, the presence of ombudsman, the presence of

children's human rights commissions, and other provisions such as mandatory court reviews, mediation, and alternative dispute mechanisms.

The presence of child advocates

The presence of child advocates refers to provincial advocates, not to lawyers who are often involved or represent children in their individual cases. The child advocates' roles are different depending on the province, but generally they are allowed to meet with individual children, make suggestions on care plans, inspect agencies, make reports on the status of youth in care in general in a province and report to the minister of child welfare or social services (depending on the ministerial department in charge) on their findings. "The Canadian Council Of Provincial Child And Youth Advocates is an alliance of the eight provincially appointed Children's Advocates from the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Newfoundland and Labrador; the Nova Scotia Children's Ombudsman; the Commission des droits de la jeunesse from the province of Quebec; and the British Columbia Children's Officer" (Findlay, 2006, p.4). The utilization of child welfare advocates and ombudspersons is relatively new. They do not exist in Prince Edward Island, the Yukon, the Northwest Territories or Nunavut. Child advocates acts are present in Newfoundland (*Child and Youth Advocate Act*, S.N.L., and 2001.cC.12.01), New Brunswick (*Child and Youth Advocate Act*, S.N.B. June, 2007C.C2.7). In September 1989, Alberta established a Child and Youth Advocate (Office Child and Youth Advocate: Alberta (webpage 2010). Saskatchewan's Children's Advocate Office was established in 1994 (Saskatchewan Children's Advocate Office, June, 21, 2006, p.3). In Ontario (R.S.O. 1990, c. C.11 s.103 (1) (b) [ii]) the Office of the Child and Youth Advocate was officially established in 2007 (Office of the

Provincial Advocate for Children and Youth- webpage, 2010), however reports from advocates in this province date back prior to 1998 (i.e. Findlay 2006). From these reports and websites, it was difficult to determine if this advocate's office officially existed prior to 2007, and if the advocate worked under the director of child welfare, the provincial ombudsman or the minister for health and social services. This information was difficult to discern from the various websites and legislation. Manitoba's Office of the Children's Advocate was established under the child welfare act, in 1992 and revamped as an independent office from child welfare in March, 1999 (Office of the Children's Advocate, 2000-2001, p.8). In British Columbia the Office of Representative for Children and Youth was established in November, 2005 and the Representative for Children and Youth Bill 34 was passed in 2006 (Representative for Children and Youth- history- Webpage, 2010). The Yukon's child welfare act refers to the minister needing to establish a child advocate position independent from the director of child welfare (R.S.Y. 2008 .C-22.s.1 & s.173[c]). From the information I could uncover, it would appear that this position is not yet established. The importance of the establishment of Child advocates has been stated by service users, including this one:

“The law should mandate involvement of a legal Child Advocate and a First Nation worker in decisions in regards to First Nation children” (Yukon Health and Social Services, 2005 Policy Forum #2 comment from service user).

#### The presence of ombudsperson

Child welfare ombudsperson has existed in Nova Scotia since June of 1999 (Francis, 2000, p. 20). Furthermore, Ontario has a provincial ombudsperson which can appoint a staff person to counsel a child in care (R.S.O. 1990, c. C.11.s.103 (1) [iii]).

The presence of Unified Family Courts

Unified Family Courts (UFCs) have existed in Canada since 1975, beginning in PEI and are now present in Newfoundland (serves half of the province), New Brunswick, Nova Scotia (serves 75% of the province), Ontario (serves only 40% of the province), Manitoba and Saskatchewan (BC Justice Review, 2003). UFCs are only mentioned in two child welfare acts, Saskatchewan (S.S. 1989-90, c. C-7.2 .s.63.6-) and Newfoundland (S.N.L. 1998 c. C-12.1.s.55.2). There are no details about their role in the child welfare act for Saskatchewan. According to the child welfare legislation in Newfoundland, these courts can hear two cases together that involve families such as those involving divorce and custody and child welfare involvement (S.N.L. 1998 c. C-12.1.s.59). The use of UFCs can be seen as both more family and more community preservationist. If the entire family is seen for several different legal issues, the court process might be faster and have more potential to be a collaborative process between family members. These courts generally include professionals in the community to help connect the family to services, thereby helping the family remain in the community.

Otherwise community councils of various forms exist that can also assess child welfare cases and make recommendations to child welfare or be part of the case plan. In some ways this can be seen as a collaborative effort that is an alternative to as these counsels may be working within the community and supplying community resources to the family. In the case of band council involvement, these councils are like a court, in that they can make some decisions regarding child welfare laws. Every provincial legislation lists that bands and their councils or a representative to be involved in child welfare hearings, or at minimum notified of child welfare proceedings (see Ch.4, Accessing

Culturally Appropriate Care, pages 118-119 and Appendix B.2.c). Saskatchewan allows the minister to establish a Family Services Board of community members who are knowledgeable about programs and services provided by child welfare and other social services in the community (S.S. 1989-90, c. C-7.2 s.43 [1-2]). British Columbia allows for the creation of community advisory committees to develop services for child welfare (R.S.Y. 2008 C-22. S.175 [1]). The Northwest Territories/ Nunavut also refers to the use and creation of a Child and Family Services committee, whose roles include involvement in plan of care committees for individual cases (S.N.W.T. 1997, c.13 s.11 (2) [c]), the promotion of community child care standards (S.N.W.T. 1997, c.13.s.57. (1)[c]), and in some regions, to carry out the provisions of the child welfare act itself (S.N.W.T. 1997, c.13.57. (1)[b]). The use of community councils can be seen as more community preservationist as it has the potential to keep the child and family within the community and offer more culturally appropriate care for the child, particularly if the child and family can choose to have their involvement or not. One service user stated their usefulness: “I would love to have a child welfare committee for each community versus one individual making the decision. Then the decisions are made for the good of the community and families can come and provide support and come together” (Yukon Health and Social Services, June 2004 Policy Forum comment from service user). The Northwest Territories/ Nunavut likely use these committees because of the number of remote communities.

#### The presence of children’s human rights commissions

is the only province with a Human Rights Commission created explicitly for youth and children, the Commission des droits de la personne et des droits de la jeunesse, in 1975 (Commission des droits de la personne et des droits de la jeunesse , Webpage,

2010). A separate youth human rights commission can be viewed as a child liberationist stance on children's rights; however the commission can investigate matters concerning child welfare and make recommendations, but cannot represent children directly in court. The absence of specific human rights commissions for children is a sign that there is a lack recognition of children as citizens with certain rights, in Canada.

Provisions (mandatory court reviews, mediation, and alternative dispute mechanisms)

Mandatory court review refers to the review of services provided by child welfare agencies, rather than review of individual cases. Mandatory court reviews of voluntary or permanent placements and secure treatment orders are possible in most provinces. This information is noted in the section above on Mobility (pages 117-136, appendix. B.3). The importance of service reviews is that if services are reviewed regularly then they are more likely to preserve the rights of children and their families. One parent of a child in care stated why this is important:

“Workers in group homes need to enjoy their jobs. My daughter's kid (in Receiving Home) was asked to wash up for dinner so she asked to have a shower instead and was told ok. When she came down she was told dinner was over and the food was put away, none saved for her. I asked her if she told anyone and she said they don't listen. Who implements these rules? There's no one for these kids to call, especially if they're from communities” (Yukon Health and Social Services, August, 2004 Policy Forum comment from service user).

Complaint review boards or mechanisms through the director or the minister to hear disputes, such as the one mentioned above and/or to investigate possible cases of misconduct. These complaint mechanisms exist in the legislation in Quebec, Saskatchewan, Manitoba, Ontario, Alberta, the Northwest Territories/Nunavut, the Yukon and PEI. Manitoba has a child abuse registry review committee and hears complaints of parents and adults who have been accused of abuse, as well as establishes the registry

(C.C.S.M.1985, c. C80. S.19 [3]). In PEI, the Lieutenant Governor in Council may make regulations respecting the establishment of a complaints process and establishes a person to hear them (R.S.P .E.I. 1988, C-5.1.s.60. [a] . Alberta's legislation states that service providers have to conform to the standard the director and minister establishes and that they must allow them to inspection their services (R.S.A. 2000, c. C-12S.105 [4-5]).

Quebec has an advisory committee who notifies the bands for specific cases with First Nations children (R.S.Q., chapter P-34.1.s.35 [1] [e]). Quebec's legislation also allows the minister to appoint a third party to hear complaints about an agency, investigate and report their findings Where an agency is accused of not abiding by the standards of the act the minister will appoint one or more persons not employed by the ministry to report findings of fact used in making recommendations and conclusions of law relevant to the case and provide the agency with a copy (R.S.Q., chapter P-34.1.s.22 [7] [b]). In Ontario there is a complaint board for service users (R.S.O. 1990, c. C.11.s. 68[all]) but I found it difficult to decipher if to whom the complaints can be made- to the minister or to a board. The law also stipulates that agencies who receive complaints do an internal review of their services (R.S.O. 1990, c. C.11.s. 109[all]) In Saskatchewan, the legislation states that anyone who has a complaint about a director's decision or someone who is acting on behalf of them can request a review by the minister for social services or a board which they can appoint (S.S. 1989-90, c. C-7.2 .s. 43(1) [3-all]). In the Northwest Territories/Nunavut, with the permission of the minister, a director or social worker ca act on their behalf to inspect child care facilities and homes and make recommendations, which can be another avenue for investigating complaints (S.N.W.T. 1997, c.13.s.59(1). In the Yukon the minister creates the policy standards and the director can act on their behalf and inspect services

(R.S.Y. 2008 C-22. s.164 (b); R.S.Y. 2008 C-22. s.165 [4&5]). As one child welfare recipient said: “There should be an external review of programs and services” (Yukon Health and Social Services, 2005 Policy Forum #1 comment from service user).

Complaint mechanisms are both protective, in the sense that they establish standards of service and ensure that agencies are following them, and they can be seen as more family preservationist because they allow families to make grievances on the care of their children.

Review boards for assessing the best practises in service delivery and conflicts in the legislation were found to exist in four provinces: Newfoundland, PEI, the Yukon and the Northwest Territories/ Nunavut. Advisory boards that the minister can establish are mentioned in the legislation for PEI, but their role is vague (R.S.P.-E.I. 1988, C-5.1.s.60 f<sup>^</sup>). In Newfoundland the review board sits every two years. The board is composed of appointed people, who are not paid and who are: in care or who are parents of children receiving care, a lawyer, a minister’s aid, and two people from minority communities (S.N.L. 1998, C-12.1.s.75 [2]). This board makes a report that goes to the house of assembly within 30 days of completion (S.N.L. 1998, C-12.s.1.75 [6]). In the Northwest Territories/Nunavut, Child and Family Services Committees can be established that assess individual cases, but also set and review community standards of child welfare services (S.N.W.T. 1997, c.13.s.59 [1]). The Yukon has three levels of review. The first is an advisory committee established by the Minister to evaluate the child welfare act and how it is used in practice. The review is done every 5 years with an appointed committee of six members which include: a lawyer, a First Nations band member, and two people who were or are in care, as well as professionals (R.S.Y. 2008, C-22.s. 183 [1 & 4]). They

produce a report within thirty days to be given to the Legislative Assembly (R.S.Y. 2008, C-22.s. 183[6]). The director also has to establish a review process concerning their own functions and to make the results public (R.S.Y. 2008 C-22. S.184 [all]). Lastly, the director of child welfare has to report to the minister every three years concerning standards and procedures of everyday services (R.S.Y. 2008 C-22. S.184[all]). The Yukon legislation can be seen as more protectionist in that it evaluates its child welfare operations on several levels and involves children in care in some of the process, the latter of which can be seen as more child liberationist. The only problem with most of the review boards is that people are appointed by the minister or director, and so there may be intentional or biased reporting (R.S.Y. 2008 C-22. S.185 [2]).

Mediation can be another venue outside of the courts for resolving disputes in individual cases and with agency service providers and service users. Mediation was only described as being available in Nova Scotia. If parties agree to this during a court proceeding, the court can stay its proceedings for up to three months, and resumes if the matter has not been resolved (S.N.S 1990 c.5.s.211 &2]).

Alternative Dispute Mechanism (ADM's) can also be a venue for resolving differences in individual child welfare cases. These proceedings may help maintain the integrity of the family or may be somewhat less controversial and traumatizing than court proceedings because it is a more collaborative process. These are generally more formal procedures than mediation itself. Alternative dispute mechanisms were not well described in most of the legislation, and were only found to exist in the legislation in:

Newfoundland (S.N.L. 1998, C-12.1.s.13), Ontario (R.S.O. 1990, c. C.11 .s. 20.2[a]),

Alberta (R.S.A. 2000, c. C-12s. 3.1[1]), British Columbia (R.S.B.C. 1996, Ch.46.s. 22),

and the Yukon (R.S.Y. 2008 C-22. s.8). Quebec also uses ADMs (R.S.Q., chapter P-34.1. s.20.2 [1]) and has a separate clause for the notification of bands when they are to be used with First Nations families R.S.Q., chapter P-34.1.s.20.2 [4]). Children in care in Alberta (R.S.A. 2000, c. C-12S.3.1 [1]) can ask for the ADM, no age is specified in the legislation. The latter legislation can be seen as more child liberationist in that the child can advocate for themselves outside of court.

a. Financial support

There is a serious lack of finances and community resources to aid children in care and their families (Piper, 2008; Trocmé, Knoke, & Blackstock, 2004). First Nations children are the most over represented number of children in care, and arguably some of the most in need of funds, given the numbers living on reserve and the lack of specialized services in many of these communities (Ducharme, et. al., 2005). "...The Indian and Northern Affairs Canada Child and Family Services Program (CFS) provides 22% less funding per child to First Nations agencies than is received by provincial agencies. The current CFS federal budget is capped at a 2% annual growth rate, even though maintenance costs alone increase by 11% per year (Assembly of First Nations, 2006, p.2). One service user came up with a solution to this issue, relating to Fetal Alcohol Syndrome, and children in care.

"Perhaps Canada, Yukon government and the Liquor Corporation need to be taken to task because we seem to struggle all the time to be scratching at brick walls. They've made money on the alcohol, and these are the victims as a result of the corporate conglomeration. Government needs to be taken to task and reminded; if they've made \$50 million on alcohol, then they need to put \$25 million towards FAS kids. Where does that money for assessment come from? It needs to come from those who made the money on the backs of our children" (Yukon Health and Social Services, August, 2004 Policy Forum comment from service user).

Access to financial support directly affects the numbers of youth living in poverty and is linked to the likelihood that youth might engage in criminal activity and be in positions of sexual exploitation. It would appear that we are more willing as a society to spend money on closed or secure custody services and services that aid homeless youth and may even get them trapped on the street, than on appropriate supports while the child is in care. “It costs an estimated \$30,000–\$40,000 per year to keep a youth in the shelter system. The cost of keeping one youth in detention is estimated at over \$250 a day, or \$100,000 a year (Raising the Roof, 2009, p.4). Outcomes for youth in care are better, if they have the finances to help them integrate into ‘normal’ community life through participation in extra-curricular activities and/or have mentor paid who is paid for (Reid & Dudding, 2006, p.8). What is interesting about Campaign 2000’s poverty “bench marks” to end child and family poverty is that none of these specifically address the financial needs of youth in care. They only address parents’ needs (Campaign 2000, 2004, p. 2). For example, some of the Adoption Acts in Canada allow for financial support on varying terms for adopting parents. Furthermore child poverty rates tend to be measured by the income of the parents or family and may or may not include children in care and their direct incomes (Campaign 2000, 2004, p. 3). At present, Alberta is the leader in post secondary bursaries for youth aged 18-22, if they have been in care at some point between the ages of 13-18, to help them with post secondary education (Reid & Dudding, 2006, p. 12). As stated previously in this thesis, much of the funding for First Nations is federal through the Indian and Northern Affairs Canada Child and Family Services Program (CFS) and is capped at 22% lower than national rates (Assembly of First Nations, 2006, p.2).

A review of the Child and Family Services Statistical Report, 1998- 2001, on child welfare monies designated by province or territory (Government of Canada: Social Development, 2005) and the “components of the National Child Benefit”(Government of Canada, 2005) reveals that there is no mention or any provision of child tax credit payment directly to youth in care. The child welfare agency responsible for children, receives the monies for their charges, but the federal and provincial governments do not designate what the money needs to be used for or if the child has direct access to these funds. There are no standardized pay scales for youth in care. Provincial legislation in this research has been evaluated on the variance in the basic amount of money allotted to: foster care, kinship care givers, families, caring for children in institutions, youth in independent living situations, extensions of support past the age of majority, and for adult welfare.

#### Basic amount for foster Care

There is nothing specific in the legislation concerning basic rates of support payments given to foster care givers. Parents must be asked if they can pay for these services in: Newfoundland (S.N.L. 1998 c. C-12.1.s.22[2]), Nova Scotia (S.N.S. 1990, C.5, s.1.52[1]), New Brunswick (S.N.B.,1980, c. F.-2.2.s.116 [a & b]), Manitoba (C.C.S.M.1985, c.C.80.s.38[3]), Alberta (R.S.A. 2000, cC 12 s.57.5.1 & 113), Québec (R.S.Q. 1977, c. P-34.1.s.65), Ontario (R.S.O. 1990, c. C.11.s.60 (1)[b]), Saskatchewan (S.S. 1989-1990, cC-7.2. s.55 (2)[a]), British Columbia (R.S.B.C.1996, Ch.46.s.93[1&1]), the Northwest Territories (R.S.N.W.T. 1997 c. 13.s.20 [8]), and PEI (R.S.P.E.I. 1988, cap C-5.1. s.18(3)[e]). New Brunswick’s law also states that a father has to support the mother, even if they are not married (S.N.B.. 1980, c. F.-2.2.s.122 [2]); S.N.B. 1980, c. F.-

2.2.s.113 (1) a). The Yukon has the only legislation that does not explicitly ask the parent to pay for child welfare services for their children in care. The director of child welfare will pay for foster care services, groups homes and institutional services in all provinces, (S.N.L. 1998 c. C-12.1.s.63 (1); S.N.S. 1990, C.5. 1. s.1.99 (1) (p); R.S.P.E.I. 1988 cap C-5.s.14 (3) (c); S.N.B. 1980 c. F.-2.2.s.19) (1); R.S.O. 1990 Ch. C.11. s.8 (3); R.S.O. 1990 Ch. C.11. s.9(1); C.C.S.M.1985, c.C80s.38[3]; R.S.A., 2000 cC 12 s.105.8; S.S. 1989-90, cC-7.2. s.5(c); S.S. 1989-90, cC-7.2. s. 55(1) [a &b]; R.S.B.C.1996, Ch.46.s.5 [1]; R.S.Y. C-22.s.164 (d); R.S.N.W.T. 1997 c. 13. s.3 [e]). No rates are mentioned, except in Québec's law, which refers to money taken from the provincial funds for social services in 1979 and all subsequent years (R.S.Q.1977, c. P-34.1.s.157). New Brunswick's law states that the Lieutenant Governor will fix the rates for child welfare services, but gives no other details (S.N.B. 1980, c. F.-2.2.s.143 (z) (nn.1) [i]). Quebec's law also states that monies are available to foster parents who become the child's tutor (R.S.Q. 1977, chapter P-34.1. s.70.2 &3). The distinction between foster parent and tutor is not clear in this legislation. Ontario's law mentions that foster parents are paid a general sum, which is not specified, for each day the child is in care (R.S.O. 1990 Ch. C.11.s.60 (1) [b]). This legislation also allocates subsidies for customary care with a band or a CAS or an agency providing care for a First Nations child R.S.O. 1990 Ch. C.11.s. 212). Quebec's legislation states monies can be allotted to First Nations for child welfare services under the Act Respecting Health Services and Social Services (R.S.Q., 1977chapter P-34.1.s.65). The Yukon minister can enter into financial agreement for provision of services with First Nations bands so they can run their own child welfare services (R.S.Y. C-22.s.168 (2) [b]). Ontario's legislation also states that children may be asked to pay for

themselves (R.S.O. 1990 Ch. C.11.s. 60(2) [1 & 2]). Manitoba also states that the minister fixes rates and that payments for care may be retroactive (C.C.S.M.1985, c.C80.s. 6(6) [2-4]). This legislation is the only one to mention payments for specific items such as housing, clothing, food, recreation, day care, supervision, etc. (C.C.S.M.1985, c.C80.s.15[3]l. n & C.C.S.M.1985, c.C80.s.[15 3-5]).

#### Basic amount for kinship

The information in this section is essentially the same as above, and there is no reference to kinship care financial allotments specifically.

#### Basic amount for families

Allotments for families to care for their own children at home represent a more family preservationist model of child welfare. The importance of this is exemplified in the following quote:

“When more responsibility is given to the family, it generally means 'use the family and traditional systems on your own time and money'. There is no financial support for the family to care for their children and this leads to more stress and a breakdown in the family structure. We need to be more aware of the impact of poverty on child protection situations” (Yukon Health and Social Services, May, 2004 Policy Forum comment from service user).

This research found explicit mention of funds available to families to care for their children at home, including Newfoundland (S.N.L. 1998 c. C-12.1.s.63[1 & 2]), the Yukon (R.S.Y. 2008, C-22.s.11&12), British Columbia (R.S.B.C.1996, Ch.46.s.93(1)[b]), and the Northwest Territories/Nunavut (R.S.N.W.T. 1997 c. 13. s.3[e]). The latter two provinces also include provisions for disabilities and rehabilitative treatment, respectively. Some legislation allows adopting parents to receive some funding, such as: Alberta (R.S.A., 2000 cC 12.s.81 [1]), the Yukon (R.S.Y. 2008, C-22.s.150) and Nova Scotia (S.N.S .1990, C.5, s.1.87 [all]). New Brunswick’s law allots money to parents prior to adoption (S.N.B.

1980, c. F.-2.2.s.72) (1) [a& b]), but it is not clear if they are eligible for funding afterward. Quebec's provisions are only for money to institutions where the child will be adopted from (R.S.Q.1977, chapter P-34.1.s. 71.3).

Basic amount for institutional care (includes detention)

The general provisions listed above in the foster care section, that provinces can pay for services for youth in care, likely also include services for institutions, although it is not explicit in all of the legislation. This research found the following clear guidelines for funding to institutions. In Quebec, "an institution operating a child and youth protection centre may, in the cases and in accordance with the criteria and conditions prescribed by regulation, grant financial assistance to facilitate the adoption of a child" ( R.S.Q. 1977, chapter P-34.1.s. 71.3). In Ontario, the minister can establish funding for agencies to establish services for the purposes of this act (R.S.O. 1990 Ch. C.11. s.8 (3); R.S.O. 1990 Ch. C.11. s. 9[1]). In Saskatchewan, the minister provides financial aid to support the child in residential services, which includes: shelter, basic needs, education, and rehabilitation (S.S.1989-90, cC-7.2.s. 55(1) [a &b]). In Quebec, the "expenses of transportation and bed and board for a child provisionally entrusted to a foster family or an institution other than an establishment shall be charged to the institution operating the child and youth protection centre whose director has taken charge of the situation of the child." (R.S.Q., chapter P-34.1.s.48). In Ontario (R.S.O. 1990 Ch. C.11. s.7 (1) [b]) and New Brunswick (S.N.B. 1980 c. F.-2.2 .s19 [1]) the minister may pay for services within or outside of their jurisdiction for the purposes of this act. Those acts which have explicit provisions for services within or outside of the province and for specific items for

children's care (i.e. for clothing or for disabilities) can be seen as more child liberationist because they clearly outline greater provisions of services.

#### Basic amount for independent living allowances

There are no basic scales or amounts listed for independent living allowances for youth in care. The lack of information in this section can be seen as both less protectionist of youth in precarious situations and less child liberationist, by not having standards of care allowing youth to be independent.

#### Extensions support for children past the age of majority

There are no basic scales or amounts listed for extensions of care for youth who have been granted an extension of care beyond the age of majority. The lack of information in this section can be seen as both less protectionist of youth in precarious situations and less child liberationist, by not having standards of care allowing youth to be independent.

#### Adult welfare rates

The comparison of rates for children and families in care and adult welfare rates is important to assess how these scales coincide. Furthermore, many children age out of care and directly into the child welfare system or end up using adult welfare supports at some point in their lives, as has been stated in previous research (Whittred & Kendall, 2007, p. 64; Tweddle, 2005, p. 9). The rates themselves are very minimal; however there are some provisions for adult welfare being accessible to youth under the legal age, which can be seen as a move towards liberationist child rights principals. The ability of youth to receive some funds to support themselves is essential given the previous gaps mentioned in the

literature for children aged 16-18 or 19 (Richard, 2008; Findlay, 2006; Findlay & Snow, 2004; Herbert, 2007).

Current adult welfare rates, per month, range from \$183.00 for a minor who is a parent (no age specified) an adult living in a shelter in Quebec (Emploi Quebec, Jan. 1, 2009), up to \$716 for adults living in northern communities in Ontario (*Ontario Disability Support Program Act*, OR 222/98.30.1). There are supplements listed on some provincial welfare agency websites for various items such as heating, clothes, initial start up provisions for housing, child care, etc. This research just looked at the minimum rates. Quebec also allows welfare recipients to earn an extra \$200 a month without penalty (Emploi Quebec, Jan. 1, 2009). Some of the adult welfare provisions include funding for youth. Alberta's is probably the most protectionist because aid is available to 16 and 17 year olds, only if they are residing with an 18 yr old partner (*Income and Employment Supports Act: Income Supports, Health and Training Benefits Regulation 2004* (last amended 2008) AR. 60/2004. s.1(1)b). Nova Scotia allows for financial aid to 16-18 olds if parents won't support/ not in care- as of April 2009 (*Nova Scotia Community Services Act*, 2008, s.5.10.1). Ontario's legislation gives 16-18 year olds who cannot live with parents, and who are in school or full time training programs funding. However they may be required to have liaison with a "responsible adult" (Ontario Ministry of Community and Social Services, directive. 3.5-1, May, 2009). New Brunswick exceptionally may give access to adult welfare supports if 16 to 18 year olds cannot live with their family and have an approved alternate residence (*Family Income Security Act*. 1995 O.C.95-470.4.9). In PEI, since 1996, youth under age 18 may be able to receive adult welfare aid, but there are no minimum age limits stipulated. There are two provinces that have long term

educational support programs for youth through the adult welfare system, the Northwest Territories /Nunavut and PEI. In the Northwest Territories youth who are aged 16 to 17 and working or in a training program may qualify for room and board under a support agreement with the Department of Health and Social Services (Government of the Northwest Territories, 2007.2.c, sec.5. p. 11 & p. 114). There appears to be financial assistance for this age group as well through other programs (Income support programs- Education- Government of Nunavut, 2005, p.7) and financial aid for youth in educational programs, who are aged 18 to 24 (Income support programs- Education- Government of Nunavut, 2005, p. 54). Minors can receive this if they are in full time school, and can keep it for 4 years above age of majority (Prince Edward Island Department of Social Services and Seniors, September, 2009 (Sec. 3-4 of the act regarding social services). Manitoba's adult welfare information has no age limit. In fact, it includes possible financial aid for children under the director of child welfare, those without parental involvement or family aid, those in "crisis" or in shelter (*The Employment and Income Assistance Act* CCSM 1998c. E98.s.5 [all]). It is unclear if adult welfare financial aid is available to youth as this research did not find any age limits, only that a "person in need" could apply (*Social Assistance Act*. R.S. 2002 (last amended 2009) c.205.s.7.1). Manitoba's legislation seems to be the most child liberationist in that it has no limits, and includes coverage of children who are currently in the child welfare system, giving those youth two financial aid options. However welfare can become a financial trap. Therefore the legislation in PEI seems to be the most child liberationist for minors and those over the age of majority because it allows a very flexible time frame and yet mandates that the youth participate in

training or educational programs so that they do not have to become dependent on the adult welfare system long term.

#### Summary of Financial Support

There are few explicit provisions in the child welfare legislation outlining funds for specific services, residential facilities, community agencies, First Nations run child welfare, and no basic rate scales for youth and families. Unlike provincial child welfare financial provisions, the basic rates for adult welfare are set by each province, are published and generally inflexible. The lack of clear financial provisions and regulations in child welfare legislation means that funding is discretionary and so services to families and children are not likely to be equally neither financed, nor available across provinces and within provinces. It does not seem that this legislation is very family or community preservationist nor child liberationist without having some guidelines for funding in the legislation to protect their rights.

Chapter 5

Pathways to implementing the UNCRC productively into Canadian child welfare systems

I have outlined four ways that child welfare legislation in Canada could be improved to better meet the criteria of the UNCRC. These solutions are linked to child rights theory on the liberationist- protectionist spectrum I have described in this thesis. The first is to use anti-oppressive practices which support the liberationist view of children's rights and encourage the children's participation in legislative change. The second is to adopt First Nations child welfare practices and ideology, which are consistent with the community preservationist view of child rights. The third is to create and utilize Unified Family Courts, in all provinces, to manage all legal matters regarding the entire family. This third solution supports the family preservationist view of child rights. The fourth solution proposed herein is to create federal legislation regarding child welfare practises and children's rights which would then make child welfare agencies more accountable for their actions. This is consistent with the state protectionist view of child rights.

1. Anti-oppressive theory and practice (AOP) and its relation to praxis in child welfare

Article 12 (UNCRC, 1989, A.12) :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.

Anti- oppressive practice changes to child welfare can be viewed as a child liberationist stance on the rights of children in care. I propose that all provincial child welfare agencies and any other agencies working with youth aging out of care adopt anti-

oppressive practices, as outlined by Ife (2001) into all aspects of child welfare, from engagement, assessment, intake, interviewing, apprehension, service provision, placement, youth justice, research into children's rights and needs, and transition planning. Our goals should be to build resiliency in children living in or aging out of the child welfare systems. "Resilience is more than internal capacities or behaviour that allows one to overcome adversity. There is growing evidence that resilience is as much dependent on the structural conditions, relationships and access to social justice that children experience as it is any individual capacities" (Unger, 2005, p.446). Child welfare is a coercive system and so can never be "non-oppressive", but there are many ways it could be less oppressive (The Child Welfare Anti-Oppression Roundtable, 2009, p. 8). Recently some child welfare advocates in Ontario (Finlay, 2006 &), New Brunswick (Richard, 2008) have discussed the need to adopt principles and tenets of this philosophy of practise and policy making.

"We must be committed to transparency; People we work with must know what we are doing, and how we are doing it and have ample opportunity, without fear of consequence, to reflect on and comment on what we are doing and how we are doing it. We must consider who we believe ourselves to be accountable to and why. And we must constantly challenge oppression, not only within larger systems, but also in our interactions, in the organization we work for and in ourselves" (Strega & Esquao [Carriere], 2009, p.16)

Anti- oppressive child welfare practise is a relatively new idea and much of what is published about it is coming from First Nations and Ontario child welfare social workers, some of whom have been in the child welfare system themselves. Anti-oppressive practice began with Paulo Friere (1972, 1995). At the core of this approach is the ideal that social work should not separate practice and theory. Learning while doing, defined as 'praxis', is an essential requirement of AOP. The concept of praxis means that

social workers and agencies become diligently self reflective, thereby adapting their policies regularly to the needs of the clients (Ife, 2007). The focus of anti oppressive practice is multifaceted. First it requires self and institutional understanding of knowledge and barriers to receiving care. Secondly it requires activism, empowerment, and the redistribution of power from worker or agency to client, where the client is considered the expert in their own lives.

AOP is a liberationist view of social work whether it be in child welfare or in any other domain, which runs contrary to the protectionist view of children and “their best interests” as defined by an adult with the power to remove them from their family and community. This view is also counter to the idea that the agency or social worker is an ‘expert’ whose dominant values allow them to be impartial judges concerning family and child interventions (The Child Welfare Anti-Oppression Roundtable, 2009, p. 9). “AOP is necessarily complicated and uncomfortable because as social workers in child welfare, we are forced to enter people’s lives” (Kundouqk [Greene], Qwul’ish’yah’maht [Thomas], 2009, p. 34).

The second tenet of AOP demands that we pay attention to our own beliefs and ethics because it affects our decision making. Instead it is important to strive to act as “collaborative” agents (Ife, 2001, p. 141). Through an ongoing analysis of our power and our differences, “we must learn to respect and honour” our clients’ lived experiences “...and not leave children and families more damaged than before they entered the child welfare system” (Kundouqk [Greene], Qwul’ish’yah’maht [Thomas], 2009, p. 34).

Third, AOP requires a commitment to anti oppression work working on human rights injustices (Ife, 2001, p. 142). Fourth, to use AOP, one must believe children and

adults should have equal human rights and be allowed to be a part of the political process of creating, sustaining and developing those rights. Human, civil and political rights protection involves accepting interdependency on each other to uphold and exercise those rights, commitment to involve the public sector in global issues and protecting collective human rights at a local level (Ife, 2001).

The fifth tenet is the need to understand the history of the struggle for human rights for children in care and their families. How society has valued rights for children has changed throughout history. This means social workers need to both comprehend the immediacy of the struggle vs. long term change, and attempt to deconstruct the philosophical underpinnings of policy and movements in order to promote intergenerational justice (Ife, 2001, p. 145-6). Sixth, children, families, cultures, identities, finances, immigration, racism, classism, ageism, gendered issues, disability and contexts are not simple to comprehend nor are they static. Social workers must also understand the structural disadvantage children in child welfare and their families face and to have a strong analysis of multiple and competing oppressions (Ife, 2001, p. 147).

Seventh, AOP is an ecological approach and one that involves other cultural knowings (Ife, 2001, p.148). “AOP forces us to critically examine how we know what we know and to explore our assumptions not only about helping, but about all living things. AOP invites us to connect our subjective lived experiences to our knowledges- that is what we know may be connected to who we are” (Kundouqk [Greene], Qwul’ish’yah’maht [Thomas], 2009, p. 34).

An eighth tenet is post modernist and post structuralist in nature, whereby AOP accepts that there is no right answer. This assumes that in order to effectively adapt child

welfare legislation, and therefore practice, we need multiple sources of knowing and input, to understand the needs of children in care regarding their rights (Ife, 2001, p. 149).

“Service users who do not share the same set of cultural values are defined as different and those differences are perceived as ‘inferior’ within child welfare. The over-representation of marginalized people in the system is a direct result of the values placed on difference” (The Child Welfare Anti-Oppression Roundtable, 2009, p. 9).

The second set of themes that make up AOP social work, involves empowering the client, social workers as activists and a general view of the client as an expert of their own needs.

The 9<sup>th</sup> tenet of AOP is empowerment or the “...idea of enabling the powerless to achieve more power”... (Ife, 2001, p. 150). In child welfare, this means the agency, social worker and the client need to understand the kinds of power that informed prior decisions, in order assist children in executing their rights to participation in their own care. Prior child welfare interventions and experiences that led to involvement in care may have been “pluralist, elitist, structural and political” (Ife, 2001, p. 151) in nature. Laws are very powerful, reactive rather than pro-active and can create more structural barriers than necessary if not well thought out and implemented with care. This is the reason I think it is important to examine how they keep children in care from accessing their basic rights as citizens.

The 10<sup>th</sup> tenet of AOP is dialogical praxis: (Ife, 2001, p. 153). This concept is from Paulo Friere’s work, (1972, 1985, and 1996), and refers to creating the goals in human service practise of: raising consciousness, levelling the power between worker and client, and basing theory and practice on lived experience. This means social workers need to

work alongside clients as activists, reciprocate respect and reframe each other's human rights (Ife, 2001, p. 154).

The 11<sup>th</sup> tenet of participatory democracy is key to AOP. It involves encouraging community and client participation to addressing and changing structural sources of oppression, and maintain a commitment to institutional and policy change (Ife, 2001, p. 154). "Without such a systemic shift, marginalized communities will continue to respond with discontent and distrust of the child welfare system and the child welfare system, in turn, will continue to contribute to the oppression of marginalized groups" (The Child Welfare Anti-Oppression Roundtable, 2009, p. 10). This is perhaps the most challenging aspect of trying to integrate AOP practises into child welfare legal and practical reforms because it is inherently a coercive system. Our current ideologies about children do not allow them to participate in decisions about themselves and their families democratically, nor do these assumptions about children allow their voices to be heard in a formal and consistent way. Legislation seems to evolve slower than actual practice, and these laws govern institutions that are not necessarily controlled nor continually re-evaluated by any one regulatory body. This means that there needs to be a systemic shift in child welfare regulation that involves children's voices in changing the legislation and monitoring practice.

The 12<sup>th</sup> tenet is anti-colonialist practise (Ife, 2001, p. 155) this refers to refraining from reinforcing western and colonialist traditions. Our approaches to child welfare have tended to be assimilationist, and based on cultural deviance and deficit assessments of families, children and communities (Strega & Esquao [Carriere], 2009, p. 65). Child welfare legislation is shaped by a lack of cultural competence and understanding about

things such as: kinship, children's roles and their value to the community, traditions in child care, dispute mechanisms, care-giver –child attachment, care giver roles, cultural history, discipline, marriage and dating (Strega & Esquao [Carriere], 2009, p. 38-40, 56, & 70). Legislation and practice changes cannot take place effectively without continual cultural competency building and direct input on these matters from child welfare users.

The 13<sup>th</sup> tenet of AOP is the use of feminist theory, whereby the worker and agency attempt to work against patriarchal structures, while maintaining an analysis of the problem from the client's understanding (Ife, 2001, p. 156). This requires at least three tiers of analysis of child welfare policy and practise: at the level of governance (boards, laws, and agency policy); the agency and practise of working with children and their families (leadership, diversity in teams and reviewing policy); and a systemic review of hiring and service delivery (The Child Welfare Anti-Oppression Roundtable, 2009, p. 12). Ideally, children in care and their families would be represented and be involved at each of these levels of analysis and recommendation to ensure that colonialist and discriminatory practices and policy are addressed effectively. The "best interests of the child should be determined/defined by family and community, versus the social worker and judge. This reflects the whole child" (Yukon Health and Social Services, 2005 Policy Forum #1 comment from service user).

The last three principals of AOP help us understand why a rights based approach to child welfare policy and practice needs to be adopted. The 14<sup>th</sup> tenet of AOP is non-violence. It encourages us to see that the denial of human rights, regardless of age, is a form of violence (Ife, 2001, p. 157). Denial of services or the delivery of inappropriate and inconsistent services can be considered a form of institutional violence against

children. We can understand this when we look at the issues affecting many children in care: youth homelessness, youth crime, child poverty, children in closed custody due to lack of suitable treatment facilities, inopportunity to form bonds because of multiple placements, denial of access to services based on identity or age, and barriers to obtaining legal recourses. This happens when programs are prevention/ protectionist based. If these programs were needs or liberationist based, children in care and their families could have a say on development, continuity and delivery of child welfare services. The 15<sup>th</sup> tenet of AOP is taking a needs based approach to defining human rights, policy and practise (Ife, 2001, p. 158) for children in child welfare and their families, with the goal of preventing the need for intrusive interventions. This concept reaffirms that everyone should have the human right to define one's own need. Understanding the definitions people create about their needs can only occur through the use of praxis (see Glossary of Terms, Appendix A), and contextual understanding that make children and families susceptible to child welfare interventions. "If social work focused more on facilitating service users defining their own problems and remedies rather than establishing its right as a profession to speak for them, social work might have had more success in remedying rather than reinforcing child welfare social injustice" (Dumbril, 2003, p.107). Finally, AOP strongly asserts that research is participatory and action oriented. This means the client takes an expert role in constructing and carrying out research based on their lived experiences. The goals of AOP for children in care are to: identify those whose rights have been violated, document these human rights abuses, allow them to articulate their needs both to agencies and the wider public, and participate in the evaluation of policy and practice (Ife, 2001, p. 159).

Canada would benefit from a rights versus a needs based approach to children's rights. The protection of children's rights would be advanced through the creation of an independent federal body, which could report to the UN. Such a body would provide oversight and would help to ensure that children's rights are in fact being respected. Such a body would provide a first step towards ensuring that government institutions, across Canada, are adequately addressing children's rights (International Institute for Children's Rights and Development, 2005, p. 11). Ideally, this body would conduct "...anti-oppression policy review to ensure integration into all aspects of organizational planning....", and "...establish both formal and informal procedures for resolving complaints and concerns..." with trained mediators (The Child Welfare Anti-Oppression Roundtable, 2009, p. 13). This body could regularly report to the public and legislative committee on oppressions children have experienced while in care. Ideally, this body would have a set of divisions with a clear structure. Each division would be accountable for addressing each of these oppressions. Finally, this body would have the legal authority over all members of the child welfare system to make sure that they abide by anti-oppressive practises, including outside agencies contracted by child welfare authorities (The Child Welfare Anti-Oppression Roundtable, 2009, p. 13). A federal body could potentially address the legislative issues, in particular the conflicts between child welfare laws and other laws that tend to affect many children in care (adoption, YCJA, etc). They may also legally intervene in individual cases, but their primary role would be to oversee provincial and institutional functioning in regards to upholding the rights of children in care.

I would suggest that we use, the “seven pillars” that make up the “foundation” of adequate transition planning for youth in care, to guide child welfare practises regarding children’s rights (Reid & Dudding, 2006, p.5). These seven pillars are: “...relationships, education, housing, life skills, identity, youth engagement, emotional healing and financial support” (Reid & Dudding, 2006, p.5). Participatory action research is essential to understanding these pillars, and how effectively our practises and laws support them (Feduniw, 2009). Participatory action research means that current and former youth in care, their families and communities would design and carry out research into best practices, on current outcomes for the children in care in their province and region (NYICN, 2007). Furthermore, these same people should be able to participate in the creation of: programs to prevent homelessness and sexual exploitation, community responses for children in care, group and familial support strategies and campaigns to inform the public about the current state of children in need of care (Save the Children Canada, 1998, p 19). Partnering with children in care to decide on the kind of care they need is a way to ensure a system of checks and balances that maintain children’s rights while in care, entering care or aging out of it (Final Standing Senate Committee on Human Rights, 2007).

This kind of research would enable children and families to engage not only in legal reform efforts, but also in efforts make future legislation and policy more user friendly.

“Keep it simple & use plain language in Act to make it understandable for more than lawyers/workers. Bottom line is service delivery and a more user friendly Act would help with the difficulty in explaining information, especially to elders/oral culture” (Yukon Health and Social Services, April 2004 Policy Forum comment from service user).

A federal committee of children in care has been suggested to determine how we can improve the protection of children's rights in child welfare, and invest in programs to make these reforms possible (International Institute for Children's Rights and Development, 2005, p. 11). Major international rights conferences have begun to change how children are included in the process of law reform. Where previously they were performers for the events and token guests, children are now being allowed to discuss their own concerns and needs regarding their rights (Ennew, 2008). Canada has several bodies active in the promotion of child welfare rights, but only the National Youth In Care Network (Herbet, 2008) and the Federation of British Columbia Youth In Care Networks are led by service users. Neither of these has political power to change policy, but from an anti-oppressive standpoint, they should participate in parliamentary decisions about child welfare legislation and amendments. "In our interconnected world, we have to be more than just directors or observers of childhood, we have to be partners with children in their struggles, talking with them and listening to them. They are the experts of their lived experience. Together with children we can act to effect change" (Finlay, 2006, p.3). Anti-oppressive practice and policy are the most liberationist ideological stance on the rights of children in care.

## 2. Examples of First Nations models of child welfare

"Consistent with Aboriginal holistic approaches and structural social work theory, we believe that child, family and community resiliency are interdependent and thus culturally based family interventions must be coupled with culturally based community development approaches to redress structural challenges to the safety of Aboriginal children."...Culturally based community development frameworks could better address some of the current structural barriers including inequitable service access and the implications of systemic causal factors on child maltreatment assessment and response" (Blackstock & Trocome, 2004, p.2.)

First Nations models of child welfare could be viewed as a community preservationist view of the rights of children in care. Solutions to current problems in child welfare laws and practices in Canada are being championed by First Nations Communities who are still disproportionately entrenched in child welfare systems (First Nations Child and Family Caring Society, 2007; Canadian Coalition for the Rights of the Child, 2003, p.4). The movement toward First Nations governed child welfare coincided with the movement towards self government and reaffirming land claims, in Canada, in the 1970s. The Blackfoot Tribal Services, in Alberta and the Dakota Ojibwa Tribal Counsel, in Manitoba were the start of First Nations operated child welfare services (Strega & Esquao, 2009, p. 24-25). Three significant changes have occurred with regards to fiscal policy and freedom of cultural identity in certain provinces. As this research has found, several provinces have moved toward implementing First Nations systems of child welfare that are supported by the state (see chapter 4: Accessing Culturally Appropriate Care, pages 116-124) and appendix.B.2.b), but there are major drawbacks to implementing these child welfare reforms because of a combination of few resources on and off reserve and underfunding of services from the federal government on reserve (AFN, 2006, p.2). There is a lack of specific programming for special needs children and to address the great diversity of First Nations cultures (Hudson & Mackenzie 2003). This move acknowledges Article 30 of the UNCRC (1989) by creating Aboriginal operated child welfare agencies. These agencies have succeeded in decreasing institutional care and commenced the long process of healing of communities from the cultural genocide they have experienced at the hands of the Canadian government (Indian and Northern Affairs Canada 2004). In some provinces band counsels have the right to be a part of the child welfare hearings to decide

what plan of action would be taken (see chapter 4. b.3 Adoption and Family Access pages 101-102, and appendix B.2.c) (Sinclair et. al., 2004, p. 230) and efforts are being made to keep children within their communities through kinship adoption agreements (see chapter 4b.2. Culturally Appropriate Care, pages 104-106 and appendix.B.2.b) (MacLaurin & Bala, 2004, p. 125). “The new act needs to reflect the interconnectedness of all systems. It needs to be restorative, not punitive” (Yukon Health and Social Services, June 2004 Policy Forum comment from service user).

This model is important because it stresses keeping children in contact with their culture, language, traditions and extended family, and reflects the community preservationist view of the rights of children in care. The goal is not to exclude the child through multiple outside placements but to keep them within the fold of the community and help them create bonds. Elders and community leaders often make decisions on the interventions and placement of children with the holistic approach of trying to aid all members of the family and to prevent family disintegration. “The elders have suggested that the offending party/parent be removed from the home, and not the child” (Yukon Health and Social Services, May 2004 Policy Forum comment from service user). The onus is on taking the adult(s) who need services out of the home, not the child. “We should look at "Resource Councils" as a model for future child welfare service delivery in the Yukon” (Yukon Health and Social Services, April 2004 Policy Forum comment from service user).

Disputes are solved often in family mediation, by consensus in immediate and often extended family, or if necessary by a community council. This model advocates for the use of family group conferencing to “shift power dynamics” between the family and the

child welfare agency (Pennell, 2009, p. 81). The use of family group conferences serves to alter how the family relates to each other and how the child welfare agency and worker relate to the family. Lastly, it empowers the community and extended family members enabling them to participate in resolutions. “For the family, the process serves to reaffirm lasting connections across generations, (which is) so important to solidify children’s sense of identity and supporting their long term welfare. For the workers, the process interrupts mother blaming, refocuses away from the family dysfunction and agency liability and generates a sense of hope” (Pennell, 2009, p. 81).

Two other formats for managing child welfare issues within First Nations communities have been suggested by the Yukon Health and Social Services survey of child welfare clients. The first is the creation of justice committees which would lessen the need for the use of formal courts. The second is the creations of a two tiered approach to child welfare which involves interdependence and mutual decision making between child welfare authorities and t child welfare community committees to determine appropriate interventions (2005 Policy Forum #2).

“Justice committees in communities are also a good alternative to court” (Yukon Health and Social Services, 2005 Policy Forum #2 comment from service user). The goal seems to be that the community would delegate or elect a justice committee to deal with adult and youth offenders that have overlap with the child welfare system. “My ideal child welfare system would be to eliminate courts from the whole process and let the communities deal with them themselves. Courts can deal with the offenders but why re-victimize a child? Deal with the offender but the community can look after the child” (Yukon Health and Social Services, May 2004 Policy Forum comment from service

user). Again, this is the idea of providing services and treatment to adults who need it and thus either preserving the child within the family unit, or keeping the child under the care of community and other local families. Formal court proceedings do protect due process rights, however, the model itself is culturally blind and non- First Nations judges and legal personnel may not be culturally competent to make appropriate decisions, particularly when community resources are limited. Furthermore, a justice committee may be able to defer incarceration for children in conflict with the law, particularly if they have been diagnosed with Fetal Alcohol Spectrum Disorders, and instead provide community treatment.

“The "Authorities" model and the "Community Committee" model are the most favourable. The Authorities model ensures full delegated authority for First Nations while the Community Committee model ensures involvement of the community and community standards. Combine these to create a new model and ensure it is flexible”

(Yukon Health and Social Services, 2005 Policy Forum #2 comment from service user).

The governance of child welfare would then become two tiered, whereby one council of authority figures in the community would report to the provincial child welfare authorities and social services, and the second council would be implemented in policy level decisions, including legislative change. The practical day to day aspects of child welfare would be governed and run by a community committee, which would then arrange care plans for children and families. Neither of these models directly addresses the input of children in their own care and policy and/ or legislative change. Both however do allow a child access to four of the six identified rights in this thesis, which are the right to: maintain their First Nations identity, access appropriate cultural care, and family and community access, have cultural supports and community treatment if the child is an

offender. Fifth, this kind of governance may affect their right to mobility in terms of limiting the number of placements outside of the community, and/ or allowing children to be in care in other communities with relatives, even if that band is not within the same province. So far only Manitoba has been successful in creating on and off reserve First Nations Child welfare governance called Manitoba Aboriginal Justice Inquiry Child Welfare Initiative. Under this regime there are separate agencies divided into band groupings (north, south, mainstream and Métis) (Blackstock & Trocme, 2004, p.8).

