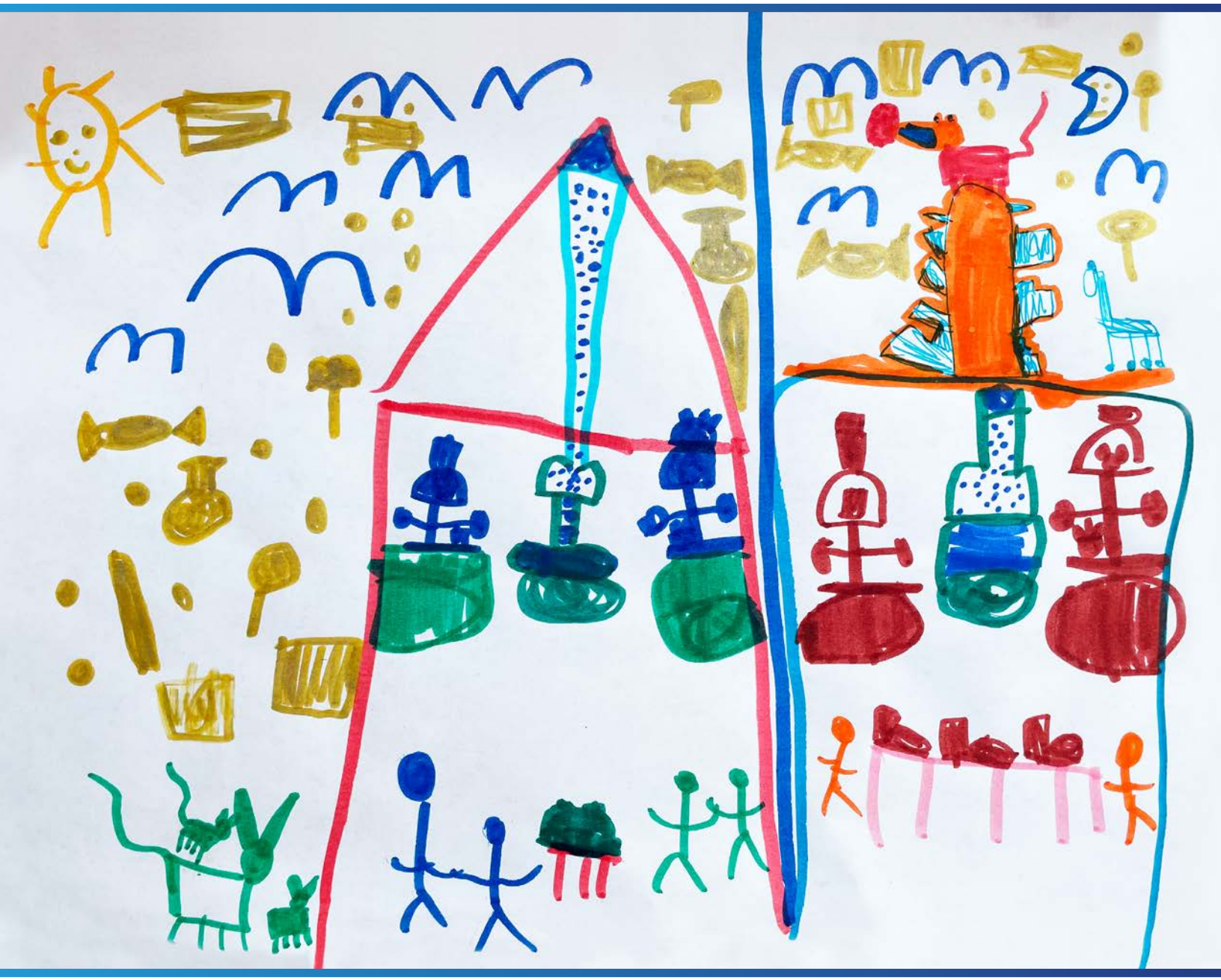
COMMISSAIRE AU BIEN-ÊTRE
ET AUX DROITS DES ENFANTS



A LEGISLATIVE REFORM FOR AND WITH CHILDREN IN QUÉBEC

Commissaire au bien-être et aux droits des enfants

May 14, 2026

English translation – the French version prevails

A Legislative Reform for and with Children in Québec

Commissaire au bien-être et aux droits des enfants,
May 14, 2026

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Note
"Commissaire au bien-être et aux droits des enfants" refers to the institution, whereas "Commissioner" refers to the person appointed by the National Assembly of Québec.

FOREWORD

This report builds on the findings made in recent years concerning the persistent limitations of the current legal framework with respect to children's rights in Québec and on the need to better recognize those rights.

First Nations and Inuit are best placed to determine and respond to the needs of their children. We acknowledge that the establishment of a *Commissaire* specific to First Nations is taking place in a context in which the Chiefs of the AFNQL have confirmed, by way of resolution, their intention to establish an institution of their own concerning the well-being and rights of First Nations children.

The Commissioner for Children's Well-Being and Rights extends a hand to First Nations, Inuit, and the various First Nations and Inuit bodies, communities, and organizations in order to collaborate and align our actions with their needs, priorities, and thoughts.

The following principles will guide our relations:

- Respect for the rights, cultures, and self-determination of First Nations and for their inherent right to exercise their jurisdiction in matters of child and family services;
- Institutional humility in the face of First Nations and Inuit knowledge, experience, and authorities;
- A willingness to build genuine and lasting relationships, beyond any symbolic approach;
- A commitment to integrating cultural safety into the evolution of practices, processes, and interventions.

Note
The Commissioner goes out to meet with children in order to hear their voices and amplify them. This report contains a number of quotations from children and young adults. These quotations were gathered during ideation meetings held to define the institution's approach together with these children and young adults. In addition, the cover page features a drawing by Rosia, age 6, depicting

MISSION OF THE COMMISSAIRE AU BIEN-ÊTRE ET AUX DROITS DES ENFANTS

The mission of the *Commissaire au bien-être et aux droits des enfants* (the *Commissaire*) is to promote the well-being and respect for the rights of all children in Québec, from birth to the age of majority,* while ensuring their best interests are protected.

As an independent institution reporting to the National Assembly, the *Commissaire* helps ensure that decisions, public policies, legislation, public services, and institutional practices take into account children's realities, needs, concerns, and rights.

The *Commissaire* analyzes issues affecting children, evaluates the programs and services intended for them, and examines situations that may impact their development, safety, or exercise of their rights. When necessary, the *Commissaire* conducts systemic investigations, publishes its findings, and formulates recommendations to promote lasting change for the benefit of children.

It may also propose amendments to legislation, regulations, policies, programs, and administrative practices, as well as request that public bodies inform it of the measures they take to act on its recommendations.

The *Commissaire* informs the public about children's rights in Québec, in particular the principles and provisions of the *Convention on the Rights of the Child*, and raises Québec society's awareness of children's lived experiences.

It gathers children's concerns and opinions, amplifies their voices, and supports their participation in the public deliberations and decisions that affect them.

The *Commissaire* also supports children in exercising their rights, in particular by directing them to the appropriate resources and accompanying them in their efforts, when necessary.

The first Commissioner for Children's Well-Being and Rights, Marie-Eve Brunet Kitchen, was appointed on April 9, 2025. She took office on May 12 of that year.

*The *Commissaire* also exercises certain functions regarding young adults aged 18 to 25 in situations of vulnerability.

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EXECUTIVE SUMMARY

This report addresses the conditions necessary for the full and complete recognition of the well-being and rights of children in Québec. It is part of the mission of the *Commissaire au bien-être et aux droits des enfants* to promote the well-being of children and respect for their rights, protect their best interests, and contribute to a better consideration of their realities within society.

More than 30 years after Québec declared itself bound by the *Convention on the Rights of the Child* (the Convention), and following Canada's ratification of the Convention in December 1991, Québec law still does not explicitly, completely, and cross-cuttingly recognize children's rights, ensuring that they are fully respected and implemented.

