

Office of the Child and Youth Advocate

Submission on the Mental Health Care and Treatment Act Evaluation

June 2022



Introduction

The Office of the Child and Youth Advocate welcomes the opportunity to provide feedback to the Department of Health and Community Services (HCS) and the Newfoundland and Labrador Centre for Health Information (NLCHI) on the evaluation of the **Mental Health Care and Treatment Act**.

While the formal review process began in February of 2021, the Advocate did not receive an invitation to participate in a focus group as part of the evaluation until February 15, 2022, near the end of the consultation phase. Despite same the Office of the Child and Youth Advocate is pleased to provide this response.

The Office of the Child and Youth Advocate is legislatively mandated by the **Child and Youth Advocate Act** to protect and advance the rights of children and youth in Newfoundland and Labrador. The Child and Youth Advocate is an independent statutory officer of the Legislature and carries significant authorities in this role. This Office provides public oversight of government programs and services to children and youth and helps young people by independently standing up for their rights and interests in dealing with child serving systems. Specific functions include investigations and reviews, individual and systemic advocacy, and public education on children and youth human rights.

This work is guided by the **United Nations Convention on the Rights of the Child (UNCRC)**, a comprehensive child rights framework that supports children's development and wellbeing.

The four guiding principles of the **UNCRC** are:

1. Non-discrimination – all rights apply to all children without exception
2. Best interests of the child – this must be the first consideration in all decisions affecting children
3. Life, survival and development – all children have the right to live and survive, and to develop to the maximum degree possible
4. Participation – all children have the right to be heard and to participate in decisions affecting them in a way that is reflective of their age and developmental level.

The Convention exists because children and youth are a unique and vulnerable group and therefore require special protection of their rights. They cannot navigate systems like many adults can. Their voices, experiences, and perspectives are frequently missing from public policy consultation, debate, and development.

According to departmental officials, this evaluation did not include a broad public consultation process but instead focused on consultations with key stakeholder groups. The lack of timely invitation to provide feedback speaks to the need for a comprehensive engagement process that ensures that the voices of young people are also heard. In keeping with the development of good public policy, practices, and meaningful legislation, those directly affected need to be included in the engagement process, including young people with lived experience and their families. This is very much a public policy issue and opportunities for meaningful public engagement are critical. A focused plan to appropriately and meaningfully engage young people who are directly knowledgeable about these issues is essential.

The **Mental Health Care and Treatment Act** is a “rights-based legislation that provides for the mandated treatment, care and supervision of people living with severe and persistent mental illness in Newfoundland and Labrador” (Government of Newfoundland and Labrador, n.d.).

This submission highlights the importance of recognizing young people as rights holders and the obligation of governments as duty bearers to uphold these rights and give priority to the best interests of children. As such, it is imperative that legislation such as the **Mental Health Care and Treatment Act** have a rigorous process that safeguards the rights of young people.

Children and Youth Focus

The current **Mental Health Care and Treatment Act** is silent on age and language that applies to young people, it is therefore vital that this review and the legislation be inclusive of a child rights perspective. This will ensure children’s rights and interests are considered and protected.

There is little information available about the impact of this legislation on young people. The Department of Health and Community Services advised that 33 young people under the age of 18 received full certification between June 2016 and December 2020. As an office mandated to advocate for the rights and services of young people we would be interested in knowing about their experiences and outcomes. What happened for these young people before and after certification is critical, i.e., did the available services meet their needs, has there been a clear plan for positive mental health and wellness for each of these 33 young people?

The Office of the Child and Youth Advocate is concerned about the quality of children’s mental health in Newfoundland and Labrador. As was evident when the Office presented to the Health Accord in September 2021 about the health needs of young

people in the province, this concern is not new. The Advocate is committed to promoting excellence in mental health services for children and youth.

Over the years, multiple investigative reports by this office have highlighted concerns about the provision of mental health services, and made recommendations aimed at improvement. Most recently, a report by this office entitled **Handle with Care** (2021), identifies the need for specialized training for those working with young people. This need is also evident in the current **Mental Health Care and Treatment Act**. Furthermore, the Advocate regularly receives individual advocacy requests for assistance with accessing mental health services. These requests often represent a young person whose mental health needs are not being met.

These concerns are shared by our counterparts across the country who have also released investigative reports identifying deficiencies in mental health services for young people. In 2021, the British Columbia Representative for Children and Youth released **Detained: Rights of children and youth under the Mental Health Act**, a report examining that province's system for involuntary detention. The New Brunswick Child and Youth Advocate released **The Best We Have To Offer**, a review of youth suicide and mental health services in September of 2021. And most recently, the Saskatchewan Advocate for Children and Youth released **Desperately Waiting** (2022), a report examining access to mental health services for children and youth.

