A Child Rights Impact Assessment of Bill 39, *An Act Respecting Proof of Immunization*

Submission to the Standing Committee on Law Amendments

Office of the Child and Youth Advocate

Advisory Opinion 2019EECD01

August 28, 2019

INTRODUCTION

The following Child Rights Impact Assessment (CRIA) Advisory Opinion is submitted to the Standing Committee on Law Amendments and to the Department of Education and Early Childhood Development pursuant to paragraphs 2(d) and 13(f) of the *Child, Youth and Seniors Advocate Act*. This CRIA submission is in relation to Bill 39 *An Act Respecting Proof of Immunization,* introduced for First Reading in the New Brunswick Legislature by the Hon. Dominic Cardy on June 7th, 2019. On June 26th, 2019, Minister Cardy brought greetings to the International Summer Course on the Rights of the Child organized by the Advocate's Office and indicated to the Advocate at that time that the Standing Committee on Law Amendments would be conducting hearings on Bill 39 during the summer and that submissions from the Advocate on the Bill would be welcomed. A formal invitation to the Advocate's Office to carry out a Child Rights Impact Assessment of the Bill was received from departmental officials in the days that followed and an appearance before law amendments was scheduled for late August.

Since early 2013 all public policy matters considered by the provincial Cabinet in New Brunswick have been filtered, prior to Cabinet review, through a Child Rights Impact Assessment (CRIA) process. The CRIA tool allows lawmakers to ensure that legislative changes advance children's rights and best interests and that any negative impacts of proposed changes are identified and minimized to the greatest extent possible. New Brunswick is leading the country regarding this general measure of child rights implementation and the Office of the Child and Youth Advocate has played an important role in advocating for and supporting this legislative decision-making process. The Advocate's Office serves as a subject matter expert to government departments and agencies in relation to child rights implementation and protection and welcomes the opportunity to make these submissions to the Standing Committee on Law Amendments in relation to Bill 39.

Following the tabling of the Bill, the Child and Youth Advocate responded to requests for media interviews. There was press coverage of the Advocate's comments that our office would be reviewing the proposed Bill and this led to further interest in our study of the Bill. The Advocate's office received comments from a small number of individuals and organizations, most of whom were interested to share their concerns about some aspects of the Bill. Two individuals sent documents highlighting potential safety concerns about vaccines, and Vaccine Choice Canada mailed us a package from British Columbia containing a letter, numerous articles, three books, and a documentary video. The New Brunswick Pharmacists' Association in turn proclaimed its support for the Bill.

Applying its own CRIA lens to the contemplated legislative changes, the Office of the Child and Youth Advocate is generally encouraged by the proposed legislative changes, while expressing some reservations about how best to limit the impact of the changes on the right to education of unvaccinated youth, as outlined below. This CRIA is premised on the rights of children as reflected in the international treaty the United Nations *Convention on the Rights of the Child*, rights in Canadian law including the Canadian Charter of Rights and Freedoms, and New Brunswick legislation.

The proposed legislative change

Bill 39, *An Act Respecting Proof of Immunization*, amends the *Education Act*, the *Public Health Act* and the *Early Childhood Services Act* Licensing Regulation (2018-11). The changes ensure that schools and daycares will require proof of immunization from every child attending, that only medical exemptions will be permitted and that religious exemptions and exemptions based upon matters of conscience will no longer be permitted.

The Bill proposes to amend the *Education Act* s. 10 in three ways. Firstly, Bill 39 removes the immunization exemption for "a written statement, on a form provided by the Minister and signed by the parent, of the parent's objection for reasons of conscience or religious belief to the immunizations required under the *Public Health Act* or the regulations under that Act." The amended *Education Act* would permit only medical exemptions. Secondly, Bill 39 amends the *Education Act* s. 10 so that superintendents refuse admission not only to students without immunization proof attending school in New Brunswick for the first time, but to all students without immunization proof. Thirdly, Bill 39 amends the *Education Act* s. 10 to allow a nurse practitioner to sign a medical exemption form that is valid for an exemption. This brings the *Education Act* in line with the *Public Health Act*, where nurse practitioners already can sign immunization medical exemptions.

Bill 39 also amends the *Public Health Act* s. 42.1(1) and 42.1(3). It amends s. 42.1(1) so that a school principal "shall require that proof of immunization is provided to the principal for any disease prescribed by regulation for a child attending school in the Province." This broadens the proof requirement so that it applies to all students. Presently, the legislative requirement only applies to a child attending school in the Province "for the first time." Bill 39 also amends the *Public Health Act* s. 42.1(3) with parallel changes to those made under the *Education Act* s. 10. It removes the immunization exemption for "a written statement, on a form provided by the Minister, signed by the parent or legal guardian of his or her objections to the immunizations." Lastly, Bill 39 amends the *Early Childhood Education Act* Regulation 2018-11, on Licensing, s. 47(2). It removes the immunization proof exemption for "a written statement, signed by the parent or guardian, of the parent or guardian's objection for reasons of conscience or religious belief to the immunizations required by the Public Health Act or the regulations under that Act, on a form provided by the Minister of Health." Bill 39 also newly authorizes nurse practitioners to sign medical exemptions under *Early Childhood Education Act* Regulation 2018-11 s. 47(2).

THE CONTEXT

Measles is a highly contagious and life-threatening disease. Before vaccines were developed and became widely available, the disease was a significant cause of death and disability worldwide, leading to an estimated 2.6 million deaths each year.[1] The complications and health impacts for survivors of measles were often significant, including permanent brain injury or deafness. Starting in 1980 Canada identified the elimination of measles (which can be defined as the absence of endemic measles virus transmission in a region for at least a 12 month period[2]) as an important and attainable public health goal[3] and this was achieved in 1998.[4]

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[1] World Health Organization (WHO). Measles fact sheet N286. Geneva: WHO; November 2015. www.who.int/mediacentre/factsheets/fs286/en/http://www.who.int/mediacentre/factsheets/fs286/en

[2] US Department of Health and Human Services / Centers for Disease Control and Prevention. "*Progress Toward Regional Measles Elimination — Worldwide, 2000–2016*." Morbidity and Mortality Weekly Report, October 27, 2017, Vol. 66, No. 42.

[3] National Advisory Committee on Immunization (NACI). Statement on elimination of indigenous measles in Canada. Can Dis Wkly Rep 1980;6:33-4.

[4] King A, Varughese P, De Serres G, Tipples GA, Waters J, Working Group on Measles Elimination. Measles elimination in Canada. J Infect Dis 2004 May;189-Suppl 1:S236-42. https://www.canada.ca/en/public-health/services/reports-publications/canada-communicable-disease-report-ccdr/monthly-issue/2016-42/ccdr-volume-42-7-july-7-2016/ccdr-volume-42-7-july-7-2016-we-stop-measles.html

In 2016 Canada's status as a country having achieved measles elimination was reconfirmed by the Pan-American Health Organization. There were 11 cases of measles in Canada in 2016 compared to 93 so far in 2019. The Public Health Agency of Canada's monitoring of measles incidents in Canada and globally, along with numerous other communicable disease containment efforts, offer ample testimony to the relative success immunization programs have had in eradicating disease in many parts of the world and especially in developed countries such as Canada.

The *UN Convention on the Rights of the Child*, in its formulation of the child's inherent right to enjoy the highest attainable standard of health, places considerable importance on State obligations to cooperate in efforts to eradicate contagious diseases. Article 24 of the *UN Convention on the Rights of the Child* speaks explicitly to the States' obligation to take measures "to diminish infant and child mortality," "to ensure the provision of necessary medical assistance and health care to all children…" and "to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology."