An analysis of the Québec legislative framework reveals several significant limitations. Children's rights are not recognized and are fragmented across various sectoral legislative instruments that primarily address protection, family matters, justice, and access to services. While these legislative instruments contain important guarantees, they do not ensure the comprehensive and integrated recognition of children's rights as genuine fundamental rights.

This report also highlights the prevalence of a protectionist approach to children's rights. Although the vulnerability inherent in childhood justifies particular protective measures, children cannot be considered solely as beneficiaries of such measures. They must also be considered subjects of law and holders of rights of their own, whose dignity, needs, evolving abilities, and growing autonomy must be fully recognized.

This report further underscores the fundamental importance of children participating in decisions that affect them. Recognized by the Convention, the right to be participate is not only an essential component of children's best interests, but also a means of protecting, including, and recognizing children as full social actors in community life.

In light of these findings, the Commissioner for Children's Well-Being and Rights recommends adopting a legislative framework based on an integrated approach to children's rights. This framework would expressly recognize children as subjects of law, clearly set out all their rights, and ensure their implementation in all environments where children live.

More specifically, the Commissioner recommends that the legislature:

RECOMMENDATION 1
Adopt a charter of children's rights that sets out all the rights recognized for children in Québec and that, at a minimum, reproduces the rights recognized in the *Convention on the Rights of the Child*.

RECOMMENDATION 2
Ensure children's effective participation in developing this charter.

RECOMMENDATION 3
Affirm that the rights guaranteed by the Charter of human rights and freedoms also apply to children.

Accordingly, considering that children's participation is essential to effectively recognizing their rights, the Commissioner for Children's Well-Being and Rights plans to tour all the province's regions to gather children's thoughts, concerns, and suggestions about which rights should be recognized in the *Charter of Children's Rights* in Québec.

The Commissioner also acknowledges the *Declaration of the Rights of First Nations Children*, which was adopted by the Chiefs of the Assembly of First Nations Quebec-Labrador in 2015. The Declaration reaffirms, in particular, the importance of recognizing the rights of First Nations children and respecting their cultures, languages, traditions, and right to self-determination.

In addition, the Commissioner acknowledges that although her mandate covers all children in Québec, any deliberations about a potential charter of children's rights will require government-to-government discussions with First Nations and Inuit regarding children from their communities.

Therefore, any initiative aimed at strengthening the recognition of children's rights in Québec must also take into account the realities, jurisdictions, legal systems, and aspirations of First Nations and Inuit.

Through these recommendations, the Commissioner wishes to help create lasting changes to the Québec legal framework that will better recognize children as genuine rights holders and strengthen the place of their rights in all decisions, legislation, public policies, institutions, and living environments that structure their daily lives and their development.

1. CREATION OF THE COMMISSAIRE AU BIEN-ÊTRE ET AUX DROITS DES ENFANTS

The creation of the *Commissaire au bien-être et aux droits des enfants* is the result of a long journey marked by the progressive evolution of children's rights and protection in Québec. It emerged from a convergence of international commitments, social transformations, commissions' work, and institutional deliberations that gradually brought to light the need to better recognize children as full subjects of law.

At the national level, the 1977 adoption of the *Youth Protection Act* was part of a desire to affirm children as subjects of law, enshrining the State's palliative and collective responsibility for children's safety and development. Several statutes followed, including the *Charter of human rights and freedoms*, the *Civil Code of Québec*, and the *Education Act*, which over time recognized rights for children. At the international level, an important milestone was reached in 1989 with the United Nations' adoption of the *Convention on the Rights of the Child* (the Convention). The international community thereby formally recognized children as subjects of law and affirmed States' obligation to take the necessary steps to protect children, promote their best interests, and ensure their development and participation without discrimination of any kind. In December 1991, Québec declared itself bound by the Convention, affirming its commitment to its implementation. A few days later, Canada officially ratified the Convention.

Over the years, studies, public inquiries, and landmark events have revealed the persistent limitations of certain protection and intervention systems for children. The work of the Truth and Reconciliation Commission of Canada and of the Viens Commission, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and various tragedies affecting children have contributed to a growing desire to better recognize children's rights and better take their well-being into account within society. In addition, in 2015 the Assembly of First Nations Quebec-Labrador adopted the *Declaration of the Rights of First Nations Children*.

The death of Clara* in 2019 had a profound effect on Québec and reignited discussions around institutions' responsibilities towards children. Against this backdrop, the Québec government gave the Special Commission on the Rights of the Child and Youth Protection, chaired by Régine Laurent, the mandate to conduct a comprehensive review of services for children as well as of the legislative and institutional framework governing them. Upon concluding its work, the Special Commission determined that a society concerned for its children must have an independent body capable of promoting their well-being, amplifying their voices, and ensuring their rights are respected.

In May 2024, the National Assembly of Québec passed Bill 37, creating the *Commissaire au bien-être et aux droits des enfants*. On April 9, 2025, the National Assembly appointed Marie-Eve Brunet Kitchen as the first Commissioner for Children's Well-Being and Rights. She officially took office on May 12, 2025.

Her appointment marked an important step in the evolution of collective responsibilities towards children. It demonstrated Québec's commitment to establishing an independent institution to promote children's well-being and rights and to advance, in a lasting manner, children's representation in decisions that affect them.

*In keeping with what coroner Géhane Kamel emphasized in her public report, the child's first name is mentioned to contribute to the duty of remembrance surrounding this tragedy and to the resulting collective reflection.

“They think we’ll get hurt too badly on the hill, so now we’re only allowed to slide. Children are overprotected; it’s boring because it takes away games and things we could do.”

– age 11

2. THE LIMITATIONS OF THE CURRENT LEGISLATIVE FRAMEWORK

The Québec legislative framework contains provisions for children's well-being, protection, and rights. However, an analysis of the framework reveals significant limitations regarding the explicit, complete, and cross-cutting recognition of children's rights. The sections that follow present findings relating to the fragmentation of the current legislative framework as well as to the predominance of an approach focused on protecting children.

2.1 A fragmented and incomplete legislative framework

The Québec legislative framework relating to children's rights is fragmented and incomplete. Some statutes recognize rights applicable to every "person", while others address specific sectors without ensuring comprehensive and cross-cutting recognition of children's rights.

The absence of legislation specifically designed for children and applicable regardless of their living environment limits the visibility and scope of their rights. This approach is difficult to reconcile with a conception based on the interdependence and equal importance of children's rights.

Conversely, sectoral approaches lead to the adoption of statutes in particular areas and result in the partial recognition of children's rights. This focuses legislative action primarily in the areas of child protection, the family, and criminal justice[1] to the detriment of a broader and more integrated recognition of children's rights.[2] Clearly and explicitly recognizing children's rights as fundamental rights would help reduce resistance to their application.[3]

The legislative instruments presented below are among the primary Québec legal tools recognized in the area of children's rights. They are presented for illustrative and non-exhaustive purposes to bring to light certain limitations of the current legislative framework regarding the full and complete recognition of children's rights.

"There are young people who don't get enough to eat."
– age 14

1 Laura Lundy, Ursula Kilkelly, Bronagh Byrne & Jason Kang, *The UN Convention on the Rights of the Child: A Study of Legal Implementation in 12 Countries* (London: UNICEF UK, 2012) at 19.

2 Jane Williams, "General Legislative Measures of Implementation: Individual Claims, 'Public Officer's Law' and a Case Study on the UNCRC in Wales" (2012) 20:2 *The International Journal of Children's Rights* 224 at 226.

3 Mona Paré, "Children's Rights Are Human Rights and Why Canadian Implementation Lags Behind" (2017) 4:1 *Canadian Journal of Children's Rights* 24 at 25, 35.

