

# Centre for Health Science and Law (CHSL)-NGO-Canada-Session-Updated Submission

Committee on the Rights of the Child April 20, 2022 update

United Nations High Commissioner for Human Rights

1211 Geneva 10, Switzerland

By email to: registry@ohchr.org

Re: Canada's fulfillment of key health obligations under the U.N. Convention on the Rights of the Child (April 20, 2022 update to August 20, 2019 submission)

Dear Madame Chair Mikiko Otani:

I am providing this update in the form of a revised comments which can be read as a stand-alone document. The recommendations remain essentially the same, though several relevant developments in the actions of government, supportive evidence and other developments are included ensure the Committee is fully informed of developments.

Updated comment about poverty reduction efforts

Low family income is a major impediment to a healthy diet and other meaningful advantages for children. In late 2019, the federal government committed in the Poverty Reduction Act to reduce poverty by 50% by 2030 from the 2015 rate of 14.5%, i.e., to 7.25%. The statute also established the National Advisory Council on Poverty. Statistics Canada reported that the percentage of people living in poverty declined to 10.3% by 2019 and to 6.4% by 2020, though the more recent improvement could be due partly to the temporary effects of COVID-19 assistance and may not fully reflect efforts to claw back some of those benefits by federal and provincial governments. Though the details of the plans have not yet been articulated, this could be an enormously meaningful improvement to the life chances of Canadian children.

A 2021 Angus Reid poll revealed that Canadians rate combating poverty, and hunger, supporting health as the top three priorities of the 17 United Nations Sustainable Development Goals, though respondents likely considered developing country poverty when answering that question. Consider life expectancy as a universal measure of the harm of poverty. While the average life expectancy in Canada is 82, a recent study found that life expectancy of the bottom 20% of income earners in Canada is approximately six years shorter than those in the highest 20% of income earners. That research underestimated the impact of official poverty which is the bottom 10% of income earners. Another study of people living in shelters, rooming houses, and hotels in Canada found that they live on average, nine years less than the average Canadian, and 11 years shorter lives than the richest 20% of Canadians. This disparity is the same as the difference between the average life expectancy in Canada and India. Similarly, a Hamilton, Ontario study found that the difference in life expectancy between people living in the lowest and highest income neighbourhoods in that Canadian city was approximately 21 years.

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A caution about unrepresentative illustrative reports

While action by provincial governments is possible on all issues highlighted in this submission, federal action is both constitutionally lawful under federal public health and spending powers, and most efficient and comprehensive. Of 193 United Nations member states, 27 are federated states, including Canada. Canada has 14 jurisdictions from which the federal government can draw examples to illustrate compliance with the

Convention on the Rights of the Child, however, sub-national jurisdictions are home to generally small shares of the total population ranging from 0.1% to 38%, with most provinces and territories being home to fewer than 3% of the population of Canada. Be wary of over-generalizations of the impact of profiled policy illustrations; for example, indicative lists that do not include Ontario and Quebec should be presumed to describe substantial non-compliance or, at best, failures to comprehensively monitor compliance of duty bearers.

Updated comment about the cost of Statistics Canada data

The cost of purchasing special cross-tabs of existing Statistics Canada data is often prohibitive for public interest organizations. Though Statistics Canada conducted a consultation of data users in 2021 and published a report its cost-recovery policy remains unchanged. In 2016, its own departmental report indicated that only 15% of departmental revenue comes from cost-recovery, and that "partners for cost-recovery projects are mostly federal departments, provinces or municipalities, while very few projects are commissioned by the private sector." It seems that most of the concern about cost-recovery that Statistics Canada expressed to Parliament is that certain programs not be dependent on revenue from cost recovery. The Government of Canada should consider giving free custom data runs to non-profits with public interest mandates.

A note about efforts by the federal government to consult civil society

We have made repeated requests to the Canadian federal government and various levels of the bureaucracy and political leadership directly and through the Canadian Coalition for the Rights of Children for the government to share with civil society drafts of its submissions to the U.N. Committee on the Rights of the Child so that we could, through collaboration, come to a comprehensive understanding of the extent to which the rights of Canadian children are being respected. In the end, my organization was not even notified directly of the government's position when it communicated its final reply to the Committee on April 4, 2022 despite the April 20, 2022 deadline for CSO updates.