More recently in its 2015 General Comment on the child's right to enjoy the highest attainable standard of health, the United Nations Committee on the Rights of the child emphasized the importance for State Parties to the *UN Convention on the Rights of the Child* to take additional steps to protect the child's right to health through public health efforts aimed at improving mental health and wellbeing and chronic health conditions impacted by negative health behaviours.[5] World Health Organization reports have also pointed to this significant change in health systems delivery from disease prevention to improving wellness and healthy living. In large part, this new health outlook is made possible by the rapid progress the global community has made in combatting disease through successful public health and immunization programs.
Today, vaccinations are at the frontline of public health care, working to prevent the onset and outbreak of viral diseases. Vaccinations work by injecting a weakened or dead strain of the virus into the patient. This injection of the virus causes the body to launch an immune response, and it begins to produce antibodies: molecules that bind to the virus and suppress it. These antibodies then remain in the immune system, allowing for the immune system to quickly launch a response if it detects the same virus in the future, preventing the impact of the virus on both the individual and the community.[6]

For vaccinations to work effectively, a majority of the population must be vaccinated. This is referred to as 'herd immunity.' Often, health officials proclaim that a minimum of 95% of the population must be vaccinated to achieve herd immunity.[7] It is important to achieve herd immunity with vaccinations, as it not only prevents the spread of disease, but also protects infants who are too young to receive the vaccine, and those who cannot be vaccinated because they are immunocompromised.[8]

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[5] Committee on the Rights of the Child. General Comment No. 15 on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24, 17 April 2013, online: https://view.officeapps.live.com/op/view.aspx?src=http%3A%2F%2Fwww2.ohchr.org%2Fenglish%2Fbodies%2Fcrc%2Fdocs%2FGC%2FCRC-C-GC-15_en.doc.
[6] Health Canada, "Vaccines for Children: Deciding to Vaccinate," (28 June 2019), online: https://www.canada.ca/en/public-health/services/vaccination-children.html.
[7] Dr. Manish Sadarangani, "Herd Immunity: How Does it Work?," (26 April 2016), Oxford Vaccine Group, online: https://www.ovg.ox.ac.uk/news/herd-immunity-how-does-it-work.
[8] Health Canada, "Vaccines for Children: Deciding to Vaccinate," (28 June 2019), online: https://www.canada.ca/en/public-health/services/vaccination-children.html.

Unfortunately, the reported proportion of vaccinated Canadians is decreasing. According to the 2011 UNICEF Report Card, Canada placed 28th for immunization on a list of the world's 29 richest countries.[9] Hungary and Greece led the world with 99% immunization coverage for measles, polio and DPT3 for children aged 12 to 23 months. Only three countries among the 29 had immunization coverage below 90%. In 2011, Canada's reported national immunization rate on this measure was 84%.[10]

In New Brunswick, the 2013 *State of the Child Report* pointed to these significant gaps in Canada's national immunization record and called upon government to shore up efforts to address this gap, noting in that year, fully 27% of children presented themselves to kindergarten for the first time without proper immunizations.[11] Keeping in mind that more four-year-olds would be immunized than 23-month-olds, and that those presenting for kindergarten are only a subset of the total population in need of coverage, it is a safe assumption that New Brunswick immunization rates have been dragging down the Canadian average.

In 2017 the Child and Youth Advocate's Office returned to this theme in the *State of the Child Report* and called upon all parents to step up their efforts in ensuring near universal immunization in order to protect childhood in New Brunswick as a whole, noting that the most recent stats for 2015-16 still showed that 22% of Kindergarten registrants were not properly immunized.[12]

Public Health and the Department of Education and Early Childhood Development prepare an annual *Daycare, School Entry and School Program Immunization Report*. According to these reports, the number of daycare infants and preschoolers who met their immunization requirements was on average 44.5% between 2012 and 2015. Also troubling is that the compliance rates varied significantly across health zones from a low of 30.7% compliance in Zone 3 to a high of 80.7% in Zone 4. In 2017-2018, 46.7% of children attending a licensed daycare met immunization requirements.[13]

For Kindergarten entry, significantly, Zones 4, 5, 6 and 7 all relied on public health officials to administer the immunizations as a sole provider of this service and all of these zones reported compliance above 90% between 2012 and 2015. In zones 1, 2 and 3 immunization services were administered by a variety of service providers and compliance was much lower, including Zone 3 at 58%.[14]

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[9] Unicef Canada, "Stuck in the Middle: Child Well-Being in Rich Countries: A Comparative Overview, Canadian Companion (Report Card 11)," online: https://www.unicef.ca/sites/default/files/legacy/imce_uploads/DISCOVER/OUR%20WORK/ADVOCACY/DOMESTIC/POLICY%20ADVOCACY/DOCS/unicef_rc_11_canadian_companion.pdf.

[10] *ibid*

[11] Office of the Child and Youth Advocate, "Children in Caring Communities: From Knowledge to Responsibility, The 2013 New Brunswick State of the Child Report and The Children's Rights and Well-Being Framework for New Brunswick," 20 November, 2013, at p. 45, online: http://www.cyanb.ca/images/State_of_the_Child_Reports/State_of_the_Child_2013_Report.pdf.

[12] Office of the Child and Youth Advocate, "State of the Child Report, 2017," November 2017 at p. 92, online: http://www.cyanb.ca/images/State_of_the_Child_Reports/State_of_the_Child_Report_2017.compressed.pdf.

[13] Department of Education and Early Childhood Development. *Daycare, School Entry and School Program Immunization Report, September 2015: Data for School Years 2017/18.* *https://www2.gnb.ca/content/dam/gnb/Departments/h-s/pdf/en/CDC/HealthProfessionals/immunization-report_school-year_2017-2018.pdf*

[14] Department of Education and Early Childhood Development. *Daycare, School Entry and School Program Immunization Report, September 2015: Data for School Years 2012-13 to 2014-15* at p. 5 https://www2.gnb.ca/content/dam/gnb/Departments/h-s/pdf/en/CDC/HealthProfessionals/Immunization_Report_Regional_PH_2015.pdf.

For the most recent statistics, we see that New Brunswick immunization for Kindergarten entry remains far below minimum levels required for 'herd immunity' to have effect.[15] For 2017-18, immunization was 76.4%. Significantly, Zone 7 was the only Zone last year reporting an immunization rate above 90%, compared to three years prior when half the health zones did.[16]

Overall the story of immunization in New Brunswick is one of long-standing inability to achieve the minimum 95% vaccination rate required to provide adequate public protection.
What actions should be taken and what impact will such actions have on the rights of New Brunswick children?

Bill 39 is not unprecedented. Other jurisdictions have taken similar steps in their efforts to support public immunization programs that will provide some promise of "herd immunity". Our Child Rights Impact Assessment includes a jurisdictional survey of other legislative schemes in this field, both nationally and globally.

REVIEW OF PRACTICES

Children's rights are not dependent upon the policies of other jurisdictions; however, it can be informative to see what practices exist outside of New Brunswick. Four examples are highlighted in this section, and others are collected under 'Appendix I' at the end of this report.