The Charter of human rights and freedoms: A fundamental text with limitations in the area of children's rights

The *Charter of human rights and freedoms* does not explicitly enshrine children's best interests, right to development, general right to participate, or other rights specific to children, such as the right to an education that fosters their fulfilment and the right to leisure. The express recognition of children's rights in the *Charter of human rights and freedoms* is limited, as is the case in the *Canadian Charter of Rights and Freedoms*. Where the *Charter of human rights and freedoms* does explicitly address children's rights, it does so primarily from the standpoint of protection within the family setting, addressing parental obligations.[4]

When analyzing European constitutions in the light of children's rights, the Council of Europe stated that "constitutions that enshrine general human rights protections but refer to children's interests merely in a language of protection and needs rather than to express them in a rights-based language, and which allow only for limited justiciability of those constitutional provisions cannot be considered as models of good practice in terms of children's rights".[5] While this analysis is specific to European constitutions, it prompts reflection on legal instruments in Québec, such as the *Charter of human rights and freedoms*. Statutes that explicitly recognize only rights related to children's protection are clearly insufficient in the light of contemporary requirements in the area of children's rights.[6]

Moreover, at the international level, the adoption of the *Convention* is interpreted as a response to the inadequacy of existing human rights legal instruments,[7] which are primarily adult-centred,[8] render children invisible,[9] and fail to recognize their unique characteristics and needs.[10] Similarly, the *Charter of human rights and freedoms*, which predates the Convention, was not developed with children's needs and realities in mind. It does not enshrine the full range of children's civil, political, economic, social, and cultural rights or their interdependence and equal importance.[11] While the *Charter of human rights and freedoms* enshrines fundamental rights, it does not accord civil, judicial, and political rights the same status as economic, social, and cultural rights. The supra-legislative force applies only to the former. However, the United Nations Committee on the Rights of the Child considers the enjoyment of economic, social, and cultural rights to be intimately linked to that of civil and political rights.[12]

In the context of Bill 63 – *An Act to amend the Charter of human rights and freedoms*, S.Q. 2008, c. 15, the

4 *Charter of human rights and freedoms*, CQLR c C-12, ss 39, 41, 47, among others.

5 Council of Europe, European Commission for Democracy through Law (Venice Commission), *Report* (March 2014) at 26, 30.

6 Philip Alston & John Tobin, *Laying the Foundations for Children's Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child*, with the collaboration of Mac Darrow (Florence: UNICEF Innocenti Research Centre, 2005) at 24.

7 Hélène Tigroudja, *La Convention internationale des droits de l'enfant* (Paris: Presses Universitaires de France, 2010) at 12-15; Eugeen Verhellen, "The Convention on the Rights of the Child" in Eugeen Verhellen, ed, *Understanding Children's Rights: Collected Papers Presented at the Fourth International Interdisciplinary Course on Children's Rights, Held at the University of Ghent, December 1999*, vol 5 (Ghent: Ghent University, Children's Rights Centre, 2000) at 19-20; Manfred Nowak, *Introduction to the International Human Rights Regime* (Leiden: Martinus Nijhoff Publishers, 2003) at 92.

8 Cynthia Price Cohen, "The Developing Jurisprudence of the Rights of the Child" (1993) 6 St Thomas L Rev 1 at 49.

9 Philip Alston & John Tobin, *Laying the Foundations for Children's Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child*, with the collaboration of Mac Darrow (Florence: UNICEF Innocenti Research Centre, 2005) at 23.

10 Jaap E Doek, "The CRC 20 Years: An Overview of Some of the Major Achievements and Remaining Challenges" (2009) 33:11 Child Abuse & Neglect 771 at 771-772.

11 On this subject, see United Nations, "Vienna Declaration and Programme of Action", World Conference on Human Rights, UN Doc A/CONF.157/23 (12 July 1993), para 5, which reads as follows: human rights must be guaranteed "in a fair and equal manner, on the same footing, and with the same emphasis".

12 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42, and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 6.

Québec legislature did not want to rely solely on the general rules of interpretation or on the general prohibition of sex-based discrimination provided for in section 10. Instead, it chose to expressly set out an interpretive directive concerning equality between women and men in section 50.1.[13] However, no comparable clause has been adopted for children, despite their particular legal vulnerability. The *Charter of human rights and freedoms* is neither specific to children nor complete in recognizing children's rights; however, it remains a fundamental legislative instrument enshrining human rights. On that basis, a provision similar to section 50.1 should expressly state that these rights also apply to children.[14]

The Civil Code of Québec: A source of partial recognition of children's rights

The *Civil Code of Québec* recognizes that every person is the holder of personality rights, such as the right to life, to the inviolability and integrity of their person, and to the respect of their name, reputation, and privacy.[15] Articles 32–34 set out specific provisions applicable to children, which read as follows:

> 32. Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are able to give to him.
>
> 33. Every decision concerning a child shall be taken in light of the child's interests and the respect of his rights.
>
> Consideration is given, in addition to the moral, intellectual, emotional and physical needs of the child, to the child's age, health, personality and family environment, including the presence of family violence, which includes spousal violence, or sexual violence, and to the other aspects of his situation.
>
> 34. The court shall, in every application brought before it affecting the interest of a child, give the child an opportunity to be heard if his age and power of discernment permit it.

While these provisions provide a legal basis for children's rights, they are nevertheless rooted in a logic focused on protecting the individual and resolving conflicts. On their own, they do not reflect complete recognition of children's rights. For example, the *Civil Code of Québec* recognizes a child's right to be heard only in court proceedings[16] and does not provide for this in determining the child's best interests.[17] Moreover, the *Civil Code of Québec* lacks provisions for several key aspects of children's rights, particularly the right to participate in all matters affecting their lives and the right to development. It provides important but insufficient protection, which does not replace the need for a comprehensive approach based on children's rights.

The Youth Protection Act: A statute of exception

The *Youth Protection Act* is structured, in particular, around collective responsibility for protecting children[18] and ensuring their stability[19] and their participation in decisions that affect them.[20] However, these legal guarantees do not apply to all children and are limited to situations where their security or development is or

13 Québec, National Assembly, *Étude détaillée du projet de loi n° 63 – Loi modifiant la Charte des droits et libertés de la personne*, 38th Leg, 1st Sess, vol 40, No 50 (29 May 2008).

14 Alain Roy, "L'intérêt de l'enfant" in Benoît Moore, ed, *Les grands classiques du droit civil – Les grandes notions* (Montréal: Éditions Thémis, 2015) at 273-274; see also: Chambre des notaires du Québec, *Mémoire sur le Projet de loi n° 2 - Loi portant sur la réforme du droit de la famille en matière de filiation et modifiant le Code civil en matière de droits de la personnalité et d'état civil* (November 2021) at 9-10; Chambre des notaires du Québec, *Mémoire sur le projet de loi n° 1 - Loi constitutionnelle de 2025 sur le Québec* (November 2025) at 39-40.

15 *Civil Code of Québec*, CQLR c CCQ-1991, arts 1, 3, 10, 35.

16 *Civil Code of Québec*, CQLR c CCQ-1991, art 34.

17 See in particular *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, 1994 CanLII 83 (SCC), [1994] 2 SCR 165, EYB 1994-67657, at 201, on considering the child's wishes in determining the child's best interests.

18 *Youth Protection Act*, CQLR c P-34.1, Preamble.

19 *Youth Protection Act*, CQLR c P-34.1, s 4.

20 *Youth Protection Act*, CQLR c P-34.1, s 4.3.

may be in danger. Thus, they fall within an exceptional legal regime. The *Youth Protection Act* recognizes that a child's security or development is in danger when the child's basic needs, particularly regarding food, clothing, hygiene, and lodging, are not adequately met.[21] It also establishes that a child's security or development is in danger if the child is not receiving the necessary care for their physical or mental health[22] or if the child is not provided with appropriate supervision or support.[23] However, this recognition falls primarily within a logic of protection in the event of a failure rather than an autonomous and explicit affirmation of fundamental rights. In the absence of explicit recognition of children's rights, the law primarily recognizes them from the standpoint of parental failure rather than as genuine fundamental rights enforceable on behalf of all children.

The Education Act: An insufficient sector-specific approach

The *Education Act*[24] rests on children's access to education but is primarily structured around the organization of the school system and the delivery of educational services. Section 0.1,[25] adopted in 2025, aims to clarify the purpose of this statute that is central for children. While it sets out elements about the objectives of education, it does not expressly enshrine children's rights. Furthermore, the *Education Act* contains a division entitled "Students' Rights", which primarily enshrines the right to access public education services and guarantees related to the delivery of education, such as the right to educational services (ss. 1 and 2), the right to free educational services and certain material conditions of schooling (ss. 3, 3.1, and 7), and the limited right to choose a school (s. 4). However, that division does not express a cross-cutting approach to recognizing children's rights in an environment initially designed for them and their education, socialization, and fulfilment.