The two greatest challenges to implementing these kinds of models in many First Nations communities are the lack of funding and the capacity and legal barriers to self governance. A piece of legislation known as Directive- 21, c.5 (Indian and Northern Affairs Canada Child and Family Services Program Directive 20-1 AFN, 2006, p.2) handed down by the federal government, in 1991, limits the ability of First Nations communities to govern their own child welfare. This directive prevents First Nations communities from providing services to band members off reserve and funding to communities with their own child welfare agencies that are outside of the provincial/territorial ones. Furthermore, it is not regulated in the same way as provincial and territorial social service funding regimes, thus preventing increases in funding to First Nations run child welfare agencies which is on par to non-First Nations child welfare agencies (Blackstock & Trocme, 2004. P.7)

### 3. Unified Family Courts

Unified Family Courts (UFCs) work in similar ways to band councils in that they use one or more judges in a region to work on all aspects of child welfare in one family. This could be viewed as a family preservationist view of the rights of children in care,

which could include the right of the child to participate in their care plan and that of their family members. The purpose of these courts is to defragment judicial systems which deal with familial abuse issues, marriage, divorce, custody, criminal charges, juvenile justice, treatment and child welfare, but they do not necessarily deal with tutorship issues for children and adults with mental health issues and/ or developmental delays

(Administrative Office of the Courts, San Francisco, 2002, p.1). The goals are holistic intervention covering many areas of family law that allows for more efficient decision making, particularly in cases of child welfare and domestic violence (Administrative Office of the Courts, San Francisco, 2002). The secondary aspect of a Unified Family Court is to use a bank of social service providers connected to the court to support the family members within their communities (Goldberg, 2004; Schwarz, 2004).

In Canada, UFCs are becoming more popular. Originally, PEI was the only province with a Unified Family Court, beginning in 1975, followed by Ontario in 1977, Saskatchewan in 1978, Newfoundland/ Labrador and New Brunswick in 1979, Manitoba in 1984 and Nova Scotia in 1999 (BC Justice Review, 2003).

#### Advantages of Unified Family Courts

These courts can help to maintain the rights of the child to liberty and due process, and the right to recourse. The goal is to resolve some or part of the family's issues in a way that focuses on individual and group strengths and helps the family reintegrate into the community (Administrative Office of the Courts, San Francisco, 2002, p.1; Schwarz, 2004, p. 306). There is a greater chance for a holistic understanding of the family's needs, cultural issues and barriers to accessing help (Schwarz, 2004, p. 305). The courts use a single judge, backed by a team of social workers, psychologists, and community partners

to decrease the time cost, and confusion that a single family may experience when dealing with legal matters. The approach is “...one judge, one family approach”...this means that the family is provided with “...a multifaceted service component, a coordinated intake process, more efficient litigation and overall, a much more user-friendly court system” (Schwarz, 2004, p. 304). There are five principals employed by UFCs in the United States: easy access to justice; “...timely dispositions”; “...equality fairness and integrity of the process...” including the monitoring of court orders; public accountability and engaging families in skills building to resolve disputes; and building “public trust and confidence” in the legal system by working in the community (Administrative Office of the Courts, San Francisco, 2002, p.4-5). Many issues can be dealt with by one judge and in one setting such as: “child support, custody and placement of children, assault charges and divorce” (Schwarz, 2004, p. 309). This prevents overlap in judicial systems and competing court orders from obfuscating the core issues the family may be facing. Abuse in a family and other family conflicts may be easier to detect, treat and could affect placement or removal of children and their caregivers in a more logical fashion. Legal services are more efficient and more community support links can be provided in a family preservationist model. The effect would be to have a judge set stipulations on a family’s treatment, and actually provide connections and follow up with the families in a timely manner. UFCs in the United States also provide counsellors through the process of completing paperwork, picture taking and evidence collection to address the structural, psychological and social stressors victims may be facing. A good example is Hawaii’s Unified Family Courts which are highly comprehensive and address restraining orders,

mental health issues, adoptions, young offenders and child welfare (Schwarz, 2004, p. 315).

For victims the UFCs mean that they do not have to repeat their story to several people. This increases confidentiality and decreases re-traumatisation. Children who are victims may be more relieved and have less self blame if they know that the abuser may be able to get help and that the whole family's issues may be dealt with (Schwarz, 2004, p. 308). For children, the level of stress of going through court may be reduced if the proceedings are dealt with in a timelier manner. Relevant facts that may not otherwise surface due to intimidation or fear on the part of the perpetrator or victim are more likely to be uncovered. Families and victims are educated on the legal process in a more cogent way and have access in lawyers for each individual. Children may have more say in their placement orders. The judge may be more aware of the implications of mobility rights and family access issues if they are addressing all of the family's issues overall.

These courts offer other non traditional ways of addressing the issues such as arbitration and mediation, which may have the effect of incarcerating fewer children and adults and instead provide services and conflict resolutions skills. The latter is much like the First Nations model of community council and treatment interventions. The Unified Family Court model melds social work and the law and may increase the possibility of progressive social change in child welfare legislation

UFCs may influence the needs of the community. It may also be possible that court staff and judges could have a positive influence on the provincial health and social service departments to create and fund suitable broad based programs that are accessible to their communities. The coordination of social services within the court allows

professionals to have a better understanding of the barriers specific families face within the community. UFCs are based on an empowerment model, where victims and families can gain support from their own community. In the present court system, social service provisions in the courts are piecemeal and so “certain litigants are deprived of social services that would be helpful to them merely because they are in the wrong court” (Schwarz, 2004, p. 313).

#### Disadvantages of Unified Family Courts

There distribution provincially is uneven, and so their effectiveness might be difficult to measure. This could lead to inconsistent rulings that may infringe on family members' rights. First of all the level of court action is different in that Saskatchewan, Manitoba and New Brunswick are the Court of the Queen's Bench Family section of law. The Superior Court is used in Ontario, and is called the family court division, and the Supreme Court family divisions are used in the other provinces mentioned above (BC Justice Review, 2003). The purpose and function of these different courts may be different, as well as the format they use for resolving familial issues. The number of judges and who oversee them differs in each province. Currently, in areas of where there are no Unified Family Courts, there are different courts that deal with the same family and tend to be unaware of previous orders. For example, in Alberta the Queen's Bench addresses protection cases for children in non- emergent cases and the Provincial Court deals with protection orders that are emergent (BC Justice Review, 2003). Non- emergent refers to conflict situations in the family which are not major safety issues for the child or the family, where as emergent refers to the need for immediate placement, removal and/or intervention for health and safety issues. The Queen's Bench deals with divorce and, child

welfare falls solely under the Provincial Court (BC Justice Review, 2003), but both courts can address child support. Potentially a child may be dealing with family access issues at the Queen's Bench but charging a family member with assault at the Provincial Court. Outcomes could conflict, whereby the child is placed somewhere where the violent parent has some access to them. Unlike the United States, in Canada, only Nova Scotia, thus far, includes issues for youth offenders, aged 12-15, in their UFC process (BC Justice Review, 2003). The lack of inclusion of youth offenders cases in these courts is a serious drawback, considering the number of "crossover kids" from the protective to the justice system and the likelihood that the reasons behind this "crossover" effect originate in the family.

There are many possible negative aspects of using UFCs. UFCs have traditionally -- excluded children unless absolutely necessary to prevent re-traumatisation. There could be an imbalance of power where the abuser or parent may hold more power than the victim or child. The judge may favour one party over another or discount the child's opinions. The literature had little to say about how this balance of power would be dealt with by these courts. Overall, there is little agreement on the definition of what a Unified Family Court is in practice (Schwarz, 2004, p. 305). This lack of agreement might lead to less comprehensive legal and social aid. Many judges are not trained in Alternative Dispute Mediation (ADM) techniques and may not use them. Cases seen in a UFC tend to focus only one issue or court order at a time, and the reality is there may be many overlapping issues that need to be dealt with efficiently in order to lessen the need for the involvement of child welfare authorities. For example, the order of protection may come before an order for a parent to obtain treatment. As a continuation of the previous example, the child

may be removed from the home and the parent not receive treatment in a timely manner, thereby limiting the child's access to their home and potentially other family members, i.e. siblings or another parent. Another example is that the court may be deal with custody issues first and financial support issues at a later date, resulting in the dilemma of the guardian not having the funds to adequately care for the child. It was not clear to me from the literature if individual family members have the right to refuse social service interventions. The literature on these courts does not address the child's capacity to charge a parent, and secondary issues such as safety, if the child does charge a parent. "Skeptics further argue that allowing mediation or other forms of alternative dispute resolution to occur in the presence of domestic violence will lead to the abuser not being held accountable for his or her actions" ( Schwarz, 2004, p. 308). This is a family preservation model with the women's rights and women as the victim of domestic violence at the forefront, and not the child. Domestic violence cases should be evaluated individually for how to proceed safely through the court process, but again this implies the protection of the mother (Schwarz, 200, p. 309).

Overall, in Canada, there is a lack of trained judges in the complex issues that may face a family for this kind of court structure to be implemented. The legal system would need to change to allow for jurisdictional overlap in the function of the judges themselves. Of the Unified Family Courts that do exist in Canada, most are only in major urban centres (BC Justice Review, 2003), so accessibility is severely limited for much of the population.

Several recommendations have been made about the requirements for Unified Family Courts to function properly from US studies of these courts. These recommendations

include: “strong judicial leadership”; solid team work; strong links to community services; educating families about their rights/ responsibilities; case managers to coordinate services ; well trained court staff, lower court staff turn-over rates; and having sufficient social services within the community(Administrative Office of the Courts, San Francisco, 2002, p.19).

#### 4.Federal Legislation and child welfare agency accountability

“Rights provide standardized expectations to the care and provision of services to young people. This is an essential safeguard. A rights based approach emphasizes both the outcome and the process of achieving goals. This approach recognizes the responsibilities and obligations of service providers in realizing the rights of the child” (Finlay, 2006, p. 7).

Creating a federal child welfare policy could be seen as a state protectionist view of the rights of children in care. To guarantee children fundamental human rights, the UN CRC must be adopted and even expanded as a federal policy which regulates provincial structures to ensure: access to rights information, recursive action that children can easily understand and that is free of charge (CCRC, 1999; Dudding, 2007; Williams, 2005). We need federal policies to govern how the provincial structures for child welfare services operate and to eliminate conflicting legislation and legal clauses, so that children’s’ rights can be equally obtained across systems. Federal standards of care and human rights delivery need to be created and a body of accountable persons designated to respond when provinces will not abide and investigate their health and welfare services in regards to children (Tweddle, 2005).

We need to establish “an independent national child rights institution ...in accordance with the Paris Principles for human rights institutions...”( Williams, 2005, p. 12) These principles include: “national legislation”; the production of “...recommendations and proposals to legislative bodies..”; “...the harmonization of national legislation and practices with (sic :international) human rights

instruments...”; submit regular reports to the UN on Canada’s progress; “cooperate with the UN...”; aid programs for research and education on children’s rights; and promote public awareness of children’s rights (Williams, 2005, p. 12).

This federal body could oversee the distribution of rights information to children in care, their families and the community at large. Awareness is the key to helping children have power in the systems that govern them (Williams, 2005, p. 12). Children need to know their rights and how to exercise them in plain language. Furthermore, information on rights and accessing lawyers, ombudspersons and child advocates needs to be free. Federal policy governing child welfare could create major stipulations on provincial child welfare services for: age and accessibility to care; cultural and familial access; the provision of housing; learning and developmental disability testing; the provision of better and more accessible treatment services i.e. for addictions and FAS; regulations for financial supports; accessibility and procedures for legal recourse, and regulations on detention and mobility issues. The federal government needs to establish a national public housing strategy for minors and youth aging out of care, minimum national ages for independent living access, and automatic access to personal identification free of charge, for the purposes of receiving health care, and rights for children and youth regarding opening bank accounts and access to educational facilities. Such legislation also needs to cover discrimination in schools against youth in care (NYINC, 2007). It needs to ensure that special needs children and those from specific cultural groups are treated with dignity and respect.

New federal children’s’ human rights agencies need to dictate provincial children’s services, in so far as they become accountable and equal across the country, and back these policies with adequate sustainable funding (CCRC ,2003; Final report of the

Standing Senate Committee on Human Rights, April, 2007). This includes creating a better youth judicial system and a separate agency to review case files, particularly where children are institutionalized, at all levels of government. Access to information and registries needs to be further restricted in terms of not including former wards' names on registries after they have reached the age of majority. Municipalities need to have review boards which look at human rights violations separately from child welfare. All efforts need to be directed to help detention and secure treatment facilities to change and maintain higher standards of practice. Canada needs to do away with provincial definitions of the "age of majority" and have one federal age (Clark, 2007). Children within the systems should be able to access child welfare and adult welfare equally across the country. Jurisdictions can then share some power if the youth is independent and wants to move to better their opportunities and/ or for safety. Transitions for children are extremely difficult and children aging out of care need more support and funding. Examples of positive steps that can and are being taken at the provincial level, that could be adopted into a new federal policy are extensions of funding for children aging out of care and help with literacy. Current suggestions for change in the Ontario child welfare protocols call for the possibility of extending crown wardship and age voluntary care accessibility to age 21 as well as financial support for wards leaving care to age 24 (Ontario Association of Children's Aid Societies, 2008; Tweddle, 2005). Ontario and Nova Scotia are considering increasing scholastic funding for higher education to combat illiteracy rates of emancipated youth.

A federal fiscal policy needs to be created which regulates the co-governance of provincial and municipal spending on child welfare thereby addressing the causes of why

children are entering into the system. The multiple facets of child poverty have to be addressed through better coordination of the federal government programs of financial health and welfare transfers to provinces. The federal and provincial ministries need to increase provincial adult and child welfare rates and municipal monies going to youth in care, in order match the current standards of living other Canadian citizens enjoy. This would include, the child tax benefits being allocated directly to children in institutional care and independent living situations, and those children having the right to bank accounts of their own. These children must not be penalized for working. Some Ontario youth workers suggest creating a series of bursaries, rather than loans for post secondary education for these youth (Tweddle, 2005).

The CRC (2003) and other agencies have made several recommendations of great importance if we are to create a national strategy and national legislation that protect and advance the rights of children in care. The first recommendation is to “develop a rights based approach in legislation, policy and practice” (Williams, 2005, p. 9) with the assumption that all children have the same rights and should be included in the process of developing those rights. Secondly, programs for children in care should be evaluated on how well they address children’s’ rights (Final Standing Senate Committee on Human Rights, 2007; Williams, 2005, p. 9). At the federal and provincial levels, research on child welfare issues should use participatory action research methods to obtain the relevant data to evaluate how well Canada is implementing the UNCRC and ensuring children’s rights are protected (Herbert, 2007; Save the Children Canada, 1998; Williams, 2005, p.10). Fourth, children need to be participants in their own rights by ensuring they are a part of policy making concerning them at all levels of government and agencies and

making it structurally possible through funds, coordination and organization of activities (Williams, 2005, p. 11). These recommendations can be accomplished by creating new structures that govern child welfare policy and practise. “The establishment of a Children's Commission centralizing all services will allow for better access and knowledge of prevention and early intervention programs by professionals and families” (Yukon Health and Social Services, July, 2004 Policy Forum comment from service user). I hypothesize that the lack of organization and coordination between child welfare services in the provinces and territories allows for conflicting legislation that violates children's rights. Therefore we need to create federal accountability to children's rights through a federal ombudsman and Federal Minister for Children who has legislative and parliamentary powers and who can coordinate provincial children's ministries (Williams, 2005, p. 11). The lack of federal standards and oversight allow “the standards for 'child in need of protection' (to be) interpreted inconsistently. (There) needs more consistent interpretation of standards and the Act” (Yukon Health and Social Services, April, 2004 Policy Forum comment from service user).

Several steps have been suggested to promote consistent federal, provincial and local agency wide implementation of children's rights into child welfare practices. The first is to adopt a “developmental rather than a problem-based approach in keeping with the social ecology of children's lives”, whereby implementation of the UNCRC takes into account the child's context, “developmental needs” and “assets” and “recognizes that problems have the same antecedents” (Williams, 2005, p.10). The second suggestion is to improve and implement child rights training for all professionals working with children,

including public service agents such as police (Williams, 2005, p. 11). This point is echoed in a statement by a policy forum participant:

“I would also like to see the role of a Protection Social Worker clarified through the Act - given that it is the Act that provides the mandate for our work. For instance, if the Act were to retain jurisdiction over deciding parental custody and access where there is no divorce and no protection, who is responsible for supporting parents through that process?” (Yukon Health and Social Services, April, 2004 Policy Forum comment from service user).

Third, increase and maintenance of finances is needed in order to implement children’s rights in protection agencies and for education of the public and professional sectors about children’s rights (Williams, 2005, p. 12). Lastly, the federal and provincial governments need to include the opinions of children, their families and communities into closing the “gaps” on children’s rights (Williams, 2005, p.12).

## Chapter 6

### Summary

In sum, the research presented in this thesis addresses six themes of rights which I interpreted from the UNCRC which I think should be available to all children in Canada, particularly those who are in or seeking child welfare services. These six themes are: age and receiving care, identity, family access and cultural care, mobility, liberty and due process, the right to legal recourse and the right to financial aid. These six themes were then examined within each of the provincial child welfare acts and assessed based on whether or not the legislation reflected the following child rights perspectives: protectionist, family preservationist, community preservationist and child liberationist. This analysis was very difficult given that the variations between provincial legislation were inconsistent in terms of the four theoretical perspectives I applied to it. It would appear that the legislation is reactive, in that it was likely created in a piecemeal fashion as problems in child welfare practice arose, rather than developed as a single approach based in children's rights theory. Furthermore the legislation has evolved over time and in some cases created before Canada signed the UNCRC. It is therefore not possible to state that anyone provincial child welfare act is entirely protectionist, family preservationist, community preservationist nor child liberationist. Nor is it possible to state that the information I found in the child welfare acts in any one of the six themes of rights fit neatly into these four theoretical frame works. What can be stated is that parts of each provincial child welfare legislation closely match one or more of the subcategories within a theme and that it is stated in such a way that it can be interpreted theoretically as being

more or less protectionist, family preservationist, community preservationist or child liberationist. Even this interpretation is limited when taking into consideration the age of the child and their capacity to understand or initiate their rights.

The research was more consistent in terms of comparing the parts of legislation that linked to the solutions which were proposed in this research for improving how the legislation guides practice. For example, some provinces use Unified Family Court systems, which is consistent with a family preservationist model of the rights of children in care. Many examples of the steps to entrench these six rights more clearly into the legislation comes from anti-oppressive research in the Yukon, the National Youth in Care Network and the provincial child welfare advocates. These are examples of using anti-oppressive research to guide child welfare practises and to promote legislation which is more consistent with the child liberationist and community preservationist views of child rights discussed throughout this paper.

The following is a discussion of the expected and unexpected findings of this research, in regards to the six themes above. Finally, the global findings are discussed in terms of the four theories protectionism, family preservationist, community preservationist and child liberationist.

## 1. Expected Findings

### a. Age and Receiving Care

The ages at which children can opt in or out of care and the kinds of contracts available to them (supervision, temporary care or permanent wardship) was expected to vary, based on my work with homeless youth from across Canada. They often end up using homeless services because they do not fit into the age criteria within their respective

provinces of origin. The age 16-18 or 19 gap is one referred to in many provinces, and age 14 for Quebec. These are the ages where youth can hold some rights to make decisions and guardians lose some control. For example youth can see a doctor anonymously at this age. In some provinces youth can apply to opt out of voluntary services at this age, and a child or family which chooses to opt out of care, cannot usually return to child welfare for aid. More commonly, I have heard from youth in my practise that this is the age the more “difficult” youth who are receiving voluntary benefits are “cut off” because they will not comply with a certain measure (i.e. living in a specified residence or attending a specific school). In these cases, the youth usually end up homeless and cannot return to child welfare. I knew from my practise with homeless youth, particularly those leaving child welfare, that provinces differ greatly on their laws regarding extensions of care and the age at which these youth can obtain adult welfare services.

b. Identity, family access and cultural care

From my practice in working with street youth, I was already aware of inconsistencies and difficulties regarding the capacity of youth to obtain their child welfare records in order to prove their identity and therefore obtain adult social services. Many youth I have worked with have had constraints placed on them in terms of contacting and/or living with family members either in kinship agreements or past the age of majority. Several youth over the years have expressed the inability to receive child welfare services that were culturally, religiously and /or linguistically appropriate.

I expected the research, concerning identity issues, to show that the legislation favours the rights of the biological parent to confidentiality, and of the adopting parents to change the child’s name. I anticipated that closed adoptions would be more prominent and

that children's rights to self identify as First Nations would be limited. The legislation in area of confidentiality is more protectionist in that the provinces have the right in all cases to control what information is shared on the adoption record. Generally, children over age 12 can have some say in the changing of their name. In the case of open adoptions the biological parent and the child welfare director have more rights in controlling whether or not openness agreements are possible than children do, and foster parents in general have little capacity to adopt their charges. I expected to find that all provinces allow for closed adoptions. I expected to find little information on the right of a child to know their identity if they are adopted internationally. Finally, I expected the legislation to be vague on the right of the child to know about their First Nations identity. For example most of the legislation in both the adoption and child welfare acts discusses the preservation of culture but most do not list specific bands or nations.

I expected the legislation concerning family access to be more state protectionist. I presumed that there would be fewer provisions for kinship agreements and more provisions preventing the child from accessing their biological family if there are no access orders. I expected there to be few rules on culturally appropriate placement that referred to the child's preference versus the biological family's preference. I expected that in regions with higher density First Nations populations, that children's right to contact their bands is more prominent, if they are labelled as "status Indians". Kinships agreements are not particularly clear in the legislation, but all of the legislation was expected to be somewhat family preservationist and have caveats that determine the best interest of the child is to remain in their biological family. I expected the legislation to be more protectionist where closed adoptions generally cut all contact with the biological

family and that the courts have the final say on family contact. I also expected that any access listed in closed adoptions might be between the biological and adopted parent, making the legislation more family preservationist for the adopting family. I expected that information on cultural placement rules would be vague and specify that placement should attempt to match the child's biological family's religion, culture, heritage, and in some cases language or race, but not refer to the child's preferences to opt into or out of these identities. For children adopted from other countries, I expected to find little information on being able to contact their family of origin, as I assumed these would be mainly closed adoptions. I expected the information on the child's right to contact their First Nation or band to be vague, and that provisions would be more clear for status Indians versus non- status.

Similarly, concerning culturally appropriate care planning I expected the information on provisions for First Nations groups to be the most detailed. I did not expect to find much information on religious placements in the legislation. It is not surprising that some legislation is more community preservationist, in some mention First Nations child welfare agencies or agreements for services particularly where there are larger populations of First Nations people (i.e. in the Western and Northern regions). I was not surprised to find so little information on the child's ability to opt out of religious or minority care. I expected the information to be more family preservationist, where the parent's religion, culture, race and language tend to determine the child's religion. I expected to find little information on the number of religious or First Nations agencies listed in the actual child welfare acts.

c. Mobility

Generally I expected to find that the legislation is more protectionist in that the state has the final say on the length of placements, the actual type of placement, and that there is little ability for children to advocate for transfer of placements within or outside of a province. I expected that foster care would be ill defined because it seems to be listed in the legislation from a more protectionist view as an emergency measure. It was expected that there would be less information in the legislation from the family preservationist view of foster care as a possible long term placement. I expected to find little information on foster care placement details (i.e. numbers of children in the home, placement with siblings) a maximum number of foster homes one can live in, mobility of children while in foster care (i.e. leaving the province with the family), and the differences in provisions for wards versus those children in voluntary care agreements. It was also expected to find that foster parents have few rights to intervene or appeal decisions on behalf of their charges. I had expected to find information on guidelines and rules for group homes and other non- institutional facilities (supervised apartments) and was surprised to find none. I was not surprised to find that much of the information related to foster care also referred to non- institutional care. In both cases I expected the time limits on care to be the same as those listed in the Age and Receiving Care (Ch. 4. pages 62-89 & Appendix B.2.1) in terms of voluntary care or wardship rules. I expected the time limits on detention to be more clearly defined and guided by the Youth Criminal Justice Act, which in general they are, as listed in Chapter 4, section d. Liberty and Due Process (pages 150-169, and appendix B.4) I also expected there to be very little information on the prevention of children in care from crossing over or being placed temporarily or permanently in youth

justice facilities, particularly where no other placements exist. I expected that detention centres may not all be run by provincial child welfare agencies, and so information on them might be more limited in the legislation. I expected that time limits on secure treatment orders to be the most well defined in the child welfare acts because most provincial child welfare legislation refers to being in charge of “treatment” facilities for children. I expected to find that some of the definitions of reasons for secure treatment might overlap with those for detention (i.e. child under age 12 dangerous to themselves or others). I also expected to find time limits on emergency measures to allow a child to be evaluated by a medical professional, but these were surprisingly quite variable.

d. Liberty and due process

I did not expect to find many rules concerning the prevention of youth in care being placed with youth in the criminal justice system, based on my work experience. In the research it was expected that the numbers for youth in detention centres, although high, have decreased since the advent of the YCJA, where more alternative measures are possible. It was also expected that in most provinces children can access a lawyer even if they are not allowed to be present in their hearings. I did expect some discrepancies between the YJCA and the SSA laws.

e. The right to recourse

I expected to find that Quebec has a Children’s Human Rights Commission, as I work in the province and use their materials regularly. I also knew that some provinces have Child Advocates, particularly Ontario, and that there has been movement to create more of these positions in other provinces and territories. I knew that there were some provisions in the legislation for the use of mandatory review of cases and placements. I

was aware that some provincial legislation allows for the use of family conferences and community councils, particularly in First Nations child welfare agencies, rather than courts.

f. Financial support

In this section it was expected that I would find general caveats in the law stating that ministers and child welfare directors could purchase and/or fund child welfare services and residential placements. I also expected to find some provisions for children with disabilities and their families, including extensions of aid beyond the age of majority. I knew that there were independent living allowances and access to adult welfare services available to youth in some of the provinces. I also was aware that extensions of care for crown wards exist in some provinces. I knew about these provisions primarily from my work with street youth. I was aware of many actual rates for adult welfare services in Quebec, Ontario, Nova Scotia, New Brunswick and British Columbia, and that some adult welfare provisions have added supplements aside from the basic rates. Again I knew this from my work with street youth who are from all across Canada, and from my dealings with their welfare agencies particularly in Quebec and Ontario.

Unexpected Findings

a. Age and Receiving Care

Major unexpected findings included the provisions for entering into or opting out of care, that there is no specific age to become a tenant in most provinces and greater flexibility in the adult welfare systems in some provinces to support youth under legal age. One of the most interesting findings was that children who are wards can in many provinces apply to opt out of care and or be released from care into the custody of their

spouse if they marry. I found it particularly alarming that two provinces allow marriage at age 15, and feel like this aspect of the child welfare acts might not have been updated. I have never known of a youth to do either or heard any mention that they even could. I suspect that since wards are often in vulnerable situations this information may not be dispersed to them, unless they were to read the law, themselves. A second unexpected finding was New Brunswick's law where an unborn child can be taken into care, which I found to be very state protectionist. At the same time, I have never known a youth in care to have a child and be able to keep their baby. Perhaps New Brunswick has one legislation that is at least clearer about minors in care and who owns their children. Third, it was interesting to see a more child liberationist view in some provinces where there appears to be some flexibility in terms of letting wards who have reached 18 years of age leave care, even if the provincial age of majority is 19. I was alarmed to see that Ontario and other provinces that have wardship until age 19 might keep the child until 19, and that the child could be kept in a secure setting for legal reasons. Even though, in some of these provinces, these youth could receive benefits from the adult welfare system and rent an apartment. These kinds of circumstances would not likely happen to a youth who has never been in care and who was in contact with the law. They would likely be released at age 18. What was very surprising is that most if not all of the residential tenancies acts do not have an age limit to rent an apartment. Most of the youth I have worked with who are aging out of care are under the impression in all provinces other than Ontario, Nova Scotia, and British Columbia that they have to be 18 years old. Finally, in terms of ages to access adult welfare, it seems that there is more flexibility in some provinces where the ages are lower. These rules seem to be relatively new. In my view, this is a move toward a

more child liberationist stance, whereby access to financial aid can prevent homelessness, while still recognizing some youth are capable of living on their own, at a younger age, and may even benefit from it. What is not in the legislation, such as Quebec's, is that youth may have to prove that their parents' will not support them and/or that they were under the care of child welfare in order to receive adult welfare, even if they are the legal age of majority.

b. Identity, family access and cultural care

In general, the most surprising finding was that many provinces and territories use several competing acts which determine a child's right to an identity, accessing their family of origin and their culture, such as adoption acts, child welfare acts, name change acts, the Hague convention on inter-country adoption, children's law acts, and federal and provincial privacy acts.

i. Identity

It was surprising to find vast age differences regarding confidentiality rules, where adoptees can access their records, and that in some cases biological parents can access their child's records but the reverse is not allowable. I was surprised to find that in many cases children cannot veto their biological family's access to the adoption files, and that there was little information on access to other information in the child welfare record except in Ontario. I had expected that once adoptees reach the age of majority they could access their adoption files automatically, but this is not the case in many provinces/ territories. I was unaware that many provinces/ territories have competing and conflicting rules because they use both adoption acts and child welfare acts to govern adoption and

confidentiality issues. It was shocking to see that Nova Scotia has nothing on the release of confidential information in their child welfare act.

Concerning the right to change a child's name, I was surprised to find that courts could overrule this and that there is no standard age across provinces allowing children to consent or contest having their name changed or limits on the number of times a name can be changed. I was shocked to find that the Northwest Territories/ Nunavut allow the child's name to change automatically to the adopting parent's name, without the child's consent.

I was amazed at the level of protectionism and family preservationist for the adopting family, whereby many acts make open agreements difficult to create. Only Ontario's act mentions open agreements between siblings and the child's band, where all the others refer only to openness agreements with the biological parent or "significant" adults. Very few acts include the right of the child to consent to open agreements, and are more likely to advocate for the right of the parents to establish these agreements. Only the province of Ontario allows children to apply for an open agreement. It was difficult to discern from the legislation if the child is even informed of the open agreement. Only Ontario states that the child is informed if the agreement is changed if they are 12 years or older, which seems to be protectionist in nature. The definitions of custom adoption were vague, particularly in discerning if the family is a foster home, can they also adopt. I was particularly confused as to whether family members who are foster parents were allowed to adopt the child in the Northwest Territories/ Nunavut, as the legislation states that foster families are not allowed to adopt, but custom adoptions are allowed. Finally custom

adoptions were only mentioned in the Northwest Territories/Nunavut, the Yukon and British Columbia and not in other regions with high populations of First Nations.

In terms of closed adoptions it was surprising to find that in many provinces the child does not have the right to consent to being adopted, and in even less provinces the child does not have the right to contest an adoption order, which seems highly protectionist. The child's right to a lawyer in the adoption proceeding is only specified in three provinces. Possibly the most protectionist and odd part of the legislation is Nova Scotia's where a married minor's spouse can consent to their adoption.

Regarding inter-country adoptions, it was surprising to find that not all acts mentioned the use of the Hague convention protocols on inter-country adoption. Furthermore, there was almost no mention of: consents of the biological family or child to be adopted, adoption of refugees and unaccompanied minors and family members in other countries adopting children in Canada, except in Alberta. Only two provincial acts allow for exchange of family contact information. Lastly British Columbia's legislation states all records of children brought into the province for adoption must be kept, except those of crown wards from another province or country.

ii. Family Access

There were several unexpected findings in all sections of the child's right to family access including, kinship care, no access orders, culturally appropriate placement rules, family access for inter-country adoptees and First Nations children having contact with their bands.

In general kinship care seems to be underutilized, which was surprising, given that this is a more family preservationist model and likely cheaper. The research found that the

child has little say in entering into this kind of placement and most of the information shows a protectionist trend. Very few provinces explicitly state that the child can remain in kinship care in the same community, at the same school and only two state that the parent can be removed for treatment allowing the child to stay in the home. Keeping siblings together is only mentioned in four provinces. This seems more protectionist than family or child liberationist. Six of the 12 laws allow for children to be placed with extended family, but it is not clear if these were temporary or permanent measures or both, which is more family preservationist.

Concerning no access orders it was surprising to find so few details considering that these orders are protectionist in nature. There was nothing in the legislation for PEI, British Columbia nor the Northwest Territories/Nunavut, and so it is impossible to judge if these provinces are more or less protectionist in their approach. The time limits on reviews of these orders seemed rather lengthy insinuating children might spend more time in care because of them. Children's right to consent to or contest these orders was hardly mentioned, and only available to children over the age of 12, which can be seen as being more protectionist. There was more information on visits than on reviews of the orders, which was surprising. Only New Brunswick clearly states that parents can still be involved in the care plan might be more family liberationist and may or may not be child liberationist depending on the wishes of the child to have their parent involved. Surprisingly there was no information on children in care having access to their siblings, which I found to be very protectionist.

A child's right to culturally appropriate placement is not addressed in detail. The Northwest Territories/ Nunavut is the only act to mention community and cultural

involvement in any detail. Nova Scotia is the only province to have a caveat about appropriate cultural placements for both temporary care and permanent custody.

Surprisingly French language services for children in care was only mentioned in Ontario, where New Brunswick is in fact the only bilingual province and Quebec is mainly French.

The acts were more family preservationist in that a child's culture seemed to be determined by the parent's background rather than what the child self identifies with. This could be very problematic given the increasingly multicultural, multi-faith and multi-lingual backgrounds of Canada's children in general.

On the issue of a child's right to be in contact with their First Nations band, it was surprising again to find so few details given the numbers of First Nations children in care. What is more community preservationist is that many provinces do list First Nations as being in partial control or at least consulted on the care plans of First Nations children, but unfortunately there was less on the preference to place the children in First Nations homes. There are only two acts which mention the child or family's rights to refuse the intervention of their first nation, which can be seen as less family preservationist and less child liberationist and more community preservationist. Surprisingly, there are no details on placement rules for First Nations children regarding procedures for those living on or off reserve, rather the information was general. Finally, there was almost no information on specific groups and placing children in the appropriate First Nations culture or where to place them if they come from more than one cultural or linguistic group.

### iii Cultural Access

In terms of specific cultural provisions for First Nations groups, the information is basically the same as what is in the family access section of this paper (Chapter 4. 2.b and

Appendix B.2.b). However, this section was looking more at First Nations communities that have control over their own child welfare services. It was surprising to find nothing in New Brunswick's Act mentions Mi'kmaq specific services, given that there are 11 of them funded by the federal Department of Indian and Northern Affairs. Only two provinces specify groups of First Nations as having control over their services. Quebec surprisingly does not include the Mohawk specific services, only the Cree ones, which is baffling considering the huge size of the three southern Mohawk reserves near Montreal. British Columbia and Newfoundland are the only provinces to mention that specific treaties may have child welfare related provisions that must be taken into consideration. Ontario's act is the only one to mention the registration of First Nations children in care with the federal Department of Indian and Northern Affairs, but it begs the question if this excludes some children who do not qualify for First Nations status, but are First Nations. It is unclear how this might affect their service provision. In fact PEI is the only province that allows children to self identify as being First Nations. There is nothing in these acts regarding service provisions for First Nations children off reserve. This lack of information can be seen as less community preservationist overall and exposes the segmentation of child welfare service delivery systems in Canada. It appears that most First Nations child welfare agencies have to follow the provincial/ territorial acts, but tend to ignore the special status of First Nations children. One can infer that the laws still reflect a state protectionist model of child welfare for First Nations children, even though the practice might be changing significantly. Finally, the most surprising and community preservationist of all acts is that of the Yukon, because the act itself was created with the Yukon Government and First Nations groups (R.S.Y. 2008, C-22 preamble).

c. Mobility

The most striking result in this section was the lack of specified information about limits on: time spent in foster care, institutional care (detention and non- detention), mobility and placement options for immigrant, refugee and unaccompanied minors. First I was surprised at the difficulty in defining foster care and that almost no information clearly distinguished limits on time spent in foster care versus institutional settings including group home.

There is no consistency across legislation regarding the amount of time children can spend in one foster home or limits on the absolute number of foster homes they can be in. There is no distinction listed for limits on emergency foster care versus long term foster care. There is very little information on: the placement of siblings together, the maximum number of children allowed in a foster home and restrictions on regional placement (i.e. near their school or family members).

Concerning non- detention institutional care, it was surprising to find few guidelines again on the number of children allowed in each home, rules and distinctions between residences i.e. bigger groups homes for younger ages, smaller ones for children with mental health issues or those preparing to age out of care. There were no guidelines on transferring children from different settings (i.e. foster home to group home or a child's right to ask for a different placement. There was next to nothing on punishments and rules in group homes such as children's right to have visits or go on outings have weekends with family, etc.

The most alarming finding was that only Ontario, Quebec and British Columbia clearly mention limits on detention, and that these acts specific it is necessary to follow

the guidelines set out in the YCJA. There was a serious lack of time limits children can spend in detention particularly if they are awaiting court hearings on placement. There is almost no information regarding rules on children who cross over from child welfare care to the criminal justice system and placing them separately. The distinction between open and secure detention was hard to understand, and it is only clearly defined in Ontario. Ontario is also the only province that describes transferring procedures for children in detention. Quebec is the only province that clearly outlaws the use of isolation rooms and mandates that the rules of the detention centre must be made explicit to all children in writing and posted in the facilities. There is no information on the number of children allowed in these facilities and services to them while being detained. Possibly the most protectionist finding is that in British Columbia the legislation does not allow children in detention the same rights as those in child welfare, other than access to a lawyer and the ombudsman.

In general this research finds secure treatment placements to be ill defined. There are vast differences in the time limits children can spend in emergency and long term treatment, across provinces. This includes major differences in time spent in secure treatment while court is adjourned concerning the care plan. Only Ontario clearly lays out the usage of isolation rooms, restraints and time limits on these. The review process on treatment orders and the ability of children to ask for the review is also very limited. Only Ontario, Manitoba, and Nova Scotia clearly state the child can have a lawyer for the review process. Only five provinces clearly allow reviews of secure treatment orders and the range of time for these reviews can be from 1 day (Nova Scotia and Newfoundland ) to 1 year ( the Yukon). Explaining the review process to the child in secure treatment is

only clearly stated in Ontario and only there does a child over the age of 16 have the right to consent or refuse treatment. Very little exists in the acts concerning the notification of guardians that the child is in secure treatment, only Alberta and British Columbia state they must be notified within 24 hours and Newfoundland and Nova Scotia within 5 days. Only Saskatchewan states that the guardian maintains custody of the child while in secure treatment. Nothing exists about secure treatment orders and time limits in four provincial and territorial acts. The legislation on secure treatment orders and time limits appears to be more protectionist in that time frames are longer and may allow for better assessments.

There is next to no information in the legislation concerning limits on placement for inter provincial children and dual citizens. Nova Scotia is the only province that clearly refers to time limits on placement for out of province children. There are no protocols on transferring care agreements between provinces except in Alberta. Nearly all provincial child welfare ministers can transfer children to another province and to another provincial director to receive care, and that for the most part their care plans would be recognized by the receiving province. In my work, many youth have been on the run or attempting to receive services in provinces other than their home province because they have extended kin there and/ or there are more appropriate services there. It is surprising to find that these transfers can also occur between countries with similar child welfare/ court systems. In my personal practice, there are several cases of dual citizens who, if they had known it were possible, would have preferred to apply for custody transfer to the other country where they were a national to live with family (myself included). This legislation could be seen as more family preservationist if service users knew about it. The

most shocking omission is that there is no information specifically on unaccompanied minors and placement limitations.

The most unexpected finding regarding runaway and homeless youth is that there are no clear review processes to find out why the child ran away and/ or ended up homeless. Further there is no real mention of homelessness, only “abandoned children”. Interestingly, the acts in Saskatchewan, British Columbia, the Yukon and the Northwest Territories recognize that children and youth in the sex trade are at risk and need child welfare services. This can be seen as both protectionist, in protecting the child from harm, and as liberationist if the child is coerced and or controlled by someone who is profiting off of them, and/or receiving sex work services and the child cannot get away on their own. Saskatchewan is the only province to explicitly say that it will pay for the return of a runaway, however the legislation does not say if the youth or child’s opinion on this matter will be considered. The Northwest Territories/ Nunavut is the only legislation to mention the UNCRC protocol that the child welfare system must aid 16-17 year olds who have no support from their family. This can be seen as a more child liberationist view, as it allows the child a clear choice to enter into care, rather than end up in precarious situations such as homelessness. British Columbia’s legislation is perhaps the most alarming and contradictory in the case of an “abandoned child” where if a parent is not found in 72 hours, the child welfare system does not necessarily have to take them in but later states that the child can and might remain in continuing custody until age 19.

d. Liberty and due process

The most striking difficulty in assessing liberty and due process was the lack of comprehensive statistics. In nearly every report from Statistics Canada, provinces had not

reported data in various categories of crimes, concerning gender, culture or for certain years. In other words information on the actual numbers of youth crime in Canada (Statistics Canada, 2006; Statistics Canada 2006/7; Kong, 2009, Kong & AuCoin, 2008), at any given time seem to be incomplete. It begs the question if there is a lack of comprehensive reporting systems for youth crime, the same way there is for collecting data on child welfare involvement. The statistics were all dated, the latest specific ones were from 2006/7 (Statistics Canada, 2006/7) and a more general report from 2008 (Kong, 2009). There was only one recent Statistics Canada document I could find that clearly distinguished the number of girls in detention per province on the numbers of girls in detention from Statistics Canada (Kong,2009; Kong & AuCoin, 2008). The only cultural distinction was the rates of First Nations youth in detention (Prison Justice.ca , 2010). There was no distinction in these provincial statistics of youth who self identified as First Nation, those who are considered status Indians, those who are Métis nor any distinction between numbers of youth in detention from various First Nations groups (Kong, 2009, p.5). There was no distinction based on language of the youth which I could find. The number of cross-over youth from child welfare to the youth justice system was not discernable in any of the literature, per province, nor were the numbers referred from the youth justice system to child welfare. The categories of sentencing were not clear as to which youth might possibly be in contact with the child welfare system prior to or after sentencing, from Statistics Canada (Statistics Canada, 2006/7, p. 17) or the other literature I could find. The three categories of sentencing that appeared to perhaps lead to time served in the child welfare system were: “deferred custody and supervision in the community”, “intensive support and supervision”, and intensive rehabilitative custody and

supervision” (Thomas, 2006/7, p.9). Each of these definitions were vague, and only the “intensive rehabilitative custody and supervision” indicated treatment within a mental health facility (Thomas, 2006/7, p.9), but again it is unclear if this means under the auspices of a child welfare agency. None of the child welfare acts had any information concerning the mixing of youth in care in the same placements as youth under the youth criminal justice system. Quebec was perhaps the most confusing because the term “compulsory foster care” is ill defined and seems to include group homes and detention centres as well as foster homes. Lastly, the numbers of youth arrested under provincial or municipal acts similar to the Safe Streets Acts (R.S.O., 1999, c.8 & SBC, 2004, C.75) are not clear, nor is it clear whether the sentencing for these youth is within the child welfare or youth criminal justice system or both. Surprisingly, there was no information in any of these statistics on the number of children under age 12 referred to child welfare because of their age and criminal involvement.

e. The right to recourse

The only unexpected finding is that there are already Unified Family Courts in six provinces in Canada, and that advisory councils are being used in several provinces particularly in the regions with high First Nations concentrations, to help determine the outcome of child welfare cases. It is also surprising to see that the ombudsman and child welfare advocates do not share the same powers across jurisdictions. I found it surprising that Child Advocates and Child ombudspersons can make suggestions about individual cases or practices but that they have no legal power to represent children, as lawyers would. The inability to represent individual cases seems counterintuitive because that insinuates the family and/or child needs to explain their story twice to get any legally

binding results. The other interesting finding was that these advocates and ombudspersons cannot dismiss child welfare agency directors or professionals if they deem there are inappropriate practises or misconduct within the agencies. Lastly, it is not clear how the recommendations and research done by these advocates and ombudspeople becomes translated into revisions in the child welfare legislation so that these laws will eventually meet the conditions of the. It is also surprising to find that only the province of Quebec has a Children's Human Rights Commission.

f. Financial support

The most surprising finding in this section was the lack of caveats in most of the legislation stating that support services would need to be scaled to match current adult social service provisions, and/ or monies allotted to the provinces and territories for each fiscal year. It was also surprising to discover that six provinces now have provisions in the adult welfare system for youth, generally aged 16 and up. Furthermore it was interesting to discover that there appears to be no age limit on the ability to receive adult social services in PEI (Prince Edward Island Department of Social Services and Seniors (September, 2009), Manitoba (*The Employment and Income Assistance Act*. 1998 CCSM c. E98.s.5 [all])and the Yukon (*Social Assistance Act*. R.S.Y. 2002 (last amended 2009) c.205.7.1). One of the more notable issues is the lack of acknowledgement that greater funds are often needed in remote and northern communities and lack of information on monies to pay for specialized services out of province.

Global findings as they relate to the protectionism vs. liberationist views of children's rights

On the theoretical continuum from state protectionist, community preservationist, family preservationist or child liberationist perspectives, overall Canadian child welfare legislation tends to lean toward protectionism and family preservation in the six themes of rights examined herein. On the theme of age and receiving care, there seems to be more movement towards child liberationist views of youth and helping youth becoming independent safely. Concerning adoption, family access and culturally appropriate care, generally the acts are protectionist or family preservationist, but there is a movement towards community preservation with the inclusion of First Nations communities being in charge of care planning and adoptions or at least consulted, in some jurisdictions. Regarding the theme of mobility, the legislation overall is generally more protectionist, in that few rights to mobility are explicitly stated and time limits on various forms of care are well stated in the law, nor is the child's ability to ask for reviews of placement limits and residential options. Concerning the theme of liberty and due process the child welfare acts are becoming more liberationist with the advent of limits and options provided in the *Youth Criminal Justice Act*, however, the guidelines for youth in care who cross over into the criminal justice system is not clear and therefore less likely to be liberationist. In regards to legal recourse, there is a recent move toward child liberationist views on children receiving legal representation and aid from lawyers, ombudspersons and child advocates. However the powers of these bodies to defend the interests of children are variable and limited. On the theme of financial support, the legislation recently has become more liberationist with more provisions for youth and extensions for youth aging

out of care or within the adult welfare systems. It is not clear if there has been a family preservationist movement to help maintain more children in the home or in foster care settings. In general, this research points toward the newest legislation being the most child liberationist, particularly towards helping youth become independent and supporting them through the age 16-18 gap that is still present in services. It is also more child rights centred in helping children and youth access lawyers and including them in their care plans. The western and northern provinces/ territories, Ontario and Nova Scotia are more community liberationist as they recognize, to at least some degree First Nations self governance over child welfare at least on reserves. Overall, however, the research has found that only the four solutions listed in this thesis represents ways that all four models of child rights theory could be used to improve child welfare legislation. None of the child welfare legislation fits neatly into these four theoretical models of the rights of children in care, as it is conflicted in many ways both internally and in conjunction with competing provincial and federal legislation on all.

In sum, none of the child welfare acts when analyzed through these six themes of rights completely meet the conditions of the UN Declaration of the Rights of the Child (OHUNC, 1989). It is clear that newer versions of the child welfare acts are more closely aligned with the UNCRC provisions.

#### Limitations of the Research

This research which compares the different provincial child welfare acts, and the six themes of citizenship derived from the UNCRC (OHCUN, 1989) has several limitations.

Technical Recording of Data

First and foremost this research is limited because it only addresses the current legislation, not any amendments, acts and related bills which are in progress of being passed in governments or are being proposed by different committees. Second, there is a trend towards a legislative shift in child welfare that is more liberationist in some regions. I suspect there is a shift in practice already occurring, but do not know if this is affecting legislative change or vice versa. This research does not address how individual child welfare agencies or regional structures that work with children in care may interpret these laws into policy and practise. Certain child welfare agencies or regional services for youth in care may be much more liberationist in their view of child rights and may be employing anti-oppressive frameworks in their practice.

Finally, this research may not adequately address all the ways that other laws can intersect with the rights of children in care. There may be other provincial, federal or municipal laws that affect how child welfare acts are interpreted and utilized. When doing this research I was forced to refer to other resources such as the adoption act, the marriage acts, adult welfare legislation, the YCJA, federal and provincial privacy acts etc. I found it extremely difficult to have clear answers to questions about legal age, name changes, when children could opt out of care. Legal issues for children in custody were contradictory within a province, and between provinces and the federal government. A full study might include an entire team of people looking in depth into the several kinds of legislation in each province regarding each of these six rights, as well as any related legislative shifts.

### Theoretical comparisons

There is a lack of systemic published information on the views and experiences of present and former children in care and their families in regards to the importance of the six themes of citizenship rights for children in care. Although I derived these six themes from the UNCRC and the literature on the rights and significant issues concerning the rights of children in care, they may not be as significant to children in care, as I think they are. I assume they are important to children in care based on my personal practise and the few published anecdotes from present or former children in care and their families I have been able to find. Individual child welfare agencies may be engaging in regular consultations with client committees to gather feedback on their satisfaction with the care they receive and their ability to access their UNCRC rights. However, I think the later is unlikely given the lack of time and staff in child welfare agencies.