Mississippi

Proof of immunization is required for admission into child care facilities and school for the first time. Exemptions are only granted on a medical basis and must be submitted by a physician to be approved by the Mississippi State Department of Health. Exemptions for religion, philosophical or conscientious reasons are not permitted.[17] Similarly, children must receive the HPV vaccine to enter into the 7th grade.[18] Mississippi maintains an immunization registry, allowing health care workers to submit records. It allows access by physicians and private providers such as parents and daycare operators.[19]

The strict exemption policy enforced by Mississippi has resulted in the highest immunization rates in the USA. In the School Immunization Compliance Rate 2018-19, Mississippi reported an immunization compliance rate of 99.7%.[20]

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[15] Department of Education and Early Childhood Development. *Daycare, School Entry and School Program Immunization Report, September 2015: Data for School Years 2017/18.* *https://www2.gnb.ca/content/dam/gnb/Departments/h-s/pdf/en/CDC/HealthProfessionals/immunization-report_school-year_2017-2018.pdf*

[16] Department of Education and Early Childhood Development. *Daycare, School Entry and School Program Immunization Report, September 2015: Data for School Years 2017/18.* *https://www2.gnb.ca/content/dam/gnb/Departments/h-s/pdf/en/CDC/HealthProfessionals/immunization-report_school-year_2017-2018.pdf*

[17] Mississippi State Department of Health, "Medical Exemptions from School Attendance," online: http://www.msdh.state.ms.us/msdhsite/_static/41,0,71,688.html>.

[18] *Ibid*.

[19] Mississippi State Department of Health, "The Mississippi Immunization Registry," online: http://www.msdh.state.ms.us/msdhsite/_static/31,0,136.html.

[20] Mississippi State Department of Health, "School Immunization Compliance Report 2018-19," online: http://www.msdh.state.ms.us/msdhsite/_static/resources/7339.pdf.

Australia

Australia does not have a mandatory immunization policy. However, in 2016, they added an immunization requirement for eligibility for tax benefits (Child Care Benefit and the Child Care Rebate) known as "No Jab No Pay."[21] Families of children who are not vaccinated according to the vaccination schedule, excluding children who have a medical exemption, do not receive these tax benefits. There are no exemptions allowed for conscientious or religious objections.[22] Australia offers further incentive payments to physicians who identify children who are behind on their vaccinations and call them in for an appointment.

Finland

In Finland, vaccines are not compulsory. Finland does however have a National Vaccination Register, where vaccination details are obtained electronically directly from patient information systems, allowing them to monitor the percentage of the population that is covered. For children under three years of age, since 2016, the coverage rate for the measles, mumps and rubella ("MMR") vaccine was 96.1%.[23] The mandate of the National Immunization Program ("NIP") of Finland is to communicate immunization policy and vaccine safety and to continuously evaluate this communication. A study cites the ongoing educational efforts by the NIP as a reason why they have such a high coverage rate, pointing to lectures, and providing information to the physicians, including booklets, leaflets, slides and videos. As well, there is a telephone service that is available to public health professionals, to help physicians better communicate with the public.[24]

California

California removed their personal belief exemption (including religious beliefs) for immunization beginning on January 1, 2016. Only medical exemptions are permitted.[25] If a child was granted a personal belief exemption prior to this date, when they reach 7th grade, they must receive the required vaccinations.
In the 2017-18 school year, 95.1% of kindergarten students had all required vaccines. There has been a significant increase in immunization coverage since the personal belief exemption was removed. When parents had this option, the immunization coverage of kindergartners in California was 92.8%.[26]

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[21] Michael Klapdor and Alex Grove, " 'No Jab No Pay' and Other Immunization Measures, online: https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/BudgetReview201516/Vaccination.
[22] *Ibid*.
[23] National Institute for Health and Welfare, "Vaccination Coverage for Children Under Three Years of Age, Children Born in 2016: Measles, Mumps and Rubella (MMR) Vaccine," online: https://thl.fi/roko/rokotusrekisteri/atlas/atlas-en.html?show=infantbc.
[24] Satu Rapola, "National Immunization Program in Finland" (2005) 66:5 International Journal of Circumpolar Health at p. 388, online: https://tandfonline.com/doi/pdf/10.3402/ijch.v66i5.18310.
[25] Health and Safety Code, Division 105. Communicable Disease Prevention and Control, s. 120325-11(c), https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=105.&title=&part=2.&chapter=1.&article.
[26] California Department of Health, Immunization Branch, "2017-18 Kindergarten Immunization Assessment—Executive Summary," p. 17, online: https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Immunization/2017-2018KindergartenSummaryReport.pdf.

THE CHILD RIGHTS IMPACTED

Bill 39 proposes changes to the *Education Act*, the *Public Health Act* and Regulations under the *Early Childhood Services Act*. The core child rights impacted are, of course: the child's right to health; the child's right to life, survival and development; and the child's right to education.

Legislators would be well-advised to consider carefully the rights found in the UN *Convention on the Rights of the Child*. Some of the most pertinent provisions of that treaty, to be considered in relation to Bill 39 can be summarized and paraphrased as follows:

- In all actions concerning children, including legislative actions, the best interests of the child must be a primary consideration.[27]
- Government has an obligation to ensure implementation of children's rights through administrative measures such as public health vaccination efforts, and legislative measures such as this one, to the maximum extent of available resources[28]
- Children have rights to be protected from false health claims.[29]
- Parents have a duty to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the child's rights.[30]
- It is a fundamental principle that parents have the primary responsibility for the upbringing and development of the child, with the best interests of the child as their basic concern.[31]
- Children have the right to life, and survival and development to the maximum extent possible.[32]
- The child has the right to the enjoyment of the highest attainable standard of health,[33] and the government has an obligation to take appropriate measures to diminish infant and child mortality,[34] combat disease,[35] and ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health.[36]
- A physically disabled child has the right to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community;[37] this right will be especially pertinent in regard to immunocompromised children endangered by susceptibility to infection.

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[27] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, Article 3.
[28] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 4.
[29] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 17(e).
[30] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 5.
[31] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 18.
[32] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 6.
[33] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 24(1).
[34] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 24(1)(a).
[35] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 24(1)(b).
[36] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 24(1)(e).
[37] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 23.

- The child has the right to education,[38] with primary education compulsory and available free to all;[39] and the government has an obligation to take measures to encourage regular attendance at schools and the reduction of drop-out rates.[40]
- Children have the right to freedom of thought, conscience and religion; the rights of parents to provide direction to the child in the exercise of his or her right; and the protection of freedom to manifest one's religion or beliefs subject only to such limitations as are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.[41]
- Children have the right to express their views freely and have them given due weight by decision-makers;[42] this will have consequences under the proposed Bill, especially in regard to the New Brunswick *Medical Consent of Minors Act*, which provides that a sixteen-year-old is an adult in terms of consent to medical treatment, and children below sixteen also generally have the legal power to consent to medical treatment as adults do.[43]
- The child has a right to an education system that guards the development of the child's physical abilities;[44] this is especially relevant in the context of the legal obligation of immunocompromised children to attend school[45] given the possibility of being exposed to infectious disease there.
- The government has a duty to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of negligent treatment while in the care of parents.[46]

The United Nations Committee on The Rights Of The Child

The UN Committee on the Rights of the Child is the official body tasked with providing governments with advice and interpretation of the *Convention on the Rights of the Child*. The Committee provides guidance through General Comments as well as Concluding Observations. A careful reading of the Convention, using a large, liberal and purposive approach to its provisions, suggests that government's fundamental obligation towards citizens in terms of preserving life and advancing the survival and development of children is a cornerstone value upon which to premise immunization programs. The reference to "the application of readily available technologies" in primary health care in Article 24 is a recognition by the Committee on the Rights of the Child of the child's fundamental right to the health benefits that national immunization programs can offer.

