

# Canada\_NGO\_Action Canada for sexual health and rights and Sexual Rights Initiative\_PSWG

Submission to the UN Committee on the Rights of the Child

87th Pre-Sessional Working Group (June 1-5 2020)

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Action Canada for Sexual Health & Rights is a progressive, pro-choice charitable organization committed to advancing and upholding sexual and reproductive health and rights in Canada and globally.

Sexual Rights Initiative is a coalition of national and regional organizations based in Canada, Egypt, Poland, India, Argentina, and South Africa that work together to advance human rights related to sexuality at the United Nations.

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## Introduction

This report is submitted by Action Canada for Sexual Health and Rights and the Sexual Rights Initiative in advance of Canada's review during the 87th Pre-Sessional working group of the UN Committee on the Rights of the Child (CRC), taking place June 1 to 5 2020, during which the List of Issues will be adopted. The report examines violations of articles 14, 19, 24, and 28 of the International Convention on the Rights of the Child (ICRC) with respect to ensuring young people have access to accurate, evidence-based comprehensive sexuality education (CSE).

**BACKGROUND:** The right to comprehensive sexuality education

Sexuality education is recognized as a basic human right of all children and youth in both the Annual Report of the Special Rapporteur on the right to education to the UN General Assembly in 2010, General Comment No. 4 of the CRC, and UN Committee on Economic, Social and Cultural Rights General Comment No. 22. States' obligation to provide sexuality education, is a requisite for the realization of the rights to education, to health and non-discrimination, among others. In words of this Committee, States must "ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula." When effectively implemented, comprehensive sexuality education contributes to the reduction of the transmission of sexually transmitted infections, gender-based violence, stigma, and discrimination, unwanted pregnancies, and the development of healthy sexual and non-sexual relationships, among other outcomes.

The CRC General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence clearly mandates that comprehensive and inclusive sexuality education must be part of the mandatory school curriculum, while also reaching out-of-school adolescents. CSE must be developed with adolescents and based

on scientific evidence and human rights standards, focusing on gender equality, sexual diversity, sexual and reproductive health and rights. These CRC has insisted on these guidelines by issuing specific recommendations to reporting State Parties, particularly under the clusters addressing education and adolescent health. In 2019, the CRC reiterated that CSE must be strengthened, must be mandatory in school curriculum, must include a human-rights based approach, and must focus on sexual and reproductive rights, healthy sexuality, non-discrimination, and the prevention of violence in intimate relationships. In the past, the CRC has recommended States to seek technical assistance from UN agencies for different topics, including violence against girls and the promotion of rights to leisure, play, and cultural activities. Given the recent (2018) update to the UNESCO International technical guidance on sexuality education, States would highly benefit from technical assistance provided by UN agencies, and particularly from UNESCO and WHO, on this regard.

The concept of the 'evolving capacities' of the child recognizes the necessary participation and opportunity for autonomous decision-making in different contexts and across different areas of decision-making.

It is suggested that the Committee has derived a role and function for “evolving capacities” that can be distilled into three broad categories: (1) “evolving capacities” as an enabling principle, [...]; (2) “evolving capacities” as an interpretative principle, [...to] recognise children’s capacities in the exercise of their rights; [and] (3) “evolving capacities” as a policy principle[...].

All these categories seek to enable, not to limit, decision-making and autonomy of children. A systematic interpretation of evolving capacities incorporates the provision found in articles 7.2, 7.3, and 12 of the Convention of the Rights of Persons with Disabilities, that requires States to provide support to children with disabilities to express their will and preferences for decision-making.

At the international level, Canada consistently works to advance progressive standards on CSE, recognizing its linkages to violence against women, the right to health, and the right to education, amongst others. At the national level, Canada has, in recent years, received numerous recommendations from human rights accountability mechanisms calling for immediate action to realize young peoples’ right to CSE. In 2016, the CEDAW Committee called for Canada to harmonize sex education curricula among provinces and territories and allow the Federal Government to hold them accountable for implementing such guidelines or standards. In 2018, Canada received and accepted a recommendation as part of its UN Universal Periodic Review to take action to ensure equal access to CSE across provinces and territories. Since then, the Government of Canada has failed to take meaningful steps to address discrepancies in access to CSE across jurisdictions.