These six themes of rights are my construction and interpretation of where the UNCRC and the literature concerning major issues for children in care intersect and agree. Based on my lived and work experience of what might define each of these six major categories, I created constitutive subcategories. I tried to insert the relevant legislative pieces into the categories, I devised. Others may debate or future research may prove these laws do not fit well into each of the six issues of rights I identified. Future research into each of these themes and their subcategories may yield different results, in terms of what rights are actually important to children in care. For example my list of children's rights and needs differs slightly from those identified by the National Youth in Care Network (Herbet, 2008; NYICN, 2005). There may be more than six major themes and/or there may be missing information within the respective subcategories that make up

these themes of rights. It is my assumption that there should be legislation in these subcategories that make up each of the six major themes of rights. However, I have not addressed previous legislation or issues that could be the reason why there is not more explicit legislation in these six areas and their subcategories. For example, there may be other legal and fiscal reasons for differences in provincial acts that go beyond the post CAP or federally run transfer funds to provinces, territories and First Nations for social services, including of child welfare, which ended in the 1980s. More exploratory research would be needed on each theme through interviews with present and former youth in care and their families, as well as social workers, child advocates, children's lawyers, etc to determine if:

- a. these themes are important in terms of rights legislation and
- b. that by not addressing them in child welfare legislation actual problems have resulted for youth in care and their families.

This kind of research would need to include: narratives and standardized sampling procedures to gather statistics on youth in care who have experienced difficulties accessing their rights, and who also identify differences regionally, culturally (not simply First Nations and non- First Nations), and demographically.

The protectionist, family preservationist, community preservationist and child liberationist dimensions are used to describe and interpret the legislation. They were meant to be individual categories, but clearly from the results above, the various pieces of the legislation fall into several of these categories and not as neatly as had been expected. There are several potentially intersecting dimensions which can affect the categorization of pieces of legislation, and some examples are: age and in some cases the ability of the

child, the terms of care (i.e. wardship, voluntary measures, treatment, etc), legal status (First Nations, Refugee, Canadian), if the child is married, if the child is or will be a parent, etc. The same parts of the legislation can be viewed in several ways and so choosing which category the relevant pieces of each act fell into was difficult. For example, is it family preservationist to keep young children on short voluntary care contracts and return them to their family of origin faster or is it child protectionist to do this so that they do not end up in care for 18 years, potentially in multiple placements and/or Crown wards. The latter could also be seen as child liberationist, if the family life and support is something the child wants and finds beneficial. Therefore a further study may find other layers and categories to the protectionist- liberationist debate on the rights of children and children in care.

A major oversight in this research is considering culturally appropriate care, by not specifically looking into the rights children have to services in their language. This is particularly important because New Brunswick is considered a fully bilingual province, Quebec is French and Ontario, Nova Scotia and small pockets in the western provinces also have Francophone communities. Furthermore, I did not research other language provisions in the legislation for the many First Nations languages, or languages other than French, English and First Nations languages. From a quick overview, there was little in the legislation I read, but further research into the provisions of linguistically specific care practises, rather than the law, may yield very different results. Also, as an Anglophone, I did not look through the published documents by French researchers and possible commentary by Francophone youth in care regarding their experiences with these six themes of rights.

Another oversight was in the theme of liberty and due process, where the statistics on the different categories of youth custody needed to be analyzed more thoroughly.

Specifically, I did not spend enough time researching the data that discerns the numbers and time spend in secure custody versus open custody or in remand. This information informs us how much liberty children in custody have, particularly in regards to the use of secure custody and remand (or holding youth in detention whilst awaiting trial).

To understand the protection of the rights of children in care further study is needed of disability and immigration legislation and how that may affect the interpretation of child welfare law and the UNCRC. I have only looked at child welfare legislation and have not examined case law. Case law may embody a more progressive and a more liberationist views of child welfare law. There will be precedents set in case law for individual provinces, regions and agencies that I have also not addressed in this thesis. Different regions may interpret the UNCRC, the Charter and their own child welfare legislation differently and adapt it to their needs. Such information is not accessible through a study of legislation. In fact different municipalities and agencies may interpret these pieces of legislation in ways which places children's UNCRC and citizenship rights foremost. This research lacks the comparison of formal and informal policies of individual child welfare agencies, in order to determine their progression towards protecting all of these six rights.

Lastly, a major deficit of this study is the lack of statistical data that is consistent and comparable between provinces. In fact few studies include Quebec at all, which may be a result of having a different legal system. It is nearly impossible to get an accurate picture of: the numbers of children in care, the kinds of placements they are in, duration of placements, conditions in the placements, the numbers in the youth criminal justice

system, financial scales for children in care, and outcomes for children on dimensions that are related to these six themes of rights. Some provinces seem to be far more consistent with their research and methods of recording information about children in care and aging out of it, in particular: Ontario, British Columbia, Manitoba and British Columbia. The differences in legislation have everything to do with this lack of consistent research because there are no similarities in the boundaries of what defines: different kinds of care agreements and placements, ages to enter into these agreements or opt out of them, limits on custody procedures, allocations for cultural, procedures for seeking legal recourse, financial rates, etc. Statistics on the theme of mobility issues, in particular the numbers of children leaving care and becoming homeless or wanting to transfer care to a different province or country of origin are totally absent. Statistical data from provincial child welfare agencies is not easy to find. Some information is contained in the annual reports of child welfare associations, but the vast majority, of what I found was in the few child and youth advocate or ombudsman reports.

*In order to further research on these six themes of rights and for all issues concerning youth in care, there needs to be a regulated national strategy of research that all provinces abide by, as children in care of one province can and do enter into care or exit care in other provinces. The research on First Nations children in care and in the criminal justice system is the most in-depth, clear and consistent in terms of the methodology of recording the statistics. Perhaps this is due to easier access in identifying First Nations children from smaller communities and reserves and or the likelihood that the child or family might self identify as First Nations. It is possible with the creation of more child welfare advocate and ombudsman positions that the research in other provinces and in regards to other*

linguistic and cultural groups of children in care will increase and improve in terms of consistency.

I am biased because I believe that children should have the same rights as adult citizens and I am liberationist in my point of view because of my personal practise with street youth and as a former street youth and youth in care. I assume that liberationist and community preservation are more important than immediate family preservation views on child welfare intervention. I make the assumption that these six themes are indicators that basic citizenship rights for children in care are protected based on my work with homeless youth, but these themes may not be as important for youth in care who have never been homeless. I view children's rights as fundamentally separate from the parents', family or even community's rights. Further research with present and former youth in care and their families may reveal that their preferred view of children's rights to citizenship is less liberationist and more community or family centred than mine.

#### Concluding Comments

This thesis has set out to reveal the lack of federal legislation and the inconsistencies between provincial child welfare acts in relation to six fundamental rights of citizenship that are allotted to all children under the UNCRC (1989). These inconsistencies translate into avoidable dilemmas for youth in care and their families and reflect a protectionist view of children's rights.

I believe this research is essential in understanding the vulnerability of youth leaving care and the potential for more negative outcomes for children and youth currently seeking or in care. In order for children in care to have these rights as Canadian citizen, they need to be consistently entrenched in both federal and provincial laws. The

provincial child welfare laws are the only major ones, intentionally or unintentionally, which dictate how the rights of children in care will be meted out from a protectionist, family preservationist, community preservationist or child liberationist view. In order for child welfare legislation and consequently practises to become more consistent with the UNCRC, child welfare agencies and the public need to decide who is responsible for governing children's rights. Is it the state (provincial or federal or both), the family, the community or the child? Furthermore, is it possible to have input from all of these parties? Should child welfare agencies and provincial ministries be responsible for protecting the rights of children in care, given that child welfare laws dictate that child welfare agencies have much of the power needed to enact what is in the UNCRC? If we believe that children in Canada, particularly those in care have rights that need to be protected, this research, I believe shows that we need significant legislative change. Consistent family or community based court systems are needed to work in conjunction with the community, such as the Unified Family Courts and/or the community councils used by some First Nations. These bodies as well as the provincial child welfare agencies need to be overseen by a federal agency and child welfare standards governed by a comprehensive federal law which is informed directly by children and their families.

I believe that in order to satisfy the conditions of the UNCRC in our child welfare systems, we need to include children in care and former youth in care in the research into policy and practice. Their needs, opinions and experiences must be utilized by lawmakers and child welfare authorities as basis for child welfare intervention, under a standard federal framework. By taking a more liberationist view of children's rights, the integration

of the UNCRC into Canadian child welfare systems may actually be attainable. This means accepting that:

“Social inclusion requires an ideological shift in order to view children as competent individuals, productive members and stakeholders. Power imbalances and notions from adults that children are not yet capable of forming their own views restricts the process of bringing children and youth into decision making” (Finlay, 2006, p. 9).

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Appendix A: Glossary of Terms

Anti-oppressive practice/theory (Ife, 2001) Ife lists several notions that encompass anti-oppressive practice and theory:

- Praxis, theory, practice and doing cannot be separated from self reflection in work with oppressed groups.
- Morality: ethics affect their decision making and they should act as “collaborative” agents (p. 141)
- Passion: a commitment to anti oppression work working on human rights injustices. (p. 142)
- Ideology: Human, civil and political rights protection involves accepting interdependency on each other to uphold and exercise those rights. , commitment to involve the public sector in global issues and protecting collective human rights at a local level.
- History: The need to understand the history of the struggle for human rights and how values have changes throughout history because: (p. 145-6)
  - history does change
  - to comprehend the immediacy of the struggle vs. long term change
  - to deconstruct philosophical underpinnings of policy and movements and to promotes intergenerational justice
- Understand structural disadvantage: (p. 147) to have a strong analysis of multiple and competing oppressions.
- Holism: (p.148) An ecological approach and one that involves other cultural knowings.
- Post modernism/ post structuralism: (p. 149) there is no right answer and we need multiple sources of knowing and input, to understand.
- Empowerment: “...idea of enabling the powerless to achieve more power”... (p. 150) therefore need to understand the kinds of power that informed prior decisions: “pluralist, elitist, structural and political.” (p. 151)
- Dialogical Praxis: (p. 153) The idea from Paulo Friere, (1972, 1985, 1996), to raise consciousness , level the power between worker and client, and

that lived experience upon which theory and practice should be based. Working towards action, respecting and reframing each other's human rights.

- Participatory democracy: (p. 154) Encouraging community and client participation, reworking structural sources of oppression, commitment to institutional and policy change.
- Anti-colonialist practise: (p. 155) Refraining from reinforcing western and colonist traditions.
- Feminism: (p. 156) Working against patriarchal structures, maintaining an analysis of the problem from the client's understanding.
- Non-violence: (p. 157) the denial of human rights is a form of violence
- Needs: (p. 158) Supporting the human right to define one's own need through the use of praxis, and understanding the context.
- Research: To identify those whose rights have been violated, document the human rights abuses, allow for people to articulate their needs, allow people to be heard by the wider public, and evaluate policy and practice. (p. 159)

Alternative Dispute Mechanisms (ADMs)(Bernstein & Reitmeier, 2004, p. 106) Is a process

- using a professionally trained mediator to come to a care plan agreement that can then be
- put before the courts. ADMS abide by guidelines to ensure the immediate safety of the
- child, that all parties understand and can participate in the mediation, all parties
- participate voluntarily, if the information will remain confidential or be available at the
- court hearing and to equalize power between all powers.

Best Interests of the child (Bala, 2004, p.16-17) Is a series of principles used by child welfare agencies to guide decisions made for children in need of protection, with the preference for children to remain within their families and have a permanent placement.. These principles include:

- “Respect for family autonomy and support of families.
- “ the importance of continuity and stability for the child”
- “consideration of views of children.”
- “the paramountcy of the protection of children from harm”

Child Advocate: can also be referred to as Child Ombudsman or Child Welfare

Commissions and they all have four functions (HRSDC, 2000, p. 3).

- Rights education for children and assisting children in advocacy for themselves.
- Investigating complaints and resolving concerns with child welfare services
- Research and report their findings
- Public education on children’s rights.

Children in care Refers to any child who is the care of a child welfare agency. This can mean the child is in the care of the agency under a voluntary care agreement, kinship agreement, as a crown ward, during adoption procedures or because they are at home but the family has a supervision order.

Child welfare: “Refers to child protection services and other related services” (Trocmé, Tonmyr, Fallon, Blackstock, MacLaurin, Barter, Daciuk, Turcotte, Felstiner, Cloutier, Black, 2003).

Closed adoptions (also referred to as “traditional adoptions” (Giesbrecht, 2004, p. 187)

This type of adoption generally “means the severance of all legal ties and contact between adopted children and their biological parents.” Usually identifying information about the child is unavailable to the parent and information about the parent is unavailable to the child, until one or both parties decides to contact each other once the child reaches the provincial age of majority.

Content Analysis (Webber, 1990, p.9): “Content analysis is a research method that uses a set of procedures to make valid inference from text. These inferences are about the sender(s) of the message, the message itself, or the audience of the message”

Crown warship (Also referred to as “permanent wardship” or “permanency planning” or “ward”) (Bernstien & Reitmeier, 2004, p. 86-87) This is a provision whereby the court may order the removal of a child from their home indefinitely where the

right to care for the child and decisions made on their behalf are given to a child welfare agency and its affiliates.

Culture: (Available from: <http://www.merriam-webster.com/dictionary/culture>, 2009) the integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for learning and transmitting knowledge to succeeding generations. The customary beliefs, social forms, and material traits of a racial, religious, or social group.

Cultural imperialism : (Young, 1990, pp. 58-59) “causes groups of people to find that “the dominant meanings of society render the particular perspective of [their] own group invisible at the same time as they stereotype[a] group and mark it as the Other”

Detention Centres (also referred to as “institutional care” and “les centres d’accueils”) (Arcane, 2005;Maclaurin & Bala, 2004, p. 126) These facilities are generally used for children who have been in contact with the law and are serving sentences under the YJCA. In some provinces they are also used as secure (locked) residential settings for children with behavioural issues. Different jurisdictions can set limits to their size and the reasons why children can enter.

Due process : (Available from: <http://www.merriam-webster.com/dictionary/dueprocess>, 2009) a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual —called also substantive due process.

Equal treatment regardless of age: (The Constitution Act, 1982, Schedule B, s.15.1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Exploitation (Young, 1990 p. 53). “results from fixed social relations between social classes and groups causing “a transfer of energies from one group to another that produce unequal distributions”

Financial support: Refers to any financial aid given directly to children in care (Child Tax benefits, monies from Child welfare agencies, bursaries for students in care, independent living allocations for youth in care. This can also refer to financial support given directly to communities, families, kin and foster families who have the responsibility and legal authority to provide for children in care either by the child welfare agency or by the adult provincial agency .

Group homes (MacLaurin & Bala, 2004, p. 126) These are licensed facilities with a maximum number of children, generally less than 10, which are staffed by personnel educated in child care. These agencies may be part of the local child welfare agency or contracted by it to take care of them. They vary in their usage from closed psychiatric settings, assessment centres, semi-independent living centres for children aging out of care, and small secure (locked) settings for children with behavioural issues and regular home-like settings.

Identity, family and cultural access: The freedom to know oneself, one's family of origin and one's culture

Kinship agreements (MacLaurin & Bala, 2004, p. 125) These are agreement by which an adult who has previously known the child agrees to become their foster parent, for an negotiated period of time. Who is allowed to enter into a kinship agreement and act as a foster parent varies by province and can include: relatives, or a friend of the child or their family.

Liberty : (Available from: <http://www.merriam-webster.com/dictionary/liberty>, 2009) The freedom from physical restraint c: freedom from arbitrary or despotic control. The positive enjoyment of various social, political, or economic rights and privileges e: the power of choice The condition of being physically and legally free from confinement, servitude, or forced labour .

Liberationist: (Available from: <http://www.merriam-webster.com/dictionary/liberationist>, 2009) a movement seeking equal rights and status for a group

Marginalization: (Young, 1990 p. 53) "Pushes classes and groups of people to the edges of Society where they are "expelled from useful participation in social life and thus potentially subjected to severe material deprivation"

Mobility: ( The Constitution Act,1982) Schedule B. Section 6.2)Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (6.2.a) to move to and take up residence in any province; and (6.2.b) to pursue the gaining of a livelihood in any province.

Children's Ombudsman & Children's Advocate: 4 common functions (HRSCD, 2005)

1. Rights education for children
2. Investigate complaints about government services for children
3. Report and make recommendations to improve services
4. Research and public education

Open adoptions (Giesbrecht, 2004, p. 187-188) An open adoption refers to an adoption order that may contain agreements to allow children contact with their biological family and/ or community, particularly for First Nations children. These agreements must be accepted by all parties and may include varying degrees of access to biological family from basic information about them to regular visits.

Positivist: (Available from: <http://www.merriam-webster.com/dictionary/positivist>, 2009)a theory that theology and metaphysics are earlier imperfect modes of knowledge and that positive knowledge is based on natural phenomena and their properties and relations as verified by the empirical sciences

Post Structuralist: ( Ife, 2001, p. 149) post structuralist refers to changing sources and discourses of power, enabling people to create their own change.

Powerlessness: (Young, 1990, p. 58) "Powerlessness" leaves categories of people experiencing "inhibition in the development of capacities, lack of decision making power in life, and exposure to disrespectful treatment because of the[ir] status

Repatriation Agreement: (Sinclair, et.al, 2004, p. 225) allow bands to bring children back to their home reserve.

Supervision order: (Bernstien & Reitmeier, 2004, p. 85) This is an order that the child remain in the custody of the parents or immediate family members and is monitored by the child welfare agency to ensure their safety. Such orders can include requiring the parents or family members to access specific services for themselves, preventing certain persons from having access to the child and can be used during the process of ongoing child welfare assessments.

Tenancy “ (Tenant) “A person to whom a landlord grants temporary and exclusive use of land or a part of a building, usually in exchange for rent.” Retrieved from Duhaime Legal Dictionary, September 20<sup>th</sup>, 2009 from <http://www.duhaime.org/LegalDictionary/T/Tenant.aspx>

Unified Family Courts: (Schwarz, 2004, p. 305-306) Unified family courts have four components Which are designed to manage family disputes and difficulties in a holistic strengths-based way. They have:

- “comprehensive jurisdiction” over many areas of law that include family, law, marriage, divorce, domestic violence and criminal matters as they related to child welfare and youth justice.
- One judge or group of legal entities to deal with an individual family’s disputes
- Onsite linkages to a wide array of community social services
- Highly trained court personnel and social service agents to address the concerns of the family in a holistic way.

Violence: (Ife, 2001, p. 157), “... To deny people equal access, to dehumanise those involved in it, to restrict rather than to open up opportunities, or to reinforce competition and aggression.” getting rid of structures that perpetuate violence.

Voluntary care (also referred to as “ temporary wardship”, temporary guardianship”, “temporary custody” or “society wardship” (Bernstien & Reitmeier, 2004, p. 86-87) Is a provision in all provinces that allows the respective child welfare agency to intervene for a defined period of time either until a reasonable resolution allows them to return home or until permanency planning ensues.

Appendix B. 1. Age and Receiving Care							
Province	Age of Majority	Minimum age to enter Wardship	Rules related to opting out of wardship (ONLY child's right to appeal)	Maximum age to enter into Voluntary care	Extensions of care	tenancy	Welfare
NFL/LAB Child Youth and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)	19	age 16 (SNL 1998 c. C-12.1 s. 1.2(c), Bernstein & Reitmeier, 2004, 88; HRSDC, 2005)	age 19 (SNL 1998 c. C-12.1 s. 12)  order is terminated is the child marries, or reaches age 16  appeal process not mentioned, or the court rescinds the order (SNL 1998 c. C-12.1 s.43)  Marriage age under 19, no minimum age stated, requires signature of both parents, or a guardian, or the director of child and family service. (Marriage Act. 2009 M-1.02 s.19)	age 16, definition of youth 16 - under 18. (SNL 1998 c. C-12.1 s. 2(o), Bala, 2004, p.36)  Youth Services Program for 16-17 (SNL 1998 c. C-12.1 s. 11.2, Gough, 2007,p.2), 6 month contracts & 6 month renewals  age 0-5 = 3months, 5-12 =4months, age 12+= 6 months, max 3-4 orders in lifetime (SNL 1998 c. C-12.1 s. 36 (1) & (2))	Beyond age 18: Up to 21 for permanent wards or temporary care recipients, or until school finishes (SNL 1998 c. C-12.1 s. 11.3)	No age specified (Residential Tenancies Act SNL 2000 c. R-14.1.2.1)	Age 18 (Newfoundland/ Labrador Department of Human Resources, Labour & Employment 2009)
NS Children and Family Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)  Residential Tenancies Act. RSNS 1989. c. 401 (last amended 2002, current version in force since Feb. 1, 2003)	19	-16 (S.N.S 1990 c.5 s. 3.1(e); Bala, 2004, p.36; HRSDC, 2005)	Up to 19 (S.N.S 1990 c.5 , s. 14.2 & s. 48.1(a))  Can terminate if marries, adopted , court terminates or the child can apply as of age 16 to opt out of permanent wardship (S.N.S 1990 c.5 s. 48.1 (all) and s. 48.3)  Marriage of 16-18 yr olds must have written consent of guardians, under 16 only with a court order. (Service Nova Scotia	-between age 16 & 18 yearly agreements (S.N.S 1990 c.5 s. 19 (all))  Temporary care agreements are 6 months to 12 months maximum (S.N.S 1990 c.5 s. 17.3) 0-3 yrs -s 3-6 months; 6-12 is 6-12 months; over age 12 is 12 months to 18 months (S.N.S 1990 c.5 s. 45 (all))  Provision for special needs children yearly agreements and have to be revised yearly (S.N.S 1990 c.5 s. 18.2)	Up to age 21 for wards pursuing education or who have a disability (S.N.S 1990 c.5 s. 48.1.a)	No Age specified (Residential Tenancies Act. RSNS 1989. c. 401, s. 2(j))	19 (S.N.S 1990 c.5 s. 5.1.1) or aged 16-18 (s. 5.10.1) if parent's won't support/ not in care- as of April 2009 (Nova Scotia, Community Services 2008)

			<b>and Municipal Relations, Vital Statistics , 2009)</b>				
<p>PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)</p> <p>Marriage Act RSPEI, 1988 c. M-3 (amended 2008, current version in force since Dec 19, 2009)</p> <p>Rental of Residential Property Act. R.S.P.E.I. 1988, c. R-13.1 (amended 2008, current version in force since Jan 1, 2009)</p> <p>Social Assistance Act, R.S.P.E.I. 1988, c. S-4.3 (amended 2005, current version in force since Nov 8, 2005)</p>	18	16 or 18 with developmental delay/mental illness (R.S.P.E.I. 1988, c. C-5.1 s. 1(h)(i) & [ii])	<p>Terminated at age 18, adopted, marries or agreement is terminated. (1988, c. C-5.1 s. 45(1)) &amp; person over 16 can apply to opt out of permanent wardship but has to have been in for 1 year immediately preceding the application (s. 45(2)(b))</p> <p>Can marry with written consent of parents, guardian or Director of Child Welfare is under 18 and over 16 (Marriage Act RSPEI, 1988 c. M-3 s. 19(2)[all]), Or if under 16 in the case of a female who is shown by a certificate from a duly qualified medical practitioner to be either pregnant of the mother of a living child. (with consent?) (PEI Department of Health, 2009)</p>	<p>-16-age 18, max contracts = 6 months (R.S.P.E.I. 1988, C-5.1. 14.1) – 18 by (HRSDC, 2005)</p> <p>- temporary care 3 months, ages 0-5; 12 months ages 5-12; and 6-12 months age 6 -18 (R.S.P.E.I. 1988, C-5.1. 17.5&amp; 17.6)</p>	<p>21 for Permanent wards only, those with disabilities (R.S.P.E.I. 1988, c. C-5.1 s. 46(1),(2) &amp; [3]) Does not specify wards or voluntary care.</p> <p>21 for school or in need of transitional support due to “unusual circumstances” (R.S.P.E.I. 1988, c. C-5.1 s. 14(3)(b))</p>	<p>No Age Specified (Rental of Residential Property Act. R.S.P.E.I. 1988, c. R-13.1 s.1(g))</p>	<p>Under 18, living apart from parents or guardians. (Social Assistance Act, R.S.P.E.I. 1988, c. S-4.3 s. 1(g)(ii))</p> <p>May serve minors but no definition of “minor” given (Prince Edward Island Department of Social Services and Seniors (September, 2009)</p>
<p>NB Family Services Act, S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)</p>	19, but age for child welfare = 16, unless the person is a ward or has a disability (HRSCD, 2005)	<p>Unborn child into wardship (S.N.B. 1980,c.F.-2.2.1.b) (Bala, 2004, p.36)</p> <p>- to age 19 for disabilities and only 16 for the rest (HRSDC, 2005)</p>	<p>1 yr. Custody agreements, then revisited (S.N.B. 1980, c. F-2.2 s. 48[3])</p> <p>Opt out through marriage, death, adoption, termination of agreement, age of</p>	<p>16 (HRSDC, 2005)</p> <p>1 yr contracts, (S.N.B. 1980, c. F-2.2 s. 48[3]) until the child reaches age of majority-not specified in act if this is age 16 or age 18/19 (S.N.B. 1980, c. F-2.2 s. 48(4)[d])</p>	<p>Post guardianship agreement if person has a disability or is attending full time school, up to 21, cannot exceed age 24 (S.N.B. 1980, c. F-2.2 s. 49[5]; (HRSDC, 2005)</p>	<p>No age specified/ no definitions of a “tenant”. (Residential Tenancies Act, S.N.B. 1975, c. R-10.2)</p>	<p>Age 18, but exceptionally may give access to 16 - 18 yr olds if the person cannot live with family and have an approved alternate residence (New Brunswick Regulation</p>

			majority (no age specified here) (S.N.B. 1980, c. F-2.2 s. 49(4) & [5])				95-61 under the Family Income Security Act., (O.C. 95-470 s. 4.9)
QC Youth Protection Act, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)	18 (Youth Protection Act, 1977 RSQ c. P-34.1 s. 1[c])	18 (HRSDC, 2009)  No ages for this defined in the Youth Protection Act. For this - could assume under 14, because child has the right to refuse at 14 (RSQ 1977 c. P-34.1 s. 47.2)	Child over 14 can contest being in immediate protective care (RSQ 1977 c. P-34.1 s. 47)  No other information  Can marry with parents approval at age 16, or by oneself at age 18- but this is not stated as a way to opt out of care in the Youth Protection Act (Justice Quebec, 2009)	Over 14 parent's can refuse provisional order or voluntary measures (RSQ 1977c. P-34.1 s. 47.2) , unless the child is under age 14 (RSQ 1977c. P-34.1 s. 52)  18 (HRSDC, 2009)  -Max agreements up to 12 months, extensions for 24 (RSQ 1977 c. P-34.1 s. 53)  Voluntary foster care max = 12 months ages 0-2; 18 months ages 2-5; 24 months ages 6-18 (RSQ 1977 c. P-34.1 s. 53.0.1(all))	Foster care up to age 21, doesn't say for whom (HRSDC, 2009), this is not in Youth Protection Act  No age limit for tutorship mentioned (RSQ 1977 c. P-34.1 s. 70.1)	Unclear, no definitions of lessee/lessor (An Act respecting the Regie du logement, 1892 R.S.Q. c. R-8.1)  No age specified by the Civil Code (applies to adults in general, over 18)	Age 18 (Emploi Quebec, Jan.2009)
ON Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)	18 to vote, sign contracts, get married, change one's name, etc. 19 to gamble, drink, buy tobacco, apply for GST (Justice for Children and Youth, June, 2006)	16(Bala, 2004, p.36; HRSDC, 2005)  If 16 birthday & apprehended will still be considered as" under 16" (R.S.O. 1990, c. C.11 s. 47(3))	Supervision order with parent/ another person, max 12 months, (1990, c. C.11 s. 57.1)  Society wardship with CAS max 12 months (R.S.O. 1990, c. C.11 s. 57.2) only to age 18 or when they marry (R.S.O. 1990, c. C.11 s. 71)  Crown ward can apply for review of status as a crown ward at age 12 + (R.S.O. 1990, c. C.11 s. 64(4)[a])	Not until age 12 with child's consent - EXCEPT in case of disability- only ages 16-17 can apply for themselves, only up to age 18 (R.S.O. 1990, c. C.11 s. 31),  Otherwise no voluntary care over age 16 (Bala, 2004, p.36); (R.S.O. 1990, c. C.11 s. 26, & 29[2]) & only if "appropriate placement is available" (R.S.O. 1990, c. C.11 s. 29 [4])  Not more than 6 months (R.S.O. 1990, c. C.11 s. 29[5]) up to 12 month contracts (Bernstien & Reiteier, 2004, p.91)	Up to 24 If Provisions made before age 16 (Bala, 2004, p.36)  Doesn't specify age limit, just for crown wards, and also related to persons' over 18 who had received care and those of "Indian and native" ancestry (R.S.O. 1990, c. C.11 s. 71.1(1) & [2])	No age limit specified (Residential Tenancies Act, 2006, S.O 2006, c. 17)	16-18 -if can't live with parents, in school or full time training program and maybe required to have liaison with a "responsible adult" (Ontario Ministry of Community and Social Services, directive. 3.5-1 ,May, 2009)

				Ages 0-6 = 12 months; 6 yrs plus =24 months (R.S.O. 1990, c. C.11 s. 29 [6])			
MAN Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)	18	18 (HRSDC, 2005)	“..when the ward marries or attains the age of majority” (C.C.S.M. 1985 c. C80 s. 50[1])  Marriage allowed under age 18 only with consent of parents/ guardian (Marriage Act, C.C.S.M. C. M50 s. 18(1)(b)(all) & (c) or under 16 with order of provincial court (Marriage Act, C.C.S.M. C. M50 s. 18(1)(d))	15 months, ages 0-5; 24 months ages 5-12; 24 months ages 12-18 (C.C.S.M. 1985,c. C80 s. 41[1 & 2])  14 yrs & up to age 18 for just behavioural problems, seems unlimited if for illness, disability to age 18 (C.C.S.M. ,1985c. C80 s. 14(1) & 14(3))  12 to 24 month agreements (C.C.S.M. 1985c. C80 s. 14(2) & 14[3])  Can terminate agreement if parent leaves province (C.C.S.M. 1985, c. C80 s. 14(4);but none of this applies if the parent is a minor (C.C.S.M. 1985c. C80 s. 15[1]); 18 (HRSDC, 2005)	Age 21 only for children who were permanent wards Sec. (C.C.S.M 1985.. c. C80 s. 50[2]); HRSDC, 2005)	No age limit described in this act to rent (Residential Tenancies Act, 1990 CCSM. c. R119) (last amended 2009)	No age limit this act, in fact includes children under the director of child welfare, those without parental involvement or family aid, those in “crisis” or in shelter as possible recipients of social assistance income (Employment and Income Assistance Act. 1998 C.C.S.M. c. E98.s. 5 (all))
AB Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)	18 (R.S.A. 2000, c. C-12 s. 1.d)	18 (MacLaurin & Bala, 2004, p. 147); HRSDC, 2005);  No stipulation on this in the Child, Youth and Family Enhancement Act	Age 15 can refuse to enter into care (MacLaurin &Bala, 2004, p. 142);  Until child reaches age 18, marries or is adopted (R.S.A. 2000, c. C-12 s. 40(2)©,(d).& [e])	9 months if under age 6, 12 months if over age 6 (R.S.A. 2000, c. C-12 s. 33(2)(a) & [b]) & 1 renewal of 6 months (R.S.A. 2000, c. C-12 s. 33[3])  Can leave temporary care at age 16 (R.S.A. 2000, c. C-12 s. 17 & 31[1])  Child 12 and over can appeal a temporary care placement (R.S.A. 2000, c. C-12 s. 32(1)[b])  Until age 18 or marries (R.S.A. 2000, c. C-12 s.	May enter into 6 month agreements, no age deadline specified to support former voluntary care, wards or youth past age 18 if following agreed upon plan ( few stipulations (R.S.A. 2000, c. C-12 s. 57.2[all] & s. 57.3)	No age requirement to become a tenant (Residential Tenancies Act, S.A. 2004 c. R-17.1)	If 16-17 and residing with an 18 yr old partner could qualify as an “adult, otherwise 18 (Income and Employment Supports Act: Income Supports, Health and Training Benefits Regulation 2004 (last amended 2008) A.R. 60/2004. s. 1(1)[b])

				40(1)[all])  Supervision orders max 6 months (, R.S.A. 2000, c. C-12 s. 28[1])			
SK Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)  Residential Tenancies Act, 2006, S.S. 2006, c. R-22.0001 (amended 2009, current version in force since Jan 1, 2010)	18	Under 16 and unmarried (S.S. 1989-90, c. C-7.2 s. 2(1)[d]) -(Bala, 2004, p.36);  Age 16 with child's consent (HRSDC, 2005) to age 18, unless adopted, married, contract is terminated (S.S. 1989-90, c. C-7.2 s. 68[1])	"can be apprehended in extraordinary circumstances if over 16 (S.S. 1989-90, c. C-7.2 s. 18[all]); protection orders include ages 16 &17, cannot be for more than 24 months and have to apply every 6 months (S.S. 1989-90, c. C-7.2 s. 16(8) & [9])  Age 18 to opt out (S.S. 1989-90, c. C-7.2 s. 37[3])  Marriage between 16-18 has to have consent of the guardians (Marriage Act, 1995, S.S. 1995, c. M-4.1 s.19(all)) or under 16 has to be pregnant female with a doctor's certificate and have a living child (Marriage Act, 1995, S.S. 1995, c. M-4.1 s. 20(2))	16 (Bala, 2004, p.36); Voluntary committals age 16, temp orders age 16, - voluntary agreements 16 & 17 - all with consent- ;cannot exceed 1 yr. (CFSA 1989-1990, cC7.2.10.1 &3) 1 yr with contract with 24 month extension ,residential care for disabilities ( S.S. 1989-90, c. C-7.2 s. 9(1) & 9[5]); (HRSDC, 2005)	Age 21 if had been in permanent "committal order or long term order (S.S. 1989-90, c. C-7.2 s. 56(1) & 3)(ward) (HRSDC, 2005)	A minor can be a tenant but the tenancy act does not protect the minor who is a tenant and is not enforceable against a landlord (Residential Tenancies Act, 2006, S.S. 2006, c. R-22.0001 s. 4)	Age 18 -19 and living alone (Saskatchewan an Assistance Act: Saskatchewan n Assistance Regulations, S.R. 78/66, s. 2(1)(c.1)[ii]), unless aged 18 and disabled (Saskatchewan an Assistance Act: Saskatchewan n Assistance Regulations, S.R. 78/66, s. 4[1])
BC Child, Family and community Services Act R.S.B.C. 1996 (last amended march 21 <sup>st</sup> , 2010 and came into force at this time), Ch.46	19	19 (MacLaurin &Bala, 2004, p.146; HRSDC, 2005) - R.S.B.C. 1996, Ch.46.53.1) Under age 19 if child: marries, court cancels order custody is transferred (RSBC1996, Ch.46.53.a)	Under age 19, is adopted, married, custody order is cancelled or transferred (RSBC1996, Ch.46.53) (i.e. transfer to band/ another guardian or situation has changed positively.(RS BC1996,	-Under age5 =3 months contract-max12; above age 5 -13 = 6 months contract , max 18months; 12-19= 6months max 24 months. (RSBC1996, Ch.46. (6) &6[7]); -Special needs= 6-12 months (RSBC1996, Ch.46.7[4]) - Parent under age	24 for permanent wards, temporary care or if they received support as young/expectant parents. Must be in school or rehab, max contracts= 24 months. (RSBC1996, Ch.46.12.3 [all]) - "post majority services program"	-can rent under age 19 and the res., ten./ act does apply for and against the youth renting, now lower age limit specified for renting. (Residential Tenancies	-must be 19= adult (child is "unmarried person under 19 (Employment Assistance Act, June, 2007, 3.2.1.1)

			<p>Ch.46.54) - not legal to marry under 19 without consent of both parents, guardian or supreme court trustee (Marriage Act 1996 (last amended 2009), RSBCc.282, 28.1) -under 16 not allowed unless the court orders it (Marriage Act 1996 (last amended 2009), RSBCc.282, 29 all)</p>	<p>16, married or parent or pregnant, age19 can make agreements for temp or perm care for their children in some cases (RSBC1996, Ch.46.11), and for themselves to receive min 3-6 months contract (RSBC1996, Ch.46.12.2[all])</p>	<p>(HRSDC, 2005); If voluntary care contract expires &amp; parent doesn't resume care- can extend another 30 days (RSBC1996, Ch.46.6[8]) -Called YEAF program est. 2002 (<a href="http://www.gov.bc.ca/forthecord/youth/yo_childre.html?src=/children/yo_children.html">http://www.gov.bc.ca/forthecord/youth/yo_childre.html?src=/children/yo_children.html</a>)</p>	<p>Act.SBC 2002 (last amended) c.78.3)</p>	
<p>YU Child and Family Services Act (2008)RSY C-22</p>	<p>19 (RSY 2008,C-22.1)</p>	<p>19 ( no info about min age to enter care)</p>	<p>19 (HRSDC, 2009) -reaches age 19; marries, voluntary order expires, adopted, or judge terminates (RSY 2008,C-22.66 all) -marriage at age 18 without consent, if minor not living with parent, otherwise has to be 19 (Marriage Act 2002, c.146.41.1) -consent of parent or guardian required –can marry as young as 15 (RSY 2008,C-22.43)</p>	<p>-support service agreements limited to 6 months (RSY 2008, C-22.11.2) -12 month support agreements for special needs (RSY 2008C-22.12.3) -voluntary care agreements=6 months (RSY 2008, C-22.14.3) -youth under 16- up to 19<sup>th</sup> b-day(s.16.3), includes married youth, youth who is expecting a child or is a parent ( both genders) (RSY 2008, C-22.16.4 [all]) -12-15 months max under age 5, 18-24 months max age 5-12, 24 -36 months 12 &amp; up (RSY 2008, C-22s.61 [all])</p>	<p>Up to age 24 for a youth leaving care or who as already left can apply – no time limits on renewal of contracts (RSY 2008, C-22.17 all) Director has to make transitional case plan w. Family conference ((RSY 2008, C-22.18all) -Age 19 for temporary care, custody or permanent wards (HRSDC, 2009)</p>	<p>-no age limit /no description of tenant (Yukon ___ Landlord and Tenant Act 2002 c.131.s.40))</p>	<p>-no age definitions at all – “person in need”(Social Assistance Act. R.S. 2002 (last amended 2009)c.205.7 .1)</p>
<p>NVT /NWT  (NWT is same Legislation. as NVT) Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c.</p>	<p>19</p>	<p>16 (R.S.N.W.T.1997, c13.1 &amp; 2)</p>	<p>Care plan cannot exceed 24 months without review &amp; has to be reviewed every 3 months beyond 12 month period (S.N.W.T.1997, c13.1.19.7 &amp;20.2) -can discharge</p>	<p>6 month contracts 1 or more times (R.S.N.W.T.1997, c13.5.4) -up to age 18 (S.N.W.T.1997, c13.47.3 &amp; 30.3)</p>	<p>Ages 16-19 if cannot live with parents 6 month contracts (S.N.W.T.1997, c13.2n &amp; 6.1 &amp;2 &amp;3)</p>	<p>Consolidation of Residential Tenancies Act (Nunavut) S.N.W.T. 1988 (revised April, 1999),c.R-50 -no age mentioned</p>	<p>-19 plus - (Government of the North West Territories., 2007, p. 11) - but between 16 “&amp; 18 can be referred to Dept of health and Social Services</p>

13			<p>a child in permanent custody as early as age 16 (S.N.W.T. 1997, c13.1.48.1.a)</p> <p>-can keep them in wardship until "age of majority" (is this fed or 19-territorial?, not clear) (S.N.W.T. 1997, c13.1.48.2)</p> <p>-child over 12 can apply to "discharge permanent order", or get out of wardship (SN.W.T.1997 , c13.1.49.1)</p> <p>-can opt wardship if adopted, court order or reaches age 16 (SN.W.T.1997 , c13..48.1 all)</p>			at all	<p>under a support agreement (sec.5) (Government of the North West Territories., 2007, p. 114)</p> <p>-Provide - provide room and board must be working/ training (Government of the North West Territories., 2007, p. 114)</p>
<p><b>Federal</b></p> <p>freedom from discrimination on the basis of age, ethnicity, sexuality, religion (Constitution Act, 1982, Schedule B, 2.a, 15.1)</p> <p>- no federal age of majority- determined by province, but can use the federal voting age of 18 as the age at which people can access their adult rights. (Canada Elections Act SC 2000, c. 9, E-2.01. s.3)</p>							
<p><b>UNCRC</b></p> <ul style="list-style-type: none"> <li>• "... A child means every human being below the age of eighteen years" (UNCRC, 1989, A.19)</li> <li>• freedom from discrimination on the basis of age, ethnicity, sexuality, religion (UNCRC, 1989, A.1 &amp; 2)</li> <li>• financial support and safety (UNCRC, 1989, A.23.2, A.24.1 &amp;2; A.26.1 &amp;2, A.27.1, 2. &amp; 3; A.28.1.b; A.32, 1; A.34. a, b, &amp;c)</li> </ul>							

Appendix B.2.a Identity						
Province	Name changing allowed	Open adoption (children in care)-	Closed adoption (children in care)	Right to access adoption records	Preserving identity for International adoptees *All provinces supposed to be using Hague Convention on Inter-country Adoption (Giesbrecht, 2004, p. 157)	Preserving Identity for First nations & other groups
<p>NFL/LAB <i>Child Youth and Family Services Act</i>, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)</p> <p><i>Adoption Act</i> SNL 1999 c. A-2.1 (last amended 2009, current version in force since Oct. 1, 2009) <i>ACT Refers to Convention on protection of children and cooperation in respect of inter-country adoption- not UNCRC</i></p>	<p>Consent needed if over 12 ys. (<i>Change of Name Act</i>, 2009, SNL 2009, c. C-8.1 s. 5.1)</p> <p>Child of 12 is considered competent to "give their opinion on care and custody" (SNL 1998 c. C-12 s. 1.7(h))</p> <p>Allows for hearing of the child in court on their views, no age limit. (SNL 1998 c. C-12.1 s. 53)</p> <p>Child must consent if over 12 to adoption or the director of care can decide that if under age 12 (SNL 1998 c. C-12.1 s. 80.3)</p> <p>Cultural heritage and child's views and wishes (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 3(f) &amp; 3(g))</p> <p>Age 5 have to counsel child on effects of adoption. (<i>Adoption Act</i> SNL 1999 c. A-2.1 s.</p>	<p>Can place a child with a family member (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 6(4))</p> <p>Can make an open agreement before or after the adoption children over 12 have to approve of it can be made by relative or significant adult. (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 43)</p> <p>Director shall not consent to adoption of child even if in permanent care unless parent agrees (SNL 1998 c. C-12.1 s. 41.3)</p>	<p>Order for closed custody possible with no contact with biological family - <i>Adoption of Children Act</i> SNL 1999 (last amended 2009)A-2.13.27 all</p> <p>Age 5 have to counsel child on effects of adoption (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 7(d)(i) &amp; have to have consent if over age 12 &amp; 16 child can revoke their consent to be adopted (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 7(d)(ii))</p>	<p>Over 12 can ask for confidential file info, why they were removed, info about birth parents, reason for continuous care order, identity and info of former care givers and full legal guardian can also apply. (SNL 1998 c. C-12.1 s. 68)</p> <p>EXCEPT if prohibited under the adoption act, if it might cause emotional or physical harm, might identify other people implicated in reporting or investigation. (SNL 1998 c. C-12.1 s. 69)</p> <p>Disclosure only if person is over age 19 (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 41)</p> <p>Allows for disclosure between adoptive parent and biological parent if openness agreement is in place and also for info on siblings. <i>Adoption of Children Act</i> SNL 1999 c. A-2.1 s. 44(2)(b)</p> <p>For medical reasons (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 45(a)) &amp; so child can receive a benefit (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 45(b))</p> <p>Possible to access</p>	<p>Kinships ties paramount and shall be preserved. (SNL 1998 c. C-12.1 s. 7(f))</p> <p>Cultural heritage of child shall be preserved. (<i>Child, Youth and Family Services Act</i>, SNL 1998 c. C-12.1 s. 7(g))</p> <p>Access to family links (SNL 1998 c. C-12.1 s. 9(f)) &amp; consideration of their regional &amp; social environment as paramount in placement. (SNL 1998 c. C-12.1 s. 9(h))</p> <p>-importance of preserving cultural heritage (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 3(2)(f))</p> <p>director must approve validity of inter-country or out of province adoption (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 33(a) (b)) &amp; mentioned the convention and that the province must abide by it <i>Adoption Act</i></p>	<p>If there is any inconsistency with the child welfare act and the Labrador Inuit Land Claims act the later takes precedent. (SNL 1998 c. C-12.1 s. 2.1) &amp; importance of preserving cultural heritage (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 3(f) &amp; s. 3.3)</p> <p>Kinships ties paramount and shall be preserved (SNL 1998 c. C-12.1 s. 7(f) &amp; 7(g))</p> <p>cultural heritage of child shall be preserved (SNL 1998 c. C-12.1 s. 9(c))</p> <p>Access to family links &amp; - (SNL 1998 c. C-12.1 s. 9(f)) &amp; consideration of their regional &amp; social environment as paramount in placement (SNL 1998 c. C-12.1 s. 9(h))</p> <p>Importance of preserving cultural heritage (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 3(2)(f))</p>

	<p>7(d)(i) &amp; child must be consulted if over age 5 on name change and has the right to refuse name change if over age 12 (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 7(d)(ii))</p> <p>BUT the director can overrule this if the child's consent to adoption has been dispensed with" (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 26.3)</p>			<p>adoption records if over 19 (<i>Adoption Act</i> SNL 1999 A-2.1 s. 48(1), except (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 2(a)) If there is a veto order or (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 2(b)) a no contact order</p> <p>Adopted child can authorize a veto order concealing their identity (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 50(2)(a)) &amp; adoptee can ask for a no-contact order (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 51(3))</p>	<p>SNL 1999 c. A-2.1 s. 35.4) ( does this refer to UNCRC? &amp; also refers to section 27 of the UNCRC and applying to become an adoptive parent. (<i>Adoption Act</i> SNL 1999 c. A-2.1 s. 40(1) &amp; (2)</p>	
<p>NS <i>Children and Family Services Act</i>, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)</p>	<p>The court will order if the name is changed or not and there is not mention of the child's opinion or right to a say in this matter. (SNS 1990 c.5 s. 78.2)</p>	<p>Openness agreement can be made with the parent adopting parent relative or important adult. Child over 12 views must be taken into consideration and under 12 if deemed able to give their views. (SNS 1990 c.5 , s. 78A(1) &amp; (2))</p> <p>Consider in adoption the merits of child remaining in contact with or returning to bio parent. (S.N.S 1990 c.5 s. 3(2)(i))</p> <p>Consider relationship with relatives as important. (S.N.S 1990 c.5 s. 3(2)(b) &amp; (SNS 1990 c.5 s. 39(8)(b))</p> <p>Adopting parent cannot be foster parent. (S.N.S 1990 c.5 s.68(1)(f)(vi)) but says that a person who has had control/care of the</p>	<p>Closed adoption suspends rights of bio parent or former guardian (SNS 1990 c.5, s. 78.(1)(b)) &amp; (SNS 1990 c.5, s. 78(5)) &amp; access to child is ended (SNS 1990 c.5, s. s. 80(1&amp;2))</p> <p>Child over 12 must consent to adoption (SNS 1990 c.5 s. 74(1)) &amp; if child is a minor and married their spouse must consent ( SNS 1990 c.5 s. 74(2))</p>	<p>Nothing on confidentiality and access to records at all</p>	<p>Allows for racial, cultural and linguistic heritage preservation (SNS 1990 c.5 s. 3(2)(g)) &amp; placement preference) religious faith (SNS 1990 c.5 s. 3(2)(h) &amp; SNS 1990 c.5 s. 47(3A))</p> <p>Where child is from out of province or country must have written consent of parent of child to adopt or the child's spouse if a minor. (SNS 1990 c.5 s. 74(10))</p> <p>If adopted out of province or country that adoption agreement remains intact if in NS (SNS 1990 c.5 s. 86)</p> <p>Advisory committee shall review adoption act every year and be</p>	<p>Allows for racial, cultural and linguistic heritage preservation (SNS 1990 c.5 s. 3(2)(g)) &amp; placement preference) religious faith (SNS 1990 c.5 s. 3(2)(h) &amp; SNS 1990 c.5 s. 47(3A))</p> <p>Will not enter into an adoption agreement until after 15 days notice to Mi'kmaq Family and Children's service and if adoption order is in progress must notify Mi'kmaq Family and Children's services 15 days prior to adoption agreement. (SNS 1990 c.5 s. 68(11 &amp; 12))</p> <p>The minister will notify the Dept of Indian and northern affairs and the Mi'kmaq Family and Children's Services, doesn't really say if they have a say as to</p>

		<p>child for 24 + months can apply to adopt (SNS 1990 c.5 s. 70A(1) but says the child can live the person for no less than 6 months before applying doesn't specific relative or foster parent or anyone in this clause.(SNS 1990 c.5 s. 76(1)(c)</p> <p>Adoption agreement shall not last more then one year before reviewed- not sure if this means it's open or not because section 6 refers to returning child to parent unless child is taken into permanent custody. (S.N.S 1990 c.5 s. 68(2))</p> <p>Refers to "openness agreement" (S.N.S 1990 c.5 s. 78A(1)) and Says this can only be made if the placement for adoption was voluntary on behalf of the bio parent (SNS 1990 c.5 s. 78A(2)(a)(i)) or (SNS 1990 c.5 s. 78A(2)(a)(ii) ) Guardian who placed the child</p>			<p>comprised of 2 members from cultural or religious communities and others (lawyer, etc.) (SNS 1990 c.5 s. 88(2)(e)</p>	<p>whether the child will go into a first nations home or not. (SNS 1990 c.5 s. 78(4))</p>
<p>PEI</p> <p><i>Child Protection Act</i>, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009) No mention of adoption in this act</p> <p><i>Adoption Act</i>, R.S.P.E.I.</p>	<p>Child's preferences should be taken into account as long as they can be ascertained. (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 1(d)(ii) &amp; s. 34)</p> <p>Name to be specified by court unless</p>	<p>Should be opportunity for openness (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 2(c))</p>	<p>Child over 12 can contest decision ask for re-evaluation (R.S.P.E.I. 1988, c. C-5.1 s. 3(d))</p> <p>Closed adoption possible, closed contact (R.S.P.E.I. 1988, c. C-5.1 s. 21(1))</p> <p>Director of child welfare has the</p>	<p>Child has right to non- identifying info about their background (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 2(f)), but the parent's right to anonymity must be preserved ( <i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 2(g))</p> <p>Can keep the parental information "secret" (<i>Adoption Act</i>, R.S.P.E.I. 1988,</p>	<p>Child shall not be placed out of province except with the director's permission (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 5)</p> <p>Court only has jurisdiction to approve adoption if child is born in the province, a</p>	<p>If the child is aboriginal, the importance of preserving the cultural identity of the child. (R.S.P.E.I. 1988, c. C-5.1 s. 2(j))</p> <p>Cultural background taken into account. (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 1(d)(vii))</p>