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[38] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 28(1)
[39] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 28(1)(a)
[40] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 28(1)(e)
[41] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 14.
[42] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 12.
[43] *Medical Consent of Minors Act*, SNB 1976, c M-6.1
[44] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 29(a)
[45] *Education Act*, SNB 1997, c E-1.12
[46] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 19.

The Committee on the Rights of the Child has explained the content of the right to the highest attainable standard of health as including "immunization against the common childhood diseases" which "should be made universally available."[47] The Committee also notes that governments have a responsibility to ensure "appropriate immunization, good nutrition and medical services, which are essential for young children's health, as is a stress-free environment"[48]

There can be no question that immunization programs are a vital aspect of the child's right to the highest attainable standard of health.

However, the right to health also includes the right to determine and to manage one's own health decisions:

> Health-seeking behaviour is shaped by the environment in which it takes place, including, inter alia, the availability of services, levels of health knowledge, life skills and values. States should seek to ensure an enabling environment to encourage appropriate health-seeking behaviour by parents and children.
>
> In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child's best interests.[49]

The Committee's comments are of course directed towards the need for children to have increased access to confidential health services, particularly in the area of reproductive health. This would include HPV vaccination decisions, which typically occur in early adolescence, however the argument could be extended to other immunization decisions regarding younger infants. It might be argued that this essential health freedom, which children hold, is shared with their parents in accordance with their evolving sense of autonomy and maturity. This is reinforced by Articles 5 and 18 of the UN *Convention on the Rights of the Child*, which insist upon the parent or legal guardian's role as the primary caregiver and their responsibility, right and duty to provide appropriate guidance and direction to the child in the exercise of their rights, in a manner consistent with the child's evolving capacity.

More broadly, the issue also calls into question the other fundamental child rights impacted by a legislative scheme such as Bill 39, including the child's freedom of conscience and religion, and their right to education. A law as proposed in Bill 39 clearly impacts upon a child's freedom of religion and freedom of conscience, as well as their Article 24 right to health and its correlative freedom to make decisions in relation to one's own health care. Of course, all of these rights are naturally bound up with the parents' responsibility to make best-interest decisions for their child and to guide their child in making such decisions in accordance with his or her capacity.

Article 14 of the UN *Convention on the Rights of the Child* clearly proclaims the child's freedom of religion and belief. This includes the freedom to be of a particular faith or belief or to profess none at all. It is the child's right, and not the parents'. The parents can provide direction, but only

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[47] UN Committee on the Rights of the Child. *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, CRC/C/GC/15.
[48] UN Committee on the Rights of the Child. *General Comment No. 7(2005) Implementing Child Rights in Early Education*, at p. 27.
[49] *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, pp. 24, 30 and 31.

in accordance with the child's evolving capacity and their rights under the whole Convention.[50] However the UNCRC makes the distinction between the freedom of thought, conscience, religion or belief and the freedom to manifest religion or belief. The first freedom is absolute and allows no limitation, the second is subject "only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights or freedoms of others."[51]

The parents' right to deny vaccination to their child is legally permissible and remains legally permissible under Bill 39. There is, however, no corresponding legal right of parents to endanger the health of children other than their own by exposing those children in school or in daycare to the threat of infectious disease. Consideration must of course be given to the proposed legislation's possible interference with the right to education in Article 28 of the UN *Convention on the Rights of the Child*. Every child has the right to accessible primary and secondary education. It must be mentioned, however, that the right of access to education for an unvaccinated child is not a right to thwart the access to education of an immunocompromised child who cannot attend school due to the threat of infectious disease.

Given the contextual analysis outlined above, certain findings can be summarized as follows:

1. The need to improve New Brunswick's and Canada's immunization rates is an important and pressing substantive policy objective. The existing legislative scheme has proven entirely inadequate to meet national and global public health goals in relation to disease prevention.

2. The recent outbreak of measles in 2019 is only a small indication of a much larger public health challenge, where New Brunswick's performance to date has been significantly lacking.

3. Other jurisdictions have adopted a legislative scheme similar to the one proposed in Bill 39.

4. Where such laws have been adopted they have helped improve immunization rates.

[50] UNICEF, "Implementation Handbook For the Convention on the Rights of the Child," 2007, p. 188 [*UNICEF Handbook*].
[51] UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989. Article 14.

ISSUES

Applying the child rights principles and the Committee's advice outlined above in relation to the legislative proposals advanced, and considering the need for New Brunswick legislation to comply with Canada's international human rights law obligations and the Canadian *Charter of Rights and Freedoms*, the issues requiring legal analysis may be stated as follows:

1. Does the removal of the exemptions on grounds of conscience or religion for the mandatory immunization scheme proposed in Bill 39 violate sections 2(a) or 2(b) of the Canadian *Charter of Rights and Freedoms* or any of the rights of the child in relation to Article 14 of the UNCRC?

2. Does the removal of the exemptions on grounds of conscience or religion for the mandatory immunization scheme proposed in Bill 39 violate the Canadian *Charter of Rights and Freedoms* section 7 rights to life, liberty or security of the person of New Brunswick children or their rights under Articles 6, 19, 24 or 28 of the UNCRC? and

3. If any of the *Charter* Rights of New Brunswick children are infringed by Bill 39 would the rights infringement be justified by the general limitation in section 1 of the *Charter*, considering also the limitation clauses applicable under the UNCRC?

Bill 39 and the child's right to freedom of religion, conscience and belief

It is possible that a national or provincial immunization program would attract an objection founded upon religious dogma. However, very few churches in the world have absolute objections to vaccines. Very often we have documented significant outbreaks of eliminated diseases in religious communities, such as: the measles outbreak in a Quebec religious community, the Esprit-Saint Eugenics Community, in March 2015 affecting 158 individuals in the Lanaudière region;[52] the Mount Cheam, BC outbreak in 2014 affecting over 400 British Columbia residents;[53] and the 500-plus cases of measles in Brooklyn, largely in Orthodox Jew communities in May of this year.[54] The fact is however that, as in the Brooklyn example, the outbreak has much more to do with the high birth rate and rate of travel in such communities, than with religious doctrine.

There are small minority faith communities such as the Netherlands Reformed Congregation in the British Columbia outbreak whose official church dogma opposes vaccination for various reasons. While the high rate of unvaccinated children within the faith community contributed to the spread of the disease in the region once it was introduced, large numbers of unvaccinated residents responded to the call for vaccination, including many of the faith adherents of the

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[52] CBC News, "Quebec Rushes to Vaccinate Against Measles in Joliette," CBC (12 march 2015), online: https://www.cbc.ca/news/canada/montreal/quebec-rushes-to-vaccinate-against-measles-in-joliette-1.2991904.
[53] Carmen Chai, "What B.C. Doctors Learned From the Province's Measles Outbreak," Global News (30 April 2014), online: https://globalnews.ca/news/1301980/what-b-c-doctors-learned-from-the-provinces-measles-outbreak/.
[54] Emma Green, "Measles Can Be Contained. Anti-Semitism Cannot.," The Atlantic (25 May 2019), online: https://www.theatlantic.com/politics/archive/2019/05/orthodox-jews-face-anti-semitism-after-measles-outbreak/590311/.