#### Comprehensive sexuality education in Canada

Documented discrepancies in the quality and delivery of CSE curriculums in Canada represent violations of articles 14, 19, 24, and 28 as interpreted within this cited work of the Committee. Specifically, the Government of Canada has failed to hold provinces and territories accountable for the delivery of comprehensive, quality, evidence-based sexuality education, in line with national guidelines for sexual health education and international human rights obligations. In 2019, the Canadian guidelines for sexual health education by Sex Information and Education Council of Canada (SIECCAN), endorsed by the Public Health Agency of Canada, were re-released. They are meant to guide educators and policy makers when it comes to comprehensive sexuality education in Canada. Since the launch of the Guidelines, the Government of Canada has not taken any steps to disseminate or raise awareness to the existence of the guidelines, nor has it engaged provinces and territories towards strengthening the quality or implementation of CSE across jurisdictions in line with human rights obligations.

The Federal Government has repeatedly shirked responsibility for its human rights obligations concerning CSE, stating the division of power between federal and provincial jurisdictions as reason for not taking a leadership role. Evidence clearly demonstrates that in the absence of standardized access to CSE, young people are susceptible to experiencing poor sexual health outcomes, heightened levels of gender-based violence, and homophobic and transphobic bullying, among other negative consequences. Given the public health, violence, stigma, and discrimination impacts associated with the delivery of poor sexual health education, combined with

its human rights obligations, there is sufficient scope for the Federal Government to play a leadership role eliminating discrepancies in access to comprehensive sexuality education across jurisdictions.

In Canada, evidence demonstrates an overall lack of knowledge on sexual and reproductive health among youth populations. The number of new HIV diagnoses among youth has increased by 10% from 2013 to 2017. In 2016, almost one quarter of positive HIV tests were attributed to young people between the ages of 15 and 29. Some groups are more vulnerable to HIV infection; almost two-thirds (61%) of new youth HIV diagnoses were attributed to gay, bisexual, and other men having sex with men. Other sub-groups may also be more vulnerable to HIV infection, particularly Indigenous youth and young people coming from countries where HIV is endemic. Moreover, STI rates have been steadily on the rise since the 1990s. In 2016, the highest rates of reportable STIs reported were in the 15-19, 20-24, and 25-29-year age groups. Overall, cases in the 15-29-year age groups consisted of 76% of the total reported cases of chlamydia in 2016, as observed in 2015, although they represented only 19% of the total population. Young women are particularly vulnerable. Female cases were younger than male cases: among female cases, 81% were 15-29 years old, while 68% of male cases were in these age groups. Female rates were higher than male rates in all age groups except those aged 40 and over. This trend is ongoing; the rate of chlamydia has increased by 13% from 2011 to 2016 and the rate of gonorrhea, 87%. Syphilis, after being almost eradicated in 1997, is making a comeback with a staggering number of cases in some provinces. Between 2008 and 2017, the rate of new infectious syphilis diagnoses increased by 167%. The cases of congenital syphilis are also rising. By the end of 2019, nine provinces and territories had declared syphilis outbreaks.

In 2018, the Government of Ontario announced the repeal of the 2015 sexual health education curriculum and replacement with the 1998 curriculum. The 2015 curriculum had only recently been updated to reflect sexual orientation and gender identity and the concept of consent, among other issues. Action Canada submitted an urgent appeal to the UN's Special Procedures to draw attention to the human rights violations occurring as a result of the repeal. In December 2018, Canada received an official communication endorsed by seven UN human rights experts demanding Canada take immediate steps to ensure compliance with human rights obligations; including:

(1) providing information on the actions taken by the Federal Government of Canada to ensure that the State, including in Provincial jurisdictions, comply with its international human rights obligations, notably in terms of Economic, Social, and Cultural Rights, including the rights to non-discrimination, health, and education, and

(2) explaining measures taken to ensure that all individuals and groups have access to comprehensive, non-discriminatory, evidence-based, scientifically accurate, and age appropriate information on all aspects of sexual and reproductive health, including gender equality, sexual and gender-based violence, and the issue of consent.

In response to the Communication, the Government of Canada, in collaboration with the Government of Ontario, submitted a response which fails to take adequate responsibility for human rights obligations (particularly regarding non-retrogression), puts forward inaccurate information regarding the curriculum in question, falsely claims there is no definition of "age appropriate," refutes any violation of the freedom of expression of teachers by denying the creation of the "snitch" line, presents misleading information regarding the curriculum consultations, and incorrectly attributes rights entitlements to parents.