<p>1988, c. A-4.1 (amended 2008, current version in force since Dec 19, 2009)</p>	<p>child is 12 or more and competent to make decision. (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 40 (all))</p>		<p>right to consent and parental rights are void if child is under the director's care (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 3.2(4))</p> <p>Closed adoption and ceases links between biological parents (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 42.1(b))</p> <p>Consent of child is required for adoption if child is over age 12 (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 22(a))</p> <p>Can enter into adoption agreement if child is under age 18 (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 23(3))</p>	<p>c. A-4.1 s. 18.1(a)(ii)</p> <p>Allows disclosure for medical reasons (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 42.2)</p> <p>Allows a reciprocal search if parents adopting parents and child approve, when child is adult. Can make an exception is bio parents are unavailable for disclosure/dead (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 49(all)), but director can withhold info if they deem it might be harmful in some way. (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1s. 50.6 &amp; 50.7)</p> <p>A minor can apply for an exception if they want to know confidential info again director has to deem it non-harmful to them (no age specified here) (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 51.1)</p>	<p>resident or under the guardian ship of the director of child welfare (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 10)</p> <p>Has to follow the Hague convention on inter-country adoption. (<i>Adoption Act</i>, R.S.P.E.I. 1988, c. A-4.1 s. 56.1)</p>	<p>First Nations band representative has to be heard in court. (R.S.P.E.I. 1988, c. C-5.1 s. 30.2)</p> <p>"preserving the cultural, racial, linguistic and religious heritage of the child" (R.S.P.E.I. 1988, c. C-5.1 s. 2(2)(i))</p> <p>All- band representatives or parent must be informed of all protection cases and court dates if child under 12. (R.S.P.E.I. 1988, c. C-5.1 s. 37.2)</p>
<p>NB <i>Family Services Act</i>, S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)</p>	<p>Change child's name only with the child's wishes –no age range (Giesbrecht, 2004, p. 187)</p> <p>Can change name, child's wishes need to be ascertained-court has to order it (S.N.B. 1980, c. F-2.2 s. 85(3)) &amp; over 12 needs the child's consent to change name (S.N.B. 1980, c. F-2.2 s. s. 85(5))</p>	<p>"Exceptional cases" can have family contact (Geisbrecht, 2004, p. 187)</p> <p>Cannot place a child except in immediate family without applying to minister first in case of familial adoption not in care. (S.N.B. 1980, c. F-2.2 s. 73(1) &amp; (3)) even if unborn, without application received 60 days in advance of the birth ( S.N.B. 1980, c. F-2.2 s. 73(2))</p> <p>but ward will be placed for adoption by child welfare and they</p>	<p>Allows child to appeal adoption order. (S.N.B. 1980, c. F-2.2 s. 89(2)(a))</p> <p>Adoption is closed and severs rights of access, unless court orders otherwise. (S.N.B. 1980, c. F-2.2 s. 85(2)(a))</p>	<p>Gives "non-identifying" information for both adult adoptees, adult siblings of adoptees and birth parents &amp; is the register (HRSDC, 2009)</p> <p>Can get non-identifying info if a minor and the biological parents have agreed, especially in medical cases. (S.N.B. 1980, c. F-2.2 s. 92(5))</p>	<p>Must abide by Inter-country Adoption Act. (S.N.B. 1980, c. F-2.2 s. 64)</p>	<p>Child maintains "aboriginal rights" says nothing about placing child in first nations home or home that matches culturally, says nothing about notifying a band. (S.N.B. 1980, c. F-2.2 s. 85(2)(c))</p>

		<p>can choose where- (S.N.B. 1980, c. F-2.2 s. 76(2))</p> <p>Adopting parent can apply for an openness agreement with relative or significant adult of child (S.N.B. 1980, c. F-2.2 s. 90.01(1))</p> <p>Ministry can assist in negotiating agreement. (S.N.B. 1980, c. F-2.2 s. 90.01(3)), &amp; child over 12 must consent to this agreement (S.N.B. 1980, c. F-2.2 s. s. 90.01(4))</p>				
<p>QC <i>Youth Protection Act</i>, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)</p> <p><i>Civil Code of Quebec</i>, S.Q. 1991, c. 64 (amended 2008, current version in force since Jan. 1, 2009)</p>	<p>Automatically assumes the adopted surname and given names unless the person being adopted requests otherwise ( no age limit on this ) (<i>Civil Code of Quebec</i>, S.Q. 1991, c. 64, Div II s. 576)</p>	<p>No information in <i>Youth Protection Act</i> about open adoptions, only tutorship's and having contact with immediate family (foster care??)</p> <p>Only closed adoptions seem to be allowed, (<i>Civil Code of Quebec</i>, S.Q. 1991, c. 64, Div IV s. 582), however, a minor 14 or older or a mature person can obtain information enabling them to find their parents if the parent consented. (<i>Civil Code of Quebec</i>, S.Q. 1991, c. 64, Div IV s. 583)</p> <p>Cousins &amp; 3<sup>rd</sup> degree relatives can adopt (Giesbrecht, 2004, p. 165)</p>	<p>Children can appeal decision (RSQ 1977c. P-34.1 s. 101)</p> <p>Child must be asked for consent to be adopted if the age of 10 and can refuse totally is over 14 plus (<i>Civil Code of Quebec</i>, S.Q. 1991, c. 64, Div I s. 549)</p> <p>Only closed adoptions seem to be allowed, (<i>Civil Code of Quebec</i>, S.Q. 1991, c. 64, Div IV s. 582)</p>	<p>Child can receive "summary of his or her antecedents" if over age 14. (RSQ 1977c. P-34.1 s. 71.4)</p> <p>Parents must authorize disclosure of their info in case of adoption, unclear if this includes past age of majority, parents can also authorize the disclosure of adopted child's info if child is under 14. (RSQ 1977c. P-34.1 s. 72.5)</p> <p>Can keep record for 5 yrs. Even if child has not been in care in the last 5 years or until age 8 – whichever is shorter.- but can extend this, doesn't say under what circumstances. (RSQ 1977 c. P-34.1 s. 37.4)</p>	<p>Ministry has to get involved in al inter-country adoptions uses inter-country adoption protocol and psych assessment. (RSQ 1977 c. P-34.1 s.71.4(2))</p> <p>Licenses adoption bodies (<i>Youth Protection Act</i>, 1977 RSQ c. P-34.1 s. 71.17) and provides regulations for their operations (RSQ 1977 c. P-34.1 s. 71.19 &amp; 20)</p> <p>Ministry can research families and request resources. -no mention of specific groups or special measures for placement (RSQ 1977c. P-34.1 s. 71.4(3))</p> <p>Must follow inter-country adoption guidelines (<i>Civil Code of Quebec</i>, S.Q.</p>	<p>Have to take into account "characteristics of child's cultural community in making decisions and the native community (RSQ1977 c. P-34.1 s. 2.4(5) and 2.4(5)(c))</p> <p>Agreement with first nations communities for child welfare services respecting this act.- especially mentions Cree (RSQ 1977c. P-34.1 s. 37.5), no other details for special provisions for adoption</p>

<p>ON <i>Child and Family Services Act</i>, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)</p>	<p>Child must be 12 yrs + to have a say in their name being changed ( Giesbrecht, 2004, p. 187)</p> <p>Can only be adopted if under age 16 or over 16 if still under control of parents and placed by CAS (R.S.O. 1990, c. C.11 s. 137(2)(all))</p> <p>A court may order adoption of 18+ "or b. "16 + and withdrawn from parental control" or another guardian (R.S.O. 1990, c. C.11 s. 146(3)(all)) - doesn't say why</p> <p>the child over 12 has to consent to a name change, but the court can overrule this. (R.S.O. 1990, c. C.11 s. 153(1))</p>	<p>"Exceptional cases" can have family contact , in kinship situations only (Giesbrecht, 2004, p. 189)</p> <p>Possible for a foster parent to apply to adopt (R.S.O. 1990, c. C.11 s. 144(1)(a))</p> <p>Crown wards can have openness agreement if there are no other access issues, if the child is over age (R.S.O. 1990, c. C.11 s. 145.1(1)) and</p> <p>only the court or CAS or the adopting parent can apply to terminate this openness agreement child has no say (R.S.O. 1990, c. C.11 s. 145.2 (1)) &amp;</p> <p>will only inform a child over 12 one of these applications to vary openness order has been made (R.S.O. 1990, c. C.11 s. 153.1(1), s. 153.1(6))</p> <p>153.2(1)a child has right to contest changing of openness order (R.S.O. 1990, c. C.11 s. 153.2(1)(a))</p> <p>Openness agreements made with foster parent, bio parent, band, siblings other extended family</p>	<p>Shall take into consideration the views of the child (R.S.O. 1990, c. C.11 s. 152.3(all))</p> <p>Closed adoptions normally (R.S.O. 1990, c. C.11 s. 162(2))</p> <p>-</p>	<p>1978 both parties had to apply to access records, 1988 only adoptee could apply and parent had to consent (Giesbrecht , 2004, p. 192)</p> <p>Court order to open records (, R.S.O. 1990, c. C.11 s. 162(2))</p> <p><i>The Freedom of Information and Protection of Privacy Act</i> does not apply to information that relates to an adoption. (R.S.O. 1990, c. C.11 s. 165(5))</p> <p>Can disclose un medical emergency , court order or (R.S.O. 1990, c. C.11 s. 180(2)(a))</p> <p>Or</p> <p>if required under the <i>Youth Criminal Justice Act</i> (R.S.O. 1990, c. C.11 s. 180(2)(b))</p> <p>Can disclose record of child under age of 16 with parent's consent to service provider (, R.S.O. 1990, c. C.11 s. 181(1))</p> <p>except</p> <p>the counselling record (R.S.O. 1990, c. C.11 s. 181(2),</p> <p>or</p> <p>if over age 16 child can consent (R.S.O. 1990, c. C.11 s. 181(3))</p> <p>Can disclose info to</p>	<p>1991, c. 64, Div I, s. 565)</p> <p>Cannot make an application to access birth parent if foreign adoption order (R.S.O. 1990, c. C.11 s. 160(1)(all))</p>	<p>CAS must apply to the first nations band and submit their care plan / adoption order idea. (R.S.O. 1990, c. C.11 s. 141.2(1))</p> <p>The first nations band can then decide the care plan, submit their own and has 60 days to do so and CAS cannot place child until that time is up. (R.S.O. 1990, c. C.11 s. 141.2(2))</p> <p>Have to send adopting record to registry for first nations (R.S.O. 1990, c. C.11 s. 162(3)(d))</p>
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		members (R.S.O. 1990, c. C.11 s. 153.6(all))		<p>a police officer if think the child may cause someone harm. (R.S.O. 1990, c. C.11 s. 182(1)(e))</p> <p>Can withhold Mental disorder records if deem it may be harmful to the client. (R.S.O. 1990, c. C.11 s. 183(2))</p> <p>Child over 12 has right to their records except counselling records and their parent/ guardian have right to their records if child is under age 16. (R.S.O. 1990, c. C.11 s. 184(1)(all)), but service provider may withhold assessments medical, psych and otherwise, counselling record if under 16 or even if over 16. (R.S.O. 1990, c. C.11 s. 185(all))</p>		
<p>MAN <i>Child and Family Services Act</i>, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)</p> <p><i>Adoption Act</i>, 1997 C.C.S.M., c. A2 (amended 2003, current version in force since Oct 9, 2008)</p> <p>Refers to <i>The Adoption Act (Child and Family Services Act</i>, 1985 C.C.S.M. c. C80 s. 7(1)(i))</p>	<p>Adopting parent gets to choose if child keep their name or changes to the adopting parent's surname <i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 30(3)</p>	<p>Foster parent can apply to adopt (<i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 41)</p> <p>Allows for open adoption agreements with child birth parents and siblings and other meaningful adults (<i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 33(1)(all))</p> <p>Consent of a child over 12 and their views are to be taken into consideration (<i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 33(3) and (4))</p>	<p>Person who has surrendered child will not be given notice of adoption application (<i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 16(4))</p> <p>Absolute termination of parental rights. (<i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 45(1))</p> <p>Allows for closed adoption, cessation of previous relationships (<i>Adoption Act</i>, 1997 C.C.S.M., c. A2 s. 31(1))</p>	<p>Adult has right to access own record (C.C.S.M. 1985 c. C80 s. 76(4)) but certain dates do not allow access (not listed) and also that the information about other people on the record is not available to client. (C.C.S.M. 1985c. C80 s. 76(5))</p> <p>Court can decide who can access records depending on how psychologically or physically damaging it could be. (C.C.S.M. 1985 c. C80 s. 76(6))</p> <p>can appeal this decision to withhold information (C.C.S.M.1985c.CC.c80.s.76(21))</p>	<p>Minister responsible for placing immigrant children within and outside of Canada or from other provinces. (C.C.S.M. 1985 c. C80 s. 83)</p>	<p>Can know/ associate with their band (Giesbrecht, 2004, p. 188)</p> <p>Community and first nations bands should be involved in decision making -must notify first nations band in decisions of permanent guardianship and placement &amp; if poss. Agency serving first nation should proceed (C.C.S.M. 1985c. C80 Declaration of Principles s. 10 &amp; 11)</p> <p>No order for permanent guardianship without person</p>

				Cultural, religious and linguistic heritage ( <i>Adoption Act</i> , 1997 C.C.S.M., c. A2 s. 3(f))		applying to first nations band (refers to private guardianship- doesn't define who specifically that would be) (C.C.S.M. 1985c. C80 s. 77(2))  Cultural religious and linguistic heritage ( <i>Adoption Act</i> , 1997 C.C.S.M., c. A2 s. 3(f))
AB <i>Child, Youth and Family Enhancement Act</i> , R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)	Child must be 12 yrs + to have a say in their name being changed (Giesbrecht , 2004, p. 187)  Surname of adopting parent becomes the child's surname, - unless the child is over age 12 and does not consent (R.S.A. 2000, c. C-12 s. 70(4) & 70(5))	Any adult can apply for permanent guardianship of a child already in care, if they have had the child for a month (R.S.A. 2000, c. C-12 s. 52(1)) BUT says the child has to be in continuous care of the person for 3 months. (R.S.A. 2000, c. C-12 s. 56(1))  Specifies the adoption take into consideration " the benefits to the child of maintaining, wherever possible, the child's familial, cultural, social and religious heritage" ( R.S.A. 2000, c. C-12 s. 58.1(d))	child over 12 must consent (R.S.A. 2000, c. C-12 s. 59(1)(b))  Child can be part of the hearing usually (R.S.A. 2000, c. C-12 s. 68(2))  Allows closed adoption and cessation of biological rights. (R.S.A. 2000, c. C-12 s. 72(1))	Can ask for adoption information if over age 18, biological parent cannot until 18 and 6 months (R.S.A. 2000, c. C-12 s. 74.2(2) & (3), but either party (if child is over age 18) can veto exchange of information (R.S.A. 2000, c. C-12 s. 74.2(4)),  Minister can still withhold info in veto if adopted child is over 18 and doesn't know they were adopted or if they deem it "detrimental" to them (R.S.A. 2000, c. C-12 s. 74.2(9)(all))	Consider cultural, familial and religious ties in adoption (R.S.A. 2000, c. C-12 s. 58.1(d))  Must be Canadian citizen or lawfully admitted to Canada to be adopted (R.S.A. 2000, c. C-12 s. 62(3) & must have parental information (R.S.A. 2000, c. C-12 s. 68(1)(a)(i))  Pre-existing relationships are not blocked unless people in adoption process-ask for it (R.S.A. 2000, c. C-12 s. 101)  Does not allow contact between adopting family and those giving child up for adoption form another country until all other requirements have been met for adoption or the people are family members already. (R.S.A. 2000, c. C-12 s. 103)  Inter-country adoption under the Alberta	Preservation of first nations cultural and heritage rights (R.S.A. 2000, c. C-12 s. 58.1(g))  Band counsel must be notified and involved in adoption hearing (R.S.A. 2000, c. C-12 s. 67(all))  Minister may release to over 18 adoptee information on their first nations background and original adoption order to prove Indian, Métis or Inuit ancestry (spells out groups) (R.S.A. 2000, c. C-12 s. 74.4(1) & (2))

					central authority, doesn't specify the Hague convention does say children 12 plus have right to counsel and consent sec. (R.S.A. 2000, c. C-12 s. 95(1) and (2)(all))	
<p>SK <i>Child and Family Services Act</i>, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)</p> <p>No mention of adoption in <i>Child and Family Services Act</i></p> <p><i>Adoption Act</i>, S.S. 1998, c. A-5.2 (amended 2009, current version in force since Aug 31, 2009)</p> <p><i>Children's Law Act</i>, S.S. 1997, c. C-8.2 (amended 2009, current version in force since Aug. 31, 2009)</p>	<p>-Court can change surnames and given names, (The Adoption Act, 1998.c-A5.2.2 (1).12-all) Unless the child 12 or over objects (The Adoption Act, 1998.c-A5.2.29(2)2</p>	<p>foster parent can apply for adoption?? Not clear says if child was placed with a guardian if the parents are dead (The Adoption Act, 1998.c-A5.2.13.2)</p> <p>Foster parent defined placement by someone who is not going to adopt child cannot adopt (S.S. 1989-90, c. C-7.2 s. 2(1)(j)(ii))</p> <p>-mentions simple adoptions interpretations "simple adoption order" means an order of adoption granted in a jurisdiction other than Saskatchewan that does not necessarily for all purposes: (a) terminate all the rights and responsibilities that exist at law between a child and the child's birth parents"(The Adoption Act, 1998.c-A5.2. 2)</p> <p>- appears the applicant can be anyone, but no direct reference to open adoptions(The Adoption Act, 1998.c-A5.2.10.2.a)</p> <p>- allows anyone to apply for custody or access, but no specific reference to family or open adoption(The</p>	<p>child over 12 who is a crown ward must consent (The Adoption Act, 1998.c-A5.2.4.1.b) &amp; has to have access to lawyer (The Adoption Act, 1998.c-A5.2.4.3.b.ii.B)</p> <p>-have to be a resident of sack to adopt crown ward (The Adoption Act, 1998.c-A5.2.8.1)</p> <p>-if parents/ adopting parents don't already know each other, information is "obliterated" or withheld from the file (The Adoption Act, 1998.c-A5.2.6)</p> <p>adoption orders cannot be contested in court once finalized. (The Adoption Act, 1998.c-A5.2.s.29.1.12) Unless file with court for grievance ( does not say child can do this ) (The Adoption Act, 1998.c-A5.2.41 all)</p>	<p>confidentiality, doesn't even say if adoptee/ parents who put child up for adoption can apply for records, says only at discretion of ministry is any info supposed to be shared.(The Adoption Act, 1998.c-A5.2.24. 4 all)</p>	<p>consideration of culture, language &amp; religion(The Adoption Act, 1998.c-A5.2.3.a &amp;c)</p>	<p>first nations bands to be notified and involved in all processes in cases where they have services be responsible for carrying out the child welfare act.(SS 1989-1990, cC-7.2s. 61 all)</p> <p>- consideration of culture, language &amp; religion (The Adoption Act, 1998.c-A5.2.3.a &amp;c)</p> <p>-must send a copy of the adoption order to the first nation band (The Adoption Act, 1998.c-A5.29(3).3.c)</p>

		<p>Children's Law Act, 1997.c-8.2.6.1. all)</p> <p>all adoptions are closed, an adoptive parent may apply to allow exchange of info with birth parents (The Adoption Act, 1998.c-A5.2.15.1 &amp; 2)</p>				
<p>BC</p> <p>Child, Family and Community Services Act RSBC 1996 (last amended march 21<sup>st</sup>, 2010 and came into force at this time), c.5</p> <p>Adoption Act 1996 RSBC.c.5</p>	<p>child must consent if 12 or over and must be consulted is age 7 or over(Adoption Act RSBC.c.5.s.36)</p>	<p>Allows open adoption (Giesbrecht, 2004, 188 &amp; 98) &amp; custom Adoptions (Giesbrecht, 2004, p. 156)</p> <p>- court may order family access (Adoption Act 1996, RSBC.c.5.38.2)</p> <p>- allows for custom adoptions under aboriginal traditions(Adoption Act 1996, RSBC.c.5.46.1)</p> <p>openness agreement to maintain links with family members and significant adults possible (Adoption Act 1996, RSBC.c.5.59- all) &amp; child must consent if mature enough to do so, no age on this one(Adoption Act 1996, RSBC.c.5.59.3)</p> <p>- parent or other family member can apply after the adoption for openness agreement(Adoption Act 1996,RSBC.c.5.60 - all)</p>	<p>child must consent if over 12 and opinion taken into consideration under 12(Adoption Act 1996 RSBC.c.5.6.1.e)</p>	<p>19+ can access adoption records, (adoptee) but either party can veto this (Bala, 2004, p. 193)</p> <p>- court order to access records (Adoption Act 1996 RSBC.c.5.43)</p> <p>- may disclose esp. to find first nations band access special monies for health and safety(Adoption Act 1996 RSBC.c.5.62 all)</p> <p>-adult over age 19 can apply for adoption records info (Adoption Act 1996 RSBC.c.5.63 all) But if there were any no-disclosure vetoes or no- contact orders then they cannot access them. (Adoption Act 1996 RSBC.c.5.s. 63.2)</p> <p>— adopted person can either grant disclosure at age 18 or refuse it completely at age 18(Adoption Act 1996 RSBC.c.5sec. 65 &amp; 66) - why can't they get their own records until age 19??</p>	<p>cultural considerations taken into account(Adoption Act 1996 RSBC.c.5. 3.c)</p> <p>- all director must approve child brought into BC for adoption and keep records (Adoption Act 1996 RSBC.c.5.48.) Except in ) is they are a ward from another province (not clear what this means.)(Adoption Act 1996 RSBC.c.5.s.49. b</p> <p>-abides by Hague conventions (Adoption Act 1996 RSBC.c.5. sec 50 to 57) and must disclose personal info to adult adoptee-(Adoption Act 1996 RSBC.c.5.s. 56)</p>	<p>Can know/ associate with their band (Giesbrecht, 2004, p. 188)</p> <p>- first nations involved, outlines esp. for specific bands (Nisga'a) and if under 12 if child self identifies as Aboriginal (under definitions section(RSBC 1996, c.46.3.b &amp; 3.2)</p> <p>- must consult with aboriginal band first about placement (RSBC 1996, c.46.1.1) (Adoption Act 1996 RSBC.c.5.s.7.1 all) Unless the child over 12 or parent of child under 12 does not want this consultation(Adoption Act 1996 RSBC.c.5s.7.2)</p> <p>- maintains aboriginal rights even if adopted (Adoption Act 1996 RSBC.c.5.s.37.7)</p>
<p>YU</p> <p>Child and Family Services Act . 2008) RSY C-22</p>	<p>-name change request is allowed by adoptive parent (RSY 2008 C-22.s. 124.1)</p>	<p>parent in some cases can select adoptive parent (RSY 2008 C-22.s. 97.b)</p> <p>-134.1 custom</p>	<p>- access to parent ceases after adoption order is finalized (RSY 2008 C-22.s. 126)</p>	<p>- child identified by birth registration number only (RSY 2008 C-22.s. 129.4)</p> <p>files are sealed no access except under</p>	<p>must get consents from the jurisdiction of which the child was a resident to adopt in the</p>	<p>director of child welfare has to consult &amp; plan the adoption with first nations of the child before</p>

<p>-can adopt adults (RSY 2008 C-22.s. 130 all)- does this apply to over age 16?</p>	<p>But a child over age 12 has to consent (RSY 2008 C-22.s. 124.2.a) and the views of a child age 7 or over need to be taken into account.(RSY 2008 C-22.s. 124.2.b)</p>	<p>adoptions allowed- no details of what this means (RSY 2008 C-22.s. 137 all)</p> <p>“openness agreement” can be made with biological parent, biological relative, adoptive parent another significant adult – if the bio parents agree(RSY 2008 C-22.s. 137.2.a)</p> <p>- child over 12 must also agree to openness agreement(RSY 2008 C-22.s. 137.3)</p> <p>allows for any of the above people to apply for an openness agreement post adoption (RSY 2008 C-22.s. 138 all) &amp; both parties must then register with the director and they can facilitate this- whether its partial disclosure or full information disclosure(RSY 2008 C-22.s. 138.2)</p>		<p>division 6 of the federal privacy act (RSY 2008 C-22.s. 132.3)</p> <p>-adoptive parents and biological parents normally cannot know each other/ share information(RSY 2008 C-22.s. 129.1)</p> <p>-if adopted under the Hague convention the adoptee can know their info as an adult only(RSY 2008 C-22.s. 136.4)</p> <p>can only apply for personal information over the age of 19 (RSY 2008 C-22.s. s. 140) &amp; allows adoptee to buy a copy of their files (RSY 2008 C-22.s. 140.2) but this is subject to disclosure vetoes which may be old court orders no allowing them to Also cannot access records if there was a no- contact order. Or to have some non-identifying info or none at all. These stay into effect until 2 yrs after the parent’s death. any information.(RSY 2008 C-22.s. 143 all)</p>	<p>Yukon(RSY 2008 C-22.s. 135.2.b )</p>	<p>adoption (RSY 2008 C-22.s. 98.2.a) unless child over 12 objects (RSY 2008 C-22.s. 98.3.a) Or the parent objects. (RSY 2008 C-22.s. 98.3.b)</p>
<p>NVT/ NWT</p> <p>NWT is same Legislation. as NVT)</p> <p>Child and Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c. 13</p> <p>Adoption Act S.N.W.T. 1998,c.9 (last amended 2004)</p>	<p>-No info, child welfare act</p> <p>-- name becomes name of adopting parent(s)(Adoption Act S.N.W.T. 1998,c.9.35)</p>	<p>-can be adopted by a family member (Adoption Act S.N.W.T. 1998,c.9,sec.101)</p> <p>-custom Adoptions (Giesbrecht, 2004, p. 156) &amp;</p> <p>-foster home cannot become adopted home, does this include kinship foster home?(S.N.W.T. 1997,c.13. 62.3)</p> <p>-- Adoption Act S.N.W.T. 1998 (last updated 2008),c.9.36.2-</p>	<p>can a child over 12 apply for the termination of permanent order, if it’s an adoption order??(S.N.W. T. 1997,c.13.49.1)</p> <p>- over or under 12 child’s wishes ascertained(Adoption Act S.N.W.T. 1998 c.9.7.4 &amp;5)</p> <p>no adoption of a child over or under 12 unless they want</p>	<p>No info child welfare act</p> <p>- no disclosure without order of the court, records kept for 119 yrs after the person was born!(Adoption Act S.N.W.T. 1998,c.9.s.50.2)</p> <p>- cannot see records until age of majority (Adoption Act S.N.W.T. c.9.64.1.a) except if person is suspected of being aboriginal or health and safety issues warrant (Adoption</p>	<p>No info child welfare act - adoption order from any other province, territory. Country after 1998 has same effect in NWT- (Adoption Act S.N.W.T. 1998 c.9.39)</p>	<p>respect linguistic, cultural and religious upbringing/needs ( doesn’t specify adoption placement-general tenant.)(S.N.W.T. 1998,c.9,Sec.3. &amp; 7.2 all)</p> <p>- Cultural, linguistic, aboriginal heritage in consideration(Adoption Act S.N.W.T. 1998 c.9.3.c)</p>

refers to Adoption Act (S.N.W.T. 1998,c.9,50)		director of child welfare may grant access to kin after adoption.	it(Adoption Act S.N.W.T. 1998 c.9 .18.3 &4) &	Act S.N.W.T. 1998,c.9.67)		- has to consult with aboriginal band(Adoption Act S.N.W.T. 1998,c.9.18(6) &.
<b>Appendix B. 2. b. Adoption and Family Access</b>						
48.1.b) -  -can adopt at age 18- (Adoption Act S.N.W.T. 1998,c.9.28			lawyer(Adoption Act S.N.W.T. 1998 c.9. 23)	other family have right to refuse disclosure of information(Adoption Act S.N.W.T. 1998,c.9)		(Adoption Act S.N.W.T. 1998,c.9.7 only with the consent of the child over 12 or the parent
Federal an identity as an individual and through family (Constitution Act, 1982, Schedule B. 2.d)						
UNCRC says children have rights to: <ul style="list-style-type: none"> <li>• an identity as an individual and through family (UNCRC, 1989, family- A.9.2 &amp;3) (identity- A7.1, A. 7.2, A8.1 &amp;2, A.21.a, A.22.2)</li> <li>• a nationality (A.7.1 &amp;2; A.8.1),</li> <li>• know one's birth parents and family (A.21.a, A.22.2)</li> </ul>						

Province	Kinship agreement-placement	Non access custody	Other cultural adoption/placement and rules/preferences	Family Access for inter country adoptees/ new Canadians in care	First nations contact with Band
<p>NFL/LAB Child Youth and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)</p>	<p>Kinship ties are "integral" to the child's dev encourages extended family involvement in care (SNL 1998 c. C-12.1. 7(f); SNL 1998 c. C-12.1 9(f) ; SNL 1998 c. C-12.1. 62.1)</p> <p>Shall look at placing within the family first or with someone the child considers to be significant (SNL 1998 c. C-12.1 s. 62.2)</p> <p>Placing possible with non-custodial parent (SNL 1998 c. C-12.1 s. 62.3)</p> <p>Judge may grant access to significant family member or other in the case of placement (SNL 1998 c. C-12.1 s. 33.6; SNL 1998 c. C-12.1.34.4)</p>	<p>Can prevent parent/ family member from accessing a child for up to 6 months then has to be reviewed if the child is deemed at risk (SNL 1998 c. C-12.1 s. 21.4)</p>	<p>Cultural heritage shall be preserved and connections kept. (SNL 1998 c. C-12.1 s. 7(g); SNL 1998 c. C-12.1. 9(c))</p>	<p>Nothing in act</p> <p>An out of province order has the same effect as it did elsewhere unless a judge orders otherwise. (SNL 1998 c. C-12.61)</p>	<p>Nothing in act &amp; nothing in Labrador Inuit Land Claims Agreement Act</p>
<p>NS Children and Family Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)</p>	<p>"special relative" or "non- relative" care (McLaurin &amp; Bala, 2004, p. 125)</p> <p>Maintain regular contact with parent/ guardian (S.N.S 1990 c.5 s. 20(a &amp;b); &amp; if in permanent custody (S.N.S 1990 c.5 . 39[8])</p> <p>-if in temporary custody- try to place siblings in the same home. (S.N.S 1990 c.5 s. 44(3)[a])</p> <p>-if in permanent custody (S.N.S 1990 c.5 s. 42[3])</p> <p>-if in temporary custody consider placing child with</p>	<p>No access unless over age 12, not being adopted or court discretion (Bernstein &amp; Reitmeier, 2004, p.97)</p> <p>Allows judge to make a no- access order on guardian or parent if child is in danger. (S.N.S 1990 c.5.30(2)[a &amp; b])</p> <p>Access to parent of guardian unless considered dangerous &amp; access by other adults to child that are significant allowed.(S.N.S 1990 c.5. 44(1)[a&amp;b])</p>	<p>Preservation of cultural linguistic and racial heritage promotes best interests of child. (S.N.S 1990 c.5 Preamble of Act)</p> <p>-if in permanent custody cultural, racial and linguistic heritage taken into consideration in placement (S.N.S 1990 c.5 . 3(2)[g]; S.N.S 1990 c.5 .20[d])</p> <p>&amp; (if in temporary custody-same considerations (S.N.S 1990 c.5 s.. 39(8)[c]; S.N.S 1990 c.5 s.. 44(3)[c]) cultural, racial and linguistic heritage taken into consideration in placement &amp; same considerations</p>	<p>Allows with permission to take the child out of province to be with family member to be adopted by family member. (S.N.S 1990 c.5 s. 71(1)[b])</p>	<p>Must notify Mi'kmaq Family &amp; Child Services &amp; Band (Sinclair, et. Al, 2004, 230)</p> <p>Mi'kmaq Family and Child services can become the substitute agency for placement and hearing proceedings if the child is first nations (any) or Mi'kmaq. (S.N.S 1990 c.5 s. 36[3])</p> <p>Has to notify</p>

	relative, significant adult, neighbour or member of community for permanent and temporary custody orders (S.N.S 1990 c.5. 44(3)(b))		<p>above if in permanent custody ( S.N.S 1990 c.5. 3(2)(h); S.N.S 1990 c.5 . 20(e) ; S.N.S 1990 c.5 . 39(8)(d))</p> <p>-if in temporary custody- Religious issues taken into consideration in placement. (S.N.S 1990 c.5 s. 44(3)(d))</p> <p>Permanent placement preference for family of same faith. (S.N.S 1990 c.5 . 47(4))</p> <p>Permanent custody preference for family of same cultural race and language. (S.N.S 1990 c.5. 47(5))</p>		<p>the Mi'kmaq Family and Child services 15 days before adoption order is finalized says nothing about band access. (S.N.S 1990 c.5 s. 68(11 &amp; (12); S.N.S 1990 c.5. 78(4))</p>
<p>PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)</p>	<p>Can place apprehended child in custody of extended family (R.S.P.E.I. 1988, c. C-5.1. 28[2]; R.S.P.E.I. 1988, c. C-5.1 31[8])</p> <p>Allows temp custody access to parent or significant other. (R.S.P.E.I. 1988, c. C-5.1. 38(4)(a))</p>	<p>Permanent custody give director right to consent for adoption with or without parent's consent. (R.S.P.E.I. 1988, c. C-5.1 s. 21[1] &amp; R.S.P.E.I. 1988, c. C-5.1 .38[5])</p>	<p>Preservation of cultural , linguistic, racial and religious background. (Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 Preamble)</p> <p>Best interests of the child must take into account cultural, linguistic, religious and racial background of the child. (R.S.P.E.I. 1988, c. C-5.1. 2(1)(i))</p>	Nothing in act.	<p>Definition of aboriginal extends past status Indian definition to one where the child can be or even identify with being First Nations. (R.S.P.E.I. 1988, c. C-5.1. 1(a){all})</p> <p>Best interests includes preserving First Nations heritage. (R.S.P.E.I. 1988, c. C-5.1. 2(j))</p> <p>First Nations band representative can be present at hearing for placement decisions (R.S.P.E.I. 1988, c. C-5.1. 30(2)) &amp; gives band 10 days notice to appear at protection hearing (R.S.P.E.I. 1988, c. C-5.1. 32{all}; R.S.P.E.I. 1988, c. C-5.1. 35(1)(b); R.S.P.E.I.</p>

					1988, c. C-5.1. 37(2)[all])  Plan of care has to be developed with representative from the band (R.S.P.E.I. 1988, c. C-5.1. 37[4])
NB <i>Family Services Act</i> , S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)	Kinship foster & adoptive care (MacLaurin & Bala, 2004, p. 125; HRSDC, 2009)  Recognizes “best interests” as including relationship with siblings, grandparents and guardians (S.N.B. 1980, c. F-2.2. 1[d])  Allows the minister to remove offending adult from the home and allow the child to remain in the home. (S.N.B. 1980, c. F-2.2. 33[a & b])  - minister has to consider wishes of child and parent in placement decision (S.N.B. 1980, c. F-2.2. 45[2])  Allows foster parents to be considered for full custody ( S.N.B. 1980, c. F-2.2. 46[1])  Allows for joint custody of the child with another (S.N.B. 1980, c. F-2.2. 129[2 & 3])	Right to access even after Adoption (Bernstein & Reitmeier, 2004, P.98)  Allows for prohibition of contact if the person is not “in the child’s best interest” BUT Minister with full custody of child, shall allow access to child and parent (S.N.B. 1980, c. F-2.2. 13)  UNLESS the best interests test deems it would be dangerous. (S.N.B. 1980, c. F-2.2. 48[1])  States the minister can arrange for periodic contact between child in custody of CAS and the parent. (S.N.B. 1980, c. F-2.2. 48[1] ; S.N.B. 1980, c. F-2.2. 56[3])  Allows for parental involvement in care plan in perm. Custody and allows for access to child while in child welfare custody(S.N.B. 1980, c. F-2.2 s. 55[4 &4(b)])  -grants right of access of parent to child being adopted (S.N.B. 1980, c. F-2.2. 75(2)[1]  - prevents right of access if child is	“best interests” includes maintaining cultural and religious heritage (note not language, in the only bilingual province) (S.N.B. 1980, c. F-2.2. 1[g])  Minster must take care of child’s cultural and religious needs (S.N.B. 1980, c. F-2.2. 45(3)[a])	Must follow Inter-country adoption act. (S.N.B. 1980, c. F-2.2. 65)  - child maintains their cultural rights (S.N.B. 1980, c. F-2.2 s. 85[2])  Court may decline to act on its jurisdiction over custody/ access to a child if it deems it would be in the best interest of the child to be returned and this process done within their jurisdiction (S.N.B. 1980, c. F-2.2. 130(5) ; S.N.B. 1980, c. F-2.2. 130(3)[2])  Appears that the court may rule for access custody to family if it has been applied for through another provincial court and does not violate the rules of this act/ province “extra provincial court” what does this mean does this include other countries? (S.N.B. 1980, c. F-2.2. 130(2)[1])	Child maintains their cultural First Nations rights (S.N.B. 1980, c. F-2.2 s. 85[2])

		<p>adopted (S.N.B. 1980, c. F-2.2 s. 85(2)[a])</p> <p>Allows for access of parents and other people in child's life subject to terms of the court (S.N.B. 1980, c. F-2.2. 129[3])</p> <p>Allows for cutting off of access if parent is deemed dangerous (S.N.B. 1980, c. F-2.2 .132 [all])</p>			
<p>QC Youth Protection Act, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)</p>	<p>Specified foster care (MacLaurin &amp; Bala, 2004, p.125)</p> <p>Nothing in act</p>	<p>Refers to maintaining links with family- esp. grandparents and parents or other extended family (RSQ 1977 c. P-34.1. 4)</p> <p>Allows emergency placement with extended family (RSQ 1977c. P-34.1. 46)</p>	<p>Nothing in act</p>	<p>Allows the Minister to help with reunions of children adopted from places outside of Qc and they are domiciled in Qc. (RSQ 1977c. P-34.1 . 71.4(3))</p>	<p>Native communities shall have their own youth protection system with the same powers as as given in this act either by a rep of the band an agency created for the band/ community (RSQ 1977c. P-34.1. 37.5) doesn't specify here adoption or family contact or which kids are referred &amp; why</p>
<p>ON Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)</p>	<p>Consider placement with family relative or neighbour first. No actual reference to "kinship care" (R.S.O. 1990, c. C.11. 57[4])</p>	<p>Court ordered exception (MacLaurin &amp; Bala, 2004, p. 97)</p> <p>Court makes an order for access to all other persons in the child's life before the no-contact/ custody order was made (i.e. for offending parent) ( R.S.O. 1990, c. C.11. 59[1.2])</p> <p>Court will not vary/ break access to crown wards unless the relationship is not beneficial to the child or it might hinder their chances for adoption</p>	<p>Take into consideration cultural traditions and identity in placement (R.S.O. 1990, c. C.11. 56[f])</p> <p>French language services have to be provided (R.S.O. 1990, c. C.11. 2[1])</p>	<p>Nothing specifically in the act regarding family contact with immigrants/ refugee children</p>	<p>place crown ward with extended family, within band or with another first nations band/ family (R.S.O. 1990, c. C.11. 61(1)[d])</p> <p>The child should be placed with extended family band within nation or with another first nations family (R.S.O. 1990, c. C.11. 57(5)[all])</p>

		<p>(R.S.O. 1990, c. C.11. 59(2.1)[all])</p> <p>Court can order contact even if no openness agreement exists (R.S.O. 1990, c. C.11 s. 59[4])</p> <p>Allows for review of no- access order (R.S.O. 1990, c. C.11. 59.1)</p> <p>Court may order supervision if a parent has committed an offense of violence against the child or other parent under the Criminal Code (R.S.O. 1990, c. C.11. 59.2)</p> <p>-child has the right to receive regular visits from family and communicate with them (R.S.O. 1990, c. C.11. 103(1)[a]) UNLESS they are a crown ward in which case they have no right to this without an openness agreement in effect. (R.S.O. 1990, c. C.11. 103[2])</p>			
<p>MAN Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)</p>	<p>Definition of family includes uncles aunts, sibling and grandparents (C.C.S.M. 1985c. C80 . 1[1])</p>	<p>No Access order are for 6 months (C.C.S.M. 1985c. C80 s. 20[3])</p> <p>Agency decided access to children in the case of a permanent order (C.C.S.M. 1985c. C80 s. 39[3]) &amp; parents can apply to court to contest decision (C.C.S.M 1985. c. C80. 39[4]) (does not mention if children can contest the order) &amp; judge can alter decision (C.C.S.M. 1985c. C80. 39[5])</p> <p>no access if application for adoption has been made (C.C.S.M. 1985c. C80 .39(6) &amp; if application has</p>	<p>Best interest includes considering child's cultural, linguistic and racial heritage (C.C.S.M. 1985c. C80. 2(1)[h])</p> <p>Provide services which respect cultural and linguistic heritage of children and families (C.C.S.M. 1985c. C80. 7(1)[m])</p>	<p>Manitoba supports parental rights granted in other countries or decisions made on placements from other countries (C.C.S.M. 1985 c. C80 s. 82[1 &amp; 2]), with the exception of sale of children (C.C.S.M1985. c. C80 s. 84[all])</p> <p>Minister responsible for placing foreign children (C.C.S.M. 1985c. C80. 83), nothing about family access</p>	<p>Communities have the right to participate in child welfare care, First Nations band have the right to involvement / provision of their own services to preserve culture/status (C.C.S.M. 1985 c. C80 Declaration of Principles s. 10 &amp; 11)</p> <p>Best interest includes considering child's cultural, linguistic and racial heritage (C.C.S.M. 1985c. C80 .</p>

		<p>been denied have to wait another year to reapply (C.C.S.M. 1985c. C80. 44[5]) -applies to parents- not clear if it means the rest of the family</p> <p>Allows access applications by family and other sign adults (C.C.S.M. 1985c. C80. 78(1)(all); C.C.S.M. 1985c. C80. 78[2])</p> <p>Child over 12 can apply , guardian, other relative or other person (C.C.S.M. 1985 c. C80. 78(3)[all])</p> <p>Spells out children can have supervised/ unsupervised access, receive communications, gifts, go to activities or maybe just pictures. Depends on the circumstance (C.C.S.M. 1985c. C80. 78(4)[all])</p> <p>Favours grandparents, but allows for others too. (C.C.S.M. 1985 c. C80 . 78(4.2)[c])</p>			2(1)(h))
<p>AB Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)</p>	<p>Temporary orders can be made with family or sign others can include visits (R.S.A. 2000, c. C-12. 14[1 &amp; 2]), AND child has to agree (R.S.A. 2000, c. C-12. 14[3]) Doesn't specifically mention kinship agreements.</p> <p>Opinion of the child has to be taken into account. (R.S.A. 2000, c. C-12. 29[d])</p> <p>Remove offending adult not child. (R.S.A. 2000, c. C-</p>	<p>-allows for access to guardian or sig other if the child is in temporary or permanent custody and also says the child must consent at age 12 (R.S.A. 2000, c. C-12 s. 31[4 &amp; 5]; R.S.A. 2000, c. C-12.34[1]), and the child over 12 must consent (R.S.A. 2000, c. C-12. 34[9])</p> <p>Allows access for visits while in custody (R.S.A. 2000, c. C-12. 9[a])</p> <p>A child over 12 has to consent or guardian and</p>	<p>Person in charge of the child must try to teach them about their familial, cultural, spiritual heritage. (R.S.A. 2000, c. C-12. 2[n])</p>	<p>Child over 12 must agree to adoption (R.S.A. 2000, c. C-12 . 95(2)(e)[all])</p> <p>Alberta can keep or terminate pre-existing relationships after adoption order is in effect- only if applied for &amp; the required consents are given (R.S.A. 2000, c. C-12 . 101) (not clear by who)</p> <p>No contact with parents giving child up for adoption, unless takes place within the family.</p>	<p>Has to inform and involve the band whether the child is a resident or not of service provision and involve them. (R.S.A. 2000, c. C-12 . 107[1 &amp; 2])</p> <p>Adopting parent must inform the child they are First Nations and take any steps necessary to make sure they have access to their rights as First</p>

	<p>12. 29(f))</p> <p>2(h) try to refer to local community service.(R.S.A. 2000, c. C-12 . 2[h])</p> <p>Place as close to home community as possible. (R.S.A. 2000, c. C-12 s. 2[j &amp; ii])</p>	<p>director (R.S.A. 2000, c. C-12 . 55(1)[all])</p> <p>Court may make recommendation concerning access. In permanent guardian ship order (R.S.A. 2000, c. C-12. 56[1])</p> <p>“fathers of an unborn child to a single mother cannot take steps to claim paternity” and therefore cannot easily adopt the child (Giesbrecht, 2004, p. 180)</p>		<p>(R.S.A. 2000, c. C-12 . 103[all])</p>	<p>Nations. (R.S.A. 2000, c. C-12 s. 107[5])</p>
<p>SK Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)</p>	<p>Family should be preserved and supported and child not removed if at all possible (S.S. 1989-90, c. C-7.2 . 3 &amp; 4[g])</p> <p>Place with extended family as first consideration or (S.S. 1989-90, c. C-7.2. 53[a]), or maintain child in environment consistent with the child’s cultural background (S.S. 1989-90, c. C-7.2. 53[b])</p>	<p>No contact orders are 6 months if a person/ parent is deemed to be dangerous to the child (S.S. 1989-90, c. C-7.2. 16[3])</p> <p>Have 60 days to make order for protection (S.S. 1989-90, c. C-7.2. 30(1)[all])</p> <p>15 days before no access is up can apply for another 6 months to the court ( S.S. 1989-90, c. C-7.2. 16[6] AND maximum is 24 months unless person is thought to be the cause of the child’s need for protection includes 16 &amp; 17 yr olds (S.S. 1989-90, c. C-7.2. 16[8 &amp;9])</p> <p>Any person in the order can apply to appeal (S.S. 1989-90, c. C-7.2 s. 16(5)[all])</p> <p>If child is apprehended judge might grant access. (S.S. 1989-90, c. C-7.2. 17[6])</p>	<p>Have to take into account the child’s cultural &amp; spiritual needs (S.S. 1989-90, c. C-7.2. 4[c])</p> <p>Minister establishes regional family review boards made up of members who are representative of the community\ “parenting standards”- doesn’t refer specifically to cult or religion (S.S. 1989-90, c. C-7.2. 40[1])</p> <p>Try to place child in home consistent with their cultural background (S.S. 1989-90, c. C-7.2. 53[b])</p>	<p>Minister can enter into agreements with anyone outside of province (does this also mean other country?) to carry out their duties (S.S. 1989-90, c. C-7.2 . 59)</p> <p>Can transfer responsibility of child care and custody from outside of Canada or other provinces to Saskatchewan (S.S. 1989-90, c. C-7.2 s. 60(1)[a &amp; b]) AND after that time this act applies (S.S. 1989-90, c. C-7.2 . 60[3]) - so not clear if kids can have family access outside of SK, doesn’t specify</p> <p>If child was in care and no custody access in another country same applies if their case is transferred to SK. (S.S. 1989-90, c. C-7.2. 61[1])</p>	<p>Have to notify band 60 days in advance of hearing and chief to be present at court hearings on protective cases (S.S. 1989-90, c. C-7.2. 23(1)[b])</p> <p>Have to notify band AND also have to have a band representative present (S.S. 1989-90, c. C-7.2 s. 37[10 &amp; 11])</p> <p>- Band member or someone who is entitled to band membership can be considered to have “sufficient interest in the child” and apply to be part of the hearing (Child and Family Services Act, S.S. 1989-90, c. C-7.2 s. 23(1)(b)[all]) AND can enter into</p>

					agreements with bands and transfer some power to band to exercise this act (S.S. 1989-90, c. C-7.2 . 61[1])
BC Child, Family and Community Services Act RSBC 1996(last amended march 21 <sup>st</sup> , 2010 and came into force at this time), c.5	kinship ties and ties to family should be preserved in adoption if possible(RSBC 1996, c.5.2[e]) PLACEMENT doesn't spec. Adoption  -- must give priority to placement with a family member or relative(RSBC 1996, c.5.71[2]),  Placement preference where they can have contact with family, with siblings, can remain at the same school (RSBC 1996, c.5.71[a-c].	child must consent if over 12 and opinion taken into consideration under 12 (RSBC.1996c.5.6.1 .e)-	cultural, racial and religious services should be provided (RSBC 1996, c.5.3[c]) AND community involvement in support/ planning with family (RSBC 1996, c.5.2[e])  best interests of the child include cultural racial and religious heritage( RSBC 1996, c.5.4.1[e])	any order made in another jurisdictions by a court/ competent authority is valid in BC.(RSBC 1996, c.5.100[all])	first nations identity preserved if possible(RSB C 1996, c.5.2[f])  aboriginal communities involved in decision making on placement (RSBC 1996, c.5.3[b]) –( UT doesn't refer to adoption  placement preference- with extended family with another first nations family(RSBC 1996, c.5.71(3) a &b)
YU Child and Family Services Act . (2008) RSY C-22	parent in some cases can select adoptive parent (RSY 2008 C-22. 97.b)	- access to parent ceases after adoption order is finalized as do other orders of access made in this jurisdiction or any other (RSY 2008 C-22.126)	- child must consent if over 12 and opinion taken into consideration under 12 (Adoption Act 1996 RSBC.c.5.6.1.e)	-any adoption order made outside in competent jurisdiction holds here (RSY 2008 C-22.133) - nothing spec. About family access -if adopted under the Hague convention the adoptee can know their info as an adult only(RSY 2008 C-22.136.4)	- director of child welfare has to consult & plan the adoption with first nations of the child before adoption(RS Y 2008 C-22. 98.2.a) UNLESS child over 12 objects or the parent objects. (RSY 2008 C-22. 98.3.a &b)
NVT/NWT  NWT is same Legislation. as NVT) Child and Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15 <sup>th</sup> , 2007), c. 13	Extended family and parents opinions should be considered in all decisions (S.N.W.T. 1997 .c.13.2[i])  Children should remain within the extended family (S.N.W.T. 1997 .c.13.2.1)	-under directors care only until age 16 unless adopted ( S.N.W.T. 1997 .c.13. 48.1[all])  - extensions may be granted until age??? ( S.N.W.T. 1997 .c.13.48.2)	Recognize child's cultural religious linguistic and community upbringing. (S.N.W.T. 1997 ,c.13.3[c]) respect linguistic, cultural and religious upbringing/needs S.N.W.T. 1997,c.13.3; S.N.W.T. 1997,c.13.7.2 [all]) (doesn't specify	-cannot act on a child domiciled outside of the NWT// NVT ( S.N.W.T. 1997,c.13.75)  - adoption order from any other province, territory. Country after 1998 has same effect in	--community counsel that decides what happens with children in care ( S.N.W.T. 1997,c.13.58. 1 [all]) AND- community is limited to exercises care