In sum, while the Québec legislative framework recognizes certain legal guarantees for children, including their rights to protection and security, these rights still lack explicit, comprehensive, and cross-cutting recognition. Examining the main Québec legislative instruments reveals that, regardless of whether they are general or sector-specific, they do not ensure the complete or consistent recognition of children's rights. These significant gaps justify the adoption of a comprehensive statute applicable to all children in Québec that enshrines the recognition of all their rights.

21 *Youth Protection Act*, CQLR c P-34.1, s 38(b)(1)(i).

22 *Youth Protection Act*, CQLR c P-34.1, s 38(b)(1)(ii).

23 *Youth Protection Act*, CQLR c P-34.1, s 38(b)(1)(iii).

24 CQLR c I-13.3.

25 *Education Act*, CQLR c I-13.3, s 0.1, which reads as follows: "The purpose of this Act is to mobilize, in the best interest of students and their success, the entire educational community through an offer of quality educational services and access to a healthy and secure learning environment, conducive to developing students' full potential and forming citizens who are responsible and fully engaged in the democratic, social, community, economic and cultural life of the Québec State.

To that end, the Act establishes a public school system founded on democratic values and Québec values expressed in particular by the Charter of human rights and freedoms (chapter C-12), including the equality of women and men, and on State laicity, which is based on

(1) the separation of State and religions;

(2) the religious neutrality of the State;

(3) the equality of all citizens; and

(4) freedom of conscience and freedom of religion.

A further purpose of the Act is to promote, in particular in the context of educational services, the quality of French, the only common language of the Québec nation, within the public school system in order to enable adherence and contribution by all to the distinct culture of that nation."

2.2 A predominant protectionist logic

Current legislation takes a protectionist approach to children's rights,[26] viewing children as vulnerable, immature beings who are dependent on adults and must be protected against risks, dangers, and their own limitations.[27]

Because vulnerability is inherent in childhood, children require legal protection[28] due to their state of dependence and evolving abilities. However, they should not be reduced to mere beneficiaries of protective measures. Rather, they should be raised to the status of active rights holders[29] who are called upon to express their views and be recognized as subjects of law.[30] Recognizing rights centred exclusively on protecting children is insufficient if children are to be apprehended as genuine social actors.

A complete approach to children's rights requires balancing protective measures with rights of autonomy, such as the rights to information, association, and participation.[31]

An exclusively protectionist conception of children and of their rights cannot honour their dignity[32] because their dignity is intrinsically linked to their growing autonomy[33] and the recognition of their rights.[34] Conversely, an approach that recognizes the elements mentioned above is the essential normative basis of a genuine rights-based approach.[35] Children's rights must be grounded in the reality of children, and their vulnerability justifies the primacy of their rights.[36] A society that takes children's dignity seriously must also take the question of their rights seriously.[18]

"Children also need to have a roof over their heads."
– age 19

26 Andrée Lajoie & Claude Parizeau, "La place du juriste dans la société québécoise" (1976) 11 RJT 490, reproduced in Édith Deleury & Michèle Rivet, eds, *La protection de l'enfant en droit social québécois* (Cowansville (Qc): Yvon Blais, 1978).

27 John Tobin, "The Convention on the Rights of the Child and its Conception of Childhood" (2026) 16:1 Global Studies of Childhood 37.

28 *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43; *Winnipeg Child and Family Services v. K.L.W.*, 2000 SCC 48 at para 75; *R. v. Friesen*, 2020 SCC 9, [2020] 1 SCR 424 at para 1: "Children are the future of our country and our communities. They are also some of the most vulnerable members of our society."

29 Committee on the Rights of the Child, *General Comment No. 7: Implementing Child Rights in Early Childhood*, UN Doc CRC/C/GC/7 (20 September 2006) at paras 3, 16; Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at paras 1, 80; Committee on the Rights of the Child, *General Comment No. 14 (2013): The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)*, UN Doc CRC/C/GC/14 (29 May 2013) at paras 12, 15(h), 16(b).

30 Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at para 1.

31 Council of Europe, European Commission for Democracy through Law (Venice Commission), *Report* (March 2014) at 9.

32 See in particular: Randi Sigurdsen, "Children's Right to Respect for their Human Dignity", in Trude Haugli et al, eds, *Children's Constitutional Rights in the Nordic Countries* (Leiden (NL): Brill, 2019) ch 2 at ss 4, 6; Trude Haugli et al, eds, *Children's Constitutional Rights in the Nordic Countries* (Leiden (NL): Brill, 2020) at 396: "[D]ignity is entangled with equality and autonomy; dignity is honoured when we respect children's autonomy and capabilities rather by giving them rights than accentuating their vulnerability and need for protection"; Claire McCann & Aoife Nolan, "Children's Socio-Economic Rights, Democracy and the Courts" (2012) 12:3 *Human Rights Law Review* 608 at 608-611.

33 Michael Freeman, *The Rights and Wrongs of Children* (London: Frances Pinter Publishers, 1983).

34 Michael Freeman, *The Rights and Wrongs of Children* (London: Frances Pinter Publishers, 1983).

35 Michael Freeman, *The Rights and Wrongs of Children* (London: Frances Pinter Publishers, 1983).

36 Michael Freeman, "Why it Remains Important to Take Children's Rights Seriously" (2007) 15:1 Int'l J Child Rts 5.

In sum, while protecting children is an essential State responsibility and societal requirement, it cannot be the sole basis for recognizing their rights. A genuine approach based on children's rights requires that they be recognized throughout Québec legislation as subjects of law and holders of rights of their own, not solely as beneficiaries of protective and intervention measures.

2.3 The unmet requirements of the *Convention on the Rights of the Child*

The twentieth century is often referred to as the "Century of the Child"[37] because it marks a significant shift in legal and social perceptions of children.[38] This transformation culminated in the United Nations' adoption of the Convention on November 20, 1989.[39] The Convention enshrines all of children's fundamental rights, namely their civil, political, economic, social, and cultural rights.[40] For the first time, an international instrument intended to produce legally binding effects for States Parties[41] explicitly enshrined the recognition of children as genuine rights holders. The Convention is the most widely ratified human rights treaty in history (196 States Parties),[42] demonstrating an international consensus regarding the need to recognize and protect children's rights. Canada ratified the Convention on December 13, 1991.[43]

Québec declared itself bound by the Convention through an order in council,[44] thereby affirming its commitment to adhere to its principles and implement it. However, in the Canadian legal system, international conventions, even when ratified, have no direct application in domestic law and require an additional step: legislative incorporation, through an implementing statute, for example.

Many of the rights enshrined by the Convention fall under provincial jurisdiction, particularly child protection, education, health, social services, and the administration of justice.[45] Moreover, the United Nations Committee on the Rights of the Child recognizes that provinces and territories bear a central responsibility in implementing the Convention in federated States such as Canada.[46] Their role in this regard is not ancillary; it is decisive in ensuring the effective realization of children's rights in Québec. This means that the Convention cannot fully produce its effects without voluntary provincial legislative action.

37 Ellen Key, *The Century of the Child* (New York and London: G.P. Putnam's Sons, 1909).

38 Ellen Key, *The Century of the Child* (New York and London: G.P. Putnam's Sons, 1909).

39 GA Res 44/25, UN GAOR, 44th Sess, Supp No 49, UN Doc A/44/49 (1989).

40 Sharon Detrick, ed, Jaap E Doek & Nigel Cantwell, *The United Nations Convention on the Rights of the Child: A Guide to the "travaux préparatoires"* (Dordrecht: Kluwer Academic Publishers, 1992) at 27; Dominic McGoldrick, "The United Nations Convention on the Rights of the Child" (1991) 5 International Journal of Law and the Family 132.