It is the responsibility of provinces and territories to develop primary and secondary educational curricula and so, every province and territory has their own distinct sexuality education curriculum. The many different curricula being used at present have all been updated at different times and do not include the same information. For example, some curricula have lessons on consent while others don't, some cover gender identity and some don't, and many are not evidence-based in terms of choosing when and how to introduce topics. For example, despite the proven benefits and best practice behind introducing the notion of gender identity at a young age, some curricula ignore it all together or introduce it when students are older. This is often a result of personal beliefs, political pressure, or perceived political risks. The same can be said about teachings that only present sexuality

as risky and something to fear and control. In many CSE curricula, much of the skills-building opportunities are focused on managing the risk that young people pose to their own health and the health of others.

The different curricula and the lack of monitoring means that the quality of information students receive is uneven and in some parts of the country extremely outdated. In many places, more up-to-date content is found in supplementary resources or in optional prompts, which make it more unlikely that it is uniformly taught. In many communities across Canada, CSE (when taught) at best skims the surface of what would ensure we meet national and international CSE standards and at worst, contravenes these standards and/or lags extremely far behind them.

Catholic schools form the single largest system in Canada offering education with a religious component. Currently five of the thirteen provinces and territories allow taxpayer funded faith-based (Catholic) school boards: Alberta, Ontario, Saskatchewan, Northwest Territories, and Yukon (to grade 9 only). Many Catholic schools use their own curricula, which do not cover many of the important aspects of human sexuality and sexual health. Many Catholic schools also refuse to teach topics that conflict with the religion's stance on issues like pregnancy options or gender and sexuality, or offer health information filtered and editorialized through a Catholic moral lens. CSE must be based on science and evidence, not opinions. It should give young people the tools and information they need to make informed choices and live their values (including religious, spiritual, and familial values) in an empowered way that upholds their human rights.

Even if every province had the most modern and up-to-date curricula, the CSE young people receive would still be sub-standard. This is because Canadian teachers are not getting the support and resources they need to become competent and comfortable talking about sexuality, sexual health, and relationships with their students. Schools don't typically acknowledge that CSE is a specialized subject that, unlike a standard English or math class, requires a bit more finesse to teach effectively. Sex can be an embarrassing and anxiety provoking topic for some educators. The results of that can be uncomfortable for all involved and effectively deny them the opportunity to learn those lessons. This is why support and capacity building to help bolster their ability to tackle these topics are important in addition to allocating resources for specialized educators to offer those lessons. Even if a topic is included in a curriculum, no Canadian studies have looked at what teachers are telling their students. Many educators report being uncomfortable with teaching CSE and, in some cases, lessons are skipped. This is in part because many of the curricula in Canada list important topics as sample topics or examples of what could be included in the lesson – meaning they are not mandatory. This means that what ends up being offered is what each individual educator is personally comfortable with. One class may receive a comprehensive lesson on diverse family structures, gender norms, anatomy, and healthy relationships, while another class within the same school may learn about none of these topics.

In some communities, schools outsource the delivery of CSE by inviting external organizations into the classroom. This is sometimes because school principals recognize the specialized skills required to teach comprehensive CSE and prefer hiring professionally trained sexual health educators, usually for a fee. This means that schools with the resources to do so benefit from state-of-the-art CSE offered by trained experts, often based out of sexual health centres. In other cases, however, students are visited by local anti-choice, religiously-funded organizations. It is often the case that these local anti-choice organizations advertise free "sexual health" classes to schools. Sadly, many of these organizations have a mandate to deliver anti-choice, homophobic, and abstinence-based CSE, which we know spreads misinformation and produces negative health outcomes. These organizations do not provide students with comprehensive sexual health information but rather, with inaccurate health information and fear/shame-based views on sexuality, pregnancy options, gender identity, gender norms, and sexual orientation. Many of these organizations share misinformation on abortion, safer sex, gender identity, and sexual orientation, and often employ scare tactics and shaming rhetoric to encourage abstinence before marriage. This results in some schools knowingly or unknowingly hiring organizations that do more harm than good, and as a result, fail to provide young people with evidence-based, accurate, and comprehensive information about the full range of sexual health-related issues.

In Alberta, some school boards allow religious groups to deliver sexuality education, which can contain inaccurate and misleading information regarding sexual and reproductive health, diverse family formations, and scientific evidence. In 2014, an Edmonton student launched a human rights complaint with the Alberta Human Rights Commission, providing evidence that religious groups were delivering misleading information to students on issues related to contraception and sexually transmitted infections within an abstinence-based approach. Research shows the correlation between the implementation of abstinence-based approaches and rises in sexually transmitted infections, unwanted pregnancies, and other negative health outcomes, as it limits young people's access to comprehensive, evidence-based, and scientific information related to sexual and reproductive health.