<p>(S.N.W.T. 1997, c. 13. 48.1.b) - refers to Adoption Act S.N.W.T. 1998,c.9 (last amended 2004)-</p>	<p>- child welfare act -foster home cannot become adopted home(S.N.W.T. 1997,c.13. 62.3) - does this include kinship foster home?  -can adopt at age 18- (Adoption Act S.N.W.T. 1998 c.9.28)</p>		<p>adoption placement-general tenant.)  - Cultural, linguistic, aboriginal heritage in consideration (Adoption Act S.N.W.T. 1998 c.9 .3.c)</p>	<p>NWT (Adoption Act S.N.W.T. 1998 c.9.39)</p>	<p>over aboriginal children (S.N.W.T. 1997,c.13.58. 2)  -each community has a role in supporting best interests of child/ family (beginning of act S.N.W.T. 1997,c.13. ix)  -all measures should promote family and community integrity (S.N.W.T. 1997,c.13.2.f)  - Adoption Act Cultural, linguistic, aboriginal heritage in consideration (S.N.W.T. 1998 c.9 .3.c)</p>
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Appendix B 2.c. Accessing Culturally Appropriate Care					
Province	Provisions for First Nations	Provisions for Religious groups	Children's ability to Opt out of religious or minority care	Actual number of agencies service options- religious	Actual number of agencies service options-  First Nations= 125 agencies in Canada (Bennett, Blackstock, De La Ronde, 2005, no p. #)
NFLD/LAB Child Youth and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)  Adoption of Children Act SNL 1999 A-2.1 (last amended 2009, current version in force since Oct. 1, 2009)	If there is any inconsistency with the child welfare act and the Labrador Inuit Land Claims act the later takes precedent. (SNL 1998 c. C-12.1. 2.1 ) AND The importance of preserving cultural heritage ( Adoption Act SNL 1999 A-2.1.3(f); ( Adoption Act SNL 1999 A-2.1.3.3)  cultural heritage of child shall be preserved & Access to family links (SNL 1998 c. C-12.1 s. 9[f & g]) AND consideration of their regional & social environment as paramount in placement (SNL 1998 c. C-12.1 s. 9(h) AND importance of preserving cultural heritage (Adoption Act SNL 199 A-2.1 s. 32[f])	Nothing in act	Nothing specific  Allows a child to express their views in a hearing. (SNL 1998 c. C-12.1 s. 53[d])	Nothing in act	No agencies mentioned -community workers are employed to assist social workers in child protection cases with Innu through the Labrador/Grenfell Regional Health Authority (Gough, 2007, 49E, p.4)
NS Children and Family Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)	Mi'kmaq Family and Child services can become the substitute agency for placement and hearing proceedings if the child is first nations (any) or Mi'kmaq (S.N.S 1990 c.5 36.3)  Preservation of cultural linguistic and racial heritage promotes best interests of child (S.N.S 1990 c.5	Court can determine the child's religious faith if any, for placement reasons. (S.N.S 1990 c.5 .50.2)  Permanent placement preference for family of same faith. (S.N.S 1990 c.5 . 47.4)	Nothing in act	Nothing in act	Mi'kmaq Family and Child services can become the substitute agency for placement and hearing proceedings if the child is first nations (any) or Mi'kmaq (S.N.S 1990 c.5 . 36.3)  Same agency also provides services to Métis, Inuit and Innu children in care in NS, and can follow off-

	<p><b>Preamble of Act)</b></p> <p>-For children in permanent custody cultural, racial and linguistic heritage taken into consideration in placement (S.N.S 1990 c.5 . 3.2(g); S.N.S 1990 c.5. 20[d])</p> <p>For children in temp custody-cultural, racial and linguistic heritage taken into consideration in placement ( S.N.S 1990 c.5 . s. 39.8(c); S.N.S 1990 c.5 44.3[c])</p>				<p>reserve children for 3 months before transferring to local agency ( Gough, 2006, 43E, p.3)</p>
<p><b>PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)</b></p>	<p>If the child is aboriginal, the importance of preserving the cultural identity of the child (R.S.P.E.I. 1988, c. C-5.1 . 2[j])</p> <p>Definition of aboriginal extends past status Indian definition to one where the child can be (R.S.P.E.I. 1988, c. C-5.1. 1[a]) OR even identify with being First Nations. (R.S.P.E.I. 1988, c. C-5.1. s. 1[4])</p> <p>Best interests includes preserving first nations heritage. (R.S.P.E.I. 1988, c. C-5.1. 2[k])</p> <p>First Nations band representative can be present at hearing for placement decisions (R.S.P.E.I. 1988, c. C-5.1 . 30[2]) AND gives band 10 days notice to appear at protection hearing ( R.S.P.E.I. 1988, c. C-5.1 s. 32(all); R.S.P.E.I. 1988, c. C-5.1 35(1)(b); R.S.P.E.I. 1988, c. C-5.1.37(2)[all])</p> <p>Plan of care has to</p>	<p>Preserving the cultural, racial, linguistic and religious heritage of the child. (R.S.P.E.I. 1988, c. C-5.1 . 2(2)[i])</p>	<p>Nothing in act</p>	<p>Nothing in act</p>	<p>Nothing in act</p> <p>Mi'kmaq Confederacy of Prince Edward Island (MCPEI) provides services to children on reserve only, funded by federal government (GOUGH, 2008, p.3)</p>

	be developed with representative from the band (R.S.P.E.I. 1988, c. C-5.1 . 37[4])				
NB <i>Family Services Act</i> , S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)	Child maintains "aboriginal rights" says nothing about placing child in First Nations home or home that matches culturally, (S.N.B. 1980, c. F-2.2. 85[2]) says nothing about notifying a band.  "best interests of the child " must take into account cultural, and religious heritage (S.N.B. 1980, c. F-2.2 . 1[g])	"best interests of the child " must take into account cultural, and religious heritage (S.N.B. 1980, c. F-2.2 . 1[g])	Nothing in act	Nothing in act	Nothing in act  11 First Nations Child and Family Service Agencies funded by Federal Department of Indian and Northern Affairs on reserve for 15 reserves but also collaborate with local child welfare agencies in case planning. (Gough, 2007a, p.2)
QC <i>Youth Protection Act</i> , 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)	Respect "characteristics" of cultural communities and Native communities (RSQ 1977c. P-34.1 s. 2.4(5)[b & c])  Tripartite agreement for funds with bands ( Sinclair, et. Al, 2004,p. 223)  Native communities shall have their own youth protection system with the same powers as as given in this act either by a rep of the band an agency created for the band/community doesn't specify here adoption or family contact or which kids are referred & why, all Native communities have jurisdiction over child welfare (R.S.Q. (1977 c. P-34.1 Div III s. 37.5)  -. have to take into account "characteristics of child's cultural community in making decisions (Civil Code 1991, c. 64, a. Ch.2 Div.1. s.22.4.5) AND (Civil Code	"consider the moral, intellectual and material needs of the child.." (RSQ 1977c. P-34.1 s. 3)	Nothing in act	Nothing in act	Kahnawake Family Services and other independent bands contracted out to intervene. Nothing in the act specifically - work experience tells me this.  "native" band councils mention northern communities (RSQ 1977c. P-34.1. 37.5), not specifically Inuit.  Act respecting health services and social services for Cree Native persons. Cree health and social service worker responsible for child can visit, collect information, intervene. (R.S.Q. 1977 c. P-34.1 s. 26)

	<p>1991, c. 64, a. Ch.2 Div.1. s.2.4.5.c)</p> <p>AND the native community agreement with first nations communities for child welfare services respecting this act.- esp. mentions Cree (<i>Civil Code</i> 1991, c. 64, a. Ch.2 Div.1.s. 37.5) - no other details for special provisions for adoption</p>				
<p>ON Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)</p>	<p>Place crown ward with extended family, within band or with another First Nations band/family (R.S.O. 1990, c. C.11 . s.61(2)[d]; R.S.O. 1990, c. C.11.s. 57(5)[all])</p> <p>Take into consideration cultural traditions and identity in placement (R.S.O. 1990, c. C.11. s.56[f])</p> <p>CAS must apply to the First Nations band and submit their care plan / adoption order idea. (R.S.O. 1990, c. C.11. s.141.2[1])</p> <p>The First Nations band can then decide the care plan, submit their own and has 60 days to do so and CAS cannot place child until that time is up. (R.S.O. 1990, c. C.11. s.141.2[2])</p> <p>Have to send adopting record to registry for First Nations (R.S.O. 1990, c. C.11 s. 162(3)[d])</p> <p>In case of First Nations- acting CAS must consult with</p>	<p>Takes into account physical, cultural, emotional, spiritual, mental and developmental needs and differences among children” (R.S.O. 1990, c. C.11 s. 1(3)[i]; R.S.O. 1990, c. C.11 s. 1.4; R.S.O. 1990, c. C.11 s. 37(3)[all])</p> <p>In placement considerations must take into account religion child was raised in. ( R.S.O. 1990, c. C.11 s. 37(3)4; R.S.O. 1990, c. C.11 s. 61.2[b])</p> <p>Child shall be put into placement with their own faith. Protestant child cannot be put into catholic care/ home/ CAS and vice versa. (R.S.O. 1990, c. C.11. 86[3]) Unless there is only one agency on that region (R.S.O. 1990, c. C.11. s.86[4])</p>	<p>Take into consideration the child’s views and wishes in placement. (R.S.O. 1990, c. C.11 .s. 37.9)</p> <p>Child’s faith determined by what the parent’s faith is. (R.S.O. 1990, c. C.11. 86[1]) Unless the court can ascertain the child’s wishes. (R.S.O. 1990, c. C.11. s. 86[20])</p>	<p>Catholic Children’s Aid societies of Ontario - not specifically mentioned in Child and Family Services Act.</p>	<p>6 First Nations Child and Family Services 5 on reserve one in Toronto (Gough, 2005, p.2)</p> <p>- “Indian and native” people should be able to provide their own child welfare services” (R.S.O. 1990, c. C.11. s.1.5)</p> <p>Recognizes agreements for the provision of child welfare with bands/ communities. And cost sharing with these agencies. (R.S.O. 1990, c. C.11 s. 209-211)</p>

<p>child's band/ community (R.S.O. 1990, c. C.11.s 20.2[2])</p> <p>In placement must take into account culture (R.S.O. 1990, c. C.11 s. 37.3[3])</p> <p>Take into consideration uniqueness of First Nations "culture, heritage and traditions." (R.S.O. 1990, c. C.11. 37.13[4])</p> <p>Child has right to have band member as representative in custody order hearings &amp; band member be given notice of hearing (R.S.O. 1990, c. C.11. 65.1(4)[f])</p> <p>All native persons have to be placed with extended family, with band or with other First Nations family (refers to wardship) (R.S.O. 1990, c. C.11. 56[5])</p> <p>First Nations child welfare provisions. (R.S.O. 1990, c. C.11 Part X - entirety)</p> <p>Allows for customary care- care of child by a band member under the traditions of the band (R.S.O. 1990, c. C.11. 208)</p> <p>Money for bands caring for children – custom / kinship care) (R.S.O. 1990, c. C.11. 212)</p> <p>Agencies must</p>				
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	<p>consult with band in all matters concerning child welfare (apprehension and placement, temporary care and special needs, adoption placement, status review, care plan, emergency housing, homemakers and other family support services, any other matter that is proscribed. (R.S.O. 1990, c. C.11 s. 213[all])</p> <p>HOWEVER Lieutenant Governor. Makes regulations on all aspects of child welfare for First Nations. &amp; approval of agencies/ operations , services, finances, bookkeeping, health care, (R.S.O. 1990, c. C.11 s. 214) determining number of band members on the boards of directors for the agencies. , payments, furnishing of specialized homes, staff training, standards of practice and procedures, etc. (R.S.O. 1990, c. C.11. 214.25)</p> <p>Lieutenant Governor can also make regulations defining counselling, special needs &amp; developmental, disability. (R.S.O. 1990, c. C.11. 215)</p> <p>Lieutenant Governor makes rules governing assessment, review, complaint</p>				
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	<p>procedures, prescribing care and maintenance of a crown ward. (R.S.O. 1990, c. C.11. s.216)</p> <p>power of Lieutenant Governor to make regulations for everything for First Nations run services, etc. (R.S.O. 1990, c. C.11.216[c]) and youth justice issues (R.S.O. 1990, c. C.11. s.219)</p> <p>Adoption (R.S.O. 1990, c. C.11. 220)</p> <p>Licensing. (R.S.O. 1990, c. C.11. s.222)</p> <p>Exempting band child welfare/ Social Services from this part of the act, including person caring for child in customary way, whether they are First Nations or not. Defining consultation procedures between bands and agencies. Proscribing services. ( R.S.O. 1990, c. C.11.s.223[a-c])</p> <p>Dispute mechanisms and regulations defined. (R.S.O. 1990, c. C.11.s.223.1[all])</p>				
<p>MAN Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)</p>	<p>Communities have the right to participate in child welfare care, First Nations band have the right to involvement / provision of their own services to preserve culture/status (C.C.S.M. 1985c. C80 Declaration of Principles s. 10 &amp; 11)</p>	<p>Nothing in act.</p>	<p>Nothing in act</p>	<p>mentioned Jewish Family services (C.C.S.M. 1985c. C80 . s.6.3[a])</p> <p>Mentions "The Child and Family Services Authorities Act"- and that this allows child welfare directors to designate authorities in different regions to govern child welfare</p>	<p>Kinosao Sipi Minisowin Agency (KSMA) &amp; Metis service agencies "Aboriginal Justice Inquiry Child Welfare Initiative (AJI-CWI). The AJI-CWI is a joint initiative of the Manitoba Métis Federation, the Assembly of</p>

	Cultural, linguistic, racial and religious heritage. (C.C.S.M. 1985c. C80. s.2[h])			(C.C.S.M1985. c. C80 . s.6.3[all])	Manitoba Chiefs, Manitoba Keewatinowi Okimakanak, and the Province of Manitoba.” (Ducharme et al., p.4)
AB Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)	Try to select placement with respect to “ the benefits to the child of a placement that respects the child’s familial, cultural, social and religious heritage” (R.S.A. 2000, c. C-12.s. 2(i)[iii])	Try to have placement where child will be made aware of religious, cultural, familial and social heritage (R.S.A. 2000, c. C-12 . s.2[n])			
SK Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)	Have to notify band 60 days in advance of hearing and chief to be present at court hearings on protective cases (S.S. 1989-90, c. C-7.2 s. 23(1)[b])  Have to notify band and also have rep present (S.S. 1989-90, c. C-7.2 s. 37[10 & 11])  Court may order/ designate person having sufficient interest in the child to be involved in case include chief, band members if child can be or already is included on a band list. (S.S. 1989-90, c. C-7.2. s.23(1)(b)[all])  Minster can enter into agreements with bands for service delivery, but are responsible to the minister (S.S. 1989-90, c. C-7.2 s. 61[1])	Have to take into consideration best interests of the child cultural, religious, spiritual needs. (S.S. 1989-90, c. C-7.2 s. 4[c])  Family counsels can have community members who represent parenting standards of that community (S.S. 1989-90, c. C-7.2. s.40[1]), doesn’t specify religion or First Nations, in general	Child’s wishes need to be assessed. (S.S. 1989-90, c. C-7.2. s.4[f])		
BC Child, Family and Community Services Act , RSBC 1996 (last amended march 21 <sup>st</sup> , 2010 and came into force at this time) c.46	director of child welfare must inform the first nations about hearing for permanent or temporary custody and the treaty of that nation applies to the process. (RSBC 1996 c.46. s.36(2.1.) [e&g]) Or inform the Nisga’a, if they are the child’s nation.(	cultural, racial and religious services should be provided (RSBC 1996 c.46. s. 3[c])  community involvement in support/ planning with family(RSBC 1996 c.46. s.2[e])  best interests of the child include cultural racial and	Nothing	nothing	-Spallumcheen band- has a band by-law to govern child welfare since 1980s -Selchelt first nation since 2003 tri-partite agreement with federal government and province - power to enact their own child welfare laws -Nisga’a - self

	<p>RSBC 1996 c.46.s. 36(2.1)(f)]</p> <p>- Have to notify band and also have rep present . band member or someone who is entitled to band membership can be considered to have "sufficient interest in the child" and apply to be part of the hearing mentioned in several areas ( supervision orders, custody temp or permanent or transfer of custody?) for treaty children, non treaty Métis, Nisga'a (RSBC 1996 c.46. s.33.1(4) ( c,e,d); (RSBC 1996 c.46. 34(3)(d-f); (RSBC 1996 c.46.s. 35 (1) (b); RSBC 1996 c.46. s.36(2)(e-f);(RSBC 1996 c.46. s. 38[1-all])</p> <p>Have to notify band and also have representative present or band member present for hearing on removal of child-child can be notified of proceedings 12 + or their parent if the child is under 12 (RSBC 1996 c.46.s. 39(1)[c-d.i]); OR if in court for continued custody order (RSBC 1996 c.46. s.49(2) [c-d]); OR cancellation of continued custody order (RSBC 1996 c.46. s.54.1(2.[c-e])</p>	<p>religious heritage (RSBC 1996 c.46. s.4(1)e)</p> <p>children have the right to religious instruction and to participate in religious activities. (RSBC 1996 c.46.s.70.1.1)</p>			<p>government = total authority over child welfare services and policy (National Collaborating Centre for Aboriginal Health ( 2006), p. 3)</p> <p>refers to Nisga'a Final Agreement, Nisga'a Lisims Government, nation and village "( all with the same meaning – the final agreement) (RSBC 1996 c.46 Definitions Section 1)</p> <p>agreements with (a) First Nations band and (a.1)Nisga'a Or a treaty First Nation (a.2) mentioned (RSBC 1996 c.46.s. 90 [ a- a.2]) AND Can enter into agreements with bands and transfer some power to band exercise act (RSBC 1996 c.46.s. 93.(1)(g)(iii))</p>
<p>YU</p> <p>Child and Family Services Act (2008)RSY C-22</p>	<p>Custom adoptions – not sure what this means- in accordance with first nations process (RSY 2008 C-22.s.134.1)</p> <p>- director of child welfare has to consult &amp; plan the adoption with First Nations of the child before adoption</p>	<p>Nothing</p>	<p>Nothing</p>	<p>Nothing</p>	<p>Pre amble of the act Lists the bands as responsible for child welfare and names several of them- definitions section 1. First nations defined as... (a) Car cross/Tagish First Nation, (b) Champagne and Aishihik First Nations,</p>

	<p>(RSY 2008 C-22.s.98.2.a), UNLESS child over 12 objects or the parent objects.(RSY 2008 C-22.s.98.3[a&amp;b])</p> <p>-preamble states the act was developed by BC gov. and first nation's bands .(RSY 2008 C-22. Preamble)</p>				<p>(c) Kluane First Nation, (d) Kwanlin Dun First Nation, (e) Liard First Nation, (f) Little Salmon/Carmacks First Nation, (g) First Nation of Nacho Nyak Dun, (h) Ross River Dena Council, (i) Selkirk First Nation, (j) Ta'an Kwach'an Council, (k) Teslin Tlingit Council, (l) Tr'ondëk Hwëch'in, (m) Vuntut Gwitchin First Nation, or (n) White River First Nation (RSY 2008 C-22. Preamble) AND- defines "first nations authority".(RSY 2008 C-22. S.169)</p>
<p>NVT/NWT</p> <p>Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c. 13</p> <p>- refers to Adoption Act (S.N.W.T. 1997,c.13,sec. 48.1.b)</p> <p>Adoption Act S.N.W.T.(last amended 2004) 1998,c.9</p>	<p>-community counsel that decides what happens with children in care (S.N.W.T. 2008,c.8.s.58.1 [all]) and - limited to exercises care over First Nations children (S.N.W.T. 1997,c.13. s.58.2)</p> <p>-each community has a role in supporting best interests of child/ family (S.N.W.T. 1997,c.13. s.ix[beginning of act])</p>	<p>. decisions should be made in accordance with the culture of the child. Recognize child's cultural religious linguistic and community upbringing. (S.N.W.T. 1997,c.13.s. 3.c; S.N.W.T. 1997,c.13.s. ix [beginning of act])</p> <p>respect linguistic, cultural and religious upbringing/needs (S.N.W.T. 1997,c.13.s.3.; S.N.W.T. 1997,c.13.s. 7.2 [all])</p>	Nothing	nothing	<p>A board of directors of a corporate body may authorize the corporate body to enter into a community agreement with the Minister</p> <p>(a) delegating to the corporate body the authority and responsibility for any matter set out in this Act S.N.W.T. 1997,c.13.58.1. (1)[a];</p> <p>(b) specifying the community or communities in which the corporate body may act (S.N.W.T. 1997,c.1358.1. (1)[b]);</p> <p>(c) specifying the aboriginal children for whom the corporate body may act(S.N.W.T. 1997,c.1358.1. (1)[c]); and</p>

					(d) establishing a Child and Family Services
					Committee and defining its role in the community or communities in which it may act, in addition to its powers and duties under this Act, and establishing the term of office of its – refers to actual community control not spec agencies(S.N.W.T. 1997,c.1358.1. (1)[d])
UNCRC cultural access (UNCRC, 1989, culture- a.4, a.14.1,A. 20.3, A.23.1, A. 29.I. b & C., A. 30, A. 31.2) mobility in nations which they are a citizen (UNCRC, 1989, A.10.1 &2)	cultural access (UNCRC, 1989, culture- a.4, a.14.1,A. 20.3, A.23.1, A. 29.I. b & C., A. 30, A. 31.2)	cultural access (UNCRC, 1989, culture- a.4, a.14.1,A. 20.3, A.23.1, A. 29.I. b & C., A. 30, A. 31.2)	be treated in such a way where their opinions and decisions concerning their well being are taken into account if the state must intervene for their welfare ( UNCRC, 1989, A.9.2).		(UNCRC, 1989,Article 23)
Federal cultural access (Constitution Act, 1982, Schedule B, Sec. 25, 27)and mobility in nations which they are a citizen (Constitution Act, 1982, Schedule B, 6.1 &2)	“Directive 20-1 (1991) provinces delegate authority to FNCFS to provide child protective services” on reserve HRSDC (2002) p. 3) Otherwise if first nation has self governance- then can deliver child welfare to anyone identifying as first nations from that band ( HRSDC, 2000, p. 3)				Indian and Northern Affairs Canada Child and Family Services Program Directive 20-1 ( as of 1991) (CFS)(AFN, 2006, p.2)

Appendix B.3 Mobility							
Province	Limits on Foster care (time, conditions)	Limits on Institutional care - non detention (time, conditions)	Limits on Detention (time, conditions)	Limits on compulsory treatment	Time limits/restrictions on placement of unaccompanied minors from outside of Canada	Limits on placement for Inter-provincial children and dual citizens	Homeless/ Runaways access to care while out of province
<p>NFL/LAB NFLD/LAB</p> <p>Child Youth and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)</p> <p>Voluntary care agreements, could be foster, institutional. Etc. 16 definition of youth = 16- under 18.(SNL.1998 cC-12.1 s.1.2.o; Bala, 2004, p.36)</p> <p>- Youth Services Program for 16-17 (Gough, 2007b,p.2)</p> <p>6 month contracts &amp; 6 month renewals (SNL. 1998 cC-12.1 .s.11.[2]) -age 0-5 = 3months, 5-12 =4months, age 12+= 6 months, max 3-4 orders in lifetime (SNL 1998 cC-12.1.s. 36. [1&amp;2])</p> <p>-wardship: continuous</p>	<p>foster parents have no legal rights, the child can be removed at any time. (MacLaurin &amp; Bala, 2004, p. 134)</p> <p>- consider placing child with siblings and near their school( SNL 1998 c. C-12.1.s.9(f &amp;h ); SNL 1998 c. C-12.1.s.62[1])</p> <p>- protection hearing has to take place within 30 days of the application for protective intervention where the child is removed from the home (SNL 1998 c. C-12.1.s.29)</p>	<p>director establishes programs (SNL 1998 c. C-12.s1.s.5)-, doesn't say if this is institutions.</p> <p>- protection hearing has to take place within 30 days of the application for protective intervention where the child is removed from the home (SNL 1998 c. C-12.1.s.29)</p> <p>THEN - the court has 10 days to give a presentation hearing (SNL 1998 c. C-12.1.s.30)</p> <p>10 days after the protection hearing a care plan must be submitted to court (SNL 1998 c. C-12.1.s.31[1]) - does this mean the child can be held in custody for 40 days?</p> <p>child can be removed for 72 hours before being returned or application for protection/ supervision and review of removal made(SNL 1998 c. C-12.1.s.47[all])</p> <p>-annual review of continuing custody(SNL 1998 c. C-12.1.s.76[1])</p>	<p>director establishes programs(SNL 1998 c. C-12.1.s.5)-, doesn't say if this is institutions.</p> <p>child can be removed for 72 hours before being returned or application for protection/ supervision and review of removal made (SNL 1998 c. C12.1.s.47 [all])</p>	<p>director establishes programs (SNL 1998 c. C-12.1.s.5)-, doesn't say if this is institution s.</p> <p>can provide services for children at risk for medical or psychiatric condition s(SNL 1998 c. C-12.s.114[ g])</p> <p>- medical / psychiatric treatment hearing must happen 1 day after the application is made, and the child may already be in treatment. (SNL 1998 c. C-12.1.s.32[ 2])</p> <p>-gives only one day for the presentation hearing</p>	<p>when the responsibility is transferred from director to another, that director has the same rights and responsibility over the child as the previous one to provide adequate care(SNL 1998 c. C-12.1.s.45.2 [a]) - doesn't spec. Interprovincial, Homeless or runaway.</p> <p>- if the child is under a temporary care order and wants to have another order under another director must remain in custody of the first director until this is granted (SNL 1998 c. C-12.1.s.40) - is this NFLD or interprovincial (unclear).</p> <p>- out of province orders have the same</p>	<p>when the responsibility is transferred from director to another, that director has the same rights and responsibility over the child as the previous one to provide adequate care (SNL 1998 c. C-12.1.s.45.2 [a]) - doesn't spec. Interprovincial, Homeless or runaway.</p>	<p>refers to a child is in need of protection if they have been "abandoned" (SNL 1998 c. C-12.1.s.14[h])</p> <p>when the responsibility if transferred from director to another, that director has the same rights and responsibility over the child as the previous one to provide adequate care (SNL 1998 c. C-12.1.s.45.2 [a])- doesn't spec. Interprovincial, Homeless or runaway.</p> <p>- can provide 6month contracts to a youth whose parents will not help them ( under 18) (SNL 1998 c. C-12.1.s.11.1 [a&amp;b] ; SNL 1998 c. C-12.1.s.11.2 )</p> <p>-can provide service to youth 16-21 if they were previously in child welfare and if they are in school if they leave</p>

<p>order is terminated is the child marries, or reaches age 16 appeal process not mentioned, or the court rescinds the order (SNL 1998 cC-12.1.s.43)                  BUT says enforceable until age 19 (SNL 1998 cC-12.1.s.12)                  supervision order can be for 6 months at home (SNL 1998 c. C-12.1.s.33(1)(a))</p>	<p>THEN - the court has 10 days to give a presentation on hearing(SNL 1998 c. C-12.1.s.30)                  -10 days after the protection hearing a care plan must be submitted to court (SNL 1998 c. C-12.1.s.31[1]) - does this mean the child can be held in custody for 40 days?                  child can be removed for 72 hours before being returned or application for protection/ supervision and review of removal made(SNL 1998 c. C-12.1.s.47-[all])                  - annual review of continuing custody(SNL 1998 c. C-12.1.s.76[1])</p>			<p>for secure order to be accomplished. (SNL 1998 c. C-12.1.s.33(1)(b))                  AND can hold child one day during the presentation hearing outside of the home (SNL 1998 c. C-12.1.s.33(2)(b))                  -child can be removed for 72 hours before being returned or application for protection/ supervision and review of removal made(SNL 1998 c. C12.1.s.47 [all])</p>	<p>effect as if they were made in nfld (SNL 1998 c. C-12.1.s.61)</p>		<p>school before this then the contracts are over, 6 months (SNL 1998 c. C-12.1.s. 11.3)                  can provide services for abandoned children/youth (SNL 1998 c. C-12.1.s.14[h])</p>
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<p>NS Children and Family Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)  Voluntary care agreements: between age 16 &amp; 18 yearly agreements (SNS 1990, C.5.19[all])  supervision orders are 12 months(SNS 1990, C.5.43.3)  -Temporary care agreements are 6 months to 12 months maximum 0-3 yrs -s 3-6 months; 6-12 is 6-12 months; over age 12 is 12 months to 18 months (SNS C.5.17.3)  -provision for special needs children yearly agreements and have to be revised yearly (SNS 1990, C.5.18.2)  Wardship: Up to 19 (SNS 1990, C.5.14.2; SNS 1990, C.5.48.1.a)  - can terminate if marries, adopted, court</p>	<p>minister can run residential facilities (SNS 1990, C.5.3(1)[h]; SNS 1990, C.5. s. 16(1) [c])  can be held for 5 days interim while protective investigation is ongoing (SNS 1990, C.5.s.39[1 &amp; 2]).  -can be held 30 days while court proceedings are ongoing to determine if placement is necessary (SNS 1990, C.5.39.4)  - placement with siblings and keep them in the same school if possible (SNS 1990, C.5.20[b &amp;e])  total time spent in care is counted from the initial disposition hearing (SNS</p>	<p>3 % of children in care in NS in 1999 were in non-detention institutional care (MacLaurin &amp; Bala, 2004, p. 126)  minister can run treatment facilities(SNS 1990, C.5.16.1[e &amp;f])  A child who is sixteen years of age or more but under the age of nineteen years, is not in the care of the child's parent or guardian and has a special need as prescribed by the regulations may enter into a written agreement with an agency or the Minister for the provision of services to meet the child's special needs. Up to one year contracts (SNS 1990, C.5.19 [1])  can be held for 5 days interim while protective investigation is ongoing.(SNS 1990, C.5. 39[1 &amp; 2])  -can be held 30 days while court proceedings are ongoing to determine if placement is necessary "Interim hearing" (SNS 1990, C.5.39.4)  THEN application for protection hearing has to take place within 90 days of the interim hearing (SNS 1990, C.5.40[1])  THEN within 90</p>	<p>minister can run youth detention centres(SNS 1990, C.5.3(1)[h]; SNS 1990, C.5. 16(1) [b])  can be held for 5 days interim while protective investigation is ongoing.(SNS 1990, C.5.39[1 &amp; 2])  -can be held 30 days while court proceedings are ongoing to determine if placement is necessary (SNS 1990, C.5. 39.4)  -can be held 30 days while court proceedings are ongoing to determine if placement is necessary (SNS 1990, C.5. 39.4)</p>	<p>minister can run treatment facilities (SNS 1990, C.5.3(1)[h]); SNS 1990, C.5. 16(1)[e &amp;f])  can provide substance abuse treatment (SNS 1990, C.5.s. 13(2)[g])  can be held for 5 days interim while protective investigation is ongoing. (SNS 1990, C.5.39.[1 &amp; 2])  -can be held 30 days while court proceedings are ongoing to determine if placement is necessary (SNS 1990, C.5.39.4)  secure treatment order can only last 5 days even if child refuses.( SNS 1990, C.5.55.[1 &amp;1.c])</p>	<p>-can be held for 5 days interim while protective investigation is ongoing.(SNS 1990, C.5.39.1 &amp; 2)  -can be held 30 days while court proceedings are ongoing to determine if placement is necessary (SNS 1990, C.5.39.4)  can transfer custody of child to "another agency" (SNS 1990, C.5.47 [6&amp;7]) doesn't say within or outside of province??  cannot take a child out of the province unless it's a mother, father or relative for the purposes of adoption or to reside with them without a certificate (SNS 1990, C.5.71(1)[a &amp;b])  97- recognizes other provincial orders similar to this act</p>	<p>cannot take a child under 12 outside of the province for adoption or to raise them unless the minister has issued a certificate (SNS 1990, C.5, s.1.71.1) AND It is 71.1.a the parent or the relative.(SNS 1990, C.5. 71.[a &amp; b]).  must provide for child who has not one to care for them.(SNS 1990, C.5.14(1) [a])  cannot take a child out of the province unless it is a mother, father or relative for the purposes of adoption or to reside with them without a certificate (SNS 1990, C.5.71(1)[a &amp;b])  need consents to bring child into province for adoption (SNS 1990, C.5.75[10] )</p>	<p>-72 hrs can detain until can contact parent, guardian or other person willing to take them in(SNS 1990, C.5.28.1)  can detain a runaway no time limits specified (SNS 1990, C.5.29.1.b)  - order of care from another province supposed to be recognized (SNS 1990, C.5.97), does not specify if NS has to care of the kid or return them.  (SNS 1990, C.5.14(1)[a]) must provide for child who has not one to care for them.  allows for apprehension of runaway child from a secure treatment facility(SNS 1990, C.5.59[3])</p>
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<p>terminates or the child can apply as of age 16 to opt out of permanent wardship (SNS 1990, C.5.48.1 [all] and SNS 1990, C.5.48.3)</p>	<p>1990, C.5.45(1) [b]) - does this mean child can potentially spend 5 +5+ 30 + 90= 120detained/ placed before final decision to place or not is set in motion?</p>	<p>days after finding the child in need of protection need to have the disposition hearing. (SNS 1990, C.5. 41[2])</p> <p>total time spent in care is counted from the initial disposition hearing(SNS 1990, C.5.45(1)[b]) - does this mean child can potentially spend 5 +5+ 30 + 90= 120detained/ placed before final decision to place or not is set in motion?</p> <p>-placement with siblings and keep them in the same school if possible (SNS 1990, C.5.20[b &amp;e])</p>		<p>-must include reason, duration and allow child access to a lawyer &amp; agency has to appear before the court within the 5 days to justify why(SNS 1990, C.5.55.2 [all] )</p> <p>secure treatment order can then become a max 30 day with (SNS 1990, C.5.56.4) the possibility of renewal for no more than 90 days (SNS 1990, C.5.56.3)</p> <p>Allows peace officer to apprehend child who has a secure treatment order and to return a runaway child to a secure treatment facility (SNS 1990, C.5. 59[1 &amp; 3]).</p> <p>allows the</p>			
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				<p>minister to give the child a leave of absence from the secure treatment facility for "humanitarian reasons". Medical and rehab (SNS 1990, C.5.61.1)</p> <p>-can make "secure treatment order" for no more than 5 days must have grounds for it (SNS 1990, C.5.55[1 &amp;2]) &amp; AND no more than one day after child must be given legal aid(SNS 1990, C.5.55[3])</p> <p>-child or parent can apply for review of secure treatment order(SNS 1990, C.5.57[1])</p>			
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<p>PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)</p> <p>-voluntary care contracts: 16- age 18, max contracts = 6 months (RSPEI 1988 c.C-5.1.s. 14.1) – 18 by (HRSDC, 2005)</p> <p>- temporary care 3 months, ages 0-5; 12 months ages 5-12; and 6-12 months age 6 -18 And for Wardship: person over 16 can apply to opt out of permanent wardship but has to have been in for 1 year immediately preceding the application (RSPEI c. C-5.1. s.17.[5&amp;6])</p>	<p>Considered a parent if they have been in charge of the child for not less than one year &amp; has a continued relationship with the child (RSPEI 1988, c. C-5.1.s. 1(s) ii)</p> <p>child can be held for no more than a cumulative period of 6 months after a disposition hearing is finished and the child is determined in need of protection. (RSPEI 1988, c.C-5.1.s. 2[a])</p> <p>can hold the child 72 hours if abandoned while searching for parent/ relatives. ( RSPEI 1988, c.C-5.1.s.45.2 .[b]; RSPEI 1988, c.C.5.1.s 15 [1])</p>	<p>child can be held for no more than a cumulative period of 6 months after a disposition hearing is finished and the child is determined in need of protection. (RSPEI 1988, c.C-5.1.s. 2[a])</p>	<p>child can be held for no more than a cumulative period of 6 months after a disposition hearing is finished and the child is determined in need of protection. (RSPEI 1988, c.C-5.1.s. 2[a])</p>	<p>child can be held for no more than a cumulative period of 6 months after a disposition hearing is finished and the child is determined in need of protection. (RSPEI 1988, c.C-5.1.s. 2[a])</p> <p>regarding “secure treatment” have “not been proclaimed” (RSPEI, 1988 c. C-5.1.S. 50-55) – does this mean it is being revised?</p>	<p>nothing</p>	<p>Nothing in child welfare act</p> <p>- Child shall not be placed out of province except with the director’s permission (Adoption Act R.S.P.E.I 1988 c.A-4.1.s.3.5.)</p> <p>- Court only has jurisdiction to approve adoption if child is born in the province, a resident or under the guardianship of the director of child welfare (Adoption Act R.S.P.E.I 1988 c.A-4.1.s.10)</p>	<p>can give youth 16-18 whose parents are unavailable or cannot live with them support 6 month contracts until 18 (RSPEI 1988, c.C-5.1.s. 14.2)</p> <p>-child can be held for no more than a cumulative period of 6 months after a disposition hearing is finished and the child is determined in need of protection. (RSPEI 1988, c.C-5.1.s. 2[a])</p>
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<p>NB Family Services Act, S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)</p> <p>-voluntary care agreements: 1 yr contracts, (SNB, 1980, c.F-2.2.s.48.3)</p> <p>UNTIL the child reaches age of majority- not specified in act if this is age 16 or age 18/19 (SNB, 1980, c.F-2.2.s.48.4.d)</p> <p>-supervisory orders are 6 months, with extension of 6 months(SNB 1980, c.F-2.2.s.54[1 &amp; 2])</p> <p>-court can order custody transfer to minister for 6 months and can extend max- up to 24 consecutive months including time of initial supervision order and any other time spent in care(SNB, 1980, c.F-2.2.s.55.[1 &amp; 2])</p> <p>-wardship: 1 yr. Custody agreements, then revisited (SNB</p>	<p>in the case there is an agreement for an adoption 30 days after this agreement is made the transfer of parental rights to the minister is final &amp; cannot be terminated.(SNB 1980 c. F.-2.2.s.49(2) 1)</p>	<p>- allows minister to enter into contracts for social services with other agencies (SNB 1980, c. F.-2.2.S.17-21)</p> <p>- licensing of non detention institutional care (MacLaurin &amp; Bala, 2004,p. 125)</p> <p>- the minister has the right to " place the child in any facility they deem appropriate", but does have to seek the opinion of the child/ parent (SNB 1980 c. F.-2.2.s.45[2])- doesn't say to what extent.</p>	<p>allows minister to enter into contracts for social services with other agencies- does NOT include corrections (SNB 1980, c. F.-2.2.S.17-21)</p> <p>the minister has the right to " place the child in any facility they deem appropriate", but does have to seek the opinion of the child/ parent- (SNB 1980 c. F.-2.2.s.45[2])- doesn't say to what extent.</p>	<p>- allows minister to enter into contracts for social services with other agencies (SNB 1980, c. F.-2.2.S.17-21)</p> <p>-the minister has the right to " place the child in any facility they deem appropriate", but does have to seek the opinion of the child/ parent- (SNB 1980 c. F.-2.2.s.45[2])- doesn't say to what extent.</p> <p>can place a child in a "place of safety" if already in care if the child is self injuring or suspect they might injure another. (SNB 1980, c. F.-2.2.s.57[1]) Does not specify compuls</p>	<p>can place a child if they have been abandoned or runaway (SNB 1980 c. F.-2.2.32.1 [b &amp; c])</p> <p>minister can enter into agreements with interprovincial or with other governments to transfer custody by court order and / or with custody agreement of the parent(SNB 1980, c. F.-2.2.s.4.7 [a &amp; b])</p> <p>-Not specifically unaccompanied minors refers to "extra-provincial" custody issues vs. "inter provincial"- but says, (SNB 1980 c. F.-2.2.s.130.1 [b]) AND the court can refuse to intervene IF they make an interim custody agreement while pushing parties to finish their application for custody.(SNB 1980 c. F.-2.2.s.130.1 [c]) OR the child is returned(SN</p>	<p>Notwithstanding subsections 4(4) and (5) of An Act Respecting Compliance of the Laws of the Province with the Canadian Charter of Rights and Freedoms, 1985, a child in care shall be deemed to be domiciled within the Province. (SNB 1980, c. F.-2.2.87[2])</p> <p>can place a child if they have been abandoned or runaway. (SNB 1980 c. F.-2.2.s.32.1 [b &amp; c])</p> <p>- minister can enter into agreements with interprovincial or with other governments to transfer custody by court order and / or with custody agreement of the parent. (SNB 1980 c. F.-2.2.s.47 [a &amp; b])</p> <p>. all: the court can make a custody order if the child is a resident or</p>	<p>a peace officer can apprehend a runaway (SNB 1980, c.F.2.2.31.5[c]) - no time specified</p> <p>For the purposes of subsection (5), "runaway" means a child whose security or development is in danger as a result of the child's withdrawing from the care and control of the parent or other person responsible for the care of the child. SNB 1980 c. F.-2.2.31[6])</p> <p>- can place a child if they have been abandoned or runaway. (SNB 1980 c. F.-2.2.32.1 [b &amp; c])</p>
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<p>1980,c.F.- 2.2.s.48.3)</p> <p>-wardship: Opt out through marriage, death, adoption, termination of agreement, age of majority (SNB 1980,c.F.- 2.2.s.49.4 &amp;5) -no age specified here</p> <p>- allows 30 days to appeal an order after it has been executed. (SNB 1980,c. F.-2.2.s.59.1) AND order remains in place until decision is made.(SNB 1980,c. F.- 2.2.s.59.3)</p> <p>-a child or parent can apply to terminate order if 6 months have elapsd from the order (SNB 1980,c. F.-2.2.s.61.2)</p>				<p>ory treatment or time</p>	<p>B 1980 c. F.-2.2.130.1 [e])</p> <p>-the court can order that the passports of the child and family member wanting to remove the child from the province be withheld as well as other assets or property (SNB 1980 c. F.2.2.s. 132.2[3])</p> <p>court can make an application for custody of extra- provincial child if they think the child is living in the province at the time of the order, , may no longer have a connection to their place of origin, might be in danger if returned, can serve the best interests of the child by remaining in the province. (SNB 1980 c. F.- 2.2.s.130.3). - nothing about the child's view..</p>	<p>if they are physically present in the province and ii "there is substantial evidence concerning the best interests of the child is available in the province." (SNB 1980 c. F.- 2.2.s.130.1[ all]) AND there is no other custody application in any other province (SNB 1980 c. F.- 2.2.s.130.1[ iii])</p>	
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<p>QC</p> <p>Youth Protection Act, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)</p> <p>Over 14 - parents' can refuse provisional order or voluntary measures, (RSQ, 1977, P-34.1.s.47.2), UNLESS the child is under age 14 (RSQ, 1977, P-34.1.s.52 &amp; s.91.1)</p> <p>-18 legal age (HRSDC, 2009)</p> <p>- max agreements up to 12 months, extensions for 24 (RSQ, 1977 P-34.1.s. 53)</p> <p>-Child over 14 can contest being in immediate protective care (RSQ, 1977, P-34.1.s.47)</p> <p>- immediate protective measures can be up to 48 hours (RSQ, 1977, P-34.1.s.46)</p>	<p>Voluntary foster care max = 12 months ages 0-2; 18 months ages 2-5; 24 months ages 6-18 (RSQ, 1977, P-34.1.s.53.0.1)</p> <p>-child &amp; family must be consulted / prepared before transfer to foster or institutional care (RSQ, 1977, P-34.1.s.7)</p> <p>placement must be discontinued as soon as it is there are no longer grounds for it (RSQ, 1977, P-34.1.s.11.1)</p> <p>- can hold for 48 hours without warrant to assess (RSQ, 1977, P-34.1.s.46)</p> <p>AND can put them in foster care rehab, hospital or a institution (RSQ, 1977, P-34.1.46[b])</p>	<p>-child &amp; family must be consulted/ prepared before transfer to foster or institutional care (RSQ, 1977, P-34.1.s.7)</p> <p>can hold for 48 hours without warrant to assess (RSQ, 1977, P-34.1.s.46) AND can put them in foster care rehab, hospital or a institution (RSQ, 1977, P-34.1.s.46[b])</p> <p>emergency measures to take in a child cannot exceed 30 days and cannot be renewed child over 14 can agree to these.(RSQ, 1977, P-34.1.s.47.1) INCLUDES 10 day period between trying to est. Voluntary measures that are not accepted by parent &amp; child over 14 and referral to the tribunal(RSQ, 1977, P-34.1.s.52)</p> <p>allows referral to foster care, institution or hospital(RSQ, 1977, P-34.1.s.54[j])</p> <p>director's review of a Cree child placed in foster care or "rehabilitation centre" for one year or more (RSQ, 1977, P-34.1.s.57.1) WITH - possibility of referral until age 18 or to be returned to the family(RSQ, 1977, P-34.1.52)</p> <p>"compulsory foster care is possible for 15</p>	<p>-child &amp; family must be consulted /before transfer to foster or institutional care (RSQ 1977 P-34.1.s.7)</p> <p>- "no child shall be placed in a house of detention within the meaning of the Act respecting the Québec correctional system, or in a police station"- does this refer to adult jails?? (RSQ, 1977, P-34.1.s.11)</p> <p>- rules of detention facility must be given to each child and also posted, as well isolation cannot be used for disciplinary measures.(RSQ, 1977, P-34.1.s.10)</p> <p>-a child can be moved to an "intensive supervision if they are deemed a "risk to themselves or other (doesn't describe how this is defined). To restrict their movements and supervise them more closely- no time limits mentioned, just has to end when it is deemed the placement is not longer needed (RSQ 1977-34.1.s.11.1[1])</p> <p>- can hold for 48 hours without warrant to assess (RSQ 1977, P-34.1.46) AND can put them in foster care rehab, hospital or a institution (RSQ 1977, P-34.1.46[b])</p>	<p>- extrajudicial sanctions guided by YCJA (RSQ, 1977 P-34.1.s.2.1)</p> <p>-child &amp; family must be consulted/ prepared before transfer to foster or institutional care (RSQ, 1977 P-34.1.s.7)</p> <p>- rules of detention facility must be given to each child and also posted, as well isolation cannot be used for disciplinary measures (. RSQ, 1977, P-34.1.s.10)</p> <p>-a child can be moved to an "intensive supervision if they are deemed a "risk to themselves or other ( doesn't describe how this is defined). To restrict</p>	<p>Definitions of "guardian" includes a person or agency in another province or state with comparable authority (RSQ, 1977, P-34.1.s.1[b])</p> <p>does not allow transfer between regional (Quebec?) directors of children in foster care/ youth protection centre (RSQ, 1977, P-34.1.s.67)</p> <p>court decisions made outside of QC count in QC is made by a competent court (RSQ, 1977, P-34.1.s.131)</p>	<p>refers to children adopted into Québec and the minister is responsible for placement- does not mention unaccompanied minors specifically (RSQ 1977 P-34.1.s.71.9)</p> <p>minister can make agreements with other countries regarding adopting into Qc. Or banning adoptions from other countries.( RSQ 1977, P-34.1.s.71.12 ; RSQ, 1977, P-34.1.s.71.1) court decisions made outside of Qc count in QC is made by a competent court (RSQ, 1977, P-34.1.s.131)</p> <p>-does this mean Canada only??</p>	<p>-Child who is missing and considered in danger – judge can issue a notice to bring the child before the court, only good for 15 days. Doesn't mention holding the child or conditions of placement.(RSQ, 1977, P-34.1.s.35.3)</p> <p>- child is considered at risk if they run away from home, a youth protection placement Or if parents are not providing stable supervision while in placement in foster care or institution for one year (RSQ, 1977, P-33.1.38.a.&amp;c)- not clear what this means.</p> <p>allows for care of a child who has been abandoned 38.1a child is in danger is they run away from a home or institution (RSQ, 1977, P-34.1.s.38[a])</p>
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<p>J)                  emergency measures to take in a child cannot exceed 30 days and cannot be renewed child over 14 can agree to these (RSQ, 1977, P-34.1.s.47.1).- INCLUDES -10 day period between trying to est. Voluntary measures that are not accepted by parent &amp; child over 14 and referral to the tribunal( RSQ, 1977, P-34.1.s.52 )                  allows referral to foster care, institution or hospital( RSQ 1977 P-34.1.s.54 [j])                  director's review of a Cree child placed in foster care or "rehabilitation centre" for one year or</p>	<p>days and may extend to 60 days or more- not clear also mentions "rehabilitation or hospital centres" (RSQ 1977, P-34.1.s.62)                  compulsory foster care during the school year, the child is kept until the school year ends- if parent's consent under age 14 or if child consents over age 14- again mentions "Rehabilitation centres" (RSQ 1977, P-34.1.s.64)                  - foster care order is usually until age 18- &amp; foster care can continue beyond age 18 if the person chooses until they can be placed in another institution with their consent.(RSQ 1977, P-34.1.s.64)                  does not allow transfer between regional (Quebec?) directors of children in foster care/ youth protection centre (RSQ 1977, P-34.1.s.67 )                  During tribunal hearing compulsory foster can only last for 30 days but it does allow for an extension of 30 days if necessary (RSQ 1977, P-34.1.s.79)                  appeals on tribunal placement decisions can take no longer than 30 days for the application to pass in court (RSQ 1977, P-34.1.s.117)</p>	<p>emergency measures to take in a child cannot exceed 30 days and cannot be renewed child over 14 can agree to these(RSQ 1977, P-34.1.a.47.1).- INCLUDES 10 day period between trying to est. Voluntary measures that are not accepted by parent &amp; child over 14 and referral to the tribunal (RSQ 1977, P-34.1.s.52)                  allows referral to foster care, institution or hospital (RSQ 1977, P-34.1.s.54[j])                  director's review of a Cree child placed in foster care or "rehabilitation centre" for one year or more (RSQ 1977,P-34.1.s.57.1) WITH -possibility of referral until age 18 or to be returned to the family (RSQ 1977, P-34.1.s.52)                  "compulsory foster care is possible for 15 days and may extend to 60 days or more- not clear also mentions "rehabilitation or hospital centres"(RSQ 1977, P-34.1.s.62)                  compulsory foster care during the school year, the child is kept until the school year ends- if parent's consent under age 14 or if child consents over age 14- again mentions</p>	<p>their movements and supervise them more closely- no time limits mentioned just has to end when it is deemed the placement is not longer needed ( RSQ, 1977, P-34.1.s.11.1[1])                  -rules of detention facility must be given to each child and also posted, as well isolation cannot be used for disciplinary measures . (RSQ 1977, P-34.1.s.10 )                  - mentions this act conforms with the YJCA (RSQ 1977, P-34.1.s.23 )                  the director has the powers of a provincial director under the YCJA(RSQ 1977, P-</p>			
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	<p>more (RSQ 1977, P-34.1.57.1) - WITH - possibility of referral until age 18 or to be returned to the family(RSQ 1977, P-34.1.s.52)</p> <p>"compulsory foster care is possible for 15 days and may extend to 60 days or more-not clear also mentions "rehabilitation or hospital centres"(RSQ 1977, P-34.1.s.62)</p> <p>compulsory foster care during the school year, the child is kept until the school year ends- if parent's consent under age 14 or if child consents over age 14- again mentions "Rehabilitation centres"(RSQ 1977, P-</p>		<p>"Rehabilitation centres"(RSQ 1977,P-34.1.s.64)</p> <p>- foster care order is usually until age 18- &amp; foster care can continue beyond age 18 if the person chooses until they can be placed in another institution with their consent.(RSQ 1977, P-34.1.s.64)</p> <p>does not allow transfer between regional (Quebec?) directors of children in foster care/ youth protection centre(RSQ 1977, P-34.1.s.67)</p> <p>During tribunal hearing compulsory foster can only last for 30 days but it does allow for an extension of 30 days if necessary (RSQ 1977, P-34.1.s.79)</p> <p>appeals on tribunal placement decisions can take no longer than 30 days for the application to pass in court (RSQ 1977,P-34.1.s.117)</p>	<p>34.1.s.33.3)</p> <p>- can hold for 48 hours without warrant to assess(RSQ 1977,P-34.1.46) AND can put them in foster care rehab, hospital or a institution (RSQ 1977, P-34.1.46[b])</p> <p>emergency measures to take in a child cannot exceed 30 days and cannot be renewed child over 14 can agree to these (RSQ 1977, P-34.1.47.1)</p> <p>- INCLUDES sec. 10 day period between trying to est. Voluntary measures that are not accepted by parent &amp; child over 14 and referral to the tribunal(RSQ 1977,P-</p>			
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	<p>34.1.s.64 )</p> <p>- foster care order is usually until age 18- &amp; foster care can continue beyond age 18 if the person chooses until they can be placed in another institution with their consent. (RSQ 1977, P-34.1.s.64 )</p> <p>does not allow transfer between regional (Quebec?) )</p> <p>directors of children in foster care/ youth protection centres (RSQ 1977, P-34.1.s.67 )</p> <p>During tribunal hearing compulsorily foster can only last for 30 days but it does allow for an extension of 30 days if necessary (RSQ 1977, P-34.1.s.79 )</p>			<p>34.1.a.52 )</p> <p>allows referral to foster care, institution or hospital( RSQ 1977, P-34.1.a.54 [B])</p> <p>director's review of a Cree child placed in foster care or "rehabilitation centre" for one year or more with (RSQ 1977, P-34.1.s.57 .1)</p> <p>- possibility of referral until age 18 or to be returned to the family (RSQ 1977, P-34.1.s.52 )</p> <p>does not allow transfer between regional (Quebec?) directors of children in foster care/ youth protection centre (RSQ 1977, P-34.1.s.67 )</p>			
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	appeals on tribunal placement decisions can take no longer than 30 days for the application to pass in court (RSQ 1977, P-34.1.s.117)						
ON - Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)  otherwise no voluntary care over age 16 (Bala, 2004, p.36; RSO, 1990, C.11. s.26; RSO, 1990, C.11. s.29([2]) AND only if "appropriate placement is available" (RSO, 1990, C.11. s. 29 [4])  - voluntary care agreements: not more than 6 months up to 12 month contracts ((RSO, 1990, C.11. 29[5]; Bernstien & Reiteier, 2004, p.91)  -ages 0-6 = 12 months; 6 yrs plus =24	- under 16 parents must consent to residential services unless CAS deems otherwise (RSO, 1990, C.11.s. 27[2])  AND can only be discharged with consent of parents or CAS (RSO, 1990, C.11. s.27[4])  can only be transferred (under 16) with consent of parent or CAS (RSO, 1990, C.11. s.29[4])  will not make a temporary care agreement unless CAS determines there is an appropriate placement available & its beneficial (RSO, 1990, C.11.s.27 [5])  will not make a temporary care agreement unless CAS	over 16 must consent to residential service, unless CAS deems otherwise.(RSO, 1990, C.11. 27[1])  - under 16 parents must consent to residential services unless CAS deems otherwise(RSO, 1990, C.11.s.27[2]) AND can only be discharged with consent of parents or CAS ( RSO, 1990, C.11.s. 27[4])  can only be transferred (under 16) with consent of parent or CAS (RSO, 1990, C.11.s.27[5])  will not make a temporary care agreement unless CAS determines there is an appropriate placement available & its beneficial (RSO, 1990, C.11. s.29(4)  - minister has 21 days to return child d to care giver after placement agreement expires (RSO, 1990, C.11.s. 33.5)	over 16 must consent to residential service, unless CAS deems otherwise. (RSO, 1990, C.11. s.27[1])  - under 16 parents must consent to residential services unless CAS deems otherwise(RSO, 1990, C.11. s.27[2]) AND can only be discharged with consent of parents or CAS ( RSO, 1990, C.11.s. 27[4])  can only be transferred (under 16) with consent of parent or CAS (RSO, 1990, C.11.27[5])  don't need child's consent if over age 12 to place if there is a developmental disability (RSO, 1990, C.11.s.s.29[3])  will not make a temporary care agreement unless CAS determines there is an appropriate placement available & its beneficial (RSO, 1990, C.11. s.29[4])	over 16 must consent to residential service, unless CAS deems otherwise. (RSO, 1990, C.11. 27[1])  - under 16 parents must consent to residential services unless CAS deems otherwise (RSO, 1990, C.11. 27[2]) – BUT under the rules of YCJA (YJCA 2006), c. 19, Sched. D , s. 2 [3]). This does not apply(RSO, 1990, C.11. 27[3])  AND under 16	- minister has 21 days to return child d to care giver after placement agreement expires (RSO, 1990, C.11. 33.5)  - mandatory review of children's placement if placed 90+ days. First time within 45 days of initial placement and then every 9 months (RSO, 1990, C.11. 34.6 (a)[ all]) AND if child is over 12 and contests placement and within the first 14 days of initial placement.R SO, 1990, C.11. 34.6[b])  reviews will be done in the absence of the public(RSO, 1990, C.11.s. 34.8)	- minister has 21 days to return child d to care giver after placement agreement expires (RSO, 1990, C.11. 33.5)  - mandatory review of children's placement if placed 90+ days. First time within 45 days of initial placement and then every 9 months. (RSO, 1990, C.11. 34.6 (a) [all]) AND if child is over 12 and contests placement and within the first 14 days of initial placement.( RSO, 1990, C.11. s.34.6[b])  reviews will be done in the absence of the public(RSO	- CAS can make agreements with other provinces to transfer care(RSO, 1990, C.11.21)  -16-18 –if can't live with parents, in school or full time training program and maybe required to have liaison with a "responsible adult" (Ontario Ministry of Community and Social Services, directive. 3.5-1 ,May, 2009)  child is considered a runaway only if under age 16 (RSO, 1990, C.11.43.2[a]) , & deemed at risk by guardian(RSO, 1990, C.11.s.43.2 [c])  if child cannot be returned within 12 hours to