Likewise, the Children's Health Policy Centre, Simon Fraser University, in its most recent **Children's Mental Health Research Quarterly** referenced emerging evidence suggesting that the Covid 19 pandemic has led to a further deterioration in children's mental health (Schwartz, Barrican, Yung, Gray-Grant, & Waddell, 2022)

Clearly, there is an overwhelming need to enhance mental health services and to ensure better outcomes for children and youth.

The Child and Youth Advocate believes that the mental health needs of children and youth are best met when centered around collaborative, comprehensive, and voluntary services within communities. Access to these services must be equitable for all young people.

Children and youth should never be passive recipients of services. Their unique needs and circumstances demand tailored consideration that prioritizes their well-being. Article 12 of the **UNCRC** recognizes a child's rights to express themselves and have their views heard in matters that affect them. The Advocate is concerned that specific consultation with young people did not occur as part of this review process. Additionally, young people must be fully informed of their rights so that they may be active participants in their own care.

Considerations for review of the **Mental Health Care and Treatment Act** must include:

- Utilization of a Child Rights Impact Assessment to guide review.
- A fulsome youth engagement policy for future reviews/evaluations informed by guidelines on consulting with young people.
- A specific definition for a young person under this legislation
- Specific language that references the United Nations Convention on the Rights of the Child.
- That the **Mental Health Care and Treatment Act** Provincial Policy and Procedure Manual be updated accordingly to reflect specific policies and procedures that safeguard the rights of children and youth who receive services under the Act.
- That the **Mental Health Care and Treatment Act** Provincial Policy and Procedure Manual be updated accordingly to include information on the United Nations Convention on the Rights of the Child.

Rights Advisors

The **Mental Health Care and Treatment Act** provides for rights advisors whose function is to offer advice and assistance in accordance with this Act. Currently rights advisors do not receive any specific training or education on child/youth rights.

Furthermore, a 2012 evaluation of the **Mental Health Care and Treatment Act** highlighted that rights advisors did not see their role as one of advocacy (Newfoundland and Labrador Centre for Health Information, 2012). This further amplifies the importance of young people having timely and developmentally appropriate information regarding their rights. While procedural rights in the **Act** may be the same for individuals regardless of age, young people are not adults; they require appropriate direction and guidance to exercise their rights, and have their voice heard.

Considerations for review of the **Mental Health Care and Treatment Act** must include:

- Mandatory training for rights advisors that includes; knowledge of child and youth mental health, trauma informed practices, knowledge of United Nations Convention on the Rights of Children and the Office of the Child and Youth Advocate.

- Clear protocol ensuring that children and youth are provided with comprehensive information regarding their rights pertaining to this legislation
- That young people be provided with information about the Office of the Child and Youth Advocate including how to contact the Advocate and be provided with an appropriate means for doing so.

Mental Health Care and Treatment Act Reviews

Section 6 of the **Mental Health Care and Treatment Act** states that a review of this legislation be completed every five years.

Considerations for review of the **Mental Health Care and Treatment Act** must include:

- That the five year review include comprehensive data on how children and youth are being impacted by this legislation including but not limited to
 - Outcome data
 - Demographic data
- That the five year review include opportunities for children and youth to share and provide feedback regarding their experiences with the **Mental Health Care and Treatment Act**.
- That the five year review include a comprehensive review of the role of Rights Advisors in relation to their duties to young people.

As the current **Mental Health Care and Treatment Act** is silent on age there is minimal data collection regarding the use of this **Act** involving young people. Furthermore, each regional health authority maintains its own statistics related to certification, renewals and community treatment orders. Disaggregated data collection is minimal. We acknowledge that this may change during the transition to one regional health authority.

In 2021, as previously stated, the British Columbia Representative for Children and Youth released an investigative report entitled **Detained: Rights of children and youth under the Mental Health Act**. This report specifically recommends the collection and reporting of key information pertaining to children and youth. The report indicates that insufficient data collection made it problematic to identify issues and trends, and fully gauge the impact the legislation had on children and youth. Adequate data collection

provides critical feedback and aids in the equitable distribution of services and resources (British Columbia Representative for Children and Youth, 2021).

Additionally, the most recent **Children’s Mental Health Research Quarterly** (Schwartz, Barrican, Yung, Gray-Grant, & Waddell, 2022) discusses the importance of data in determining how to best meet mental health treatment needs for children. The authors emphasize the importance of regular reporting by governments on how children are doing.

Based on the cursory information received from the Department of Health and Community Services and our own analysis since the invitation in February 2022, we believe that inadequate data collection and reporting of key information exists as it relates to this legislation.

Considerations for review of the **Mental Health Care and Treatment Act** must include:

- Regular analyzing and reporting of demographic data collection
- Establishment of standardized data collection.
- Tracking outcomes for young people who have been certified
- Quarterly reporting to the Office of the Child and Youth Advocate of the number of children and youth who have been certified under this legislation
- Annual file audits by the Department of Health and Community Services on those young people who receive full certifications

Mental Health Care and Treatment Act Review Board

The lack of child and youth focus in the **Mental Health Care and Treatment Act** is evident in other sections of the legislation including provisions that relate to the Mental Health Care and Treatment Act Review Board. The review board serves as an independent quasi-judicial body whose mandate is focused on a “patient’s right to periodic, fair, and timely review of their involuntary status under the **Act**” (The Mental Health Care and Treatment Review Board, 2020-2021).