41 Zoé Moody, "La fabrication internationale des droits de l'enfant: genèse de la Déclaration des Nations Unies relative aux droits de l'enfant" (2015) 161:1 *Relations internationales* 65.

42 UNICEF, *La Convention internationale des droits de l'enfant (CIDE)*, online: <https://www.unicef.fr/convention-droits-enfants/>; Office of the United Nations High Commissioner for Human Rights, *Convention on the Rights of the Child*, online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

43 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS No 3. Note that Canada expressed reservations regarding articles 21 and 37(c), and made an interpretive declaration regarding article 30. It also ratified two of the three optional protocols to the Convention: the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, on 17 July 2000, and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, on 14 September 2005.

44 QUÉBEC, *Gazette officielle du Québec*, 124th year, No 1, Part 2 (8 January 1992) at 51, Order in Council 1676-91 (9 December 1991).

45 *Constitution Act, 1867*, 30 & 31 Vict, c 3, ss 92, 93.

46 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at paras 55–57; Committee on the Rights of the Child, *General Comment No. 14 (2013): The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)*, UN Doc CRC/C/GC/14 (29 May 2013) at para 38; Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at para 41.

2.3.1 Formal commitments of limited scope

The Convention has never been fully incorporated into the Québec or Canadian legal systems, so it does not have full legal force.[47] It primarily serves as a source for interpreting domestic legislative norms[48] and cannot be the autonomous basis of a legal remedy on its own. However, there is a presumption that domestic law conforms to international law.[49] In addition, the United Nations Committee on the Rights of the Child has stated that "[w]hen a State ratifies the Convention on the Rights of the Child, it takes on obligations under international law to implement it".[50] For the Convention to have real scope for children, however, the legislature must expressly incorporate this international treaty by which Québec has declared itself bound into Québec law.

Certain children's rights recognized in Québec legislation appear to conform to the Convention.[51] However, others recognized by the Convention are absent from or only partially integrated into Québec legislation. By way of example, the right to participate in decisions that affect them,[52] the right to be protected against all forms of violence,[53] the right to a clean, healthy, and sustainable environment,[54] the right to rest and leisure,[55] and the right to optimal development.[56] These considerations also apply to Indigenous children's cultural rights,[57] the recognition of which must take into account the realities, cultures, languages, traditions, and right to self-determination of First Nations and Inuit peoples.[58]

47 Michelle Giroux & Carmen Lavallée, *Les droits de l'enfant: Rapport du Canada* (report presented to the International Academy of Comparative Law, Vienna, 2014) at 3.

48 On the interpretive relevance of international treaties ratified by Canada: *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at 349-350; *National Corn Growers Assn. v. Canada (Import tribunal)*, [1990] 2 SCR 1324; *P. (D.) v. S. (C.)*, [1993] 4 SCR 141; *Young v. Young*, [1993] 4 SCR 3; *R. v. L. (DO)*, [1993] 4 SCR 419; *Gordon v. Goertz*, [1996] 2 SCR 27; *W. (V.) v. S. (D.)*, [1996] 2 SCR 108; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 SCR 519; *R. v. Sharpe*, [2001] 1 SCR 45; *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, [2004] 1 SCR 76.

49 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817; *R. v. Hape*, 2007 SCC 26, [2007] 2 SCR 292.

50 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 1.

51 By way of example: *Civil Code of Québec*, CQLR c CCQ-1991, art 34; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 12(2); *Education Act*, CQLR c I-13.3, ss 1–3.1; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 28.

52 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 12.

53 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 19.

54 This right is the result of an analysis by the United Nations Committee on the Rights of the Child of rights expressly enshrined in the Convention, the joint interpretation of which leads to the conclusion that it is implicitly contained therein. See Committee on the Rights of the Child, *General Comment No. 26: Children's Rights and the Environment, with a Special Focus on Climate Change*, UN Doc CRC/C/GC/26 (22 August 2023) at para 63.

55 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 31.

56 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 6; Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12.

57 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 30.

58 Committee on the Rights of the Child, *General Comment No. 11: Indigenous Children and Their Rights Under the Convention*, UN Doc CRC/C/GC/11 (12 February 2009).

"It's a whole set of things: people worrying more about health, that children be happy, not judged, be respected, have a roof over their heads, emotional bonds, be loved, be listened to." – age 12

Québec's commitment to promoting the Convention

The United Nations Committee on the Rights of the Child insists that promoting and disseminating the Convention is indispensable to its implementation.[59] The Committee considers that recognizing children as holders of rights is possible only if the adults around them know and understand those rights.[60] By declaring itself bound by the Convention, Québec committed to applying its provisions, in particular the obligation to make the Convention's principles and provisions widely known to adults and children alike.[61] In this regard, the *Commissaire au bien-être et aux droits des enfants*, under its constituting statute, must inform the public about the principles and provisions of the Convention.[62] However, promoting an international treaty whose value is interpretive raises a normative ambiguity: Disseminating the Convention may create the impression that there are rights in Québec that are recognized and fully applicable, when in fact they are only indirectly imposed by way of interpretation.

2.3.2 Making children's rights effective

According to the United Nations Committee on the Rights of the Child, the effectiveness of the Convention depends on adopting a rights-based approach within all governmental, parliamentary, and judicial bodies.[63]

The Committee states that this approach is a prerequisite for the genuine implementation of the Convention's obligations and aims to fully realize all of the Convention's enshrined rights in their entirety, interdependence, and indivisibility.[64] The Committee specifies that this undertaking requires integrating the rights recognized in the Convention, operationalizing them, and considering them in legislation, policies, decision-making mechanisms, and institutional practices.[65]

59 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 66.

60 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 66.

61 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS No 3, art 42, which reads as follows: "States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."

62 *Act respecting the Commissioner for Children's Well-Being and Rights*, CQLR c C-32.1.01, s 5, para 2(4).

63 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at paras 1, 12.

64 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at paras 1, 2.

65 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at paras 18, 19.

From this perspective, effectively implementing international obligations cannot be limited to abstract principles, but rather requires concrete measures to ensure their effectiveness. In this regard, reforming the legislative framework related to children's rights would significantly help improve children's access to justice. The United Nations Committee on the Rights of the Child has a broad conception of access to justice that is not limited to the possibility of bringing proceedings before courts.[66] Rather, it encompasses the entirety of the judicial, administrative, and social mechanisms that enable children to have their rights recognized, protected, and respected in their daily lives.[67] In practical terms, children's rights that are clearly defined, brought together in a single text, and recognized by all actors concerned are more likely to be known, invoked, and applied. Such a reform would help remove structural obstacles to children's access to justice that substantially reduce the scope of their available rights and remedies.[68]

The effectiveness of rights depends not only on their explicit recognition but also on the real possibility of asserting them.[69] Children's rights cannot be effectively enforced without clear remedies and redress, procedures designed for their particular situation,[70] and timeframes that align with the unique pace of childhood. Mechanisms that are too cumbersome or too slow risk depriving these rights of their concrete scope.[71] By way of example, the distinct nature and scope of time for children compared to adults must be taken into account when implementing children's rights. A child's development cannot be put on hold while awaiting decisions, proceedings, or services. This reality should be reflected in judicial timeframes and access to services to prevent administrative or institutional processes from harming children's well-being, stability, and development due to their slowness.

66 Committee on the Rights of the Child, *Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies* (2024), online: <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf>.

67 Committee on the Rights of the Child, *Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies* (2024), online: <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf>; see also Marie Deschamps, "L'accès à la justice, l'affaire de chacun" (2009) 50 *Cahiers de droit* 247 at 251: [Translation] "[w]e need a law that responds to our everyday needs".

68 Emmanuelle Bernheim & Marilyn Coupienne, "Faire valoir ses droits à la chambre de la jeunesse: état des lieux des barrières structurelles à l'accès à la justice des familles" (2019) 32:2 Can J Fam L 237.