<p>months (RSO, 1990, C.11. 29 [6])</p> <p>periods before March 31<sup>st</sup> 2000 are counted as aggregate 9 not more than 12 months) for temp car, unless the child was out of care for consecutive 5 years(RSO, 1990, C.11.29.6[2])</p> <p>-society wardship with CAS max 12 months (RSO 1990, C.11. 57.2) ONLY to age 18 or when they marry (RSO, 1990, C.11.s.10)</p> <p>Supervision order with parent/ another person, max 12 months, (RSO, 1990, C.11. 57.1)</p> <p>-crown ward can apply for review of status as a crown ward at age 12 + (RSO, 1990, C.11.64.4.a)</p>	<p>determines there is an appropriate placement available &amp; its beneficial (RSO, 1990, C.11.s. 29[4])</p> <p>- minister has 21 days to return child to care giver after placement agreement expires (RSO, 1990, C.11. s.33.5)</p> <p>- defines a residential placement as not a foster home, not a centre designated under the former YOA or current YJCA and not secure treatment facility(RSO, 1990, C.11.s. 34(1)[all])</p> <p>all-mandatory review of children's placements if placed 90+ days. First time</p>	<p>- all- defines a residential placement as not a foster home, not a centre designated under the former YOA or current YJCA and not secure treatment facility (RSO, 1990, C.11. s.34[1])</p> <p>mandatory review of children's placement if placed 90+ days. First time within 45 days of initial placement and then every 9 months. (RSO, 1990, C.11. 34.6 (a) [all]) AND if child is over 12 and contests placement and within the first 14 days of initial placement. (RSO, 1990, C.11. 34.6[b])</p> <p>reviews will be done in the absence of the public (RSO, 1990, C.11. 34.8)</p> <p>child 12 plus, 30 days after the review (time allotted for CAS to make a report of the review) can apply to opt out (RSO, 1990, C.11. 36.1[all])</p> <p>- BUT the CAS board ultimately decides if they will hold a hearing for this or not.(RSO, 1990, C.11. 36.3)</p> <p>- within 5 days of apprehension there shall be a court hearing for decision on placement care plan or discharge.(RSO, 1990, C.11.46[1])</p> <p>can place child temporarily for 30</p>	<p>- allows the protection worker to bring the child to a "temporary open custody" place of safety if no other more appropriate place can be found while protection intervention is underway (RSO, 1990, C.11. s.40[10]), NO time limit specified in this.</p> <p>where a child under 12 has committed a criminal offence &amp; has been apprehended and cannot be replaced with guardian within 12 hours they will be considered in "need of protection" and can be placed. (RSO, 1990, C.11. s.42[2])</p> <p>- hearing for placement will take place if in temporary open custody 24 hours after being brought there (RSO, 1990, C.11.46(2) [all]) AND it is possible that they can then be detained for no more than 30 days (RSO, 1990, C.11. s.46.2[a]) - does this include runaways??</p> <p>- while court is adjourned ( up to 30 days) for protections hearing the child cannot be placed in a secure or open custody setting (RSO, 1990, C.11. 51(2)[i&amp;ii]; RSO, 1990, C.11. 69[4])</p> <p>- a placement of crown wards shall be the least</p>	<p>27(4) can only be discharged with consent of parents or CAS ( RSO, 1990, C.11. 27[4])</p> <p>can only be transferred (under 16) with consent of parent or CAS (RSO, 1990, C.11.27[5])</p> <p>will not make a temporary care agreement unless CAS determines there is an appropriate placement available &amp; its beneficial(RSO, 1990, C.11.s. 29[4])</p> <p>- minister has 21 days to return child to care giver after placement agreement expires (RSO, 1990, C.11.s. 33.5)</p> <p>- up to 18special</p>	<p>- child 12 plus, 30 days after the review (time allotted for CAS to make a report of the review) can apply to opt out (RSO, 1990, C.11.s. 36.1[ all]) BUT the CAS board ultimately decides if they will hold a hearing for this or not.(RSO, 1990, C.11.36.3)</p> <p>- allows the protection worker to bring the child to a "temporary open custody" place of safety if no other more appropriate place can be found while protection intervention is underway(RSO, 1990, C.11. 40[10]), NO time limit specified in this.</p> <p>where a child under 12 has committed a criminal offence &amp; has been apprehended and cannot be replaced with guardian within 12 hours they will be considered in "need of protection" and can be placed. (RSO, 1990, C.11. 42[2])</p> <p>- hearing for placement will take place if in temporary open custody 24 hours after being brought there (RSO, 1990, C.11.46(2)</p>	<p>, 1990, C.11.s. 34.8)</p> <p>- allows the protection worker to bring the child to a "temporary open custody" place of safety if no other more appropriate place can be found while protection intervention is underway (RSO, 1990, C.11.s. 40[10]), NO time limit specified in this.</p> <p>where a child under 12 has committed a criminal offence &amp; has been apprehended and cannot be replaced with guardian within 12 hours they will be considered in "need of protection" and can be placed. (RSO, 1990, C.11. 42[2])</p> <p>- hearing for placement will take place if in temporary open custody 24 hours after being brought there (RSO, 1990, C.11.46(2)</p>	<p>guardian then they will be taken into care. (RSO, 1990, C.11.s. 43[5])</p> <p>CONTRADICTION - CAS will not hold a hearing for protection unless within its legal jurisdiction area.(RSO, 1990, C.11.s.48[4])</p> <p>- can be put into secure detention if runaway from temp open detention (RSO, 1990, C.11. 93[2]) - doesn't specify time period</p> <p>can be placed in secure detention if runaway from another secure detention until child is brought back to the first secure placement. (RSO, 1990, C.11. 93[3])</p> <p>- runaway from open custody must be returned within 48 hours of apprehension by police to original open custody placement unless prov. Director decides they need secure placement. (RSO, 1990, C.11. 98[3])</p>
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	<p>within 45 days of initial placement and then every 9 months.( RSO, 1990, C.11. s.34.6 [a]) AND if child is over 12 and contests placement and within the first 14 days of initial placement. (RSO, 1990, C.11. s.34.6[b])</p> <p>reviews will be done in the absence of the public.(R SO, 1990, C.11. 34.8)</p> <p>- child 12 plus, 30 days after the review ( time allotted for CAS to make a report of the review) can apply to opt out (RSO, 1990, C.11. 36.1[all]) BUT the CAS board ultimately decides if they will hold a hearing for this or not.(RSO , 1990,</p>	<p>days while child protection hearing is ongoing. (RSO, 1990, C.11. 51.2[c])</p> <p>-placement of crown wards shall be the least restrictive possible.(RSO, 1990, C.11. s.61.2[a])</p> <p>child has the right to a plan of care- they can be a part of within 30 days of residential placement and in placement right to adequate food, shelter, clothing, activities within the community (RSO, 1990, C.11.s. 105[1&amp;2])</p>	<p>restrictive possible. (RSO, 1990, C.11. s.61[2])</p> <p>- child will be placed in open temp. Detention (RSO, 1990, C.11.s. 93.2) AND only in secure detention if immediate or within last 12 months committed offense which adult could be charged for 5 yrs.a grievous bodily harm charge or failure to appear in court under YCJA(RSO, 1990, C.11.s. 93(2)1 [all])</p> <p>- can be put into secure detention if runaway from temp open detention (RSO, 1990, C.11. s.93[2])- doesn't specify time period</p> <p>- (can be placed in secure detention if there it is believed the child will commit another offense, will risk safety and security of the open temp detention and or will miss court dates (RSO, 1990, C.11. s.93(2)3 [all])-</p> <p>says can only hold child in secure custody for 24 hours before court makes ruling on placement if child is detained under YJCA (RSO, 1990, C.11. 93[4])</p> <p>-- for breach of probation only can be served in open custody (RSO, 1990, C.11. 95)</p> <p>prevents the use of lock up except</p>	<p>needs agreements no time limits specified (RSO, 1990, C.11. s.30.1; RSO, 1990, C.11.s. 32)</p> <p>child of 16 plus with special need (not defined clearly) can request services( RSO, 1990, C.11. s.31.2) - again does this mean treatment facility?</p> <p>- minister has 21 days to return child d to care giver after placement agreement expires (RSO, 1990, C.11.s. 33.5)</p> <p>- within 5 days of apprehension there shall be a court hearing for decision on placement care plan or discharge. (RSO,</p>	<p>in "need of protection" and can be placed. (RSO, 1990, C.11. 42[2])</p> <p>hearing for placement will take place if in temporary open custody 24 hours after being brought there (RSO, 1990, C.11.46(2) [all]) AND it is possible that they can then be detained for no more than 30 days(RSO, 1990, C.11. 46.2[a]) - does this include runaways??</p> <p>- while court is adjourned ( up to but not more than 30 days) for protections hearing the child cannot be placed in a secure or open custody setting (RSO, 1990, C.11. 51.2(d)[i&amp;ii])</p> <p>- placement of crown wards shall be the least restrictive possible (RSO, 1990, C.11. 61.2[a])</p> <p>- placement of crown wards shall be the least restrictive possible (RSO, 1990, C.11. 61.2[a])</p>	<p>[all]) AND it is possible that they can then be detained for no more than 30 days RSO, 1990, C.11. 46.2[a]) - does this include runaways??</p> <p>- while court is adjourned (up to but not more than 30 days) for protections hearing the child cannot be placed in a secure or open custody setting (RSO, 1990, C.11. 51.2(d) [i&amp;ii])</p> <p>-placement of crown wards shall be the least restrictive possible (RSO, 1990, C.11. 61.2[a])</p> <p>- child shall not be placed outside of Ontario unless extraordinary circumstances (RSO, 1990, C.11. 61.4), doesn't say what this is.</p>	
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	<p>C.11. 36.3)</p> <p>- within 5 days of apprehension there shall be a court hearing for decision on placement care plan or discharge. (RSO, 1990, C.11.46[1])</p> <p>can place child temporarily for 30 days while child protection hearing is ongoing. (RSO, 1990, C.11.51.2 [c])</p> <p>- placement of crown wards shall be the least restrictive possible. (RSO, 1990, C.11.61.2[a])</p> <p>- foster parents of a crown ward from more than 2 years have 10 days to apply to stop a removal of a child. (RSO, 1990,</p>		<p>under the YCJA and "extraordinary measures (RSO, 1990, C.11.100[1]) (doesn't define)</p> <p>- placement of crown wards shall be the least restrictive possible RSO, 1990, C.11.61.2[a])</p>	<p>1990, C.11.46[1])</p> <p>defines secure treatment, secure isolation rooms, use of restraints and psychotropic drugs for secure treatment for "mental disorders" (RSO, 1990, C.11.112)</p> <p>allows minister to operate secure treatment facilities RSO, 1990, C.11.113[1]),</p> <p>allows minister to change the restrictions placed on treatment facility and children RSO, 1990, C.11.113[2]) - no guideline specified</p> <p>children may only be placed in these facilities by court order (RSO, 1990, C.11.113[3])</p>			
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	<p>C.11.s 61.7[a]; RSO, 1990, C.11. s.61.7.1 [all])</p> <p>child has the right to a plan of care- they can be a part of within 30 days of residential placement and in placement right to adequate food, shelter, clothing, activities within the community (RSO, 1990, C.11. 105[1&amp;2] )</p>			<p>AND lock up is permitted(RSO, 1990, C.11. 113[4])</p> <p>allows the child's parent or someone with custody to apply to have child placed in secure treatment (RSO, 1990, C.11. 114(1)[ all])</p> <p>allows child over 16 to apply to place themselves &amp; parent /CAS-if the child consents. OR a doctor(RSO, 1990, C.11. 114.2)</p> <p>child can be held for 30 days while court is adjourned in secure treatment - awaiting final decision &amp; under 12 and deemed a risk.(RSO, 1990, C.11. 114[3&amp;4])</p>			
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				<p>- put guideline s for secure treatment – mental disorder, has caused bodily harm to self other in last 12 months, is under 12 and might cause , or has been taken in on criminal charges.( RSO, 1990, C.11. 117)</p> <p>max, day commit ment to secure treatment (RSO, 1990, C.11. 118 – 180)</p> <p>normally released after 60 days unless guardian s apply for extensio n or child is made a crown ward and CAS applies for extensio n. (RSO, 1990, C.11. 118[2]) BUT may be kept in past their 18<sup>th</sup> birthday if the</p>			
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				<p>order hasn't expired (RSO, 1990, C.11.118(4) RSO, 1990, C.11.199[3])</p> <p>child can be kept in secure treatment while extension order is pending, doesn't say how long this can take.. (RSO, 1990, C.11.120 ([6])</p> <p>extensions to secure treatment can be up to another 180 days the child must receive information within 24 hours of emergency admission on how to apply for a review of their case and must receive a lawyer within 5 days. (RSO, 1990, C.11.124(6) [a &amp; b])</p> <p>lays out details for use of secure isolation</p>			
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				<p>rooms (RSO, 1990, C.11. 127- [all]) AND time limit is one hour in them unless director the premises justifies in writing why longer time is needed. (RSO, 1990, C.11. 127[4])</p> <p>secure isolation cannot exceed 8 hours aggregat e in 24 or 24 hours in 7 days RSO, 1990, C.11. 127[8])</p> <p>BUT does not count for 16 plus. (RSO, 1990, C.11. 127[9]). they can be held in isolation indefinit ely??</p> <p>calls for review of use of secure isolation rooms every 3-6 months, not clear though how, if on individua l cases,</p>			
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				<p>etc. &amp; then says this is not applicable with within a secure custody setting (RSO, 1990, C.11. 128[ all].</p> <p>talks about the use of intrusive procedures to transport children from secure facilities or in secure facilities (RSO, 1990, C.11. 131[all], but doesn't specify these procedures what is okay or not</p> <p>only that service provider has up to 72 hours to use intrusive measures on a child without the approval of a review team (RSO, 1990, C.11. 131(6)[dij])</p> <p>psychotropic drugs needs consent</p>			
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				<p>of 16 yr+ or the guardian under 16 (RSO, 1990, C.11. 132.1 [all]) NOT the child to administer BUT must consider the child's views (RSO, 1990, C.11. 131[3]) AND have to list course of treatment possible side effects and justify usage (RSO, 1990, C.11. 132[2]). EXCEPT has 72 hrs to seek consent in case of emergency( RSO, 1990, C.11. 132[5])</p>			
<p>MAN Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)  -voluntary care agreements are: 15</p>	<p>Foster home is 4 or less children, unless siblings (last part not clear, if there can be more than 4 siblings) (C.C.S.M . 1985 c. C80 Definitions section)</p>	<p>Definitions section group home between 5 &amp; 8 children, treatment centre more than 8, and nothing about a detention centre.(C.C.S.M.1 985 c. C80 Definitions section)</p>	<p>Nothing</p>	<p>judge may order legal counsel for child ( is it guaranteed??) and if over 12 child has the right to direct counsel ( under 12 do they?) (C.C.S. M.1985</p>	<p>Nothing</p>	<p>Nothing</p>	<p>nothing</p>

<p>months, ages 0-5; 24 months ages 5(really6)*-12; 24 months ages 12-18 (C.C.S.M.c.80. [1&amp;2]) *(age 5 =under the age of 5-, C.C.S.M. 1985c.C.80.4. 1[3])</p> <p>-12 to 24 month agreements C.C.S.M.c.C 80.s.14[2 &amp;3])</p> <p>- can terminate agreement if parent leaves province (C.C.S.M. 1985c.C80.s.14[4])</p> <p>-none of this applies if the parent is a minor (C.C.S.M.1985c.C80.s.15(1); (HRSDC, 2005)</p> <p>-wardship ends “..when the ward marries or attains the age of majority” (C.C.S.M.c.C 80ss.50(1)</p>	<p>apprehension of child in need of protection no time specified, just says “temporarity custody. (C.C.S.M . 1985c. C80.s.20. 21[1])-</p> <p>- can hold the child for 14 days while judge is determining in need of protection or when appeal by family is being made(C. C.S.M. 1985 c.C80.s.4 4[4])</p> <p>foster parents can appeal decision to removes child from the home and pending decision keep them if there are no safety issues(C. C.S.M. 1985c.C80.s.51[4 &amp;5])</p> <p>best interests of the child includes “ the need for permanency” in</p>			<p>c.C80s.34[2])</p> <p>determination rules of having legal counsel for child:” capacity to understand, presence of parents, complexity of the case, differences in views of the child(C. C.S.M 1985.c.C 80.s.34(3) [all]</p> <p>gives judge right to have informal hearing-doesn’t say anything about legal counsel present here.(C. C.S.M. 1985 c.C80.s.36)</p>			
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	<p>placement "with the least disruption"(C.C.S.M. c. C80 s.20.21[d])</p> <p>- length of placement is det. By the length of the placement order, if they are to be adopted and lived there less than one year, if they are no longer in need of protection, no spec. Time limits(C. C.S.M. 1985c.C80.s.51(2)[all])</p>						
<p>AB</p> <p>Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)</p> <p>director has 42 days after order is given by judge to place child to consult with guardian for planning of placement (RSA, 2000cC-12 s.21.6 [all])</p> <p>allows visitation in the 42 days</p>	<p>Try to keep stable placements/ continuity of care, permanency custody (RSA, 2000cC-12 s.2m.i)</p> <p>allows the director to hold a child who is being investigated "any place in order to complete the investigation"- does this include</p>	<p>allows the director to hold a child who is being investigated "any place in order to complete the investigation"- does this include detention?? Not clear (RSA,2000 cC-12 s.6.2)</p> <p>- child 12 and over can appeal a temporary care placement(RSA 2000, cC-12s.32[1])</p> <p>director of child welfare has to have a plan for permanent placement of a child who has been a ward for more than a year(RSA, cC-12 s.34[1])</p> <p>allows the</p>	<p>allows the director to hold a child who is being investigated "any place in order to complete the investigation"- does this include detention?? Not clear (RSA,2000 cC-12 s.6.2)</p> <p>allows the director/ minister to licence residential facilities: foster home, group home or secure treatment centre- does not include corrections (RSA, cC-12 s.105[1])</p>	<p>director must within 3 days of detention prove to the court why the child is under a secure treatment certificate &amp; can apply for another secure treatment cert of not more than 7 days (RSA 2000, cC-12 s.43.1(3) [all])</p> <p>has to tell the guardian</p>	<p>can apprehend child from Alberta in another province and keep them in the other province (RSA 20000, cC-12 s.19.1)</p> <p>can "confine the child.(RSA, cC-12 s.20(1)b). &amp; other province director must give reason for apprehension and the number of legal aid ( to who- not</p>	<p>can make agreements and transfer guardian ship of children from other provinces or other countries (RSA, 2000 cC-12 s.124[all]) .&amp; keep the same agreement for care as was originally made in the other jurisdiction if its valid(RSA, 2000 cC-12 s.125)</p>	<p>if child is apprehended in another province territory their rules/ regs apply to the placement detention of the child(RSA 2000, cC-12 s.19[1]) &amp; allows AB to do the same detain and place the child or return them (RSA 2000, cC-12 s.21(1) [all])</p> <p>- have to inform guardian to come forth before deciding placement</p>

<p>of any court adjournment ( max time)(RSA, 2000cC-12 s.26.2.a) - voluntary/temporary care contracts= 6 months if under age 6, 9 months is over age 6 = total cumulative time, (RSA 2000, cC-s..33.1.a &amp;b) &amp; 1 renewal of 6 months ((RSA 2000, cC-s..33.2) &amp; in exceptional cases another 3 months (RSA 2000, cC-s..33.3) UNLESS does not count times in care if the child has been out of care for last 5 yrs(RSA 2000, cC-s.31[4]) Age 15 can refuse to enter into care (MacLaurin &amp;Bala, 2004, p. 142); -wardship until child reaches age 18, marries or is adopted (RSA 2000, cC-12 s.40.2.[c.d.&amp; e]) - director of child welfare has to have a plan for permanent</p>	<p>detention ?? Not clear(RSA A, cC-12 s.6.2) emergency placement in foster care for not more than 3 days(RSA A 2000 C-12. cC-12 s. 7[3]) - child 12 and over can appeal a temporary care placement(RSA 2000, cC-12 s.32[1]) - director of child welfare has to have a plan for permanent placement of a child who has been a ward for more than a year (RSA 2000, cC-12 s. 34[1]) allows the director/ minister to licence residential facilities: foster home, group home or secure treatment centre- does not include corrections (RSA, cC-12 s.105[1])</p>	<p>director/ minister to licence residential facilities: foster home, group home or secure treatment centre- does not include corrections (RSA, cC-12 s.105[1])</p>		<p>within one day of the child being put in treatment (RSA 2000, cC-12 s.43.1.[4] ) allows for placing the child in secure treatment (RSA 2000, cC-12 s.43(1) [all]) - applies to children ALREADY in care- director has three days to appear in court once child is in secure treatment to justify why(RSA A 2000, cC-12 s.43.1[3] ), and then can apply for another 7 days. (RSA 2000, cC-12 s.43.1(3) (b)) must give the child and guardian a copy of the secure order within one day of it being issued by</p>	<p>clear)(RSA, cC-12 s.20[3]) child needs to be returned to guardian in two days, if not can apply for supervision, permanent or temporary guardianship or return child to guardian (RSA 2000 cC-12 s.21(1) [a-c]) - &amp; if from another province return to the province of origin to be placed (RSA 2000 C-12. cC-12 s.21(1) d) &amp; application for guardianship or transfer has to be done in 10 days of apprehension of child (RSA 2000 cC-12 s.21[3]) BUT state that hearing cannot be adjourned for more than 14 days then it says 42 days and that the director of child welfare could take custody for this period ( doesn't say where) (RSA 2000, cC-12 s.21.1[4 &amp;5])</p>	<p>(RSA 2000, cC-12 s.48(2) &amp; (11) [all]) - can detain a child who has run away from a secure treatment facility until they can find a place for them at the treatment facility- doesn't say where... (RSA, cC-12 s.18[14]) allows for apprehension without warrant of a runaway (RSA 2000, cC-12 s.21(1) [a-c]) child needs to be returned to guardian in two days, if not can apply for supervision, permanent or temporary guardianship or return child to guardian (RSA 2000 cC-12 s.21(1) [a-c]) - But state that hearing cannot be adjourned for more than 14 days then it says 42 days and that the director of child welfare could take custody for this period ( doesn't say where) (RSA 2000, cC-12 s.21.1[4 &amp;5]) allows for apprehension of a runaway from a secure</p>
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<p>placement of a child who has been a ward for more than a year(RSA 2000, cC-12 s.34[1])</p>	<p>correctio ns(RSA 2000, cC-12 s. 105[1]) -</p>			<p>the court (RSA 2000, cC-12 s.43.1[4] )  applies to a child NOT under the custody of the director and they can place them for 5 days (RSA 2000, cC-12 s.44[2]) &amp; can apply for an extensio n of another 5 days(RS A 2000, cC-12 s.44[4])  has one day to notify the child and guardian of the court hearing for this secure treatment order(RS A 2000, cC-12 s..44[5])  - court has to provide child, child's lawyer and parent with reason for secure treatment order, reasons for it length of time, etc. (RSA</p>	<p>can make agreements and transfer guardian ship of children from other provinces or other countries(RSA 2000, cC-12 s.124[all]) &amp; keep the same agreement for care as was originally made in the other jurisdiction if its valid(RSA 2000 cC-12 s.125)</p>		<p>service facility(RSA 2000 cC-12 s..48[1])  -technically should allow for the support of youth who are homeless no age specified just not living with guardian and in need of assistance- 6 months contracts (RSA 2000, cC-12 s.57(2)(1) [all])  can make agreements and transfer guardian ship of children from other provinces or other countries(RS A 2000, cC-12 s.124[all]) .&amp; keep the same agreement for care as was originally made in the other jurisdiction if its valid (RSA 2000, cC-12 s.125)</p>
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				<p>2000, cC-12 s.44(9)[a II])</p> <p>cannot exceed 30 consecutive days of confinement in secure treatment (RSA 2000, cC-12 s.44(1)2)</p> <p>has to provide child with address of the address of the child and youth advocate and the parent with the number of legal aid. (RSA 2000, cC-12 s.44(9) [c &amp; d])</p> <p>allows detainment of child who is being transferring to different secure services-no limits mentioned (RSA 2000, cC-12 s.46)</p> <p>- director can grant a leave of absence from secure facility</p>			
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				<p>for child for rehab, humanitarian reasons.( RSA 2000, cC-12 s.47).</p> <p>- allows for review of secure treatment order application by guardian, child or director( RSA 2000, cC-12 s.49[all])</p> <p>- mention 42 day adjournment or more mandates the child welfare director to provide custody &amp; access to child if in need (not clear) of essential health care- refers to "rehabilitative" services- is this emergency mental health care? Doesn't say where they can be held(RSA 2000, cC-s.26[1 &amp;3])</p> <p>- allows child (</p>			
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				<p>regardless of age) or guardian to apply for a review of the secure treatment order (RSA 2000, cC-12 s.49[1]) AND must be heard within 3 days of being filed (RSA 2000, cC-12 s.49[3])</p> <p>court can extend confinement of child while court is adjourned, (RSA 2000, cC-12 s.51[2]) BUT must include the days of confinement in the total amount the child spends consecutively confined. (RSA 2000, cC-12 s.51 [3])</p> <p>allows the director/ minister to licence residential facilities: foster home, group</p>			
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				home or secure treatment centre- does not include corrections (RSA 2000, cC-12 s.105[1])			
<p>SK Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)</p> <p>- voluntary agreements 16 &amp; 17 – all with consent; cannot exceed 1 yr. (SS. 1989-1990, cC7.2.10.[1 &amp;3])</p> <p>--1 yr with contract with 24 month extension ,residential care for disabilities (SS 1989-1990, cC-7.2.s.9.1 &amp;9.5) (HRSDC, 2005)</p> <p>- protection orders include ages 16 &amp;17, cannot be for more than 24 months and have to apply every 6 months (SS1989-1990, cC-7.2.16.8 &amp;9)</p> <p>--Age 18 to opt out of wardship (SS1989-1990,</p>	<p>– preference for keeping the child in a stable placement (S.S., 1989-1990, cC-7.2.s.24.g )</p> <p>Facilities refers to treatment , shelter doesn't say detention - minister can run, operate or contract out.(S.S. 1989-1990, cC7.2.s.2 .6.)</p> <p>can be held in emergency foster care/ group home for 48 hrs. Up to another 7 days until hearing takes place (S.S.1989-1990, cC-7.2.s.17[4]) &amp; includes 16&amp; 17 yr olds in exceptional cases (S.S.1989-1990, cC-7.2.s.18 [a &amp; b]) &amp; hearing must take place in one day(S.S.1989-1990, cC-7.2.s.20(1) [a] )</p> <p>court has 60 days to determine if the child is in need of protection and can technically hold them during this time even if there is an adjournment. (S.S.1989-1990, cC-7.2.s.35(1)[c])</p> <p>can be held in emergency foster care/ group home for 48 hrs. Up to another 7 days until hearing takes place (S.S.1989-1990, cC-7.2.s.2.17 [4]) &amp; includes 16&amp; 17 yr olds in</p>	<p>Facilities refers to treatment, shelter doesn't say detention- minister can run, operate or contract out.(S.S.1989-1990, cC7.2.s.2.6.)</p> <p>can be held in emergency foster care/ group home for 48 hrs. Up to another 7 days until hearing takes place (S.S.1989-1990, cC-7.2.s.17[4]) &amp; includes 16&amp; 17 yr olds in exceptional cases (S.S.1989-1990, cC-7.2.s.18 [a &amp; b]) &amp; hearing must take place in one day(S.S.1989-1990, cC-7.2.s.20(1) [a] )</p> <p>court has 60 days to determine if the child is in need of protection and can technically hold them during this time even if there is an adjournment. (S.S.1989-1990, cC-7.2.s.35(1)[c])</p>	<p>Nothing</p>	<p>1 yr service agreements for residential services to children with special needs (S.S.1989-1990, cC-7.2.s.9(1) b) &amp; (S.S.1989-1990, cC-7.2.s.9(2) parent remains guardian unless otherwise stated Max 24 months agreements- treatment centres (S.S.1989-1990, cC-7.2.s.2.9[5])</p> <p>parent may seek 3<sup>rd</sup> party advice on this, nothing about the kid seeking this(S.S. 1989-1990, cC-7.2.s.9[3] )</p> <p>BUT</p>	<p>allows minister to enter into agreements within and outside of SA for services and to carry out any part of the act(S.S.1989-1990 cC-7.2.59)</p> <p>within or outside of Canada- allows to transfer the authority over a child and or custody to another provincial minister or to the minister of SA(S.S.1989-1990, cC7.2.60(1) [a &amp;b])</p> <p>SA(S.S.1989-1990, cC-7.2.60(1) (a &amp;b)</p>	<p>within or outside of Canada- allows to transfer the authority over a child and or custody to another provincial minister or to the minister of SA(S.S.1989-1990, cC7.2.60(1) [a &amp;b])</p>	<p>minister can pay for the return of a runaway.(SS 1989-1990, cC-7.2.7 (5) [all])</p> <p>provide for residential / financial services for 16-17 without guardians who will take care of them (SS 1989-1990, cC-7.2.10[1]) &amp; year renewable agreements(S S 1989-1990, cC-7.2.10(3) 1)</p> <p>a child is considered in need of protection if involved in prostitution or criminal activity under definitions of the criminal code(SS 1989-1990, cC-7.2.11(a) [iii])</p> <p>minister can pay for residential services for 16 -17plus ( SS 1989-1990, cC-7.2.s.55(5)</p>

<p>c7.2.37.3)</p>	<p>exceptional cases (S.S.1989-1990, cC-7.2.s.2.18 [a &amp; b]) &amp; hearing must take place in one day (S.S.1989-1990, cC-7.2.s.20(1) [a]) )</p> <p>court has 60 days to determine if the child is in need of protection and can technically hold them during this time even if there is an adjournment.(S.S.1989-1990, cC-7.2.s.35(1)[c])</p>			<p>child over 12 opinion is to be heard(S.S.1989-1990, cC-7.2.s.9[6])</p> <p>if child is apprehended and taken into care, guardian has to be notified in 48 hrs and application for protection made within 7 days (S.S.1989-1990, cC-7.2.s.17(4)[ all])</p> <p>Facilities refers to treatment , shelter doesn't say detention - minister can run, operate or contract out.(S.S.1989-1990, cC-7.2.s.6)</p> <p>allows minister to enter into agreements within and outside of SA for services and to carry out any part of the act (S.S.1989-1990, cC-</p>			
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				7.2.s.59)			
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Child, Family and Community Services Act, RSBC 1996 (last amended March 21 <sup>st</sup> , 2010 and came into force at this time) c.46	unattended child for 72 hours, (RSBC 1996, Ch.46.s.25(1)(a)) BUT says 24 hours if considered "in immediate danger" (RSBC 1996, Ch.46.s.27(4)) definitions "residential service" = foster home or other place not with guardian (RSBC 1996, Ch.46.s.1[1]) director has 7 days to go to court for presentation hearing following the removal of a child (RSBC 1996, Ch.46.s.34[1]) & subsequent hearing has to take place within 45 days of the presentation hearing- technically child can be held then for 52 days during court proceedings (RSBC 1996, Ch.46.s.37[2]) this is counted in total of 12 months child can be in care (RSBC 1996, Ch.46.s.44[3.1]) all consider placement within community, to attend same school to be placed with siblings (RSBC 1996, Ch.46.s.71[2]) director can est. Residential services for children (RSBC 1996, Ch.46.93[1d])	for 72 hours, (RSBC 1996, Ch.46.s.25(1)(a)) BUT says 24 hours if considered "in immediate danger" (RSBC 1996, Ch.46.s.27(4)) definitions "residential service" = foster home or other place not with guardian (RSBC 1996, Ch.46.s.1[1]) director has 7 days to go to court for presentation hearing following the removal of a child (RSBC 1996, Ch.46.s.34[1]) & subsequent hearing has to take place within 45 days of the presentation hearing- technically child can be held then for 52 days during court proceedings (RSBC 1996, Ch.46.s.37[2]) this is counted in total of 12 months child can be in care (RSBC 1996, Ch.46.s.44[3.1]) all consider placement within community, to attend same school to be placed with siblings (RSBC 1996, Ch.46.s.71[2]) director can est. Residential services for children (RSBC 1996, Ch.46.93[1d])	(a) = correctional centre, youth confinement (RSBC 1996, Ch.46.s.1[1]) child in place of confinement only has right to right to a lawyer, ombudsman, but not to other rights of the child (RSBC 1996, Ch.46.s.70[3]) laid out in SECTION below includes food, clothing, recreation, religious and cultural instruction, interpreter or to be informed of their rights (RSBC 1996, Ch.46.s.70[1])	is placed of confinement (RSBC 1996, Ch.46.s.1[1]) mental health facility (RSBC 1996, Ch.46.s.1[1b]) -Special needs= 6-12 months (RSBC 1996, Ch.46.s.7[4]) can make agreements with other provincial or other countries gov. For provision of services or to follow through with any part of the child welfare act (RSBC 1996, Ch.46.s.31)(g)[i]v)	unattended child for 72 hours (RSBC 1996, Ch.46.s.25(1)(a), But says 24 hours if considered "in immediate danger" (RSBC 1996, Ch.46.s.27(4)) director has 7 days to go to court for presentation hearing following the removal of a child (RSBC 1996, Ch.46.s.4(1)) & subsequent hearing has to take place within 45 days of the presentation hearing- technically child can be held then for 52 days during court proceedings this is counted in total of 12 months child can be in care (RSBC 1996, Ch.46.44(3.1)) can make agreements with other provincial or other countries gov. For provision of services or to follow through with any part of the child welfare act (RSBC 1996, Ch.46.93(1)(g)(iv)) any agreement made with child welfare org. In another province has same	unattended child for 72 hours (RSBC 1996, Ch.46.s.25(1)(a), But says 24 hours if considered "in immediate danger" (RSBC 1996, Ch.46.s.27(4)) director has 7 days to go to court for presentation hearing following the removal of a child (RSBC 1996, Ch.46.s.4(1)) & subsequent hearing has to take place within 45 days of the presentation hearing- technically child can be held then for 52 days during court proceedings this is counted in total of 12 months child can be in care (RSBC 1996, Ch.46.44(3.1)) child must be placed in continuing custody if the child's parents cannot be found- in the case (RSBC 1996, Ch.46.s.49(4a) (doesn't specify unaccompanied minors) temp custody agreement is over-continuing custody until age 19 (RSBC 1996, Ch.46.s.53	unattended child for 72 hours (RSBC 1996, Ch.46.s.25(1)(a), But says 24 hours if considered "in immediate danger" (RSBC 1996, Ch.46.s.27(4)) may make agreements with youth for supportive living, safe houses, outreach (RSBC 1996, Ch.46.s.12.1) - says "under 16 or a parent expecting parent or is married (RSBC 1996, Ch.46.s.12.2[9]) for youth- includes finances and housing for youth who cannot live with family or do not have family (RSBC 1996, Ch.46.s.12.2[1 & 2]) & youth agreements are 3 initially and can be renewed for 6 months (RSBC 1996, Ch.46.s.12.2[5]) - more than once? child considered in need of protection is away from home & in circumstance that endanger their safety and wellbeing" (RSBC 1996, Ch.46.s.13(1)[i]) & if the child is abandoned (RSBC 1996,

<p>YU Child and Family Services Act . RSY 2008 C-22.</p> <p>voluntary care agreements= 6 months (Child and Family Services Act . 2008 RSY C-22.13(3) and RSY C-22.13(4) cannot total more than 24 months -12-15 months max under age 5, 18-24 months max age 5-12, 24 -36 months 12 &amp; up (RSY C-22s.61 all) -19 (HRSDC, 2009) -reaches age 19; marries, voluntary order expires, adopted, or judge terminates ( s. 66 all)</p> <p>judge can order protective supervision order, or temp placement for not more than 12 months, or continuing custody(RSY 2008 C-22.s.57(3)[all])</p>	<p>definition s- " out of home care" is the only definition doesn't specify foster, group home or institutional/ Correctional (RSY 2008 C-22. 1 &amp; 165(1all))</p> <p>kinship foster care 6 month agreements (RSY 2008 C-22 14(3))</p> <p>child brought into care under a warrant the director has to appear in court for presentation hearing within 15 days,( RSY C-22. 46(1))</p> <p>without a warrant has to appear within 7 days of child being brought into care (RSY 2008 C-22. 46(2))</p> <p>if child is in temp care and a motion for subsequent order is filed but not heard &amp; temp custody is up child can be held until it is heard ( no time limit!) includes adjournments(RSY 2008 C-22. 60(6)&amp; 79(3) [c])</p> <p>placement considers near extended family and same school(RSY 2008 C-22. 89(2) [a&amp;b])</p> <p>annual review of case plan for children in care over 1 yr. (RSY 2008 C-22. 86[1 &amp;2])</p> <p>if child is in temp care and a motion for subsequent order is filed</p>	<p>definitions- " out of home care" is the only definition doesn't specify foster, group home or institutional/ Correctional(RSY 2008 C-22 . 1 &amp; 165.1[all])</p> <p>child brought into care under a warrant the director has to appear in court for presentation hearing within 15 days, (RSY 2008 C-22.s. 46[1])</p> <p>without a warrant has to appear within 7 days of child being brought into care (RSY 2008 C-22. 46[2])</p> <p>if child is in temp care and a motion for subsequent order is filed but not heard &amp; temp custody is up child can be held until it is heard ( no time limit!) includes adjournments(RSY 2008 C-22. 60(6)&amp; 79(3) [c])</p> <p>placement considers near extended family and same school(RSY 2008 C-22. 89(2) [a&amp;b])</p> <p>annual review of case plan for children in care over 1 yr. (RSY 2008 C-22. 86[1 &amp;2])</p>	<p>" out of home care" is the only definition doesn't specify foster, group home or institutional/ Correctional(RSY 2008 C-22.s. 1 definitions&amp; 165.1[all])</p> <p>- cannot place child in lock up with adult prisoners. (RSY 2008 C-22.s.161)</p>	<p>special needs service agreements in or out of home 12 months initial and can be renewed for 12 months-several times (RSY C-22. 12[3])</p> <p>" out of home care" is the only definition doesn't specify foster, group home or institutional/ Correctional(RSY 2008 C-22.s. 1 definitions)</p> <p>cannot place child in locked facility( RSY 2008C-22. 93[1])</p> <p>annual review of case plan for children in care over 1 yr.(RSY 2008 C-22. 186[1 &amp;2])</p>	<p>child brought into care under a warrant the director has to appear in court for presentation hearing within 15 days, (RSY 2008 C-22. 46[1])</p> <p>without a warrant has to appear within 7 days of child being brought into care(RSY 2008 C-22. 46[2])</p> <p>if child is in temp care and a motion for subsequent order is filed but not heard &amp; temp custody is up child can be held until it is heard ( no time limit!) includes adjournment (RSY 2008 C-22. 60(6)&amp; 79(3) [c])</p>	<p>child brought into care under a warrant the director has to appear in court for presentation hearing within 15 days(RSY 2008 C-22. 46(1))</p> <p>without a warrant has to appear within 7 days of child being brought into care(RSY 2008C-22. 46(2))</p> <p>if child is in temp care and a motion for subsequent order is filed but not heard &amp; temp custody is up child can be held until it is heard (no time limit!) includes adjournments(RSY 2008C-22. 60(6) &amp; 79(3) (c))</p>	<p>6 month agreements for youth 16(RSY 2008 C-22.s. 16[2])</p> <p>not past 19 th birthday who do not have parental support, (RSY 2008 C-22. 16[4])</p> <p>includes under 16 if married or parent or expecting parent(RSY 2008 C-22. 16[4])</p> <p>transitional support services for youth leaving care can go up to age 24- even if there is a break in service(RSY 2008 C-22.s. 17[2]) - no time limits specified</p> <p>child is in need of protection if abandoned and if guardians won't care for them or there are none (RSY C-22. 21(1) [h&amp;i])</p> <p>also in need of protection is working in or being coerced into prostitution (RSY 2008 C-22. 21(2) [a &amp;b])</p> <p>unsupervised . lost or runaway can hold child for 72 hours (RSY 2008 C-22.s.</p>
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	<p>but not heard &amp; temp custody is up child can be held until it is heard (no time limit!) includes adjourments (RSY 2008 C-22.s.60[6]) &amp; RSY 2008 C-22.s.79(3) [c])</p> <p>placement considers near extended family and same school (RSY 2008 C-22.s.89(2) [a&amp;b])</p> <p>annual review of case plan for children in care over 1 yr. (RSY 2008 C-22.s 186[1 &amp;2])</p>						30(1) [a] & 31(2)[a]
<p>NVT/ NWT</p> <p>NWT is same Legislation. as NVT) Child and Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c. 13</p> <p>(S.N.W.T. 1997, c. 13. 48.1.b) - refers to Adoption Act</p>	<p>gives 8 days between apprehension of child and making of a care plan (R.S.N.W.T. 1997, c. 13s..9(c) &amp; s.11(3)[c])</p> <p>where there is no care plan made</p>	<p>allows for placement of children in group homes, doesn't describe them (R.S.N.W.T. 1997 c. 13s..62[1])</p>	<p>director of child welfare NOT in charge of approving detention centres or custody centres under the YCJA(R.S.N.W.T . 1997, c. 13s..62[2])</p> <p>- no children are allowed to be held with young or adult offenders in lock up or a police station if being brought before a court hearing on protection (R.S.N.W.T. 1997 c.13s.66)</p>	<p>specify help for families for drug and alcohol rehab and children who are ill, does not specify disabilities. (R.S.N.W.T. 1997 c. 13.s.5(3) [g &amp; i]) &amp; terms of</p>	<p>-No mentions of other provinces</p> <p>NWT/NU recognizes court orders made in the Yukon as being the same as if they were made in NWT/NU (R.S.N.W.T . 1997,c. 13 s.79)</p> <p>allows minster to transfer</p>	<p>allows minster to transfer custody of NWT child to another province/ county/ First nation and vice versa (R.S.N.W.T . 1997, c. 13 s.94[2 &amp;3])</p> <p>transfer of child into NWT for adoption from another</p>	<p>No specific mention of runaways/homeless.</p> <p>children over 16 who are not supported by parents need to be given support of child welfare-mentions the general assembly signing UNCRC and abiding to help until 18 (R.S.N.W.T. 1997, c. 13.s</p>