Congregation, and this helped contain the spread of the disease.[55] Recent research has focused on testing the perseverance of religious objections in the face of a disease outbreak.[56] Some researchers also seek to educate health professionals about the formal endorsement of immunization programs within the world's main religious denominations.[57]

Generally when courts are asked to assess objections to medical treatment for religious reasons they will want to assess 1) whether the member making the objection is an adherent of the particular faith; 2) whether the Church or faith community in question is a faith community that attracts the protection of religious freedom; 3) whether the faith in question requires adherents to refuse the treatment in question as a matter of dogma, or the faith adherent in question has a bona fide belief to that effect. Given the average age at which most immunizations are offered, few objections to this medical intervention on religious grounds will be raised by children themselves. The vast majority of religion-based exemptions, few as they may be, will be raised by parents on their child's behalf. Using a best interests approach, it is difficult to imagine the case in which the parents' refusal of the recommended medical treatment would be reasonable.[58]

Bill 39 does not force vaccination. It does not protect the health of children whose parents refuse vaccination. It protects the health of other children. Children whose parents will not vaccinate may remain unvaccinated, regardless of Bill 39. There is an argument to be made that Bill 39 may protect some of those unvaccinated children by using the law to 'sway' parents over to the idea of vaccinating. At its heart, though, Bill 39 is about public health, not forcing vaccination.

The case of objections on the grounds of personal conscience, while more common, is not more easily proven. There are few reported cases under section 2(a) of the *Charter of Rights and Freedoms* in relation to freedom of conscience. Correctional Services of Canada has for instance been required under this section to provide a vegetarian diet in accommodation of an inmate's non-religious conscientious beliefs. In that case, *Maurice v. Canada* 215 FTR 315 (FCTD), Campbell J. in the Federal Court cited Dickson in *Big M Drug Mart* [1985] 1 SCR 295, at 346 in support of the broad scope of freedom of conscience in section 2(a) of the *Charter* and found that: "the rights associated with freedom of individual conscience are central to basic beliefs about human worth and dignity, and that every individual should be free to hold and manifest whatever beliefs and opinions his or her conscience dictates." Further, the court held that in order to establish such a claim "cogent evidence must be produced to prove the conscientious belief to a balance of probabilities." Again, while violations of children's freedom of conscience may exist in relation to mature minors, the courts might very well consider in a given case that the young person's refusal of a vaccine is insufficient to overcome the court's assessment of their best interests after giving due consideration to their opinion and level of maturity. Similarly, as with religious objections, the rights of their parents to raise such objections on their child's behalf, keeping in mind the child's best interests, would appear to put the case on an even more difficult footing. The parents' assertion of an objection on grounds of conscience should not be disassociated from a best interest analysis of the child's situation – articles 3, 5 and 18 as well as article 14(3) of the UNCRC all concur with this proposition. Canadian jurisprudence tends to support this view. Finally, if Canadian courts have found no violation of religious freedom in cases involving children's rights and best interests, based upon the inherent limitations

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[55] The Canadian Press, "Measles Outbreak Mostly Contained in B.C.," Global News (31 March 2014), online: https://globalnews.ca/news/1241813/measles-outbreak-mostly-contained-b-c/.
[56] Kennedy AM, Gust DA. Measles outbreak associated with a church congregation: a study of immunization attitudes of congregation members. *Public Health Rep*. 2008;123(2):126–134.
[57] Dr. Vincent Iannelli, "Are There Religious Exemptions to Vaccines?" (5 August 2019), online: https://www.verywellfamily.com/religious-exemptions-to-vaccines-2633702#citation-10.
[58] See *Manitoba v. C. (A.)* [2009] 2 SCR 181.

concerning the manifestation of such religious beliefs, they should be all the more likely to find no violation of *Charter* 2(a) as a matter of conscience, because in such cases there is no external dogma and no religious context (which admittedly is sometimes impervious to reason) upon which to fall back, and the parent's belief presents a weaker claim in relation to the child's health interests and other public health benefits afforded by mandatory immunization.

To conclude this first question, our analysis suggests that the case for possible violations of the freedom of religion of New Brunswick children through the operation of Bill 39 is remote and difficult to prove and that the objections in relation to freedom of conscience, while less remote, are even less easily established. All the same it is possible, although in our view not likely, that a reviewing court may find the infringement grounded on either count. If so, as we demonstrate below, the legislative scheme and the rights infringement would still be saved and held justifiable under a section 1 analysis.

Bill 39, section 7 of the Charter, and articles 6, 19, 24 and 28 of the UNCRC

Section 7 of the *Charter* holds that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice."[59] A mandatory vaccination scheme has the potential to invoke a s. 7 claim on the basis of violating liberty and the security of the person.
The definition of liberty under s. 7 "grants the individual a degree of autonomy in making decisions of fundamental importance."[60] Instances where liberty has been successfully argued are instances where the person's life is fundamentally altered, such as a right to access abortion, euthanasia, and decisions regarding potential lifesaving medical procedures.[61] On the other hand, the courts have held that lifestyle choices such as choosing to use marijuana do not attract a liberty interest such as would prevent the criminalization of such behaviour.[62]

A claim that Bill 39 violates one's right to liberty might be rejected considering the long-standing practice in countries around the world of insisting on mandatory immunization laws as a disease prevention measure. However, the preponderant view of Canadian courts has been that human beings need to have control over decisions impacting their medical care. As demonstrated in *Carter v Canada (Attorney General)* "The law has long protected patient autonomy in medical decision-making. ... This right to decide one's own fate entitles adults to direct the course of their own medical care: it is this principle that underlies the concept of "informed consent" and is protected by s. 7's guarantee of liberty and security of the person."[63] Here again however we find the qualifiers regarding adults and competent individuals. Parents cannot claim a violation of their right to parent as they choose without regard for the consequences for their child as an infringement on liberty. Parents are required to act always in their child's best interests.

The liberty and security of the person interests of the parents cannot be determinative of this question; it is the child's rights that must be looked to. Section 7 if anything would serve as a shield for the child in this context and should help ground the right to immunization health services, consistent with Article 6 and 24 of the UNCRC.

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[59] *Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, s. 7.
[60] *R v Morgentaler* [1988] 1 SCR 30 at p. 166 [*Morgentaler*].
[61] *Morgentaler*; *Carter v Canada (Attorney General)*, 2015 SCC 5, [2015] 1 SCR 331[*Carter*]; *A. (C.) v Manitoba (Director of Child and Family Services)* 2009 SCC30, [2009] 2 SCR 181 [*A. (C.)*].
[62] *R v Malmo-Levine; R v Caine*, 2003 SCC 74, [2003] 3 SCR 571.
[63] *Carter*, *supra* at para 67 citing *A. (C.) v Manitoba (Director of Child and Family Services)* 2009 at paras 40 and 100.

Some of the concerned citizens who shared their views with us on Bill 39 question the benefits of national immunization campaigns, and question the adverse health impacts vaccines may have and the power of pharmaceutical companies that create the vaccines. Ted Kuntz' text *Dare to Question* submitted by Vaccine Choice Canada strongly objects to mandatory immunization laws for school entry, such as California's, and argues that they require parents to forfeit the right to parent to the State.[64] A strong lobby is actively campaigning against immunization programs, raising doubts about their efficacy and sowing fear about their adverse impacts. Often times those adverse effects are informed by personal experience and are deeply felt. To the extent that such campaigns lead to an erosion in public confidence in public health systems and a reduction in responsible health behaviours, legislators may feel warranted in taking ever stricter measures to ensure compliance. Human rights law allows for this by recognizing that the law operates in an evolving social context. Conduct which was criminalized years ago, homosexual relations, abortion and euthanasia, for instance, now attracts constitutional protection because the law changes and evolves with the times.