Paragraph 17 of the Government's April 4, 2022 reply stated:

Bill S-210, An Act to Establish the Office of the Commissioner for Children and Youth in Canada, equivalent to former S-217, was introduced in the Senate in September 2020. The Bill died when Parliament dissolved in August 2021.

It seems disingenuous to cite the example of Private Member's Bills that the government never declared an intention to support in the 43rd Parliament. Similar Bills C-451, and C-441 were also introduced by different opposition parties late in the 42nd Parliament, signifying that all-party support would have been achievable.

Canada has not systematically implemented the U.N. Convention on the Rights of the Child ("the Convention"), nearly three decades after ratifying the most widely supported treaty in UN history. Mindful of the Committee's 2012 report on Canada and the Government of Canada's 2019 report, we alert the Committee to Canada's progress concerning Convention Articles 1, 3(1), 4, 24 (c & e), and 36 on: (1) nutrition at school, (2) commercial advertising to children, (3) advertising and promotion of breast-milk substitutes, and (4) governance concerning children and the marketplace.

Child nutrition in Canadian schools

Canadian children are all eligible for public healthcare and elementary and secondary education when attendance is mainly required by law. Paragraph 120 of the government's report does not acknowledge that adherence to school nutrition standards is voluntary, weakly monitored, and not enforced or that government funding is only enough to feed 4% of students. So, programs court community and food industry donations of cash and food with the attendant governance risks. The Coalition for Healthy School Food estimates that a fully funded program would cost approximately 2% of the public expenditures on elementary and secondary education. Numerous experts have stressed the importance and viability of a national program. The former U.N. Special Rapporteur on the Right to Food recommended that Canada:

Formulate a comprehensive rights-based national food strategy...as part of this strategy, create a nationally funded children and food strategy (including school-feeding food literacy and school garden programmes) to ensure that all children, at all times, have access to healthy and nutritious food;

Since our 2019 submission, several systematic reviews of scientific literature revealed the effectiveness of school meal programs to improve educational and health outcome in low-and middle-income countries as well as high-income countries like Canada.

In its March 2019 Federal Budget Plan, the federal government stated:

“Critically important for a child’s education is ensuring they have healthy meals before and during school. Currently, Canada has a mix of different school breakfast and lunch programs, but much more could be done. Budget 2019 announces the Government’s intention to work with provinces and territories toward the creation of a National School Food Program.” [emphasis in original]

Little tangible progress was made implementing this commitment. However, in December 2021, Prime Minister Justin Trudeau publicly mandated the Minister of Families, Children and Social Development to work with the Minister of Agriculture and Agri-Food to create the first national policy for school food with the US-dollar equivalent of approximately \$800 million distributed over five years promised in the governing party’s election platform in 2021. This is a transformative step forward, though the combined federal, provincial and local financial commitment would need to be approximately 10-fold higher when fully rolled out to fund the universal program recommended by the Coalition for Healthy School Food. Canada has not yet committed to the global School Meals Coalition declaration (currently supported by 63 national governments, and the European Union and African Union), of which the Centre for Health Science and Law and the 190-group Canadian Coalition for Healthy School Food are two of 65 NGO supporters.

The April 2022 Federal Budget stated the following instead of information indicating the manner in which the first annual \$200 million tranche (approximately US\$160 million) would be spent:

#### National School Food Policy

Ensuring that the most vulnerable children have the healthy, nutritious food they need to grow and learn is vitally important. However, nearly two million children in Canada are at risk of going to school hungry on any given day. Over the next year, the Minister of Agriculture and Agri-Food and the Minister of Families, Children and Social Development will work with provinces, territories, municipalities, Indigenous partners, and stakeholders to develop a National School Food Policy and to explore how more Canadian children can receive nutritious food at school.

This is one year delay fulfilling the election promise, but is an encouraging placeholder that might partly signify political obstacles in negotiating financial arrangements with provincial counterparts that are nearly universally led by different political parties. However, the Finance Department’s analysis appears to envision a means-testing approach to restrict the benefit to the “most vulnerable children,” which would stigmatize beneficiaries of the program and likely undermine its impact as well as foment feelings of shame in many of the students that would benefit most from the program.

The eight guiding principles urged by the Canadian Coalition for Healthy School Food include that the new school food program be: (1) health-promoting, (2) universal (like education and health care, not just for low-income students), (3) cost-shared, (4) flexible and locally adapted, (5) indigenous controlled where applicable, (6) supportive of community economic development, (7) supportive of food literacy, and (8) supported by conflict-of-interest and accountability safeguards.