<p>S.N.W.T. 1998,c.9 (last amended 2004)</p> <p>(R.S.N.W.T. 1997c. 13 S.N.W.T. 2008,c.13 s.. 48.1.b) - refers to (<i>Adoption Act</i> S.N.W.T. 1998,c.9 (last amended 2004)-</p> <p>-voluntary care agreements : 6 month contracts 1 or more times voluntary care (R.S.N.W.T. 1997, c.13.s.5.4)</p> <p>- wardship Care plan cannot exceed 24 months without review &amp; has to be reviewed every 3 months beyond 1 2 month period (R.S.N.W.T. 1997, c. 13 s.19.7 &amp; R.S.N.W.T.1 997, c. 13.s. 20.2)</p> <p>can opt wardship if adopted, court order or reaches age 16 (R.S.N.W.T. 1997, c13.1.s.48.1 [all])</p>	<p>child can be held for 72 hrs and then returned to guardian (R.S.N.W.T. 1997, c. 13s.12[1] )</p> <p>looks like if there is not care plan committee formed then child has to be returned and referred within 15 days of apprehension- not entirely clear. (R.S.N.W.T. 1997, c. 13.s. .16(2)[c])</p> <p>court hearing must take place within 45 days of apprehension (R.S.N.W.T. 1997, c. 13.s.24(c) )</p> <p>BUT not clear looks like the parent can apply to cancel the care plan with 10 days notice and then the protection worker needs to apply for an order of protectio</p>			<p>6 months. Contract s (R.S.N.W.T. 1997 c. 13s.5[4])</p> <p>considered at risk if there are disabilities or mental health issues &amp; parent doesn't provide agree to treatment (R.S.N.W.T. 1997 c. 13.s.7[e -g])</p> <p>- child is considered at risk if there is substance abuse (R.S.N.W.T. 1997 c. 13 .7(3) [h &amp; i])</p> <p>child can be apprehended for medical treatment doesn't have time limits but says applicati on to court for protection must happen "without delay" (R.S.N.W.T. 1997 c. 13.s.31(1 &amp;2)[ all])</p>	<p>custody of NWT child to another province/ county/ First nation and vice versa(R.S.N.W.T. 1997,c. 13 s.94[2 &amp;3])</p>	<p>country must be consented for- Hague convention (R.S.N.W.T . 1997, c. 13s..136[3])</p>	<p>.2[n]) specifies housing support for 16-17 (R.S.N.W.T. 1997, c. 13 s.6(2)d) &amp; money (R.S.N.W.T. 1997, c. 13 s.6(2)[c]) &amp; drug (R.S.N.W.T. 1997, c. 13 s.6(2)[e]) &amp; alcohol rehab (R.S.N.W.T. 1997 c. 13 s.7(3)[d])</p> <p>considered in need of protection is at risk for "sexual exploitation considered at risk if the family will not care of the child(R.S.N.W.T. 1997, c. 13 s.7(3) [n])</p>
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	<p>n to the court.(R. S.N.W.T. 1997, c. 13.s.22) - so is the child returned?</p> <p>second hearing must be held within 3 months of apprehension- confusing does this mean a child can be held potentially for 3 months while awaiting protection hearing? (R.S.N. W.T. 1997 c. 13s.26)</p> <p>placement only mentions "foster home"(R. S.N.W.T. 1997 c. 13.s.46(1)[a])</p> <p>a child at 12 can apply to have a permanent order rescinded (R.S.N. W.T. 1997 c. 13s.49[1])</p> <p>no foster home can have more than three infants under a year old for more</p>						
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<b>Appendix B.4 Liberty and Due Process</b>	than 24						
	hours (R. S.N.W.P. 1997 c. 13s.67)						
Federal mobility in nations which they are a citizen (Constitution Act, 1982, Schedule B, 6.1 &2)							
UNCRC mobility in nations which they are a citizen (UNCRC, 1989, A.10.1 &2)							

Province	Mixed youth detention and youth in care	Separate youth detention clauses	Average length of time in detention-no charge	Access to lawyers	Numbers in detention	Gender separation in detention/representation on statistics	Cultural representation in detention	Laws governing mobility (i.e. Safe Streets act)
<p>Only 10 jurisdictions reported youth crime stats to statistics can 2007-8 –this doesn't include nfld, nb or the Yukon ( Kong, 2009, p.6)</p> <p>15% more youth since YJCA implementati on 2003 are referred to "deferred custody" (means what?) and supervision in the community (Kong, 2009, p.6)</p> <p>-NO info from stats Canada on if youth are going to custody within youth protection or the numbers already in youth protection. Is it possible that some of these youth are in the "deferred custody into the community section??"</p>	<p>Nothing</p>		<p>(nothing on this. Only max limits in child welfare acts. 56% youth spend only one week or less in remand, 17% spend 1-6 months and only 1% longer than 6 months ( Kong, 2009, p.7)</p>	<p>rules of the unified family</p>	<p>-*indicates the numbers in 2004/5 daily sentencing to youth custody (Statistics Canada 2006)</p> <p>-** indicates the total number in youth custody 2006/7 (Statistics Canada 2006/7)</p> <p>*** indicates numbers in remand (Kong, 2009, p.15)</p>	<p>-almost no information on gender in youth detentions in Canada by province all stats are federal comparing males and females on the kind of crime or overall Canada wide rates in detention. -no info in any act about separating genders in detention 2007/8 female youth = 17 % of youth in custody ( Kong, 2009, p.11)</p>	<p>"Aboriginal Youth stats (2005-2006)</p> <p>* 6% of the youth in Canada - (2006 Census). * There were approximately 7,500 Aboriginal youth admitted to either custody or probation in 2005/2006 (Prisonjustice.ca, 2010)</p> <p>-25% of youth held on remand * 33% of admissions to sentenced custody * 22% of probation admissions (Kong, 2009, p.6)</p> <p>-Female Aboriginal Youth</p> <p>* 35% of female youth admitted to sentenced custody * 27% of female youth admitted to remand</p> <p>Male Aboriginal Youth</p> <p>* 31% of male youth admitted to sentenced custody * 22% of male youth admitted to remand" (Prison Justice.ca , 2010)</p>	
<p>NFL/ LAB Child Youth</p>	<p>Nothing</p>		<p>medical / psychiatric treatment</p>	<p>rules of the unified family</p>	<p>*44 (Statistics Canada,</p>	<p>No info -increase from</p>	<p>Percentages of "youth admitted to correctional</p>	

<p>and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)</p>			<p>hearing must happen 1 day after the application is made, and the child may already be in treatment. (SNL 1998 c. C-12.132(2))</p> <p>gives only one day for the presentation hearing to be accomplished. (SNL 1998 c. C-12.133(1) (b) &amp; can hold child one day during the presentation hearing outside of the home(SNL 1998 c. C-12.1.33(2) (b))</p> <p>child can be removed for 72 hours before being returned or application for protection/ supervision and review of removal made(SNL 1998 c. C-12.1.47-all)</p> <p>-days in custody increased 2003/4 = 105 days to 2007/8= 206 (Kong, 2009, p.10)</p>	<p>court apply - this court can appoint a lawyer. Require court to consider child's views when making an order esp. over age 12(SNL 1998 c.C-12.1.7 &amp; 53 &amp;58)</p>	<p>2006)</p> <p>**104 custody and 13 to deferred custody/supervision (Statistics Canada, 2006/7)</p> <p>***132 (Kong, 2009, p.15)</p>	<p>2004/5= 19% to 2007/8=26% remand ( Kong, 2009, p.12)</p> <p>percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 26 ** custody 2007/8=15 (Kong, 2009, p.21)</p>	<p>services who are aboriginal" *remand 2007/8=2% **custody 2007/8=6% Overall percentage of youth in correctional services =7% (Kong, 2009, p.22)</p>	
<p>NS Children and Family</p>	<p>Nothing refers to child care facilities</p>		<p>can be held for 5 days interim</p>	<p>all allows parent and child to</p>	<p>*38(Statistics Canada, 2006)</p>	<p>No info increase from</p>	<p>Percentages of "youth admitted to correctional</p>	

<p>Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)</p>	<p>and youth detention centre is one of them that the minister licences(SNS 1990, C.5, s.1.3.h.x )  says the minister operates young offenders facilities(SNS 1990, C.5, s.1.16(1)b)</p>		<p>while protective investigation is ongoing.(SNS 1990, C.5, s.1.39.1 &amp; 2)  - can be held 30 days while court proceedings are ongoing to determine if placement is necessary SNS 1990, C.5, s.1.39.4)  -days in custody increased 2003/4 = 129 days to 2007/8= 254 (Kong, 2009, p.10)</p>	<p>have a mediator concerning placement/ care (SNS1990, C.5, s.1.21)  - doesn't say if this is a lawyer  can have legal counsel at protection hearings(SNS1990, C.5, s.36(4)c)  -protection hearing: allows 16 plus to ask for legal counsel and allows 12 plus – if the judge orders their presence to appoint counsel- however in both cases the child can be excluded from the court proceeding (SNS1990, C.5, s.137(1 &amp;2)  minister can pay for counsel for parent and child(SNS 1990, C.5, s.137(4)</p>	<p>**153 custody 87 deferred custody/supervision ( Statistics Canada 2006/7) -***364 (Kong, 2009, p.15)</p>	<p>2004/5= 11% to 2007/8=24% remand ( Kong, 2009, p.12)  percentages “of all youth admitted to correctional services who are female” admitted to : *remand 2007/8= 24 ** custody 2007/8=22 (Kong, 2009, p.21)</p>	<p>services who are aboriginal” *remand 2007/8=9% **custody 2007/8=5% Overall percentage of youth in correctional services =4% (Kong, 2009, p.22)</p>	
<p>PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)</p>	<p>Nothing</p>	<p>Nothing</p>	<p>child can be held for no more than a cumulative period of 6 months after a disposition hearing is finished and the child is determined in need of protection (R.S.P.E.I.</p>	<p>12 years + child might be appointed counsel paid for by the director in a protection hearing/ application (RSPEI 1988. C. C-5.1.34)</p>	<p>*3(Statistics Canada, 2006)  **26 custody 0 to deferred custody/supervision (Statistics Canada, 2006/7)</p>	<p>No info  percentages “of all youth admitted to correctional services who are female” admitted to : *remand 2007/8= unknown ** custody 2007/8=unknown (Kong,</p>	<p>Overall percentage of youth in correctional services =2% (Kong, 2009, p.22)- rest is unknown</p>	

			1988, c. C-5.1. 2(a))			2009, p.21)		
NB <i>Family Services Act, S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)</i>	Nothing	allows minister to enter into contracts for social services with other agencies -does NOT include corrections (SNB1980 c. F.-2.2. 17-21)  - the minister has the right to " place the child in any facility they deem appropriate", but does have to seek the opinion of the child/ parent- doesn't say to what extent (SNB1980 c. F.-2.2.45(2))	the minister has the right to "place the child in any facility they deem appropriate" (SNB1980 c. F.-2.2.45(2)- but does have to seek the opinion of the child/ parent- doesn't say to what extent.	court can appoint counsel for the child involving custody proceeding (SNB1980 c. F.-2.2. 22.7 )	*59(Statistics Canada, 2006)  **107 custody 67 deferred custody & supervision (Statistics Canada 2006/7)  ***315 remand (Kong, 2009, p. 15)	No info percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 16 ** custody 2007/8=21 (Kong, 2009, p.21)	Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8=8% **custody 2007/8=11% Overall percentage of youth in correctional services =4% (Kong, 2009, p.22)	
QC <i>Youth Protection Act, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)</i>  compulsory Foster care refers to rehabilitation centres too, are these the same as detention NOT clear (RSQ 1977, P-34.1.62)  "compulsory foster care is possible for 15 days and may extend to 60 days or more (RSQ 1977 P-34.1.s.62) -	Nothing	- "no child shall be placed in a house of detention within the meaning of the Act respecting the Québec correctional system, or in a police station"(RSQ 1977, P-34.1.s.7) - does this refer to adult jails??	-a child can be moved to an "intensive supervision if they are deemed a "risk to themselves or other(RSQ 1977, P-34.1.s.10) -doesn't describe how this is defined  . To restrict their movements and supervise them more closely- no time limits mentioned, just has to end when it is deemed the placement is not longer needed (RSQ	Child protection agency must inform the child of their right to counsel for representation or to consult. (RSQ, 1977 P-34.1. 5 &6)  Child must be given the opportunity to be heard in court, can have independent legal representation if views differ from parents QC legal aid has lawyers for children in care(RSQ. 1977, P-34.1.s.78	*184(Statistics Canada, 2006)  **custody 93 deferred custody & supervision (Statistics Canada, 2006/7)489  -rate of secure & open custody sentencing increased 2007-8 (Kong, 2009, p.10)  ***2667 remand (Kong, 2009, p.15)	No info percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= unknown ** custody 2007/8=unknown (Kong, 2009, p.21)	Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8= unknown **custody 2007/8= unknown Overall percentage of youth in correctional services =2% (Kong, 2009, p.22)	

<p>not clear also mentions "rehabilitation or hospital centres"</p>			<p>1977. 34.1.s. 11.1(1)</p> <p>can hold for 48 hours without warrant to assess (RSQ 1977 P-34.1.s.46) &amp; can put them in foster care rehab, hospital or a institution (RSQ 1977 P-34.1.s.46 (b))</p> <p>emergency measures to take in a child cannot exceed 30 days and cannot be renewed child over 14 can agree to these (RSQ 1977 P-34.1.s.47.1 ). includes 10 day period between trying to est. Voluntary measures that are not accepted by parent (RSQ 1977 P-34.1.s. 52) &amp; child over 14 and referral to the tribunal (RSQ 1977 P-34.1.s.52)- possibility of referral until age 18 or to be returned to the family</p>	<p>&amp;s. 80)</p>				
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			<p>“compulsor y foster care is possible for 15 days and may extend to 60 days or more- not clear also mentions “rehabilitat ion or hospital centres”(R SQ 1977 P-34.1.s.62)</p> <p>compulsor y foster care during the school year, the chid is kept until the school year ends- if parent’s consent under age 14 or if child consents over age 14- again mentions “Rehabilita tion centres”(R SQ 1977 P-34.1.s.64)</p> <p>During tribunal hearing compulsor y foster can only last for 30 days but it does allow for an extension of 30 days if necessary (RSQ 1977 P-34.1.s.79)</p> <p>appeals on tribunal placement decisions can take no longer than 30 days for the</p>				
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			<p>application to pass in court(RSQ 1977 P-34.1.s.117)</p>					
<p>ON  Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)</p>	<p>Nothing</p>	<p>No separate clause looks like CAS also runs detention?</p>	<p>Under the rules of YCJA (2006), c. 19, Sched. D, s. 2 (3). This does not apply &amp; under 16 (R.S.O., Ch. C.11.s. 27(3))</p> <p>can only be discharged with consent of parents or CAS (R.S.O. Ch. C.11.s.27 (4))</p> <p>-can only be transferred (under 16) with consent of parent or CAS (R.S.O. 1990 Ch. C.11.s.27 (5))</p> <p>where a child under 12 has committed a criminal offence &amp; has been apprehended and cannot be replaced with guardian within 12 hours they will be considered in "need of protection" and can be placed.(R.S.O. 1990 Ch. C.11.s.42 (2) &amp; (R.S.O.</p>	<p>- court orders office of the Children's Lawyer to assign a lawyer for the child (R.S.O. 1990, Ch. C.11), , c.11.38)</p>	<p>*485(Statistics Canada, 2006)</p> <p>** 2880 custody 469 deferred custody &amp; supervision, 19 conditional sentencing (Statistics Canada, 2006/7)</p> <p>***8571 remand (Kong, 2009, p.15)</p>	<p>No info percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 20 ** custody 2007/8=15 (Kong, 2009, p.21)</p>	<p>Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8=9% **custody 2007/8=14% Overall percentage of youth in correctional services =3% (Kong, 2009, p.22)</p>	<p>- no age given in the entire act. No reference to youth detentions vs. Adult. (Safe Streets Act. SO, 1999. C.8)</p> <p>deal with solicitation, (SO1999, c. 8 s. 1-4)</p> <p>allows for arrest without a warrant(SO, 1999, c.8.6)</p> <p>explains the consequence of breaking these rules (SO, 1999, c.8.5 (all):</p> <p>first offence is a fine not exceeding \$500, (SO 1999, c.8.5.(1)a).- subsequent offences are fines not exceeding \$1000 or imprisonment not exceeding 6 months- (SO 1999, c.8.5.(1)b). again does not state if this does or does not include youth</p>

			<p>1990, Ch. C.11. .51(2) (i&amp;ii)</p> <p>&amp;</p> <p>while court is adjourned (up to but not more than 30 days) for protection hearing the child cannot be placed in a secure or open custody setting (R.S.O. 1990, Ch. c.11 .69(4)</p> <p>-</p> <p>child will be placed in open temp. Detention &amp; only in secure detention (R.S.O. 1990, c.11 .93.2) if immediate or within last 12 months committed offense which adult could be charged for 5 yrs. a grievous bodily harm charge or failure to appear in court under YCJA (R.S.O. 1990, Ch. C.11 .93(2)I all)-</p> <p>-</p> <p>can be put into secure detention if runaway from temp</p>				
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			<p>open detention-doesn't specify time period (R.S.O. 1990, Ch. c.11. 93(2))</p> <p>- can be placed in secure detention if there it is believed the child will commit another offense, will risk safety and security of the open temp detention and or will miss court dates (R.S.O. 1990, Ch. C.11. c.11 . 93(2)3 all)</p> <p>says can only hold child in secure custody for 24 hours before court makes ruling on placement if child is detained under (R.S.O. 1990, Ch. C.11 . 93(4))</p> <p>prevents the use of lock up except under the YCJA and "extraordinary measures (R.S.O. 1990, Ch. c.11 .100(1) (doesn't define)</p>					
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			<p>can be put into secure detention if runaway from temp open detention-doesn't specify time period(R.S.O. 1990, Ch. c.11 .93(2)</p> <p>can be placed in secure detention if runaway from another secure detention until child is brought back to the first secure placement. (R.S.O. 1990, .93(3)</p> <p>runaway from open custody must be returned within 48 hours of apprehension by police to original open custody placement unless prov. Director decides they need secure placement. (R.S.O. 1990, c.11 .98(3)</p> <p>where a child under 12 has committed a criminal offence &amp; has been apprehended and cannot be</p>					
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			<p>replaced with guardian within 12 hours they will be considered in "need of protection" and can be placed. (R.S.O. 1990, c.11 .42(2))</p> <p>hearing for placement will take place if in temporary open custody 24 hours after being brought there, (R.S.O. 1990, c.11 .46(2- all))</p> <p>and it is possible that they can then be detained for no more than 30 days (R.S.O. 1990, Ch. C.11. .46.2(a) - does this include runaways? ? - (R.S.O. 1990, Ch. C.11. 51.2(d i&amp;ii) while court is adjourned ( up to but not more than 30 days) for protections hearing the child cannot be placed in a secure or open custody setting (R.S.O. 1990, Ch. C.11. 51.2(d</p>					
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			<p>i&amp;ii)</p> <p>within 5 days of apprehension there shall be a court hearing for decision on placement care plan or discharge. (R.S.O. 1990, Ch. C.11. .46(1))</p> <p>defines secure treatment, secure isolation rooms, use of restraints and psychotropic drugs for secure treatment for "mental disorders" (R.S.O. 1990, Ch. C.11.s. .112)-</p> <p>child will be placed in open temp. Detention &amp; only in secure detention if (R.S.O. 1990, Ch. C.11.s. 93(2)1 all)</p> <p>immediate or within last 12 months committed offense which adult could be charged for 5 yrs.a grievous bodily harm charge or failure to appear in court under</p>					
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			<p>YCJA</p> <p>child can be held for 30 days while court is adjourned in secure treatment-awaiting final decision &amp; under 12 and deemed a risk.(R.S.O . 1990, c.11 s.114(3&amp;4)</p> <p>says can only hold child in secure custody for 24 hours before court makes ruling on placement if child is detained under YJCA (R.S.O. 1990 c.11 . 93(4)</p> <p>child can be held for 30 days while court is adjourned in secure treatment-awaiting final decision &amp; under 12 and deemed a risk(R.S.O. 1990, Ch. 11s. 114(3&amp;4)</p>					
<p>MAN Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in</p>	Nothing	<p>Nothing group home between 5 &amp; 8 children, treatment centre more than 8, and nothing about a detention centre.(C.C.S .M.1985c.C8</p>	Nothing	<p>presence of a child over 12 required in court(C.C. S.M. 1985 c.C80. 20.33[2]) judge may order legal counsel for</p>	<p>*92(Statistics Canada, 2006)</p> <p>**164 custody , 29 deferred custody and supervision, 3 conditional sentencing</p>	<p>Nothing</p> <p>percentages "of all youth admitted to correctional services who are female" *remand</p>	<p>Nothing</p> <p>Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8=84% **custody 2007/8=82%</p>	Nothing

<p>force since Apr. 15, 2009)</p>		<p>0.Definitions section)</p>		<p>child (C.C.S.M. 1985 c.80.34[2]) ( is it guaranteed ??) and if over 12 child has the right to direct counsel (under 12 do they?)</p> <p>determinati on rules of having legal counsel for child:” capacity to understand, presence of parents, complexity of the case, differences in views of the child(C.C. S.M. 1985 c.80.34[3] all)-</p> <p>gives judge right to have informal hearing- doesn’t say anything about legal counsel present here.(C.C. S.M. 1985c.80.36)-</p>	<p>(Statistics Canada, 2006/7)</p> <p>***1888 (Kong, 2009, p.15)</p>	<p>2007/8= 22 ** custody 2007/8=10 (Kong, 2009, p.21)</p>	<p>Overall percentage of youth in correctional services =23% (Kong, 2009, p.22)</p>	
<p>AB Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)</p>	<p>allows the director to hold a child who is being investigated “any place in order to complete the investigation (RSA,2000 cC-12 6.2)”- does this include detention?? Not clear</p> <p>state that hearing cannot be adjourned for</p>	<p>allows the director/ minister to licence residential facilities: foster home, group home or secure treatment centre- does not include corrections(RSA,2000 cC-12 105(1))</p> <p>allows the director to hold a child</p>	<p>cannot exceed 30 consecutive days of confinement in secure treatment(RSA,2000 cC-12 .44(1)2)</p> <p>can “confine the (runaway child.(RSA ,2000 cC-12 20(1)b)</p>	<p>can “confine the (runaway child.(RSA ,2000 cC-12 s.20(1)b.) &amp; other province director must give reason for apprehension and the number of legal aid(RSA,2000 cC-12.</p>	<p>*126(Statistics Canada, 2006)</p> <p>**557custody, 158 deferred custody/ supervision (Statistics Canada, 2006/7)</p> <p>***1932 remand (Kong, 2009, p.15)</p>	<p>No info percentages “of all youth admitted to correctional services who are female” admitted to : *remand 2007/8= 28 ** custody 2007/8=17 (Kong, 2009, p.21)</p>	<p>Percentages of “youth admitted to correctional services who are aboriginal” *remand 2007/8=41% **custody 2007/8=39% Overall percentage of youth in correctional services =9% (Kong, 2009, p.22)</p>	<p>Nothing</p>

	<p>more than 14 days then it says 42 days and that the director of child welfare could take custody for this period ( doesn't say where)(RSA, 2000 cC-12 .21.1(4) &amp;(5))</p> <p>(RSA,2000 cC-12 .48(1) allows for apprehension of a runaway from a secure service facility</p> <p>allows detainment of child who is being transferring to different secure services (RSA,2000 cC-12 .46)- - no limits mentioned</p>	<p>who is being investigated "any place in order to complete the investigation( RSA,2000 cC-12 .6.2)"- does this include detention?? Not clear</p> <p>allows the director/ minister to licence residential facilities: foster home, group home or secure treatment centre- does not include corrections (RSA,2000 cC-12 .105(1)</p>		<p>20(3) ( to who- not clear)</p> <p>- court has to provide child, child's lawyer and parent with reason for secure treatment order, reasons for it length of time, etc.) (RSA,2000 cC-12 .44(9)all)</p> <p>has to provide child with address of the address of the child and youth advocate and the parent with the number of legal aid.(RSA, 2000 cC-12 s.44(9) c&amp; d)</p> <p>of any application order (supervision, temporary, permanent- court may appoint a lawyer if a. child or guardian requests it, b. if the court feels child's views will not be heard (RSA,2000 cC-12 .112(1) and</p> <p>(RSA,2000 cC-12 .111(2) children can be party to all hearings</p>				
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<p>SK  Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)</p>	<p>Nothing  a child is considered in need of protection if involved in prostitution or criminal activity under definitions of the criminal code(SS 1989-1990, cC-7.2.11(a) (iii))</p>	<p>Facilities refers to treatment, shelter doesn't say detention-minister can run, operate or contract out.(SS 1989-1990, cC-7.2.s.2.6)</p>	<p>can be held in emergency foster care/ group home for 48 hrs. Up to another 7 days until hearing takes place (SS 1989-1990, cC-7.2.s.17(4) &amp; -includes 16&amp; 17 yr olds in exceptional cases(SS 1989-1990, cC-7.2.s.18 (a &amp; b ) &amp; hearing must take place in one day(SS 1989-1990, cC-7.2.s.20(1) (a)  court has 60 days to determine if the child is in need of protection and can technically hold them during this time even if there is an adjournment (SS 1989-1990, cC-7.2.s.35(1)(c))</p>	<p>(age not specified)  Child is not party to child welfare proceeding and does not receive counsel, BUT might be allowed to be present in a hearing and give their views.(SS 1989-1990, c.C-7.2.s.29)</p>	<p>*160(Statistics Canada, 2006)  ** 489 custody , O deferred/ supervision (statistics Canada, 2006/7)</p>	<p>No info percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 13 ** custody 2007/8=unknown (Kong, 2009, p.21)</p>	<p>Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8= unknown **custody 2007/8=79% Overall percentage of youth in correctional services =24% (Kong, 2009, p.22)</p>	<p>Nothing</p>
<p>BC Child, Family and Community Services Act RSBC 1996(last amended march 21<sup>st</sup>, 2010 and came into force at this time), c.5</p>	<p>Nothing</p>	<p>"place of confinement" (a) = correctional centre , youth custody centre (RSBC1996, Ch.46. 1(1) definitions)</p>	<p>"residential service" = foster home or other place not with guardian(R SBC1996, Ch.46. 1(1) definitions)  director has 7 days to go to court for</p>	<p>.RSBC1996, Ch.46.39 (4) 54.1 &amp;60 Child can be party to child welfare proceeding esp. if views are different than the director or parent. -private</p>	<p>*87(Statistics Canada, 2006)  **525 custody, 106 deferred custody &amp; supervision, 4conditional sentencing ( Statistics Canada, 2006/7)  -rate of</p>	<p>No info percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 24 ** custody 2007/8=24 (Kong, 2009, p.21)</p>	<p>Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8=29% **custody 2007/836% Overall percentage of youth in correctional services =8% (Kong, 2009, p.22)</p>	<p>nothing on age of person who can be arrested- just says " persons who..." refers to Safe Streets Act ( SBC 2004) Ch. 75)-  soliciting and soliciting in</p>

			<p>presentation hearing following the removal of a child (RSBC 1996Ch.46. s.34(1) &amp; subsequent hearing has to take place within 45 days of the presentation hearing-technically child can be held then for 52 days during court proceeding (RSBC 1996, Ch.46s. 37(2))</p> <p>this is counted in total of 12 months child can be in care(RSBC 1996, Ch.46.s. 44(3.1))</p>	<p>counsel is appointed 12 + must be informed of the right to counsel before consenting to an order.</p>	<p>secure custody sentencing increased 2007-8 (Kong, 2009, p.10)</p> <p>***1293 (Kong, 2009, p.15)</p>		<p>an aggressive manner (SBC 2004.75.s.1 &amp;2)</p> <p>keeping a captive audience _ soliciting vehicles on a roadway, blocking people at pay phones, public toilets etc. -(SBC 2004,75s..3 (all))</p> <p>And allows for - police arrest without warrant, -does not say anywhere in the act what time/ fines people can get for this. (SBC 2004, 75.s.5)</p>	
<p>YU Child and Family Services Act . 2008)RSY C-22</p>	<p>Nothing - "out of home care" is the only definition (RSY C-22s. 1 definitions &amp;s. 165(1-all) doesn't specify foster, group home or institutional/ Correctional</p>	<p>nothing</p>	<p>child brought into care under a warrant the director has to appear in court for presentation hearing within 15 days (RSY 2008 C-22 s. 46(1))</p> <p>without a warrant has to appear within 7 days of child being brought into care (RSY 2008 C-22s. 46(2))</p> <p>if child is</p>	<p>child in place of confinement only has right to a lawyer, ombudsman, (RSY 2008 C-22 70(3)) but not to other rights of the child laid out in includes food, clothing, recreation, religious and cultural instruction, interpreter or to be informed of their rights(RSY</p>	<p>*4(Statistics Canada, 2006)</p> <p>** 14 custody , 0 deferred custody (Statistics Canada, 2006/7)</p> <p>-rate of secure custody sentencing increased 2007-8 (Kong, 2009, p.10)</p> <p>-46 remand (Kong, 2009, p.15)</p>	<p>increase from 2004/5= 0% to 2007/8=22% remand (Kong, 2009, p.12)</p> <p>percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 22 ** custody 2007/8=38 (Kong, 2009, p.21)</p>	<p>Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8=87% **custody 2007/8=81% Overall percentage of youth in correctional services =33% (Kong, 2009, p.22)</p>	<p>Nothing</p>

			<p>in temp care and a motion for subsequent order is filed but not heard &amp; temp custody is up child can be held until it is heard ( no time limit!) includes adjournments (RSY 2008 C-22s. 60(6) &amp; s.79(3) (c)</p> <p>unsupervised. lost or runaway can hold child for 72 hours(RSY 2008C-22 30(1) (a) &amp; 31(2)(a)</p>	<p>2008, C-22 s.70(1)</p> <p>- official guardian has exclusive right to determine if a child needs independent legal representation. (RSY 2008, C-22 s. 31) &amp; representative does not necessarily have to be a lawyer. (RSY 2008, C-22s. 168)</p>				
<p>NVT/ NWT</p> <p>NWT is same Legislation. as NVT) Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c. 13</p>	<p>no children are allowed to be held with young or adult offenders in lock up or a police station if being brought before a court hearing on protection(R. S.N.W.T. 1997 c. 13.66)-</p>	<p>director of child welfare NOT in charge of approving detention centres or custody centres under the YCJA(R.S.N.W.T. 1997 c. 13.62(2)</p>	<p>where there is no care plan made child can be held for 72 hrs and then returned to guardian (R.S.N.W.T. 1997 c. 13.12(1)</p> <p>looks like if there is not care plan committee formed then child has to be returned and referred within 15 days of apprehension- (R.S.N.W.T. 1997 c. 13.16(2)(c) not entirely clear.</p> <p>court hearing must take place within 45</p>	<p>court appoints independent counsel for child if the parents and child's interests are different or in the best interests of the child.(R.S.N.W.T. 1997 ,c. 13.86(1)</p>	<p>*17- NWT *8- NVT(Statistics Canada, 2006)</p> <p>** NWT 29 custody, 0 deferred custody &amp; supervision NVT 22 custody,4 deferred custody/ supervision, 1 conditional ( Statistics Canada, 2006/7)</p> <p>*** 45 NWT ( no stats for NVT) remand (Kong 2009, p.15)</p>	<p>- increase from 2004/5= 13% to 2007/8=40% remand (Kong, 2009, p.12)</p> <p>NVT only-percentages "of all youth admitted to correctional services who are female" admitted to : *remand 2007/8= 40 ** custody 2007/8=25 (Kong, 2009, p.21)</p>	<p>Percentages of "youth admitted to correctional services who are aboriginal" *remand 2007/8=82% **custody 2007/8=93% Overall percentage of youth in correctional services =65% (Kong, 2009, p.22)- ONLY NWT</p> <p>NVT Overall percentage of youth in correctional services =95%</p>	

			<p>days of apprehension (R.S.N.W.T. 1997 c. 13.24(c) BUT not clear looks like the parent can apply to cancel the care plan with 10 days notice and then the protection worker needs to apply for an order of protection to the court.(R.S. N.W.T. 1997 c. 13.22) - so is the child returned?</p> <p>second hearing must be held within 3 months of apprehension- confusing does this mean a child can be held potentially for 3 months while awaiting protection hearing?(R.S.N.W.T. 1997 c. 13.26 )</p>				
<p>Federal- YJCA. (2002-amended 2010) 2002.S.C.1.3</p>		<p>separate detention for youth and the emphasise has to be on (i) rehabilitation, (ii) fair and proportionate sentences to the crime &amp; (iv) timely intervention YJCA. 2002-S.C.1.3(1)(b)</p>	<p>youth custody and supervision system in each province requires 2 tiers- one of which has to be the least restrictive supervision TIME LIMITS</p>	<p>right to legal counsel and advised of that right when they are arrested or detained ( (YJCA, SC 2002, c.1.25.1&amp;2 ) . can appoint legal counsel is</p>	<p>*800 (Statistics Canada, 2006)</p> <p>**5640 custody, 27 conditional, 1080 deferred custody/ supervision (Statistics Canada, 2006/7)</p>		<p>4700 admitted to custody first Nations 2007/8 ( Kong, 2009, p.12)</p>

		<p>"A youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures."(YJCA. 2002.S.C.1. 29. (1) &amp; "A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures." (YJCA. 2002.S.C.1. 39(5)</p>	<p>(YJCA. 2002.S.C.1 . 85(1) for serious violent offenses -( YJCA. 2002.S.C.1 . 42(2)(k) i.e. murder- can get 2ys probation or -put into intensive supervision ( no time specified) (YJCA. 2002.S.C.1 . 42(2)(l) or a non residential program and community service for no more than 240 hours or less than 6 months, if serving 2 years custody and the n half is half as long as the first ( 1/2 sentence??) to be served in the community (YJCA. 2002.S.C.1 . 42(2) (m) or continuous custody for 2yrs. (YJCA. 2002.S.C.1 . 42(2) (o) Or deferred supervision and custody for 6 months(YJCA. 2002.S.C.1 . 42(2) (p) ( not sure what this means)</p>	<p>on trial (YJCA, SC 2002, c.1.25.4)</p>	<p>4457 secure custody in 2007/8 (Kong, 2009, p.9)- only 11 jurisdictions reporting</p> <p>-remand increased so that more youth were held in remand than in custody (only 7 jurisdictions reporting) = a 19% increase from 2003/4 to 2007/8 1009 in remand 2007/8 and 991 sentenced custody 2007/8 (Kong, 2009, p.13)</p> <p>-Est. 25,000 in detention in Canada on any given day ( Manser, 2007,p.5)</p> <p>-"There were about 39,000 admissions to youth custody and community correctional services "(2004/2005, not all provinces reported) "At any given time (2004/5) there were approximately 400 federal prisoners aged 20 or younger. 28% of these prisoners are aboriginal" (Prison Justice.ca , 2010)</p>			
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			<p>- if sentence is 1<sup>st</sup> degree murder max is 10 years or less with (YJCA. 2002.S.C.1 . 42(2)(q)(i) – (A) max 6 years served in custody and the rest (B) placement under supervision in the community (YJCA. 2002.S.C.1 . 42(2)(q)(i)</p> <p>2<sup>nd</sup> degree murder= 7 years max. With (A) max 4 years custody and (B)rest in community supervision (YJCA. 2002.S.C.1 .42(2)(q) (ii)</p> <p>intensive rehabilitation ( not sure what this means..) no more than 2 years or (B) 3 years if the youth receives what would have been an adult life sentence &amp; the first half is in custody and the 2<sup>nd</sup> in the community ( YJCA. 2002.S.C.1 42(2)(r)(i) (A)</p> <p>intensive rehabilitation</p>					
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			<p>on and custody is 2 yrs (YJCA. 2002.S.C.1 . 42(7) only if murder, manslaughter, aggravated sexual assault- etc under the Criminal Code (YJCA. 2002.S.C.1 42(7)(a)(1) and Only if –if it’s what an adult would get 2 years or more for and if the youth was previously guilty of 2 serious violent offenses. (YJCA. 2002.S.C.1 42(7)(a)(ii) OR –if the person has a psychological disorder.(YJCA. 2002.S.C.1 . 42(7)(b)</p> <p>Otherwise no youth sentence will be more than 2 years with ½ served in the community (YJCA. 2002.S.C.1 . 42(14) unless under continuous sentences cannot go over 3 years except where one or more the offenses is</p>					
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			<p>first or 2<sup>nd</sup> degree murder- if 1st degree murder the 2 sentences will not exceed 10 years and if one of 2<sup>nd</sup> degree murder then the two sentences won't exceed 7 years.(YJC A. 2002.S.C.1 s. 42(7) or s.42(2) s.-42(15) 2 ) additional sentences usually served continuously (YJCA. 2002.S.C.1 .43 ) or concurrently ( YJCA. 2002.S.C.1 .44)</p> <p>if youth was charged with a serious violent offense (YJCA. 2002.S.C.1 .45(2)</p> <p>&amp; is charged with another sentence that would not exceed the time they are already serving (i.e. 7-10 yrs) they can either be remanded to a youth custody centre and the director has to</p>					
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			<p>review the case within 24 hrs &amp; either release into the community under supervision or keep in custody for the remainder of the first sentence (YJCA. 2002.S.C.1 . 45(3) - for no more than a total of 6 yrs in custody with the rest served in the community (YJCA. (2002-2002.S.C.1 . 46)</p> <p>if youth is sentenced to what and adult would serve 2 yrs or more, and the sentence they are given is under 90 days of custody it might be able to be served "intermittently" (not sure what this means (weekends ?))(YJCA. 2002.S.C.1 . 47(1&amp;2)</p> <p>no community service order can be for more than 240 hours or more than 12 months. (YJCA. 2002.S.C.1 . 54(8)</p>					
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			<p>probation order might require the youth to stay within the territory of the court. (YJCA. 2002.S.C.1 .55(2)(c) &amp;/or "reside at a place the provincial director specifies" (YJCA. 2002.S.C.1 .55(2)(g) - could this be child welfare institution?</p> <p>allows for the youth or family to ask for a review of the sentence after 6 months of the sentencing date (YJCA. 2002.S.C.1 .s.59(1) &amp; on the grounds the sentence is interfering with the youth's opportunity to "receive services", education or employment.(YJCA. 2002.S.C.1 .59(1)(d)</p> <p>an extended sentence is possible after the review of a sentence that is more than 12 months</p>				
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			<p>(YJCA. 2002.S.C.1 . 59(9)</p> <p>can be charged as an adult if between ages 14 &amp; 16</p> <p>(YJCA. 2002.S.C.1 . 62)</p> <p><b>BUT</b></p> <p>cannot do this unless there is evidence and it is presented before sentencing- otherwise charged as youth for serious violent offenses(Y JCA. 2002.S.C.1 . 63(I).</p> <p>can sentence youth to (a) youth custody facility away from adult offenders (b) provincial adult jail or (c) if they receive 2 yrs or more a penitentiary- adult</p> <p>(YJCA. 2002.S.C.1 . 76(1)</p> <p><b>IF</b></p> <p>think the youth might jeopardize the safety of other youth or (b) they are age 18 at time of sentencing.</p> <p>(YJCA. 2002.S.C.1 . 76(2)(a))</p> <p>cannot be</p>					
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			in youth detention if 21 yrs or older					
<b>Appendix B. 5 Right to Legal Recourse</b>								
			deemed safe by director and in the best interests of the youth (YJCA. 2002.S.C.1 .76(9))					
UNCRC				UNCRC a RES/ 44/25 (1989) Article 12 " a child who can form vies in a matter affecting him or her can either directly or through a representati ve or an appropriate body, have those views placed before any judicial or administrati ve proceeding. "				

Province	Presence of child advocate Dates est.	Unified Family or Community counsel/ court Dates est.	Ombudsman-Dates est.	Children's HR commission Dates est.	Other provincial recourse laws for youth Dates est. (i.e. Mandatory court review, mediation, alternative dispute mechanisms)
<p>NFL/ LAB Child Youth and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)</p>	<p><i>Child and Youth Advocate Act</i>, SNL, 2001.c.C.12.01</p>	<p>-Unified family courts est. 1979, St. John's , Avalon Peninsula and Bonavista Peninsula.- serves half of the province (BC Justice Review, 2003)</p> <p>mentions unified family court(SNL 1998 c. C-12.1.s.55.2)</p> <p>“Where a hearing under this Act is proceeding at the same time as custody of a child is being determined under another Act, a party may apply to have the 2 matters heard together, whether the different proceedings are heard by the Provincial Court, the Trial Division or the Unified Family Court, but if a matter relates to an application made under the Divorce Act (Canada), the combined matter shall only be</p>	<p>Nothing</p>	<p>Nothing</p>	<p>encourage study and discussion for the development of sound standards(SNL. 1998, C-12.1.9.5(d)</p> <p>director or social worker Can use ADM's= family group conference, pre-trial settlement and mediation(SNL. 1998, C-12.1.13.)</p> <p>minister can appoint a review board of all services sits every two years, (SNL. 1998, C-12.1.75 (all )</p> <p>Made of people appointed for 3 yrs. appointed people: two people who are in care or who are parents of children receiving care!!!: lawyer, minister aid, two people from minority communities, NOT paid(SNL. 1998, C-12.1.75(2) &amp; report goes to the house of assembly within 30 days..SNL. 1998, C-12.1.75(6)</p>

		heard by the Trial Division or Unified Family Court.”(SNL 1998 c. C-12.1.59).			
NS Children and Family Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)	Nothing	Unified Family Courts est. 1999 Halifax, Sydney and Port Hawkesbury Baddeck, Port Hood and Arichat. Currently serves about 75% of the province’s population.  (BC Justice Review, 2003)	-in 1996, ombudsman had role in youth programs  -Children’s ombudsman June, 1999 (Francis, 2000, p. 20)	Nothing	An agency and guardian may agree to appoint a mediator to resolve matters relating to a child in or about to be in protective services. Child, parent or agency can ask for this (S.N.S 1990 c.5..21(1)  “Where a mediator is appointed pursuant to subsection (S.N.S 1990 c.5..211) after proceedings to determine whether the child is in need of protective services have been commenced, the court, on the application of the parties, may grant a stay of the proceedings for a period not exceeding three months.” (S.N.S 1990 c.5..21(2)
PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)	Nothing	- Unified Family Courts est. 1975 serves whole province in three areas Charlottetown, Summer-side and Georgestown (BC Justice Review, 2003)  Where a child is aboriginal the court will consider the submissions of a band representative or counsel. (R.S.P .E.I. 1988, C-5.1.30[2]	Nothing	Nothing	Director of child welfare will submit an annual review of child welfare services to the minister (R.S.P .E.I. 1988, C-5.1.5.2[i]  The Lieutenant Governor in Council may make regulations respecting the establishment of a complaints process(R.S.P .E.I. 1988, C-5.1.60 a) , including the designation of one or more persons to review complaints, the process for making complaints and for conducting reviews, making recommendations also est. Advisory committees- vague what they do(S.N.S 1990 c.5.s.2160(f))
NB Family Services Act, S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan	<i>Child and Youth Advocate Act</i> , June, 2007, SNB. C.C2.7	Unified family courts serve the whole province est. 1979 has 8 locations	Nothing	Nothing	minister can inspect service agencies/placements (SNB 1980 c.F-2.2.s.22(1)[all] & (SNB 1980 c.F-2.2.s.27 (all) &can order agency to meet standards (SNB 1980 c.F-2.2.s.22[40])

5, 2009)					
<p>QC</p> <p>Youth Protection Act, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)</p>	<p>Nothing</p>	<p>The government must enter into agreement with a first nation represented by the band councils of all the communities of that nation for the establishment of a special youth protection program. (R.S.Q. 1977, c. P-34.1.s.37.5</p>	<p>Nothing</p>	<p>Commission des droits de la personne et des droits de la jeunesse Commission established 1975</p> <p><a href="http://www.cdpdj.qc.ca/en/commission/index.asp?noeu d1=1&amp;noeud2=1&amp;cle=0">http://www.cdpdj.qc.ca/en/commission/index.asp?noeu d1=1&amp;noeud2=1&amp;cle=0</a></p>	<p>If a child needs protection under this act the Child Protection Society shall consider whether a prescribed method of alternative dispute resolution could assist in resolving an issue related to the child or the plan for the child's care. (R.S.Q.1977, c. P-34.1. 20.2[1]</p> <p>If a society makes or receives an alternative dispute resolution proposal involving an Indian child then the child's band or community will be given notice. (R.S.Q.1977, c. P-34.1.20.2[4]</p> <p>An advisory committee that conducts a review will advise a native child's band or community. (R.S.Q. 1977, c. P-34.1s..35[1][e]</p> <p>Where an agency is accused of not abiding by the standards of the act the minister will appoint one or more persons not employed by the ministry to report findings of fact used in making recommendations and conclusions of law relevant to the case and provide the agency with a copy. (R.S.Q. 1977, c. P-34.1.22[7][b]</p>
<p>ON</p> <p>Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)</p>	<p>established in 2007 under Bill 165 and the first on(Office of the Provincial Advocate for Children and Youth- webpage, 2010)</p> <p>A child in care has a right, (b) to speak in private with and receive visits from, (i) the child's solicitor, (ii) another person representing the child, including the Provincial Advocate for Children and Youth, (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada(R.S.O. 1990, c. C.11 .103(1))</p>	<p>Unified Family Courts, est. 1977, now 17 locations-serve 40% of population (BC Justice Review, 2003)</p>	<p>A child in care has a right, (b) to speak in private with and receive visits from, (iii) the Ombudsman appointed under the Ombudsman Act and members of the Ombudsman's staff, (R.S.O. 1990, c. C.11 . 103(1)</p>	<p>Nothing</p>	<p>ADMs can be used in individual child welfare care plans (R.S.O. 1990, c. C.11 . 20.2(a)</p> <p>describes complaint review process by a complain board, anyone can make a complaint &amp; 68(4) this generally refers to complaints made to a society that were not heard and now the board can resolve the dispute between the client and the agency 69(1) [all] then the person can appeal the decision of the review board in court(R.S.O. 1990, c. C.11 . 68[all ]</p> <p>allows a service provider to make a complaint and also mandates that they conduct an internal review if a complaint is received from a child or their family.(R.S.O. 1990, c. C.11 . 109[all])</p>
MAN	Office of the	-United	Nothing	Nothing	child abuse review committee, allow the