The story of the alleged links between vaccines and autism is a well-known but persistent falsehood. UNICEF alluded to it in its 11th report card, and Daniel J. Levitin the McGill based neurologist and popular science writer uses it as a classic illustration of how enduring some untruths can be. Levitin is writing about the need to improve critical thinking in what he claims is "the post truth era" of fake news. He decries the fact that emotional appeals in today's world are often more impactful than good science and hard evidence. In one passage he illustrates his point with the Autism and vaccine story. He suggests the story of autism and vaccines involves four different pitfalls in critical thinking: illusory correlation, belief perseverance, persuasion by association and *post hoc ergo propter hoc* (this happened after that, so this caused that).[65]
One factor the courts would consider in evaluating a challenge to Bill 39 under section 7 of the *Charter* is whether any erroneous claims circulating about purported dangers of vaccines are being and can be adequately countered by public health education efforts and if not whether more intrusive measures are justified.

However, if the law does find a violation of liberty or security of the person, it may still be upheld if it is in accordance with the principles of fundamental justice. These principles hold that a law cannot be arbitrary, overbroad or grossly disproportionate.[66]
First, to determine if a law is in accordance with the principles of fundamental justice, the purpose of the law must be defined. This can be gleaned from the legislative record and from the legislative history, as outlined above. Bill 39 will likely uphold the principles of fundamental justice. "The protection of a child's right to life and to health, when it becomes necessary to do so, is a basic tenet of our legal system, and legislation to that end accords with the principles of fundamental justice."[67]

The link between the public health goal of 95% immunization and public education may be challenged as arbitrary, overbroad or grossly disproportionate, but a court reviewing such a claim would most likely not find that there was any overbreadth or arbitrariness. Children are in schools and schools are a very likely area for the spread of communicable disease, so school vaccination programs make perfect sense. They could not be overbroad in the sense that for the many people not in school the problem is actually one of under-inclusiveness. Finally, the most likely

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[64] Ted Kuntz, *Dare to Question*, Columbia, South Carolina, CreateSpace Independent Publishing Platform, 2018.
[65] Daniel J Levitin, *Weaponized Lies: How to Think Critically in the Post-Truth Era*, New York, Dutton, 2017.
[66] *Carter*, *supra* at para 73.
[67] *B. (R.)* v *Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 at para 88.

challenge would be that refusal of educational services is in itself a breach of children's rights and the penalty may be grossly disproportionate to the offence. Here again however, the problem of low immunization rates in New Brunswick is a persistent and pervasive problem and the remedy proposed has been broadly adopted in other jurisdictions with great success and is an extension of the long-standing policy in large parts of Canada.

Therefore, a claim that Bill 39 violates the security of the person under s. 7 is likely to be rejected. While our analysis suggests that liberty or security of the person claims under the *Charter* in relation to Bill 39 would most likely fail, any infringement, should the courts find one, should be saved by operation of section 1 of the *Charter* as we see below.

Bill 39, Charter of Rights and Freedoms section 1 analysis, and limitations to rights under the UNCRC

The test under section 1 of the *Charter* that any right-infringing provisions of Bill 39 should be upheld as demonstrably justified in a free and democratic society, requires the demonstration that: 1) the measure is prescribed by law; 2) it has a pressing and substantial objective; and 3) in achieving this objective, the means chosen are proportional.[68]

It is clear that if passed, Bill 39 is a limit that is prescribed by law. It will likely not be in contention that the law has a clear and pressing objective given the problem in Canada and in New Brunswick in particular in achieving national and global immunization goals. When determining if the law is proportionate, it must be shown that (a) the impugned measure or provision is rationally connected to the objective; (b) any impairment of the right is no more than is reasonably necessary to accomplish the objective; and (c) overall there must be some proportionality as between the deleterious and salutary effects of the law.

Rational Connection

As with the problem of gross disproportionality alluded to above, the challenge in defending Bill 39 may lie in drawing the rational connection between the public health immunization goals and the suspension of educational services. At first glance these seem to be two unrelated aspects of children's lives and of public policy. However, the facts that immunizations are routinely given in younger years, that children are almost universally to be found in school, and that school institutions themselves, all present real risks for the spread of disease all help explain the rational connection. Legislators will of course want to assure themselves that the public health risks for the spread of disease are real and substantive and that the immunization program is informed by a desire to reach children where they are, to reach the greatest number of children and to prevent contagion within school premises.

Minimal Impairment

The limitation on Charter rights must impair the right or freedom no more than is reasonably necessary to accomplish the objective. Another way of stating this is that there are no less rights-impairing means of achieving the objective "in a real and substantial manner."[69] Therefore, it must be determined if there would be another way to increase the number of children vaccinated to the minimum of 95%, without eliminating non-medical exemptions. Government does not,

[68] *R v Oakes*, [1986] 1 SCR 103 [*Oakes*].
[69] *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331, at paragraph 102

however, have to choose the absolute least intrusive measure, and a high degree of deference must be afforded to the Legislature in its law-making task. On the whole, however, it is on the prong of minimal impairment that the government may have the hardest time defending the legislative choice in Bill 39. We see from our jurisdictional scan that many jurisdictions have achieved high immunization rates without mandatory immunizations or without linking them to a refusal of school admission. National immunization registries have proven very effective in ensuring broad immunization compliance and present a less intrusive measure that may be worth considering. They are also sometimes linked with digital alert systems to remind parents of vaccination schedules. Ontario also requires mandatory vaccine education for parents who refuse to immunize their children, although the rate of non-medical objection remains the same as in New Brunswick, despite these efforts.[70] We know also that in some regions in New Brunswick in recent years immunization rates compliant with the national goals have been achieved through public health administration of vaccines using the existing legislative scheme. On the other hand, the best-performing American states allow for no exemptions other than medical reasons and the trend among American legislators is strongly in favour of reforms such as those proposed in Bill 39. These states, such as Mississippi, have protection significantly higher than any Canadian jurisdiction.

Finally, it must be noted that if parents truly hold this belief, they are not forced to vaccinate their child - the option remains for them to homeschool their child or provide them with alternate education services. Bill 39 may be seen by some as making immunization mandatory; however, that stance only holds up as an argument if one accepts that not being able to attend school without vaccination is in effect leaving no other choice but to vaccinate. Another way of looking at the issue is that the choice not to vaccinate is the choice not to avail oneself of publicly-funded education. Given New Brunswick's failure to even reach an 80% vaccination rate, it is difficult to conclude that there are less rights-impairing means of achieving the objective in a real and substantial manner than by means of Bill 39.

Proportionality

The last prong of the s. 1 analysis is the test of proportionality. The impugned legislative provision must not have effects or impacts that are disproportionate to the government's objective.[71]

Removing non-medical exemptions for immunization confers a large benefit to society. The provision that children can only enter school if they are immunized, protects children themselves, their family and the community at large. As mentioned above, for immunizations to work, a minimum of 95% of the population should be immunized. When the proportion of the population that is immunized falls below this rate, vaccine coverage is compromised.

Further, Bill 39 would protect children entering school who lack the ability to form decisions regarding their health. While immunization does not protect against an immediate threat of the child becoming sick, it does protect them well into their future against contracting the disease. While it could be argued that the decision should be made when the child gains the age of providing medical consent, it again turns to the issue of individual rights versus the rights of the

[70] Public Health Ontario, "Immunization Coverage Report for School Pupils in Ontario: 2017-18 School Year," online: https://www.publichealthontario.ca/-/media/documents/immunization-coverage-2017-18.pdf?la=en.
[71] *Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37,* at para 73.

community. When looking specifically at children entering primary, it is likely that they have siblings who may not have received all their vaccinations, due to their age. Therefore, it is extremely important to vaccinate young children, as it can help protect the vulnerable who are unable to protect themselves. This is arguably more important than adults who are unvaccinated, as they had the ability to make up their mind regarding vaccination and opted against it. Young children were not provided the same opportunity.