69 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 24; Committee on the Rights of the Child, *Concept Note: General Comment on Children's Rights to Access to Justice and Effective Remedies* (2024), online: <https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf>; Pierre Noreau, "Accès à la justice et démocratie en panne: constats, analyses et projections", in Pierre Noreau, ed, *Révolutionner la justice: constats, mutations et perspectives. Les Journées Maximilien-Caron 2009* (Montréal: Thémis, 2010) 13 at 15: [Translation] "Recourse to the courts in order to assert a right or to oppose a third party's claim is meaningful only to the extent that everyone is afforded the real possibility of applying to the courts, of being represented there, or of asserting their claims there. . . . Legal equality implies genuine access to justice."; *Renvoi à la Cour d'appel du Québec portant sur la validité constitutionnelle des dispositions de l'article 35 du Code de procédure civile qui fixent à moins de 85 000 $ la compétence pécuniaire exclusive de la Cour du Québec et sur la compétence d'appel attribuée à la Cour du Québec*, 2019 QCCA 1492; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 SCR 31.

70 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 24; Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at paras 46-47; Mona Paré et al, eds, *L'accès des enfants à la justice: bilan critique* (Paris: Dalloz, 2022); Alexandra Lévesque, David Bendo, Jean-François Hübsch & Marie Paré, "How to Make Legal Proceedings in Canada More Child Friendly?" (2025) 103:2 Canadian Bar Review 546.

71 Ton Liefaard, "Protection and Participation of Children in the Justice System" (2016) 88:4 *Temple Law Review* 905; Lisa V Martin, "Securing Access to Justice for Children" (2022) 57 *Harvard Civil Rights–Civil Liberties Law Review* 621; Mona Paré, "L'accès des enfants à la justice et leur droit de participation devant les tribunaux: quelques réflexions" (2014) 44:1 *Revue générale de droit* 81.

"When we make a complaint, we wait for an answer. We never get one. We're ignored." – age 16

2.3.3 The general principles as a compass for children's rights

Although the rights-based approach covers all the rights guaranteed by the Convention, the United Nations Committee on the Rights of the Child emphasizes its particular importance regarding the Convention's general principles, which must guide the interpretation and application of all the other rights.[72] The Committee expressly highlighted these principles as essential levers for effectiveness, urging their use to structure legislative, executive, and judicial action when a decision is likely to directly or indirectly affect children.[73]

The rights-based approach is anchored in international human rights law and considers children to be genuine rights holders and not mere passive beneficiaries of care or of protection. In this regard, the Committee recalls that States have a legal obligation to guarantee every child's fundamental rights. This obligation must not be perceived as an act of charity towards them,[74] which also implies integrating the Convention and its application.[75]

The rights-based approach rests on the Convention's four general principles: the right to non-discrimination, the best interests of the child, the right to life, survival, and development, as well as respect for the child's views, or the right to participate.[76]

72 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12.

73 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at paras 12, 19.

74 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 11.

75 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12.

76 Committee on the Rights of the Child, *Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties Under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child*, UN Doc CRC/C/5 (30 October 1991); see also the updated version of those guidelines (23 November 2010), UN Doc CRC/C/58/Rev.2, at paras 23-27; Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12.

Non-discrimination requires equal access to rights as well as equity measures to correct structural obstacles to realizing these rights.[77] Regarding the best interests of the child, the United Nations Committee on the Rights of the Child emphasizes that these interests are inseparable from all the rights recognized by the Convention.[78] This presupposes a precise definition of the scope and content of children's rights. The Committee further emphasizes that the right to life, survival, and development must be understood holistically[79] as a concept encompassing its physical, mental, psychological, social, moral, and spiritual aspects.[80]

Lastly, respect for the child's views, or the right to participate, cannot be tokenistic[81] or a one-off event:[64] It must be exercised in all spheres of children's lives[82] and help strengthen the effectiveness of all their rights.[83]

"My dream for children in Québec is that there be no more bullying or other forms of harassment." – age 18

Understood in this way, the rights-based approach, which entails the explicit recognition of children's rights, is a major strategic tool for Québec parliamentarians. It helps structure the drafting of legislation, assess its effects on children, and ensure that legislative reforms genuinely meet Québec's obligations under the Convention. It fosters the concrete realization of all children's rights because incorporating the Convention and recognizing the rights of children makes them more visible in legislation and public policy, thereby consolidating their status as rights holders.[84]

77 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12.

78 Committee on the Rights of the Child, *General Comment No. 14 (2013): The Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)*, UN Doc CRC/C/GC/14 (29 May 2013) at paras 4, 6, 47.

79 Committee on the Rights of the Child, *General Comment No. 7: Implementing Child Rights in Early Childhood*, UN Doc CRC/C/GC/7 (20 September 2006) at para 10; Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12.

80 Committee on the Rights of the Child, *General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44, para 6)*, UN Doc CRC/GC/2003/5 (27 November 2003) at para 12; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, art 6.

81 Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at para 132.

82 Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at paras 13, 133.

83 Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at para 80.

84 Sabine Hoffman & Siôn O'Neill, *The Impact of Legal Integration of the UN Convention on the Rights of the Child in Wales*, (Cardiff (UK): Equality and Human Rights Commission, 2018).

2.4 The need for legislative reform

The findings presented in this report bring to light the limitations of the Québec legal framework regarding the full and complete recognition of children's rights. Without an autonomous, complete, and cross-cutting legislative instrument dedicated to children, Québec law is fragmented and lacks a single text that brings together all their recognized rights. This dispersion and incompleteness undermine the visibility, recognition, and effectiveness of children's rights.

Recognizing children as rights holders requires explicitly setting out their rights in a complete and cross-cutting manner. Vulnerability cannot be the primary basis of a legislative framework intended to recognize all their rights. Children are much more than vulnerable beings. They are entitled to special protection, while at the same time being full social actors who are an integral part of society, have their own needs, and are growing in autonomy.

A legislative framework based on children's rights should recognize all these aspects and rest on the principles of non-discrimination, the best interests of the child, the right to life, survival, and development, and the right to participate.

Their dignity is at stake. This is precisely the spirit of the Convention.

The current situation undermines children's status as rights holders, limiting not only the concrete scope of those rights, but also their visibility, understanding, and appropriation by children and the individuals responsible for implementing them.

Against this backdrop, adopting a legislative framework based on an integrated approach to children's rights is essential to ensure the explicit recognition of children's rights in Québec. This line of thinking builds on the work of the Special Commission on the Rights of the Child and Youth Protection, chaired by Régine Laurent, which also recommended adopting a charter of children's rights in order to better recognize children as rights holders and strengthen consideration of their rights.

Adopting such a legislative framework would strengthen children's place in Québec law and society. It would foster greater recognition of children's rights and greater coherence in the actions of the State, institutions, and private actors. It would also promote the development of a legal, institutional, and societal culture that fully recognizes children as subjects of law.

RECOMMENDATION 1

That the legislature adopt a charter of children's rights that sets out all the rights recognized for children in Québec and that, at a minimum, reproduces the rights recognized in the *Convention on the Rights of the Child*.

3. THE PARTICIPATION OF YOUNG PEOPLE

However, such a reform could not be fully coherent without the participation of children themselves. Recognizing children as rights holders also involves seeking and hearing their views in upstream deliberations and in decisions affecting their rights.

From this perspective, the Commissioner believes that it is essential for children to participate in developing a charter of children's rights. They must be stakeholders in that collective process. To this end, the Commissioner plans to tour Québec's regions to gather children's thoughts and proposals about which rights should be recognized in the *Charter of Children's Rights*. To effectively implement the right of children to participate in adopting a charter that enshrines their rights, the legislature will have to give due consideration to their views once the Commissioner has gathered them.

3.1 The right to participate

The Convention enshrines children' right to participate in decisions that affect them. As such, children's views must be given due weight.[85] As mentioned above, the right to participate is a general principle of the United Nations Committee on the Rights of the Child, which emphasizes that States Parties to the Convention have the obligation "to review or amend their legislation in order to introduce mechanisms providing children with access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress".[86]

"To be listened to as a child by the people around me." – age 11

The United Nations Committee on the Rights of the Child recognizes that a child's right to self-expression and participation in decisions affecting them is closely linked to the child's best interests.[87] To determine what is in children's best interests, their views must be given due weight.