<p>Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)</p>	<p>Children's advocate, April, 1993 (Office of the Children's Advocate, 2004-5, p.1)</p> <p>can hold office for 3 years. Can be renewed twice8[1] Appointed by lieutenant governor and legislative counsel(C.C.S.M.1985, c. C80.s. 20.8[1]4 &amp; 5)</p> <p>(C.C.S.M.1985, c. C80.20.8[1]7 can be removed from office by 2/3 majority vote of the legislative counsel 8[1]2c can investigate child welfare cases, present information, research etc to the leg. Counsel and lieutenant gov, but cannot represent individual children</p> <p>main role is investigation of cases to see if child is eligible where there is a dispute. (C.C.S.M.1985, c. C80.s.20.8 all) &amp; to investigate/ make recommendations in the case of death of a child(C.C.S.M. 1985, c. C80.s 8[2] all) (C.C.S.M.1985, c. C80.s 8[3] &amp; on top of reports, investigations can visit homes, inspect residences and visit/ communicate with actual</p>	<p>Family Courts est. 1984 – now several (Winnipeg, Brandon, Selkirk, Morden, Portage la Prairie, Dauphin, Swan River, Flin Flon, BC Justice Review, 2003</p>			<p>accused to prove otherwise and are in charge of the child abuse registry entries(C.C.S.M.1985, c. C80.s.19(3) &amp; their decision can be appealed in court(C.C.S.M.1985, c. C80.s. 19(3.)9 )</p>
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	<p>kids.(C.C.S.M. 1985, c. C80.s 8[9]all)</p> <p>can report to the child over 12 or the parent their findings in dispute case.(C.C.S.M. 1985, c. C80.s 8[8]2)</p> <p>leg. Assembly makes rules for reporting, structure of child advocates office/ duties and pays them.(C.C.S.M. 1985 c. C80.20.8[14]1)</p>				
<p>AB Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12. (last amended 2009, current version in force since Nov 26, 2009)</p>	<p>-September 1989 est. Office ( Child and Youth Advocate: Alberta ( webpage 2010)</p> <p>minister can appoint a child advocate for 5 year terms Duties. (RSA, 2000cC-12 .s..3.1 &amp; ] can ask for representation of the child, investigate cases, esp lays out under act” protection of sexually exploited child” can involve community/ family in advocating for child (RSA, 2000cC-12 .s.3[all</p> <p>can represent interests of chil -ren in care.(R.S.A. 2000, c. C-12 s.3.5c)</p> <p>can represent, visit, communicate with and advocate for all kids esp sex.</p>	<p>If a director or an officer of a licensed adoption agency, as the case may be, has reason to believe that a child who is being placed for adoption is an Indian and a member of a band and that the guardian who is surrendering custody of the child is a resident of a reserve, the director or officer shall involve a person designated by the council of the band in decisions relating to the adoption of the child.(R.S.A. 2000, c. C-12 s. 67(1)</p> <p>If a director or an officer of a licensed adoption agency, as the case may be, has reason to</p>	<p>Nothing</p>	<p>Nothing</p>	<p>“a child, the guardian of a child or a person who in the opinion of a director has a significant connection to a child may, with the agreement of the director, enter into alternative dispute resolution with the director with respect to any decision made by the director with respect to the child. ( and rest of section 2-5 explains procedures..”(R.S.A. 2000, c. C-12 s. 3.1(1)</p> <p>service provider has to conform to standard of director/ minister and 105(5) (all) allow inspections-describes procedures (R.S.A. 2000, c. C-12 s. 105(4)</p>

	<p>Exploited one, do research and report to minister(R.S.A. 2000, c. C-12s.5 [all ])</p> <p>can impose/ request family or community in duties related to the child protection(R.S.A. 2000, c. C-12 s.3.6.b &amp; c)</p> <p>If the Court makes a secure services order it shall provide the child with the address and phone number or the Child and Youth Advocate(R.S.A. 2000, c. C-12s. 44(9)(c))</p> <p>the Child and Youth Advocate shall submit a report to the Minister every 3 months on the Child and Youth Advocate's activities and observations. (R.S.A. 2000, c. C-12s. 3(3)(f) &amp; prepare and submit annual reports to the Minister respecting the exercise of the duties and functions of the Child and Youth Advocate. (R.S.A. 2000, c. C-12s. 3(3)(g))</p> <p>On receiving a report under subsection (3)(g), the Minister shall lay a copy of the report before the Legislative Assembly if it is then sitting, and if not, within 15 days</p>	<p>believe that a child who is being placed for adoption is an Indian and a member of a band and that the guardian who is surrendering custody of the child is not a resident of a reserve, the director or officer shall (a) request the guardian who is surrendering custody of the child to consent to the involvement of a person designated by the council of the band in decisions relating to the adoption of the child, and (b) if the guardian consents to the involvement under clause (a), involve the person designated by the council of the band in decisions relating to the adoption of the child.(R.S.A. 2000, c. C-12 s. 67 (2))</p>			
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	after the commencement of the next sitting. (R.S.A. 2000, c. C-12s. 3 (4))				
SK Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)	1994- est. Children's Advocate Office ( Saskatchewan Children's Advocate Office, June, 21, 2006, p.3)	Unified family court est. 1978 now three Regina, Saskatoon, Prince Albert (B.C. Justice Review, 2003)  Where the child is Indian the chief of the band or designate shall be a party to the protection hearing respecting that child. (S.S. 1989-90, c. C-7.2.23(1)(b) & s. 23(4)(1))  The minister may, by order, establish, for any region or locality, a family review panel consisting of members appointed by the minister from among those persons who, in the opinion of the minister, are representative of community parenting standards. (S.S. 1989-90, c. C-7.2.40(1))  (1) The minister may, by order, establish a Family Services	Nothing	Nothing	Any person who is aggrieved by a decision of: (a) the director; or (b) any person acting on behalf of the minister or director; pursuant to this or the regulations may request that the decision be reviewed by the minister or, with the approval of the minister, by the board. (S.S. 1989-90, c. C-7.2.43(1)(3)) A request for review pursuant to subsection (3) does not stay or otherwise affect the validity of the decision with respect to which the review is requested. (S.S. 1989-90, c. C-7.2.43(1)(4))  On completing a review pursuant to subsection (3), the board shall submit its recommendations respecting the decision to the minister. (S.S. 1989-90, c. C-7.2.43(1)(5))  On completing the review the minister may: (a) confirm; (b) reverse; or (c) vary; the decision with respect to which the review was requested. (S.S. 1989-90, c. C-7.2.43(1)(6))

		<p>Board. (2) The board shall consist of members appointed by the minister from among those persons who, in the opinion of the minister, are interested and knowledgeable in the programs and services administered or provided pursuant to this Act.(S.S. 1989-90, c. C-7.2 .43)</p> <p>The minister may, having regard to the aspirations of people of Indian ancestry to provide services to their communities , enter into agreements with a band or any other legal entity in accordance with the regulations(S .S. 1989-90, c. C-7.2 .61(1)</p> <p>mention of unified family court orders have to be appealed in the court of appeals(S.S. 1989-90, c. C-7.2 .63.6)-</p>			
BC Child, Family and Community Services Act RSBC 1996(last	Office est. November 2005 & Representative for children and Youth Bill 34-2006 Statutes	At least 10 days before the date set for a protection hearing, notice of the	Children in care have the following rights: to be informed about and to be assisted in	Nothing	If a director and any person are unable to resolve an issue relating to the child or a plan of care, the director and the person may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the issue.(RSBC1996, Ch.46. 22)

<p>amended march 21<sup>st</sup>, 2010 and came into force at this time), c.5</p>	<p>of British Columbia (Representative for Children and Youth- history- Webpage, 2010)</p> <p>-</p> <p>Children in care have the following rights: (m) to privacy during discussions with a lawyer, the representative or a person employed or retained by the representative under the Representative for Children and Youth Act,(n) to be informed about and to be assisted in contacting the representative under the Representative for Children and Youth Act,(RSBC199 6, Ch.46. 70(1)</p>	<p>time, date and place of the hearing must be served as follows (c) if the child is registered or entitled to be registered as a member of an Indian band, on a designated representativ e of the band (c.1) if the child is a Nisga'a child, on a designated representativ e of the Nisga'a Lisims Government (d) if the child is not a Nisga'a child and is not registered or not entitled to be registered as a member of an Indian band but is an aboriginal child, on a designated representativ e of an aboriginal community that has been identified by (i) the child, if 12 years of age or over, or (ii) the parent who at the time of the child's removal was apparently entitled to custody, if the child is under 12 years of age(RSBC19 96, Ch.46. 38 (1)</p> <p>If the following persons appear at the commencem ent of the</p>	<p>contacting the representative under the Representative for Children and Youth Act, or the Ombudsman;(R SBC1996, Ch.46. . 70(1)(n)</p>		
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	<p>protection hearing, they are entitled to be parties at the hearing (c) if the child is an aboriginal child, other than a Nisga'a child, a designated representative of an Indian band or aboriginal community served with notice of the hearing (d) if the child is a Nisga'a child, a designated representative of the Nisga'a Lisims Government served with notice of the hearing (RSB C1996, Ch.46. 39 (1))</p> <p>A Director may apply to the court to permanently transfer custody of a child to a person other than the child's parent but (2) at least 10 days before the hearing must (c) if the child is Indian notify the band (d) if the child is Nisga'a, notify the Nisga'a government or (d) notify the aboriginal community (RSBC 1996, Ch.46. 54.1(1))</p> <p>the</p>			
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		<p>Lieutenant Governor in Council may make regulations as follows: (f) prescribing aboriginal organizations for the purposes of presentation hearings designating, by name or position (RSBC1996, Ch.46. 103 (2))</p>			
<p>YU Child and Family Services Act . 2008) RSY C-22</p>	<p>The Minister shall develop an Act to establish a child advocate, to be independent of the director of family and children's services and of any director appointed under paragraph (RSY 2008 .C-22.s.1 &amp; RSY 2008 .C-22.s 173(c).</p>	<p>The Minister shall, at the request of a First Nation, enter into negotiations with the First Nation or other legal entity, respecting the proposed designation of a First Nation service authority to provide services under this Act (RSY 2008 C-22. 168(1)(a))</p> <p>A director may establish one or more advisory committees to promote and encourage the participation of the community in the planning, development and delivery of services by the director.(RS Y 2008 C-22. 175(1))</p> <p>RSY 2008 C-22. 172(1) The</p>	<p>A child in the care or custody of a director has the following rights to privacy during discussions with a lawyer, the Ombudsman, a member of the Legislative Assembly, a member of Parliament, and, if the child is a member of a First Nation, an authorized representative of the child's First Nation;(RSY 2008 C-22. 88(1)(j))</p> <p>Schedule A of the Ombudsman Act is amended by adding the following "A First Nation service authority designated under the Child and Family Services Act".(RSY 2008 C-22. 172 (4))</p>	<p>nothing</p>	<p>If a director and a person are unable to resolve an issue relating to a child in respect of a process or service under the Act, they may agree to mediation or to another alternative dispute resolution mechanism as a means of resolving the issue.(RSY 2008 C-22. S.8)</p> <p>minister est. policies and standards. RSY 2008 C-22. 164(b) &amp; 165 (5)</p> <p>director inspects/ in charge of direct operations(RSY 2008 C-22. 165(4))</p> <p>The Minister may, in addition to the committee required under section 183, establish one or more committees to act in an advisory, investigative, or administrative capacity in connection with the implementation of this Act."(RSY 2008 C-22. 167(1))</p> <p>The operation of this Act shall be reviewed every 5 years by an advisory committee established by the Minister. (RSY 2008 C-22. 183(1)) = 6 members, lawyer, first nations band member, people who were / are in care, rep of minister(RSY 2008 C-22. 183(4))</p> <p>produce report to the leg. Assembly within 30 days (RSY 2008 C-22. 183(6))</p> <p>the director est. Review process on their functions, makes it public(RSY 2008 C-22. 184 (all))</p> <p>director reports to minister every 3 yrs on standards and procedures(RSY 2008 C-22. 185(2))</p>

		<p>definition of "public body" in section 3 of the Access to Information and Protection of Privacy Act is amended by adding the following "(b.1) a First Nation service authority designated under the Child and Family Services Act.". (3) Section 15 of the Human Rights Act applies to a First Nation service authority.</p>			
<p>NVT/NWT</p> <p>NWT is same Legislation. as NVT)</p> <p>Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c. 13</p>	<p>Nothing</p>	<p>A plan of care committee shall be composed of one member of the Child and Family Services Committee, where there is a Child and Family Services Committee in the child's community (S.N.W.T. 1997, c.13 s.11 (2)(c))</p> <p>Community agreement (S.N.W.T. 1997, c.13 s.36)</p> <p>A community council may, by by-law, authorize the community corporation to enter into a community agreement with the Minister (a) delegating to</p>	<p>Nothing</p>	<p>Nothing</p>	<p>Child and Family Services Committee est. community standards of care (S.N.W.T. 1997, c.13.59(1))</p> <p>permission of director or social worker to inspect premises of child care facilities and homes.(S.N.W.T. 1997, c.13.61(b) &amp; 64 (1) &amp; 65(2))</p> <p>service provider has an obligation to meet standards set out by minister/ director and allow inspections(S.N.W.T. 1997, c.13.63(all))</p>

		the community corporation			
<b>Appendix B.6 Financial Support</b>		the authority and responsibility for any matter set out in this Act; (b) establishing a Child and Family Services Committee and defining its role in the community, in addition to its powers and duties under this Act, and establishing the term of office of its members and the procedures by which the Child and Family Services Committee shall conduct its meetings and exercise its powers and			
		perform its duties under this Act; and (c) setting out the procedure for establishing and amending community standards and making the members of the community aware of community standards.(S. N.W.T. 1997, c.13 s.57.(1)			
UNCRC (OHCUN, 1989)					

Province	Basic amount for foster care	Basic amount for Kinship Care	Basic Amount for family care	Basic Amount for institutional care (includes detention)	Basic amount for independent living allowance & age	Extended support of children past age of majority to receive services	Welfare rates adult
NFL  Child Youth and Family Services Act, SNL 1998 c. C-12.1 (last amended 2009 but current version in force since Apr. 1, 2008)	Can order the expense of a child's care by another person to be the expense of the parent (SNL 1998 c. C-12.1.s 22.(2))  - also Can order the expense of care by the director be paid by the parent. (SNL 1998 c. C-12.1.s 35.(5))  -judge can order support for a care giver of the child who is not a parent (SNL 1998 c. C-12.1.63(1))	Lieutenant-Governor prescribes rate at which grandparents or other relatives get paid.( SNL 1998 c. C-12.1. 41.(1)(g)(ii))	"...families will be provided with services to support the safety health and well being of their children" (SNL 1998 c. C-12.1.8(a))  -provides money for anyone taking care of the child (, SNL 1998 c. C-12.1. 63(1))  -judge can order support for a non-custodial parent (SNL 1998 c. C-12.1. 63(2)-	Where a child is committed temporarily or permanently to the care and custody of the director, the court may order that the obligation of the parents to provide support to the child shall continue and Part III of the Family Law Act shall apply to permit the director to apply for an order for support of the child. (SNL 1998 c. C-12.1.19.(3))  Judge may order maintenance paid by pension or person for the care of a child in custody. (SNL 1998 c. C-12.1.19.12)	- can provide 6month contracts to a youth whose parents will not help them ( under 18) (SNL 1998 c. C-12.1. 11.1(a&b) & sec. 11.2)  - Youth Services Program for 16-17 (Gough, 2007,p.2) , 6 month contracts & 6 month renewals (SNL1998 cC-12.1s.11.2)	can provide service to youth 16-21 if they were previously in child welfare and if they are in school if they leave school before this then the contracts are over, 6 months ?( SNL 1998 c. C-12.1.11.3)  -Beyond age 18: Up to 21 for permanent wards or temporary care recipients, or until school finishes (SNL 1998 c. C-12.11.3; HRSDC, 2005)	Between \$290 if living with relatives to \$478 (apartment NFL; up to \$638 for coastal Labrador (Newfoundland/ Labrador Department of Human Resources, Labour and Employment)  Age 18 (Newfoundland/ Labrador Department of Human Resources, Labour & Employment 2009)
NS  Children and Family Services Act, S.N.S 1990 c.5 (last amended 2008, current version in force since June 10, 2008)  The Minister may make payments in respect of child-care services, child-caring facilities and child-placing agencies in such amounts as are appropriated annually for those purposes.	- governor in counsel is responsible for payments to a "guardian as litem" appointed to the child (SNS 1990, C.5, s.1.99(1) (p)	nothing	(can provide a subsidy for person who wants to adopt if the child is living with them , (SNS 1990, C.5, s.1.87all)-minister)	Court shall inquire into the ability of a parent of guardian to support maintenance of child in custody. (SNS1990, C.5, s.1.52(1))	-between age 16 & 18 yearly agreements-. (SNS 1990, C.5, s.1.19 (all)	An order for permanent care terminates at age 19 unless the child is pursuing an education, is under disability or the court orders care be extended to age 21(SNS 1990, C.5, s.1.48(1)(a))	\$504 housing and food (Nova Scotia, Community Services Basic Income assistance, 2009)  19 (SNS 1990 S. 5.1.1) or aged16-18 (SNS 1990 S. 5.10.1) if parent's won't support/ not in care- as of April 2009 (Nova Scotia, Community Services 2008)

<p>(SNS C.5, s.1.s. 7)</p> <p>- governor in counsel is responsible for providing and determining procedures of payments for all child welfare services &amp; facilities (SNS 1990, C.5, s.1.99(1)(g))</p> <p>&amp; costs for the care and maintenance of a child taken into care (SNS 1990, C.5, s.1.99(1)(n) [all] )</p>							
<p>PEI Child Protection Act, R.S.P.E.I. 1988, c. C-5.1 (amended 2008, current version in force since Jan. 1, 2009)</p> <p>minister is responsible for financing resources for child welfare services (R.S.P.E.I. 1988, c. C-5.1. 4(3)(c))</p>	<p>Nothing</p>	<p>nothing</p>	<p>minister can ask the parent to pay for services for their child while in care (R.S.P.E.I. 1988, c. C-5.1. 18(3)(e))</p>	<p>nothing</p>	<p>can give youth 16-18 whose parents are unavailable or cannot live with them support 6 month contracts until 18 (R.S.P.E.I. 1988, c. C-5.1.14.2)</p>	<p>a person who was the subject of an agreement under this section reaches the age of 18 years, the Director may enter a written agreement for continued child welfare services to prepare the person for independent living, where (a)the person is a student or a participant in an approved educational, training or rehabilitative program; or (b)the Director considers that there are unusual circumstances which necessitate special transitional support, until the person reaches the age of 21 years or until the Director considers that there is no longer a need for child welfare services under this subsection, whichever occurs earlier. (R.S.P.E.I. 1988, c. C-5.1.14. (3))</p>	<p>-Minors living apart from parents, ( as of Aug,1996,sec.3-4 of act) If in full time school only, and can keep it for 4 years above age of majority. -various detailed scales of finances "deficit model" (food, clothes, transit , disabilities, etc. ) calculated individually, between \$486 (food &amp; shelter) with relative &amp;\$686 food &amp; shelter per/ month (Prince Edward Island Department of Social Services and Seniors (September, 2009)</p> <p>18, may serve minors, but no age stipulated for what constitutes a 'minor" (Sec. 3-4 of act since 1996) (Prince Edward Island Department of Social Services and Seniors</p>

						<p>-(1)Where a person in the permanent custody and guardianship of the Director reaches the age of 18 years, the Director may enter into a written agreement with the person for continued child welfare services to prepare the person for independent living,</p> <p>-(2) Where a mentally incompetent person in the permanent custody and guardianship of the Director reaches the age of 18 years, the Director shall apply to the court for an order appointing another person, other than the Director, as guardian of the mentally incompetent person.</p> <p>-(3) The Director may enter into a written agreement with the guardian appointed pursuant to subsection (2) to provide transitional support for the person, up to the age of 21 years. (R.S.P.E.I. 1988, c. C-5.1 s.46. 1-3)</p>	(September, 2009)
<p>NB</p> <p><i>Family Services Act,</i> S.N.B. 1980, c. F-2.2 (Last amended 2008, current version in force since Jan 5, 2009)</p>	Nothing	Nothing	<p>minister can provide funds for prospective adopting parent (before the child moves in) if they have special needs or special placement consideration</p>	<p>minister can purchase social services from any agency within or outside of the province for the care of child in child welfare (SNB 1980c. F.-2.2. (19)(1 )</p>	<p>-1 yr contracts(SNB 1980c. F.-2.2. (48)3) until the child reaches age of majority - not specified in act if this is age 16 or age 18/19 ( SNB 1980c., c. F.-</p>	<p>Post guardianship agreement if person has a disability or is attending full time school, up to 21, cannot exceed age 24 (Family Services Act , Statutes of New Brunswick 1980 (Last amended 2007), c. F.-2.2. (49)5 ; HRSDC,</p>	<p>-Between \$295 (able bodied, or awaiting EI or workers comp) and \$537 (temporary disability) (Government of New Brunswick Social Development, 2009) age 18 usually can go as low as 16</p>

			<p>(SNB1980 c. F.-2.2. (72)(1)(a&amp; b)</p> <p>every father has to support the mother of the child even if they are not married.. Family Services Act , Statutes of New Brunswick 1980 (Last amended 2007), c. F.-2.2.122(2) 113(1) a )</p> <p>every parent has the obligation to support their child where possible- paid monthly or could be a lump sum or held in trust (SNB 1980c.c. F.-2.2. 116 (a &amp; b)</p> <p>lieutenant governor in counsel makes guidelines for support payments for a child under the age of majority (SNB 1980c.c. F.-2.2.143(z)(nn.1) (ii))</p>		<p>2.2.48.4.d)</p> <p>every parent has the obligation where possible to support a child beyond the age of majority who is ill, has a disability or is pursuing their education (SNB 1980c.c. F.-2.2. 113(1)b)</p> <p>discussed the court decisions on support amounts for dependants and that dependants and the parent of the dependant can ask for this or the court can. (SNB 1980c. c. F.-2.2.115 (all)</p> <p>lieutenant governor in counsel makes guidelines for support payments for a child over the age of majority (SNB 1980c. c. F.-2.2.143(z)(nn.1) (ii)</p>	<p>2005)</p>	<p>under exceptional circumstances</p> <p>Age 18, but exceptionally may give access to 16-18 yr olds if the person cannot live with family and have an approved alternate residence (Family Income Security Act. O.C.95-470.4.9)</p>
<p>QC</p> <p>Youth Protection Act, 1977 RSQ c. P-34.1 (amended 2009, current version in force since Nov 19, 2009)</p> <p>“The moneys required for the carrying out of this Act shall be taken for the</p>	<p>Foster care up to age 21, doesn't say for whom (HRSDC, 2009)- this is NOT in RSQ</p> <p>- no age limit for tutorship mentioned (R.S.Q. 1977 ch. P-</p>	<p>nothing</p>	<p>“An institution operating a child and youth protection centre may, in the cases and in accordance with the criteria and conditions prescribed by regulation, grant financial</p>	<p>.” An institution operating a child and youth protection centre may, in the cases and in accordance with the criteria and conditions prescribed by regulation, grant financial assistance to facilitate the adoption of a</p>	<p>nothing</p>	<p>Foster care up to age 21, doesn't say for whom (HRSDC, 2009)- this is NOT in RSQ; - no age limit for tutorship mentioned(R.S.Q. RSQ ch. P-34.1.70.1)</p>	<p>-an adult in shelter or a minor parent in social housing= \$183 a month and allowed to earn \$200/month legally - adult living independently &amp; alone= \$588.92, and able to make \$200 extra a month (Emploi Quebec, Jan. 1 ,</p>

<p>fiscal years 1977/1978 and 1978/1979 out of the consolidated revenue fund, and for subsequent fiscal years, out of the moneys granted each year for that purpose by Parliament.” Act.(RSQ 1977, c.P-34.1.157).</p>	<p>34.1.70.1) - “Expenses of transportat ion and board for a child provisionally entrusted to a foster family or an institution other than an establishm ent shall be charged to the institution operating the child and youth protection centre whose director has taken charge of the situation of the child.” (R.S.Q.1977, ch. P-34.1.48)</p> <p>-if child is in foster care natural “parents are subject to the contributio n fixed by regulation under section 159 of the Act respecting health services and social services for Cree Native persons (chapter S-5) or under section 512 of the Act</p>	<p>assistance to facilitate the adoption of a child.” (R.S.Q.1977, ch.P-34.1.71.3)</p>	<p>child.” (R.S.Q.1977, ch. P-34.1.71.3)</p>		<p>2009)</p>
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	<p>Respecting Health Services and Social Services (chapter S-4.2).” (R.S.Q.19 77, ch. P-34.1.65)</p> <p>- if foster parent becomes the child’s tutor minister may allocate funds to them to care for the child (R.S.Q.19 77, c.P-34.1. 70.2 &amp;3)</p>						
<p>ON</p> <p>Child and Family Services Act, R.S.O. 1990, c. C.11 (amended 2009, current version in force since Dec. 15, 2009)</p> <p>minister may pay for services within or outside of their jurisdiction for the purposes of this act (R.S.O., C.11. 7(1)(b))</p> <p>funding to Children’s aid societies will be determined by the minister, mentions a pay scale but seems like that part of the law was repealed..19(5) (R.S.O. 1990 Ch. C.11. 19 (all))</p>	Nothing	Nothing	<p>court may order parent to pay the society or the person in charge of their child per day for their care (R.S.O. 1990 Ch. C.11.60 (1)(b))</p> <p>court might also look at the child’s capacity to pay for themselves! (R.S.O. 1990 Ch. C.11. 60(2)1 &amp; 2)</p> <p>- minster can provide subsidies for customary care with a band or a CAS or an agency providing care for a First Nations child (R.S.O. 1990, Ch. C.11. 212)</p>	<p>minister can establish funding for agencies to establish services for the purposes of this act (R.S.O. 1990, Ch. C.11. 8(3) &amp; 9(1))</p>	<p>-EXCEPT in case of disability- only ages 16-17 can apply for themselves only up to age 18 (R.S.O., Ch. C.11. 31),</p> <p>-otherwise no voluntary care over age 16 (Bala, 2004, p.36; (R.S.O. 1990 Ch. C.11. 26, &amp; 29(2) &amp; only if “appropriate placement is available” (R.S.O. 1990 Ch. C.11. 29 (4)</p>	<p>-Up to 24 If Provisions made before age 16 (Bala, 2004, p.36)</p> <p>- doesn’t specify age limit, just for crown wards, and also related to persons’ over 18 who had received care and those of “Indian and native” ancestry (R.S.O. 1990 Ch. C.11. 71.1 &amp;2)</p>	<p>Minimum for single independent adult= \$566, up to \$716 for northern communities north of 50<sup>th</sup> parallel (Ontario Disability Support Program Act, OR222/98.30.1)</p> <p>16-18 –if can’t live with parents, in school or full time training program and maybe required to have liaison with a “responsible adult” (Ontario Ministry of Community and Social Services, directive. 3.5-1 ,May, 2009)</p>
MAN	Nothing	Nothing	<p>minster can determine to</p>	Nothing	Nothing	- age 21 only for children who were	Basic assistance without shelter

<p>Child and Family Services Act, 1985 C.C.S.M. c. C80 (amended 2007, current version in force since Apr. 15, 2009)</p> <p>minister fixes rates. (C.C.S.M.1985 c. C80.6[6] 1 &amp;2 )</p> <p>rates could be retroactive where rates are not fixed in emergencies minister can determine the amounts (C.C.S.M. 1985c. C80.6[6] 2-4)</p>			<p>raise/ lower amounts given to families no rates specified, have to take into account food clothing, shelter, recreation and supervision &amp; parent's financial obligations :includes cash for daycare (C.C.S.M.19 85c.C80. 15[3]1, n &amp; C.C.S.M.198 5c.C80.s.15 3-5)</p> <p>parent may be asked to pay for child (C.C.S.M.19 85 c.C80. 38[3])</p>			<p>permanent wards Sec. ( C.C.S.M.1985c Cc.80.50(2); HRSDC, 2005)</p>	<p>costs = 295.90/ month with shelter costs= \$331.40(Manitoba Family Services and Housing, 2009)</p> <p>- no age limit this act in fact includes children under the director of child welfare, those without parental involvement or family aid, those in "crisis" or in shelter as possible recipients of social assistance income (<i>The Employment and Income Assistance Act</i>, 1998 CCSM c. E98.s.5 [all])</p>
<p>AB.</p> <p>Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12 (last amended 2009, current version in force since Nov 26, 2009)</p>	<p>court can ask family to support the child while in care (RSA2000 , cC-12 s.57.5.2)</p> <p>can grant financial assistance to a person who is temporary guardian of the child(RSA 2000, cC-12 s..105.8 )</p>	<p>can grant financial assistance to person who has taken child into permanent private custody. (RSA 2000, s.56.1. al)</p> <p>director can provide financial assistance to someone who adopts a child (RSA 2000, cC-12s..81(1) -</p> <p>if need be can grant financial assistance to a person who is temporary guardian of the child(RSA 2000 cC-12 s.105.8 )</p>	<p>can ask the parent to contribute to the cost of the care of the child while in child welfare custody(RSA 2000, cC-12 s..57.5.1 &amp; RSA, cC-12 s..113)</p>	<p>Nothing</p>	<p>Nothing</p>	<p>can grant financial assistance to a youth in need of services over the - age of 18+ if from voluntary care, supervision or permanent care &amp; May enter into 6 month agreements, no age deadline specified to support former voluntary care, wards or youth past age 18 if following agreed upon plan ( few stipulations ) (RSA2000 cC-s. 57.2.1 &amp; 2 &amp;3; RSA 2000 cC-s.57(3) all)</p> <p>-Age 20 if had been voluntary care, temporary care, permanent care or after receiving support orders or custody with the child ?? (HRSDC, 2005)</p>	<p>Core assistance single adult not working is \$260/ month up to \$521 for a full time learner; for those in shelters is as low as \$120 up to \$323 / month- not working, learning or on disability (<i>Income and Employment Supports Act</i>: Income Supports, Health and Training Benefits Regulation 2004 (last amended 2008) AR. 60/2004. part 2, s.3)</p> <p>- if 16-17 and residing with an 18 yr old partner could qualify as an "adult, otherwise 18 (<i>Income and Employment</i></p>

							<i>Supports Act: Income Supports, Health and Training Benefits Regulation 2004 (last amended 2008) AR. 60/2004. s.1(1)b</i>
<p>SK</p> <p>Child and Family Services Act, S.S. 1989-90, c. C-7.2 (amended 2006, current version in force since Sep. 1, 2006)</p> <p>“enter into agreements with any person providing family services by which the minister is obliged to make payments for the provision of family services pursuant to this section.” (SS 1989-1990, cC-7.2. 5(c))</p>	Nothing	Nothing	nothing	<p>minister provides financial aid to support the child in residential services includes shelter, basic needs/ education, rehabilitation, (SS 1989-1990, ) cC-7.2. 55(1)(a &amp;b) - Unless it's something the parent would and can normally pay for, ( SS 1989-1990cC-7.2. 55 (2)(a)</p>	<p>provide for residential / financial services for 16-17 without guardians who will take care of them (SS, 1989-1990cC-7.2.10(1) &amp; 1 year renewable agreements (SS 1989-1990, cC-7.2.10(3)</p> <p>minster can pay for residential services for 16 -17plus (SS 1989-1990cC-7.2.55(5)</p>	<p>Age 21 if had been in permanent “committal order or long term order, must have been care until their 18<sup>th</sup> birthday (SS 1989-1990, cC-7.2. 56.1 &amp;3)(ward) (HRSDC, 2005)</p>	<p>\$225 basic rate up to \$528 (if employable) with shelter allowance, can make \$200 extra a month no exemption (Saskatchewan Ministry of Social Services, Feb. 1, 2009)</p> <p>-age 18 and living alone (<i>The Saskatchewan Assistance Act.</i> 1978 ( last amended in 2008)R.S.78/66. c.i.ii)</p>
<p>BC</p> <p>Child, Family and Community Services Act RSBC 1996(last amended march 21<sup>st</sup>, 2010 and came into force at this time), c.5</p>	Nothing	nothing	<p>allows for financial support to care for the child (RSBC1996, Ch.46.5(1))</p> <p>minister can make payments to a parent or caregiver of a child with special needs so they can remain in the home (RSBC1996, Ch.46.93(1) (b)</p> <p>minister may make parent pay for support services of</p>	nothing	<p>may make agreements with youth for supportive living, safe houses, outreach (RSBC1996, Ch.46.12.1)</p> <p>- says “under 16 or a parent expecting parent or is married (RSBC1996, Ch.46.12.2 (9)) for youth- includes finances and housing for youth who cannot live with family or do not have family</p>	<p>24 for permanent wards, temporary care or if they received support as young/expectant parents. Must be in school or rehab, max contracts= 24 months. (RSBC1996, Ch.46..12.3 all)</p> <p>- “post majority services program” (HRSDC, 2005); If voluntary care contract expires &amp; parent doesn't resume care- can extend another 30 days (RSBC1996, Ch.46..6(8)</p> <p>-Called YEAF program est. 2002 (<a href="http://www.gov.b">http://www.gov.b</a></p>	<p>Basic rate = \$235, up to \$610 with shelter allowance ( British Columbia Ministry of Housing and Social Development, April, 2007)</p> <p>-must be 19= adult (child is “unmarried person under 19 (<i>Employment Assistance Act,</i> June, 2007, 3.2.1.1)</p>

			their children in care (RSBC1996, Ch.46.93(1&1))		(RSBC1996, Ch.46.12.2(1&2)) & youth agreements are 3initially and can be renewed for 6 months- more than once? (RSBC1996, Ch.46.12.2(5))	c.ca/fortherecord/youth/yo_children.html?src=/children/yo_children.html)	
<p>YU Child and Family Services Act . 2008)RSY C-22</p> <p>minister is responsible for allocating the funds and resources for the purpose of the child welfare act to be used (RSY 2008 C-22.164(d))</p> <p>minister can enter into financial agreement for provision of services with First Nations bands so they can run their own child welfare services (RSY 2008 C-22.168(2)(b))</p>	Nothing	nothing	<p>refer to support services top parent to keep child in home and for special needs children do NOT mention finances.. (RSY 2008C-22.11 &amp; 12)</p> <p>director might provide financial assistance to a person who applies to adopt a child in care (RSY 2008C-22.150)</p>	nothing	<p>6month agreements for youth 16- (RSY 2008 C-22.16(2) )</p> <p>-not past 19 th birthday who do not have parental support, includes under 16 if married or parent or expecting parent (RSY 2008 C-22.16(4))</p>	<p>transitional support services for youth leaving care can go up to age 24- even if there is a break in service- no time limits specified (RSY 2008 C-22.17(2))</p>	<p>no age definitions at all – “person in need”(Social Assistance Act. R.S. 2002 (last amended 2009)c.205.7.1)</p> <p>-Could not find a basic rate schedule appears to be governed by the person’s need. (Yukon Social Assistance Brochure, Aug. 2008)</p>
<p>NVT/NWT</p> <p>NWT is same Legislation. as NVT)</p> <p>Child and Family Services Act, R.S.N.W.T. 1997 (last amended 2004, current in force since January 15<sup>th</sup>, 2007), c. 13</p>	nothing	nothing	<p>support services to “improve the family’s financial situation” (R.S.N.W.T. 1997, c. 13. 3 (all) includes help for addictions, rehabilitation, respite, illness etc. (R.S.N.W.T. 1997, c. 13. 3(e))</p>	<p>Where a court makes an order under paragraph (R.S.N.W.T. 1997, c. 13. (1)(c), the order may provide that the child’s parent or a person who stands in the place of the child’s parent shall make a financial contribution specified in the order towards the costs incurred by the Director in maintaining</p>	<p>children over 16 who are not supported by parents need to be given support of child welfare- mentions the general assembly signing UNCRC and abiding to help until 18 (R.S.N.W.T. 1997, c. 13.s.2(n))</p> <p>specifies housing support for</p>	Nothing	<p>19 plus - (government of the North West Territories., 2007.2.c. p. 11) - but btwn 16 “&amp; 18 can be referred to Dept of health and Social Services under a support agreement (sec.5)- provide room and board must be working/ training (p. 114)</p> <p>-adult rates single person basic housing amount \$450/month-</p>

				and supervising the child during the term of the order. (R.S.N.W.T. 1997 c. 13s.20 (8).	16-17 (R.S.N.W.T. 1997 (c. 13.s.6((2)d)) & money & drug & alcohol rehab (R.S.N.W.T. 1997 c. 13s..6(2) (c &e)		there are other supplements possible (Income support programs- Education- government of Nunavut, 2005, p.8)  -states NO assistance for 16-17 unless exceptionally granted. (Income support programs- Education- government of Nunavut, 2005, p.7)  Youth program for youth in educational programs 18-24 ( Income support programs- Education- government of Nunavut, 2005, p. 54)
Federal  financial support and safety(Constitution Act, 1982, Schedule B, Sec. 7)	Indian and Northern Affairs Canada Child and Family Services Program (CFS) (AFN, 2006, p.2) capped at 22% lower than national rates- refers to any kind of child welfare support \$						
<p>UNCRC Financial support and safety (UNCRC, 1989, A.23.2, A.24.1 &amp;2; A.26.1 &amp;2, A.27.1, 2. &amp; 3; A.28.1.b; A.32, 1; A.34. a, b, &amp;c)</p>							

Province	# of days in Emergency Custody	# of day held during Court Proceedings and Adjournments	Total potential number of days children can be detained in foster or institutional care while awaiting court rulings
Newfoundland	3 (SNL 1998 c. C12.1.s.47 [all])	40 (SNL 1998 c. C-12.1.s.29; SNL 1998 c. C-12.1.s.30)	43
Nova Scotia	5 (SNS 1990, C.5.s.39[1 & 2]).	30 (SNS 1990, C.5.39.4)	35
PEI	3 (RSPEI 1988, c.C-5.1.s.45.2.[b]; RSPEI 1988, c.C.5.1.s)	177 (RSPEI 1988, c.C-5.1.s.2[a])	6 months (180 days) (RSPEI 1988, c.C-5.1.s.2[a])
New Brunswick	30. (SNB 1980 c. F.-2.2.s.49(2) 1)	30 (SNB 1980,c. F.-2.2.s.59.1; SNB 1980,c. F.-2.2.s.59.3)	60 (SNB 1980,c. F.-2.2.s.61.2)
Quebec.	2 (RSQ 1977, P-34.1.s.46)	28 (RSQ, 1977, P-34.1.s.47.1).-	30 (RSQ, 1977, P-34.1.s.47.1).-
Ontario	5 (RSO, 1990, C.11.46[1])	30 (RSO, 1990, C.11. 51(2)[i&j]; RSO, 1990, C.11. 69[4]) (RSO, 1990, C.11. s.46.2[a])	35 (RSO, 1990, C.11. 51.2[c]) - and another 21 days after the placement agreement is over (RSO, 1990, C.11.s. 33.5)
Manitoba	14(C.C.S.M. 1985 c.C80.s.44[4])	No information	14(C.C.S.M. 1985 c.C80.s.44[4])
Alberta	No clear time limits	90	90, plus after the ruling leeway of 42 days to place the child
Saskatchewan	10 (S.S.1989-1990, cC-7.2.s.17[4])	60 (S.S.1989-1990, cC-7.2.s.35(1)[c])	70
British Columbia	2-7 (RSBC1996, Ch.46.s.25(1)[a])(RSBC 1996, Ch.46.s sec. 27[4])	45 (RSBC 1996, Ch.46. s.37[2])	52
Yukon	7 (no warrant) (RSY2008 C-22. 46[2]) 15(with a warrant), (RSY 2008 C-22.s. 46[1])	No time limit	12 months if care plan is reviewed every year?
Northwest Territories/Nunavut	3-15 (R.S.N.W.T. 1997, c. 13s..9(c) & s.11(3)[c]) (R.S.N.W.T. 1997, c. 13s.12[1])	45 (R.S.N.W.T. 1997, c. 13.s.24(c))	60

Appendix C. Table. 2 Secure Treatment Order Custody Limits

Province	Max time to be	Max. Time for	Time to notify	Maximum	Potential total time
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	held before the secure order hearing/is processed	the hearing	parent/guardian	time for initial secure treatment order	in secure treatment
Newfoundland	Three times listed: 72 hours (SNL 1998 c. C12.1.s.47 [all]), one day (SNL 1998 c. C-12.1.s. 33(2)[b]) and 5 days	1 day (SNL 1998 c. C-12.1.s. 33(1)[b])	No information	No information	No information
Nova Scotia	5 days (SNS 1990, C.5.55.[1. &1.c])  first 24 hours child must be given legal aid(SNS 1990, C.5.55[3])	5 days(SNS 1990, C.5.55.2 [all] )	No information	30 days(SNS 1990, C.5.56.4)	max renewal of 90 days (SNS 1990, C.5.56.3)=120 days, maybe 130 doesn't mention if the first 5-10 days are included in total treatment time.
PEI	No info	No info	No information	No info	No info
New Brunswick	No info	No info	No information	No info	No info
Quebec	No info	No info	No information	30 (RSQ 1977, P-34.1.47.1)	Max renewal 30 days (RSQ 1977, P-34.1.s.79)
Ontario	5days. (RSO, 1990, C.11.46[1])  - first 72 hours can use "intrusive measures without a review team(RSO, 1990, C.11. 131(6)[dii])  1 day needs to be given info on how to apply for review(RSO, 1990, C.11.46(2 [all]) , within 5 days access to a lawyer(RSO, 1990, C.11.46[1])	30 (RSO, 1990, C.11.46[1])	Within 12 hrs (RSO, 1990, C.11. s.42[2])	60 (RSO, 1990, C.11. 51(2)[i&ii]; RSO, 1990, C.11. 69[4]) (RSO, 1990, C.11. 118[2])	Extension of 90 days possible= 180 days max (RSO, 1990, C.11. 124(6) [a & b]) -can be kept past 18 <sup>th</sup> birthday if order has not expired) (RSO, 1990, C.11. 118(4) RSO, 1990, C.11. 199[3])
Manitoba	No information	No information	No information	No information	No information
Alberta	3-7 days(RSA 2000, cC-12 s.43.1(3)[ all])  - can extend	42 days max (RSA 2000, cC-s.26[1 &3])	Within 24 hours (RSA 2000, cC-12 s.43.1.[4])  child and parent	30 (RSA 2000, cC-12 s.44(1)2)	74

	this 5 days(RSA 2000, cC-12 s.44[4]) = total of 12 days		must be given copy of secure treatment order in the first day (RSA 2000, cC-12 s.43.1[4])		
Saskatchewan	24hours (S.S.1989-1990, cC-7.2.s.17[4])	7(S.S.1989-1990, cC-7.2.s.17(4)[ all])	48 hrs (S.S.1989-1990, cC-7.2.s.17(4)[ all])	24 months (S.S.1989-1990, cC-7.2.s.2.9[5])	24 month & 9 days
British Columbia	7 (RSBC 1996, Ch.46. s.34[1])	7 days up to 45 days (RSBC 1996, Ch.46. s.34[1]) (RSBC 1996, Ch.46. s.37[2])	No information	6-12 months (RSBC1996, Ch.46s.7. [4])	12 months (RSBC1996Ch.46.44(3.1))
Yukon	Not clear, maybe 7 (no warrant) (RSY2008 C-22. 46[2]) 15(with a warrant), (RSY 2008 C-22.s. 46[1])	7 (no warrant) (RSY2008 C-22. 46[2]) 15(with a warrant), (RSY 2008 C-22.s. 46[1])	No information	12 months (special needs??) (RSY C-22. 12[3])	12 months and 15 days
Northwest Territories/Nunavut	8 hours from apprehension to care plan (R.S.N.W.T. 1997, c. 13s.9(c) & s.11(3)[c])	45 days(R.S.N.W.T. 1997, c. 13.s.24(c))	No information	6 months	6 months- not entirely sure

**Table 3: Provincial Statistics of Youth held in Various Types of Custody**

Province	*indicates the numbers in 2004/5 daily sentencing to youth custody (Statistics Canada 2006)	** indicates the total number in youth custody 2006/7 (Statistics Canada 2006/7)	*** indicates numbers in remand (Kong, 2009, p.15)	2007/8 female youth = 17 % of youth in custody ( Kong, 2009, p.11) Numbers are expressed in Percentages	2005/2006 Female Aboriginal Youth  * 35% of female youth admitted to sentenced custody * 27% of female youth admitted to remand (Prison Justice.ca , 2010) 2005/2006  Male Aboriginal Youth  * 31% of male youth admitted to sentenced custody * 22% of male youth admitted to remand" (Prison Justice.ca , 2010)	Average length of time in detention- no charge  56% youth spend only one week or less in remand, 17% spend 1-6 months and only 1% ;longer than 6 months ( Kong, 2009, p.7)
Newfoundland	*44 (Statistics Canada, 2006)	**104 custody and 13 to deferred custody/supervision (Statistics Canada, 2006/7)	***132 (Kong, 2009, p.15)	*remand 2007/8= 26 ** custody 2007/8=15 (Kong, 2009, p.21)	*remand 2007/8=2% **custody 2007/8=6% Overall percentage of Aboriginal youth in correctional services =7% (Kong, 2009, p.22)	days in custody increased 2003/4 = 129 days to 2007/8= 254 (Kong, 2009, p.10)
Nova Scotia	*38(Statistics Canada, 2006)	**153 custody 87 deferred custody/supervision ( Statistics Canada 2006/7)	-***364 (Kong, 2009, p.15)	*remand 2007/8= 24 ** custody 2007/8=22 (Kong, 2009, p.21)	*remand 2007/8=9% **custody 2007/8=5%	increase from 2004/5= 11% to 2007/8=24% remand ( Kong, 2009, p.12)
PEI	*3(Statistics Canada, 2006) **26 custody 0 to deferred custody/supervision (Statistics Canada, 2006/7)	**26 custody 0 to deferred custody/supervision (Statistics Canada, 2006/7)	No information	: *remand 2007/8= unknown ** custody 2007/8=unknown (Kong, 2009, p.21)	Overall percentage of youth in correctional services =2% (Kong, 2009, p.22)- rest is unknown	No information
New Brunswick	*59(Statistics Canada, 2006)	**107 custody 67 deferred custody & supervision (Statistics Canada 2006/7)	***315 remand (Kong, 2009, p. 15)	*remand 2007/8= 16 ** custody 2007/8=21 (Kong, 2009, p.21)	*remand 2007/8=8% **custody 2007/8=11% Overall percentage of youth in correctional services =4% (Kong, 2009, p.22)	No information
Quebec	*184(Statistics Canada, 2006)	**custody 93 deferred custody & supervision (Statistics Canada, 2006/7)489	***2667 remand (Kong, 2009, p.15)	*remand 2007/8= unknown ** custody 2007/8=unknown (Kong, 2009, p.21)	*remand 2007/8= unknown **custody 2007/8= unknown Overall percentage of youth in correctional services =2% (Kong, 2009, p.22)	-rate of secure & open custody sentencing increased 2007-8 (Kong, 2009, p.10)
Ontario	*485(Statistics Canada,	** 2880 custody 469	***8571 remand	*remand 2007/8= 20	*remand 2007/8=9% **custody 2007/8=14%	No information

	2006)	deferred custody & supervision, 19 conditional sentencing (Statistics Canada, 2006/7)	(Kong, 2009, p.15)	** custody 2007/8=15 (Kong, 2009, p.21)	Overall percentage of youth in correctional services =3% (Kong, 2009, p.22)	
Manitoba	*92(Statistics Canada, 2006)	**164 custody , 29 deferred custody and supervision, 3 conditional sentencing (Statistics Canada, 2006/7)	***1888 (Kong, 2009, p.15)	: *remand 2007/8= 22 ** custody 2007/8=10 (Kong, 2009, p.21)	2007/8=84% **custody 2007/8=82% Overall percentage of youth in correctional services =23% (Kong, 2009, p.22)	No Information
Alberta	*126 (Statistics Canada, 2006)	**557custody , 158 deferred custody/ supervision (Statistics Canada, 2006/7)	***1932 remand (Kong, 2009, p.15)	*remand 2007/8= 28 ** custody 2007/8=17 (Kong, 2009, p.21)	*remand 2007/8=41% **custody 2007/8=39% Overall percentage of youth in correctional services =9% (Kong, 2009, p.22)	No Information
Saskatchewan	*160(Statistics Canada, 2006)	** 489 custody , 0 deferred/ supervision (statistics Canada, 2006/7)	No Information	*remand 2007/8= 13 ** custody 2007/8=unknown (Kong, 2009, p.21)	*remand 2007/8= unknown **custody 2007/8=79% Overall percentage of youth in correctional services =24% (Kong, 2009, p.22)	No Information
British Columbia	*87(Statistics Canada, 2006)	**525 custody, 106 deferred custody & supervision, 4conditional sentencing ( Statistics Canada, 2006/7)	***1293 (Kong, 2009, p.15)	*remand 2007/8= 24 ** custody 2007/8=24 (Kong, 2009, p.21)	*remand 2007/8=29% **custody 2007/8= 36% Overall percentage of youth in correctional services =8% (Kong, 2009, p.22)	-rate of secure custody sentencing increased 2007-8 (Kong, 2009, p.10)
Yukon	*4(Statistics Canada, 2006)	** 14 custody , 0 deferred custody (Statistics Canada, 2006/7)	***46 remand (Kong, 2009, p.15)	*remand 2007/8= 22 ** custody 2007/8=38 (Kong, 2009, p.21) increase from 2004/5= 0% to 2007/8=22% remand (Kong, 2009, p.12)	*remand 2007/8=87% **custody 2007/8=81% Overall percentage of youth in correctional services =33% (Kong, 2009, p.22)	-rate of secure custody sentencing increased- 2007-8 (Kong, 2009, p.10)
NWT/Nunavut	*17- NWT *8- NVT(Statistics Canada, 2006)	** NWT 29 custody, 0 deferred custody & supervision NVT 22 custody, 4 deferred custody/ supervision, 1 conditional (Statistics Canada, 2006/7)	*** 45 NWT ( no stats for NVT) remand (Kong 2009, p.15)	*remand 2007/8= 40 ** custody 2007/8=25 (Kong, 2009, p.21) - increase from 2004/5= 13% to 2007/8=40% remand (Kong, 2009, p.12)	*remand 2007/8=82% **custody 2007/8=93% Overall percentage of youth in correctional services =65% (Kong, 2009, p.22)- ONLY NWT NVT Overall percentage of youth in correctional services =95%	No information