The right to health embedded in the section 7 right to “right to life, liberty and security of the person” in the the Canadian Charter of Rights and Freedoms has not been fully articulated in relation to non-criminal matters like

the right to food at school while students are legally obliged to attend. However, the federal spending power and scientific expertise to prescribe dietary guidance and regulate food marketing are beyond dispute. (In many countries, school meal programs are established by acts of Parliament and in some jurisdictions, mandated constitutionally, such as in Brazil and India.) However, this Committee has opined that the international right to health extends:

to a right to grow and develop to [one's] full potential and live in conditions that enable them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health.

Likewise, the United Nations Committee on Economic, Social and Cultural Rights held that the right to food is realized when:

every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement'. It goes far beyond the right to be free from hunger and includes the right to live in food environments where healthy food is accessible, affordable and acceptable.

U.N. Human Rights Council urged all member states to

Review the existing systems of agricultural subsidies, in order to take into account the public health impacts of current allocations, and use public procurement schemes for school-feeding programmes and for other public institutions to support the provision of locally sourced, nutritious foods;

REMEDY: Launch a national universal, publicly funded, environmentally sustainable, healthy school food program with commercial conflict of interest safeguards and cost-shared with other levels of government.

Advertising and promotion of food to children is still weakly regulated outside Quebec.

Since the Committee's 2012 report, the federal government has still not restricted advertising to children outside Quebec. It supported a Senator's bill to restrict advertising nutrient-poor foods, but weakened the protections (from age 16 to age 12) and was unable or unwilling to ensure the bill proceeded to a final vote before the summer recess preceding the 2019 election. Advertising nutrient-poor foods to children (especially soft drinks and restaurant foods) and sedentary leisure activities (e.g., video games, television and social media) contribute to life-long unhealthy dietary and activity patterns of which obesity is only one stigmatizing and easily measured consequence. Nutrient-based advertising restrictions are vulnerable to legal challenge and cannot block advertisements promoting restaurants, mascots, logos, or generic meal ads.

The province of Quebec uses a different approach. Since 1981, the Quebec Consumer Protection Act has prohibited commercial advertising to children under age 13 of all products, services, and companies, not just certain foods, based on the premise that children are uniquely vulnerable to marketing and deserve protection from manipulation by commercial actors. The Supreme Court of Canada rejected a constitutional challenge to the Quebec advertising ban in 1989 brought by an aggrieved toy company, by concluding that all advertising to children is:

"...per se manipulative. Such advertising aims to promote products by convincing those who will always believe."

The Prime Minister's December 2021 open letter mandated the Minister of Health Dr. Yves Duclos take steps to support healthy eating including by "supporting restrictions on the commercial marketing of food and beverages to children." Though the Minister has not yet acted on that mandate, in February 2022, a Member of Parliament from the governing Liberal Party of Canada proposed Bill C-252 An Act to amend the Food and Drugs Act (prohibition of food and beverage marketing directed at children) which would restrict the advertising only of foods considered high in fats, sugar, or salt targeting to children aged up to age 12. Not only would this bill do nothing to help teenagers but monitor advertising directed toward them, it would not prohibit advertising brands, logos, restaurants, or artificially sweetened soft drinks and energy drinks to children of any age. These loopholes are big

enough to render the measures almost completely ineffective.

The federal Competition Act and Food and Drugs Act already prohibit misleading advertising. So, interpretive guidance from the enforcement agencies, the federal Cabinet, or Parliament could confirm in writing that all advertising aimed at children under the age of 18 or 19 is prohibited. This would prevent the courts from settling ambiguity in favour of self-serving companies whose business models depend on manipulating children and teenagers. Provincial age-of-majority statutes stipulate that childhood ends at age 18 (like the Convention) or 19. And section 9 of the federal Competition Act states that only persons 18 years or older may officially complain about misleading ads.

REMEDY: Urge the federal government to promptly promulgate strict regulations on the advertising and promotion modelled on the Quebec approach, but raise the age of protection to all minors up to age 18 or 19 as applicable age-of-majority laws specify and to intervene to ensure that any judicial or administrative decisions respecting the statutory limits on misleading advertising are interpreted in the spirit of the Supreme Court Irwin Toy decision on the matter and in full consideration of the Convention on the Rights of the Child, Canadian age of majority laws, and the principle of the best interests of the child (Article 3).