Currently members of the Board are appointed by the Lieutenant-Governor in Council (Mental Health Care and Treatment Act, 2006).

Considerations for review of the **Mental Health Care and Treatment Act** must include:

- Ensure that the Mental Health Care and Treatment Review Board include the appointment of individuals who have knowledge and experience specific to child and youth mental health.
- Ensure that each time an application to the Review Board by a young person, is heard by a panel that includes at least one person who has knowledge and experience specific to youth mental health.
- Consider a separate process for young people appearing before the Review Board that is child and youth focused and trauma informed.

Substance Use

In 2016, the provincial government introduced **The Secure Withdrawal Management Act**, in the House of Assembly. The **Act** is not yet proclaimed.

This current review process is considering if the **Mental Health Care and Treatment Act** should include provisions for secure withdrawal management.

As part of the consultation process with the Department of Health and Community Services and the Newfoundland and Labrador Centre for Health Information, the Advocate requested further information about the delay in this legislation moving forward. The Department of Health and Community Services provided clarity advising that an ethics consultation concluded that involuntarily detaining young people, who have capacity without their consent, is a violation of their rights. Additionally there is mounting evidence on risks associated with withdrawal management of opioids, further questioning the benefits of doing so. (Department of Health and Community Services, personal communication, April 11, 2022).

Involuntary detention of a young person must be a last resort and should prompt an immediate process to safeguard the rights of young people. Additionally, when considering treatment options, we agree that minimizing harm including risk of overdose is essential.

Considerations for review of the **Mental Health Care and Treatment Act** must include:

- That treatment guidelines for young people experiencing problematic substance use adhere to best practices.

Conclusion

Children have a right to the best possible health services to ensure optimal development. This is enshrined in Article 24 of the **UNCRC**. This right includes access to mental health care. And governments as duty bearers of these rights have responsibility to ensure children's rights are protected.

The importance of this cannot be understated when legislation such as the **Mental Health Care and Treatment Act** contains provisions for apprehension, detention, custody, restraint, observation, assessment, treatment and care and supervision of a person with a mental disorder, and that person can be a child.

This evaluation provides an opportunity to center the **Mental Health Care and Treatment Act** as a rights based legislation for children and youth. To do otherwise does not meet the threshold for protecting the rights of children as set by the United Nations Convention on the Rights of Children.

Summary of all Proposed Considerations for the Review of the Mental Health Care and Treatment Act

- Utilization of a Child Rights Impact Assessment to guide review.
- A fulsome youth engagement policy for future reviews/evaluations informed by guidelines on consulting with young people.
- A specific definition for a young person under this legislation
- Specific language that references the United Nations Convention on the Rights of the Child.
- That the **Mental Health Care and Treatment Act** Provincial Policy and Procedure Manual be updated accordingly to reflect specific policies and procedures that safeguard the rights of children and youth who receive services under the **Act**.
- That the **Mental Health Care and Treatment Act** Provincial Policy and Procedure Manual be updated accordingly to include information on the United Nations Convention on the Rights of the Child.
- Mandatory training for rights advisors that includes; knowledge of child and youth mental health, trauma informed practices, knowledge of United Nations Convention on the Rights of Children and the Office of the Child and Youth Advocate.
- Clear protocol ensuring that children and youth are provided with comprehensive information regarding their rights pertaining to this legislation
- That young people be provided with information about the Office of the Child and Youth Advocate including how to contact the Advocate and be provided with an appropriate means for doing so.
- That the five year review include comprehensive data on how children and youth are being impacted by this legislation including but not limited to
 - Outcome data
 - Demographic data

- That the five year review include opportunities for children and youth to share and provide feedback regarding their experiences with the **Mental Health Care and Treatment Act**.
- That the five year review include a comprehensive review of the role of Rights Advisors in relation to their duties to young people.
- Regular analyzing and reporting of demographic data collection
- Establishment of standardized data collection.
- Tracking outcomes for young people who have been certified
- Quarterly reporting to the Office of the Child and Youth Advocate of the number of children and youth who have been certified under this legislation
- Annual file audits by the Department of Health and Community Services on those young people who receive full certifications
- Ensure that the Mental Health Care and Treatment Review Board include the appointment of individuals who have knowledge and experience specific to child and youth mental health.
- Ensure that each time an application to the Review Board by a young person, is heard by a panel that includes at least one person who has knowledge and experience specific to youth mental health.
- Consider a separate process for young people appearing before the Review Board that is child and youth focused and trauma informed.
- That treatment guidelines for young people experiencing problematic substance use adhere to best practices.

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