On the other side, the child's freedom of conscience or religion is minimally impaired since young children receiving most immunizations will not have formed defined views on the matter and their parent's preoccupations could not support an independent section 2 or section 7 claim. Articles 3, 5, 6, and 18 of the UNCRC strongly support this view. If the reverse were true and the court did find in favour of a violation of a parental security of the person claim, then the balance of harm would favour the legislative scheme as it is most protective of the vulnerable child and their health status.

As mentioned above, this requirement is not an absolute one. A parent has the option to send their child to private school or homeschool them. Overall, when balancing the effects of the law, the reviewing court may find that the salutary effects that arise are greater than the deleterious ones, and therefore conclude that Bill 39 is demonstrably justified under s. 1 of the *Charter*.

CONCLUSION

The government should be commended for taking action in response to a pressing child rights and public health concern. The issue is much broader than simply keeping a lid on disease elimination benchmarks as in the case of measles. Our review shows a concerningly low rate of immunization and a failure to make progress toward the 95% minimum vaccination rate necessary to prevent against spread of these diseases.

The Advocate's office strongly endorses the view that parents should essentially be the persons supported and equipped to make decisions regarding their child's health care. Parents however have to act always in their child's best interest. This is not a standard of care that is subjectively determined by the parent using their own worldview. Parents must be required by law to act prudently and responsibly in caring for their children.

While our Child Rights Impact Assessment reveals significant rights impacts in Bill 39, we find that they are on balance positive and may assist in protecting the child's rights of New Brunswick children in relation to sections 6 (life, survival and development) and 24 (highest attainable standard of health). Any impacts on the right to education of non-immunized children should be minimized by State efforts to ensure alternate educational arrangements.

Moreover, while the proposed legislative scheme does present some legislative risk in terms of potential *Charter* challenges, the Legislature is supreme and has to make a clear choice as to its own assessment of the law and its human rights obligations both domestically and internationally. Bill 39 is a welcome and eminently defensible legislative scheme.

The Advocate's recommendations are to move forward with the proposed amendments but to couch them within a broader array of legislative and administrative measures that will help further advance the legislative intent. These recommendations are in the areas of public education in relation to vaccine efficacy, improved coordination of vaccine delivery, establishment of a provincial vaccine registry, better monitoring and reporting of provincial immunization efforts and gap reduction efforts and consideration of adding a vaccine adverse effects registry and a compensation mechanism. We hope that through the combination of these several efforts immunization rates in New Brunswick will significantly improve and allow New Brunswick to lead the country in terms of our immunization rates and thereby improve the health of our children and of the population in general.

RECOMMENDATIONS

Further to the adoption of the provisions outlined in Bill 39 now under review, the Office of the Child and Youth Advocate submits the following recommendations for consideration:

1. It is recommended that the Department of Health and the Department of Education and Early Childhood Development coordinate efforts to significantly improve public education in relation to vaccine efficacy and the benefits of immunization;

2. It is recommended that all vaccines on the provincial formulary for mandatory immunization for school entry be administered centrally by a single service within the division of Public Health in keeping with a provincial strategy to reach national immunization goals by 2025;

3. It is recommended that the Province of New Brunswick establish a provincial vaccine registry based upon the model in place in Prince Edward Island;

4. It is recommended that the provincial strategy for improved immunization rates include measures for the better monitoring and reporting of provincial immunization efforts and gap reduction efforts particularly in relation to outreach to nonimmunized children and their families

Dated August 28th, 2019, in the City of Fredericton.

APPENDIX I

JURISDICTIONAL SCAN

United States

All states require proof of immunization prior to beginning kindergarten[72]. However, the states differ in terms of the various types of exemptions that are permitted. Additionally, all states researched have an immunization registry that is accessible by health care providers and certain private entities, such as schools and daycares. These Immunization Registries have the immunization records of all persons under the age of 19.

West Virginia

Like Mississippi, West Virginia has compulsory immunization for entry into school and only permits medical exemptions. If a child is late on receiving the mandatory vaccines (chickenpox, Hepatitis B, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough), they must have received at least one dose of the required vaccines to attend school.[73] In the Public School Survey Results 2015-16, there was a coverage rate of 97-99% for students enrolled in kindergarten that year. For those enrolled in the 7th grade, there was a 100% immunization coverage rate for meningococcal (meningitis), 95% for varicella, 99% MMR and 98% for Hepatitis B

Delaware

There are two exemptions to immunizations in Delaware: medical and religious. All medical exemptions must be signed by a physician and approved by the Delaware Division of Public Health. If a religious exemption is sought, an affidavit must be completed and notarized.[74] In 2017-18, 1.1% of the surveyed kindergartners claimed a religious exemption, while 0.1% claimed a medical exemption. This was a 0.2% decrease in religious exemptions from the 2016-17 year. In the data from 2012-13 onwards, Delaware has met the 95% coverage rate, although they dropped 1.9% from the 2016-17 year.[75]

Vermont

There are two exemptions to immunizations in Vermont: medical and religious. To claim a religious exemption, a form must be completed annually. At the bottom of the form, there is a statement saying that you have reviewed the immunization educational material provided by the Vermont Department of Health. It then proceeds to list some of the information in the educational material, such as the dangers of not vaccinating the child. There is no formal program to ensure that the parent has read the educational material.[76] Additionally, since there is no formal way of testing, it is likely that someone who has a philosophical/conscientious objection towards immunization could claim that they have a religious objection.

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[72] Vermont Department of Health, Adopted Rule 6/1/2016, online: http://www.healthvermont.gov/sites/default/files/documents/2016/12/REG_immunization.pdf.
[73] West Virginia Code, 16, s. 16-3-4, online: http://code.wvlegislature.gov/16-3-4/.
[74] "Notarized Affidavit Required Per 14. Del Code Sec. 131," online : https://www.dhss.delaware.gov/dph/dpc/files/notarizedaffidavitofreligiousbelief.pdf.
[75] Delaware Division of Public Health, "Survey School Exemption Data" online: https://www.dhss.delaware.gov/dph/dpc/files/schoolsurveyexemptionrates.pdf.
[76] Vermont Department of Health "Immunization Information for Child Care and School Providers," online: , https://www.healthvermont.gov/immunizations-infectious-disease/immunization/child-care-school-providers#1.

Oregon
Oregon also has two types of exemptions: medical and non-medical. Oregon provides two mechanisms to claim a non-medical exemption. The first is to watch an online education module and to submit a certificate of completion. The module takes 15-60 minutes to complete, depending on the number of vaccines that you are claiming an exemption for. There is no test after the video to determine if the individual has watched the video. The second option is to talk to a health care provider and they can provide you with a signed Vaccine Education Certificate.[77] This certificate, which must be signed by the health care practitioner, must say that they have reviewed the benefits and risks of vaccination with the individual.[78]

Provincial Immunization Policies

In Canada, each province is responsible for administering and recording the vaccinations. They each have their own immunization schedule. As a result, there is no national registry for the immunization coverage in Canada, nor is there a requirement for each province to set up immunization registries. Unlike in the USA, only two provinces require proof of vaccination for school entry: New Brunswick and Ontario. In these two provinces, both medical and non-medical (religious, philosophical and conscientious) exemptions are permitted. For the rest of the provinces and territories, there is no mandatory requirement for immunization.