Another issue is that Canada's physical geography is vast, with populations concentrated in major city centres and economic hubs (often located in the southern regions of each province). As a result, there tends to be a concentration of services and resources within these urban centres, which includes access to specialized teacher trainings/professional development that is necessary for effective implementation of CSE. It also means better access to sexual health centres or other specialized organizations that can provide high-quality CSE in local schools and/or in the community. Young people in rural and remote communities often have the most limited access to youth-friendly sexual health services, due to the most sexual health centres being located in urban areas. Evidence shows that CSE has the most impact when it's linked to youth friendly community-based health services. Failing to invest in community infrastructures that support accessible sexual health centres everywhere in Canada – not only in urban areas – limits the tools young people need to take the best care of their health. In under-resourced provinces and territories and under resourced communities and schools, CSE becomes less of a priority in terms of teacher training or during Professional Development days than math or science. There are also less resources to hire external sexual health experts. This means that in Canada, where you live and your school's resources will determine your access to life-changing sexual and reproductive health information.

Despite the Federal Government having a role to play both in fulfilling young people's sexual and reproductive rights (in part through the implementation of CSE) and in gathering and analyzing data on trends in relation to the sexual and reproductive health of all people in Canada, there are no standards through which sexual health education curricula can be monitored and evaluated. Regular national studies are required in order to determine the effectiveness of sexuality education and, ultimately, to determine if curriculums are contributing to positive health outcomes and reductions in stigma and discrimination, among other outcomes.

Further, Canada has no progress to effectively implement human rights recommendations or to ensure the implementation of human rights law across governmental jurisdictions. Process by which the Government consults civil society and Indigenous organizations before and after treaty body reviews are either nonexistence or perfunctory. The Federal Government must establish a robust human rights accountability framework to ensure compliance with international human rights law. Such a framework or mechanism would engage all levels of government, maintain adequate resources for the implementation of human rights recommendations and Concluding Observations, incorporate regular monitoring and evaluation functions, and regularly engage civil society organizations and Indigenous peoples' organizations towards greater implementation of and compliance with human rights law.

#### Comprehensive sexuality education in Canada: voices of young people

There are many studies that confirm the importance of investing in more robust CSE and treat it with sensitivity to meet young people's needs, such as the Université du Québec à Montréal and the Fédération du Québec pour le Planning des Naissances study published in 2018. The report is an analysis of multiple studies featuring interviews with over 6,000 young people about the CSE they get versus the CSE they want. Or the Teen Talk survey, which highlighted how for LGBTQI2S+ youth to gain the same health benefits as their non-LGBTQI2S+ peers, CSE programs must be LGBTQI2S+ inclusive. Or the Sex-Ed Is Our Right report from Youth Co, which looks at the experiences of 600 LGBTQI2S+ students in British Columbia. All these studies speak to the current status-quo of young people's experiences of CSE across the country.

In 2019, Action Canada, in collaboration with local partners, organized and hosted roundtables in various Canadian communities to speak with young people about their CSE. This gave us a better sense of what is currently happening and what must be done to offer better CSE.

For many of the young people consulted, the sexuality education was very basic and did not include opportunities to have in-depth conversations about the social aspects of sexuality and the context in which young people navigate their romantic and sexual partnerships. For some of participants, sexuality education had been either a one-off or not offered regularly rather than a robust program that gradually provided information and skill-building opportunities over the years. Young people reported that even when teachers offer lessons on sexual health, talking about actual sexual behaviours can be taboo.

The omission of certain topics can have long-term impacts as it stokes fear and shame around bodies and sexuality. All of the young people we spoke to mentioned having never been taught about abortion during CSE. Almost every young person we spoke to mentioned the lack of content on LGBTQI2S+ identities, sexuality, and relationships. Many young people talked about their educators' discomfort. Sometimes discomfort and the lack of training means that educators do not offer CSE lessons. The limited or non-existent information young people receive on sexual orientation and gender identity speaks to the bigger issue of a lack of content relevant to their lives.

An emerging trend from the discussion groups was that there was no standardized experience of CSE. Irregularities included the scientific accuracy of the information shared. Some youth reported having learned things that turned out inaccurate or completely false. Many participants spoke about misinformation around condoms and condom use, making them feel less prepared to protect themselves from STIs. For example, some participants were surprised to learn that condoms protect against both pregnancy and infection; they had falsely learned in CSE that condoms only protect against pregnancy (not STIs). Young people also spoke up about the issue of parental consent. There was consensus in consultation groups that everyone has the right to sexual health education regardless of their parents, background, identities, religion, race, etc. Many explicitly suggested that CSE should be a requirement to graduate.