Children's participation should no longer be perceived as an administrative practice or a privilege granted at discretion, but rather as a fundamental right applicable in all spheres of children's lives. Recognizing and implementing this right is essential to making decisions in children's best interests. Fully recognizing this right would strengthen children's status as genuine rights holders, not solely as persons to be protected

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85 *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS No 3, art 12.

86 Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at para 48.

87 Committee on the Rights of the Child, *General Comment No. 12 (2009): The Right of the Child to Be Heard*, UN Doc CRC/C/GC/12 (20 July 2009) at paras 68, 70–74.

3.2 Children's participation in any legislative reform affecting their rights

Although children do not have the right to vote, they are social actors who can influence their environment and society. Therefore, involving children in legislative reforms concerning their rights would be a significant step towards the genuine implementation of their right to participation. It would send a strong message that children are not merely beneficiaries of protective measures but also full social actors and rights holders whose views are sought, recognized, and valued. Including them in the process of identifying their rights would demonstrate that society that regards them as an integral part of community life.

The direct participation of children in adopting a charter devoted entirely to them would also act as a protective factor: When children participate in identifying their rights, they are more likely to know them, understand them, and recognize them as legitimate. They are thereby better equipped to protect themselves and their peers and to seek redress when their rights are violated.[88] Such participation would also foster a lasting civic culture based on critical thinking, engagement, and the ability to influence decisions that affect them. Children's participation in this legislative exercise would thus be a lever for recognizing children's dignity and a practical mechanism for learning citizenship.

Involving children would also help bridge the gap between children's theoretical rights and lived experiences. When procedural mechanisms, avenues of recourse and redress, access to justice, and protective arrangements are designed with children, they become more accessible and better adapted to children's real needs. A reform involving children would allow for the design of mechanisms more firmly anchored in their daily experience.

At the societal level, involving children in adopting a charter of children's rights would be part of a project in which they are recognized as genuine social actors and as allies in their own protection. This legislative instrument would help build a more inclusive, cohesive, and democratic society in which children genuinely participate in defining the norms that affect them.

RECOMMENDATION 2

That the legislature ensure children's effective participation in developing a charter of children's rights.

88 Megan Mitchell, Laura Lundy & Lisa Hill, "Children's Human Rights to 'Participation' and 'Protection': Rethinking the Relationship Using Barnahus as a Case Example" (2023) Child Abuse Review e2820 at 5.

4. AN IMMEDIATE ADVANCE FOR CHILDREN'S RIGHTS

The foregoing recommendations aim for the explicit, complete, and cross-cutting recognition of children as rights holders by adopting a statute devoted specifically to them and explicitly recognizing their right to participate in decisions affecting them. Although such a reform requires broader reflection, consultation, and the transformation of the current legislative framework, an immediate advance is possible: explicitly affirming that the rights guaranteed by the *Charter of human rights and freedoms* also apply to children.

However, in the light of the elements presented above, such recognition alone cannot address all the issues raised in this report. The *Charter of human rights and freedoms* is not an instrument specifically devoted to children, nor does it recognize all the rights that should be guaranteed to them. Nonetheless, it is a fundamental text in the area of human rights protection. An explicit affirmation of its application to children would thus be an important step towards strengthening the visibility and effectiveness of their rights, particularly in situations where those rights are violated, by facilitating the identification of the rights at issue, the applicable provisions, and the available remedies.

RECOMMENDATION 3

That the legislature affirm that the rights guaranteed by the *Charter of human rights and freedoms* also apply to children.

5. FIRST NATIONS AND INUIT CHILDREN

The Commissioner acknowledges that the realities, rights, and aspirations of First Nations and Inuit regarding children's rights are part of their own historical, cultural, legal, and political contexts. A number of initiatives and undertakings led by First Nations and Inuit already affirm the importance of recognizing the rights of First Nations and Inuit children while respecting their cultures, languages, traditions, and right to self-determination.

The Commissioner also acknowledges that although her mandate covers all children in Québec, any deliberations about a potential charter of children's rights will have to take these unique circumstances into account and will require government-to-government discussions with First Nations and Inuit regarding children from their communities.

6. BASIS FOR REFORM AND RECOMMENDATIONS

The findings presented in this report highlight the limitations of the Québec legal framework in fully and completely recognizing children's rights. Despite the existence of several important legal guarantees, children's rights are still incomplete, fragmented, and unevenly recognized.

This report also emphasizes that children cannot be considered solely from the standpoint of protection. They must be recognized as genuine holders of rights, including the right to protection as well as rights connected to their development and growing autonomy, within a complete and cross-cutting body of rights. That body of rights must guide deliberations, decisions, legislation, public policies, and interventions affecting children.

In this context, the Commissioner for Children's Well-Being and Rights believes that reforming the Québec legislative framework is necessary to ensure more explicit, complete, and cross-cutting recognition of children's rights in Québec. The reform also aims to strengthen children's status in Québec society and foster a legal, institutional, and societal culture that recognizes children as full subjects of law.

ACCORDINGLY, CONSIDERING THAT:

- Canada ratified the *Convention on the Rights of the Child* on December 13, 1991;
- Québec declared itself bound by the Convention through Order in Council 1676-91 on December 9, 1991;
- in that order in council, Québec affirmed that the Convention falls in large part within its jurisdiction and committed to complying with it;
- Québec adopted the *Act respecting the Commissioner for Children's Well-Being and Rights* on May 30, 2024;
- the *Commissaire au bien-être et aux droits des enfants* is responsible for promoting the well-being of children and respect for their rights, which includes informing the public about the principles and provisions of the Convention;
- the Québec legislative framework recognizes certain legal guarantees for children, particularly their right to protection and security;
- in Québec law, children's rights are not explicitly and cross-cuttingly recognized to ensure their respect and consistent implementation;
- certain children's rights recognized in the Convention are absent from or insufficiently enshrined in the Québec legislative framework;
- throughout Québec legislation, children must be recognized as genuine subjects of law and holders of their own rights, not solely as beneficiaries of protective and intervention measures;
- a child's best interests must be understood in the light of all their rights and must guide every decision affecting them;
- the Convention's four general principles—the right to non-discrimination, the best interests of the child, the right to life, survival, and development, as well as the right to participate—must guide all legislation, policies, judicial decisions, and administrative decisions affecting children;

- the Special Commission on the Rights of the Child and Youth Protection recommended adopting a charter of children's rights that sets out children's fundamental rights and affirming clearly, within the Québec legislative framework, the condemnation of all forms of corporal punishment of children in order to fully recognize their dignity, integrity, and right to effective protection against violence;
- the United Nations Committee on the Rights of the Child recommends that States Parties to the Convention adopt general legislation on children's rights and ensure its effectiveness; and
- the effective participation of children in any legislative reform affecting their rights is necessary to recognize their status as subjects of law and give due weight to their views in decisions affecting them.

THE COMMISSIONER FOR CHILDREN'S WELL-BEING AND RIGHTS RECOMMENDS THE ADOPTION OF:

- a legislative framework based on an integrated approach to children's rights in order to expressly recognize children as subjects of law, clearly and explicitly set out all their rights, and coherently implement those rights in all environments in which children live. This framework should be guided by genuine consideration of their views, best interests, dignity, security, and development and should be free of discrimination of any kind.

MORE SPECIFICALLY, THE COMMISSIONER RECOMMENDS THAT THE LEGISLATURE:

- adopt a charter of children's rights that sets out all children's rights in Québec and that, at a minimum, reproduces the rights recognized in the Convention;
- ensure the participation of children in Québec in developing the *Charter of Children's Rights*; and
- affirm that the rights guaranteed by the *Charter of human rights and freedoms* also apply to children.

ANNEX 1: EXAMPLES OF JURISDICTIONS THAT HAVE LEGISLATED ON CHILDREN'S RIGHTS

In recent decades, a number of States have undertaken legislative reforms aimed at strengthening the recognition of children's rights in their domestic law. These initiatives reflect a significant evolution in contemporary legal systems, in which children are increasingly recognized as rights holders.