Advertising and promotion of breast-milk substitutes is still weakly regulated.

The advertising and promotion of breast-milk substitutes and related products contributes to low breastfeeding rates which evidence shows undermines babies' immune systems and has other negative health effects. The Government of Canada endorsed the World Health Organization's International Code of Marketing of Breast-milk Substitutes in 1981 and supported more than two dozen subsequent relevant resolutions adopted by the World Health Assembly in its Geneva meetings. In 2012, this Committee urge Canada to implement the Code. However, in 2018, UNICEF reported that Canada is one of only a handful of 36 OECD (rich) countries designated as having "no legal measures in place" to curb the advertising and promotion abuses that the International Code aims to prevent. The rate of exclusive breastfeeding babies from birth to age six months remains low in Canada, 26%, despite high rates of initiation (89%). Canadian law allows powdered baby formula—which can be intrinsically contaminated with dangerous bacteria because powder cannot be manufactured under sterile conditions—to be sold without warnings of this risk and even allows them to carry preparation instructions that specifically expose infants to this risk. In 2021, CHSL urged the World Health Organization to correct an error in its guidance for the preparation of powdered infant formula that Canada should also follow.

REMEDY: Urge the federal government to promulgate regulations to restrict the advertising and promotion of breast-milk substitutes in Canada pursuant Canada's unwavering support for the global consensus at the World Health Organization since 1981, including supporting resolutions to reinforce and extend the scope of the Code to address baby food marketing innovations.

Governance safeguards do not ensure protection of most children from exploitation.

Unlike many other countries, Canada does not constitutionally guarantee protection against economic exploitation of children. In responding to a question from the Committee at paragraph 166 of CRC/C/CAN/5-6 in 2020, the Government of Canada indicated only that Canadian children are de facto protected from labour force exploitation by being obliged by law to attend school full-time to the age of 16.

The government report often cites only illustrations of provincial policies providing Convention protections instead of comprehensive reports of where gaps might leave millions of Canadian children unprotected. Also, the government report failed to note that the Prime Minister himself assumed the responsibility of Minister Responsible for Youth; though he no longer holds this role, he remains chair of the Prime Minister's Youth Council and could leverage his stated interests and dedication to bring about transformative change where inter-departmental and federal-provincial cooperation and leadership are needed (e.g., paras. 9 and 11).

As the government noted (at para. 58), governments generally do not require the interpretive concept "the best interests of the child" (Article 3(1)) and child impact assessments do not apply comprehensively for 98% of

Canadian children, though environmental and gender image analysis has become routine and rigorous. Canadian governments often give generous access to government health, education and other services, but tolerate commercial practices that are exploitative, unfair and injurious to the health of children contrary to the Convention Article 36 commitment to “protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.” The effect is illustrated by the 2018 UNICEF report which ranked Canada 37th out of 41 “rich” countries on its food security index citing high childhood obesity and low food security as contributing factors.

Since 2019, the federal Department of Justice has developed a draft webinar and model tool for conducting Child Rights Impact Assessments, though this tool has not yet been finalized. Nor have plans been announced to trigger the application of CRIAs to law-making or budgeting processes or to ensure that Canada's 400,000 K-12 teachers incorporate the webinar tool into the curriculum studies of five million students. Creating such a tool was not included in the Minister of Justice's mandate letter which raises doubt about the degree of political will to do so. This lack of political will seems to also be reflected by the lack of reference to this initiative in the Government of Canada's April 4, 2022 reply to the listed questions. The federal justice officials responsible for developing this Child Rights Impact Assessment tool are among the 23-member government delegation to the Committee on the Rights of the Child virtual hearing in Geneva in May 2022.

REMEDY: Urge Canada to (a) prepare future reports as full child rights impact audits of its implementation of the Convention and quantify the number of Canadian children protected by each measure, (b) enshrine the protective principle of the “best interests of the child” into the federal Interpretation Act and counterpart provincial guidance, (c) institute robust commercial conflict of interest safeguards in government advisory committees, such as the proposed Canadian Food Policy Advisory Council, and (d) optimize the impact of the appointment of the Prime Minister as the child-advocate-in-chief, though he no longer occupies this role.

Respectfully submitted,

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References