Newfoundland and Labrador
The province's *Public Health Protection and Promotion Act* authorizes Cabinet to make regulations "respecting disease prevention measures, including the immunization of humans and the supply and distribution of vaccine." But there are no mandatory immunization provisions.[79]

PEI
In Prince Edward Island the Immunization Regulation under the *Public Health Act* requires vaccination reporting through a provincial immunization registry and regulates immunization, reporting and vaccine supply. All health professionals and pharmacists must report on vaccines administered to the Chief Public Health Officer (CPHO) and the CPHO can require mandatory immunization but only if a public health emergency is declared.

New Brunswick
Proof of immunization is required for entry to school in New Brunswick. A record of immunization will be submitted to the principal or daycare operator. The record of immunization is also submitted to the Minister by the health care practitioner.[80]
If there is a non-medical objection, it must be in the form of a written statement and signed by the legal guardians. This form was last updated in 2007. There is no requirement for any education

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[77] Oregon Health Authority, "Nonmedical Vaccine Exemptions," online: https://www.oregon.gov/OHA/PH/PreventionWellness/VaccinesImmunization/GettingImmunized/Pages/non-medical-exemption.aspx#option1.
[78] Oregon Health Authority, "Vaccine Education Certificate," online: https://www.oregon.gov/oha/ph/preventionwellness/vaccinesimmunization/gettingimmunized/Documents/vaccine-ed-certificate-parents.pdf.
[79] *Public Health Protection and Promotion Act* SNL, 2018, c P-37.3, s 28.
[80] NB Reg 2009-136, ss. 12(1)(2), 13.

surrounding vaccinations, nor for a health care practitioner to discuss the benefits and risks of vaccines with the parents.[81]

The 2017-18 *Daycare, School Entry and School Program Immunization Report* detailed the immunization coverage for daycares and school entry. The Report notes that they are unable to perform an accurate tracking of those who are immunized and to obtain a provincial picture of population level vaccine coverage, due to the lack of an immunization registry.[82]

Quebec

Under its *Loi sur la santé publique*, Québec has an electronic Registry, which was gradually rolled out, from June 2014-18. All vaccines must be recorded in the registry. The registry includes all persons who receive vaccines. Information in the registry includes name, date of birth, gender, health insurance number, home address, vaccines already received and any contra-indications. From this information, promotional information on vaccines and reminders for vaccination can be recorded. The law allows for compulsory vaccinations in public health emergencies, supported by judicial order. It also requires the reporting of adverse vaccine reactions and provides a mechanism for public compensation to victims of adverse reactions.[83]

Ontario

Ontario requires proof of vaccination for entry into licensed daycares and school, except with a valid exemption. This exemption can be either medical or non-medical. However, to claim a non-medical exemption the parent must complete an education session on vaccinations. This education session must cover basic information about immunization, vaccine safety, community health in relation to vaccines and the law in Ontario regarding vaccines. They then must complete a Statement of Conscience or Religious Belief form and have it notarized. Finally, it must be submitted to the local public health authority.[84] Failure to adhere to the above can result in a fine of $1,000.[85] If children are not immunized, they may be excluded from school in the event of an outbreak of disease.

In a survey, it was found that opposition to immunization declined 8% following the education session. However, 80% still intended to seek an exemption for their child. The common reasons for seeking an exemption were concerns over vaccine ingredients, side effects, to prevent child from being suspended and religious beliefs. However, religious beliefs was the lowest percentage.[86]

In the 2017-18 school year, the immunization rates for children who are 7 years old can be viewed in Figure 1:

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[81] NB reg 2009-136, s. 12(3).
[82] New Brunswick, Daycare, "School Entry, and School Program Immunization Report: Data for School Year 2017-18," p. 2, online: https://www2.gnb.ca/content/dam/gnb/Departments/h-s/pdf/en/CDC/HealthProfessionals/immunization-report_school-year_2017-2018.pdf.
[83] Quebec, "Quebec Vaccinaiton Registry," online: https://www.quebec.ca/en/health/your-health-information/quebec-vaccination-registry/.
[84] *Immunization of School Pupils Act*, RSO, c. I.1, s. 3.
[85] *Ibid*, s. 4
[86] Canadian Immunization Conference, "Mandatory Immunziation Education Sessions for Parents Seeking a Philosophical or religious exemption: A survey of parents' attitudes and beliefs," 2018, online: https://cic-cci.ca/wp-content/uploads/2018/11/CIC18_Poster-Abstract-Book.pdf

Figure 1. Immunization coverage in Ontario among children 7 years old: 2017–18 school year

	Meas	Mumps	Rubella	Dip	Tet	Polio	Pert	Hib	Pneum	MCC	Var
2017-18	87.6	87.4	96.4	85.9	85.9	86.3	85.8	82.4	74.1	94.7	82.6
PHU min.	72.6	72.4	91.6	68.9	68.9	68.6	68.5	75.9	67.2	87.4	61.7
PHU max.	96.8	96.8	98.5	96.5	96.5	96.6	96.5	93.7	91.2	98.2	95.4
National Goal	95.0	95.0	95.0	95.0	95.0	95.0	95.0	95.0	95.0	95.0	

The only vaccine that is above the national goal of 95% is rubella, with most other diseases being vaccinated for at a rate of 87%. The range within Public Health Units for compliance as in New Brunswick usually includes a 20% to 30% spread and points to significant challenges across regions in achieving national immunization goals. The percentage of non-medical exemptions is around 2.5%, while medical exemptions are 0.3% of the population.[87]

Manitoba

Manitoba at one time had provisions for mandatory measles vaccination for school children with an option to opt out for medical, religious or personal beliefs. However those provisions are no longer in place. Today the Manitoba *Public Health Act* allows Medical Officers under s. 43 to order potentially infected persons to be immunized, but s. 97 preserves the right of any person to refuse immunization even when so ordered.[88]

Saskatchewan

Saskatchewan has no mandatory immunization requirements in place either. The Province's Law Reform Commission published in 2009 a report entitled *Vaccination and the Law* which also recommended the reporting of vaccine-related injuries and compensation mechanisms for such.[89]

Other Provinces and Territories

In the rest of Canada, there are no requirements for immunization. The immunization pages contain no statistics on immunization coverage, nor do they have an immunization registry. Our review of legislative models supporting the national immunization goals of public health agencies around the world suggests that a variety of mechanisms have had success. National immunization registries combined with public education campaigns work very effectively in countries such as Finland. The North American model most frequently in use is mandatory immunization requirements for school entry, such as we have in Canada in New Brunswick and Ontario. In the United States the most successful immunization programs are run in states such as Virginia and Mississippi and rely on a legislative model which allows for no exemptions other than for medical reasons. California has recently opted for this model, but other jurisdictions such as Australia have opted for an incentive-based mechanism rather than a constraint mechanism.

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[87] Public Health Ontario, "Immunization Coverage Report for School Pupils in Ontario: 2017-18 School Year" (May 2019), online: https://www.publichealthontario.ca/-/media/documents/immunization-coverage-2017-18.pdf?la=en&hash=9F36CC1967CE6BE75D2FB9DB0AB473FA65D015B7.

[88] *Public Health Act*, RSM, 2006, c 1, ss. 43, 97.

[89] Law Reform Commission of Saskatchewan, "Consultation Paper: Vaccination and the Law" (September 2007), online: https://lawreformcommission.sk.ca/vaccinef.pdf.