The approaches vary according to each State's legal traditions and constitutional structures. Some have incorporated the Convention directly into their legal systems, sometimes recognizing it superior to ordinary statutes. Others have adopted specific constitutional provisions enshrining certain fundamental rights for children, or created specialized legislative instruments aimed at better governing their protection, participation, and development.

Scotland

In 2024, Scotland adopted the *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*, which incorporates the Convention into Scots law, within the limits of the competences devolved to Scottish institutions.

The Act requires public authorities to respect children's rights in all their actions, including when services are entrusted to external bodies.[89] Children or their representatives may also initiate legal proceedings to directly assert the rights recognized by the Convention.[90]

Scottish courts may intervene when a statute is incompatible with the Convention by preventing its application or by declaring its incompatibility. Existing statutes must also be interpreted in a manner that is, as far as possible, compatible with the Convention.[91]

The reform also provides for various monitoring and implementation mechanisms. Certain independent institutions responsible for protecting children's rights may initiate legal proceedings, and the Scottish Government must publish action plans, produce regular reports, and assess progress in the area of children's rights.[92]

Another notable aspect of the Scottish model is the participation of children and young people. While not specifically arising from the Act, the participation of children and young people already occupies an important place in Scottish public policy and, as part of the reform process, their views on issues affecting them were gathered.[93]

89 Scotland, *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*, s 6.

90 Scotland, *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*, ss 7, 8, 9.

91 Bruce Adamson, "Incorporating the United Nations Convention on the Rights of the Child in Scotland: One Hundred Years in the Making" (2024), online: OKAJU <https://www.okaju.lu/en/100-joer-kannerrechter/incorporating-the-united-nations-convention-on-the-rights-of-the-child-in-scotland-one-hundred-years-in-the-making/>.

92 Scotland, *United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024*, ss 13–18.

93 Together Scotland, *Children's Participation in UNCRC Incorporation Process*, research and public policy documents, online: <https://www.togetherscotland.org.uk/>.

This participation is evident in the work of the Scottish Youth Parliament[94] as part of the *Right Here, Right Now* campaign. Through the 2016–2021 youth manifesto of Scotland's young people, *Lead the Way*,[95] more than 70,000 responses were gathered during public consultations. Of those participants, 76% indicated that the Convention should be fully incorporated into Scots law and that the rights of children and young people should be protected and promoted.[96]

Norway

In 2003, Norway incorporated the Convention into its domestic legal system through an amendment to the *Menneskerettsloven* (Human Rights Act 1999).[97] An essential characteristic of this incorporation is that the Convention was recognized as having supra-legislative value at a semi-constitutional level.[98] Under this Act, the Convention's provisions prevail over any conflicting ordinary legislation.[99]

Children's rights also acquired constitutional protection in 2014 with the addition of a new section largely inspired by the Convention. This section enshrines three fundamental principles: the right of children to be heard in all matters affecting them, the obligation to treat their best interests as a primary consideration in decisions affecting them, and the right to protection of their personal integrity. It also requires public authorities to create conditions that promote the child's development, thereby strengthening the constitutional protection of children's rights in Norwegian law.[100]

Sweden

Sweden presents a model for integrating children's rights marked by a legislative incorporation of the Convention into domestic law in 2020. The Convention thereby acquired the status of national law. According to the Swedish government, this reform has helped increase the visibility of children's rights throughout the public sector and has strengthened consideration of the Convention in both policy development and practice.[101] However, the Convention retains the same value as ordinary statutes and has no formal primacy in the event of a conflict with other legislative provisions.[102]

94 Scottish Youth Parliament, an independent youth representation organization recognized by the Scottish authorities, official website: <https://syp.org.uk/>.

95 United Nations House Scotland, *Leading the Way: How Scotland is Championing the Rights of Children and Young People in the United Kingdom*, online: <https://www.unhscotland.org.uk/post/leading-the-way-how-scotland-is-championing-the-rights-of-children-and-young-people-in-the-united-k>.

96 Kasey McCall-Smith, "Incorporating the CRC in Scotland" in Ursula Kilkelly, Laura Lundy & Bronagh Byrne, eds, *Incorporating the UN Convention on the Rights of the Child into National Law* (Cambridge: Intersentia, 2021).

97 Norway, *Seventh Periodic Report Submitted Under Article 44 of the Convention on the Rights of the Child, Due in 2024* (20 August 2024), online: <https://www.regjeringen.no/contentassets/7143148c6e194913be6146746e949d72/norways-seventh-report-to-the-un-committee-on-the-rights-of-the-child.pdf>.

98 Trude Haugli, "Constitutional Rights for Children in Norway" in Trude Haugli, Anna Nylund, Randi Sigurdsen & Lena RL Bendiksen, eds, *Children's Constitutional Rights in the Nordic Countries* (Leiden/Boston: Brill, 2020), online: <https://www.jstor.org/content/oa_book_edited/10.1163/j.ctv2gjwv97>.

99 Nordic Welfare Centre et al, *Participation is Protection – Embedding Children's Rights in Nordic Crisis Governance* (2025) at 51, online: <https://nordicwelfare.org/wp-content/uploads/2025/08/Participation-is-Protection-_-Embedding-Children_s-Rights-in-Nordic-Crisis-Governance.pdf>.

100 Malcolm Langford et al, eds, *Children's Rights in Norway: An Implementation Paradox?* (Oslo: Universitetsforlaget, 2019), at 41, online: https://www.scup.com/doi/full/10.18261/9788215031415-2019-02.

101 Sweden, *Statement by Sweden at the Consideration of Sweden's Combined 6th and 7th Periodic Report at the Ninety-Second Session of the Committee on the Rights of the Child* (16 January 2023), online: <https://www.swedenabroad.se/en/embassies/un-geneva/current/statements/crc_6_7>.

102 Sweden, *The UN Convention on the Rights of the Child Becomes Swedish Law (SOU 2016:19): English Summary* (Stockholm: Ministry of Health and Social Affairs, 2016), online: <https://www.government.se/globalassets/government/dokument/socialdepartementet/english-summary_sou2016_19.pdf>.

Austria

In 2011, Austria adopted the *Bundesverfassungsgesetz über die Rechte von Kindern* (Federal Constitutional Act on the Rights of Children), a specific constitutional statute devoted to children's rights).[103] Among other things, this statute recognizes the principle of the child's best interests, the right to protection, and the right to participation, thereby conferring constitutional value on several children's rights even though it does not incorporate the *Convention on the Rights of the Child* in its entirety.

SOUTH AMERICA

Brazil

In Brazil, article 227 of the 1988 Constitution plays a central role in protecting children's rights. This provision requires the family, society, and the State to ensure, with absolute priority, children's rights to life, health, food, education, leisure, vocational training, culture, dignity, respect, liberty, family life, and community life. It also requires them to protect children against all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression.[104]

Reports from the United Nations Committee on the Rights of the Child emphasize Brazil's advanced legal and constitutional framework for protecting the rights of children and adolescents, particularly due to article 227 of the Brazilian constitution.[105]

Uruguay

After ratifying the Convention in 1990, Uruguay adopted, a code on childhood and adolescence in 2004, recognizing children as individuals with rights rather than merely as individuals to be protected. This statute emphasizes the best interests of the child and the right to be heard. In addition, international norms relating to children's rights may be invoked directly before the Uruguayan courts.[106]

103 Austria, *Federal Constitutional Act on the Rights of Children*.

104 Federative Republic of Brazil, *Constitution of the Federative Republic of Brazil of 1988*, art 227.

105 Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth to Seventh Periodic Reports of Brazil*, UN Doc CRC/C/BRA/CO/5-7 (25 July 2025), online: <https://digitallibrary.un.org/record/4086797/files/CRC_C_BRA_CO_5-7-EN.pdf>.

106 Child Rights International Network (CRIN), "Uruguay: National Laws on Children's Rights", online: <https://archive.crin.org/en/library/publications/uruguay-national-laws.html>; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990; ratified by Uruguay on 20 November 1990).



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