

Canadian Council of Child and Youth Advocates (CCCYA)-NHRI-Canada-session

Mikiko Otani, Chairperson

Committee on the Rights of the Child

Human Rights Treaties Division

Office of the United Nations High Commissioner for Human Rights

Palais Wilson – 52, rue des Pâquis

CH 1201 Geneva

Switzerland

Dear Mikiko Otani,

On behalf of the Canadian Council of Child and Youth Advocates (CCCYA), thank you for the opportunity to present this Additional Information in advance of Canada's appearance at the 90th Session of the Committee on the Rights of the Child.

The CCCYA is an association of children's Advocates, Representatives and Ombudspersons from across Canada who are independent officers of the legislatures in their respective jurisdictions, with legislated mandates to promote and protect children's human rights through complaint resolution, advice to government, amplification of child and youth voices, and public education functions. CCCYA members work together to identify areas of mutual concern and address national issues.

In its capacity as a National Human Rights Institution, the CCCYA submitted an Alternative Report to the Committee, and participated in the Pre-Session. The enclosed submission reflects updates on new developments since the Pre-Session and includes comment on Canada's Written Reply to the Committee's List of Issues.

If we can provide you with any additional information about our work that may be of assistance to the Committee in its discussions on the implementation of the United Nations Convention on the Rights of the Child in Canada, please do not hesitate to contact me.

Sincerely,

Lisa Broda, PhD

President, Canadian Council of Child and Youth Advocates

Saskatchewan Advocate for Children and Youth

The Canadian Council of Child and Youth Advocates (CCCYA)

Additional Information submitted in advance of Canada's Plenary Session

90th Session of the Committee on the Rights of the Child

CANADIAN COUNCIL OF CHILD AND YOUTH ADVOCATES

April 2022

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The Canadian Council of Child and Youth Advocates (CCCYA) is pleased to submit this Additional Information in advance of Canada's Plenary Session at the 90th Session of the Committee on the Rights of the Child. This submission reflects updates on new developments since the CCCYA's Alternative Report and participation in the 87th Pre-Session, as well as comments on Canada's Written Reply to the Committee's List of Issues.

Re: Ratification of the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure

The CCCYA, along with many other organizations that have made submissions to the Committee during this reporting cycle, has identified Canada's lack of action regarding the Third Optional Protocol to the CRC as a continuing concern. It is notable, and disappointing, that Canada wholly disregarded the Committee's Question 2(c) requesting information on measures taken toward ratification. Furthermore, it is noted that the Third Optional Protocol was not referenced in Canada's response to Question 16(d) wherein it discussed the human rights instruments currently under consideration, clearly indicating that Canada has no plans to move toward ratification in the near future.

The CCCYA supports ratification of the instruments currently being considered by Canada and acknowledges that they, too, will result in improvements in circumstances for children. However, as indicated in the CCCYA's Written Statement in advance of the Pre-Session, Canada must take urgent action to recognize the rule of law and the rights of children and youth to accountability for human rights violations.

In this regard, we urge the Committee to take notice that Canada's response to Question 5(a) referenced its eventual steps toward complying with an order of the Canadian Human Rights Tribunal in the case of *Caring Society v. Canada*, but again did not identify its repeated challenges to aspects of the enforcement orders. This case is an example of one that could have benefited from the ability of children and/or their representatives to make a communication to the Committee.

RE: Incorporation of the UNCRC into Canadian Law

In response to Question 2(d) regarding measures taken to adopt a comprehensive national law covering all aspects of the Convention, Canada has asserted that its federal framework does not allow for the adoption of such "national laws". However, Canada has shown in other instances that – when there is a will to address the uneven implementation of international human rights principles across jurisdictions – it can find a way. Since the Pre-Session, Canada has implemented the United Nations Declaration on the Rights of Indigenous Peoples Act, 2021. Although the new Act stops short of making the articles of the UN Declaration justiciable in Canada and requires only the creation of an action plan towards implementation, it does embed Canada's commitment to the concepts, principles and processes laid out in the UN Declaration in national legislation. While there is a still long way to go, the CCCYA is encouraged by this progress towards respecting, protecting, and fulfilling the rights of Indigenous peoples. The swift action taken by Canada to legislate a commitment to implementing the UN Declaration is evidence that, at the very least, similar action could be taken in relation to the Convention on the Rights of the Child and its Optional Protocols. Preferably, however, as put forward in the CCCYA's Alternative Report, Canada could find a constitutional path towards incorporation of the UNCRC and its protocols through its treaty making power.

In further response to Question 2(d), Canada pointed towards the formalization of the Forum of Ministers on Human Rights, the endorsement of protocols and engagement strategies aimed at following up on international human rights recommendations and various national action plans on issues such as human trafficking, homelessness, and poverty. These steps are positive. However, the consistency of the realization of children's

rights to equality of services across the country would be strengthened by legislating these commitments, such as has been done through the United Nations Declaration on the Rights of Indigenous Peoples Act, 2021.

RE: Adoption of a National Strategy for the Implementation of Children's Rights

As regards the Committee's recommendation for a national strategy for the realization of the rights in the Convention, Canada's response to Question 3(a) continues to put forward only piecemeal actions that, while helpful if implemented effectively, each have a singular focus (i.e. human trafficking, housing, etc.) and do not put children's best interests at the fore. The right of children to development is a holistic one and requires a holistic approach. The CCCYA reiterates that, to make the best interests of children a paramount consideration in any action that affects them – whether directly or indirectly, children and youth must receive distinct consideration through consistent, cross-sectoral, coordinated, comprehensive and dedicated dialogue.

In response to Question 3(c), Canada referenced training for federal government officials in Child Rights Impact Assessment (CRIA) and the development of a CRIA tool. Again, these steps are positive. However, commitment to a national strategy remains imperative to ensure accountability for the use of these tools in every decision that impacts children at all levels of government and in all departments. Some provinces and territories are taking important steps forward in implementing CRIAs. Canada's 5th & 6th Report to the Committee identified the province of New Brunswick's use of a CRIA tool in all major legislative policy decisions of Cabinet. Since the Pre-Session, additional progress has been made in Prince Edward Island and Yukon.

In Prince Edward Island, in October and November 2021, motions were passed in that provincial Legislature calling for the implementation of CRIA by the provincial government in all policy and legislative development, as well for the public disclosure of CRIA outcomes. Additionally, an independent CRIA was commissioned by the Office of the Child and Youth Advocate in Prince Edward Island from the David Asper Centre for Constitutional Rights at the University of Toronto in response to proposed new child protection legislation which led to ten recommendations advanced to the provincial government. In the Yukon, in March 2022, a CRIA supported by Justice for Children and Youth was submitted to the Minister of Health and Social Services regarding Bill 11, An Act to amend the Child and Family Services Act (2022), which led to eleven recommendations. Notwithstanding these positive developments, many jurisdictions have not yet adopted CRIA processes and there is still much more that can be done. Both legislating a commitment to the UNCRC and developing a national strategy for the implementation of children's rights would help ensure these assessments occur on a consistent basis across Canada and that their use is not subject to the political will of a governing party.

Further, it is noted that Canada did not respond to the Committee's Question 3(b) on measures taken to improve the interdepartmental working group on children's rights, such as by addressing its lack of mandate to coordinate implementation of cross-governmental programs. Considering the continued piecemeal approach to a national strategy offered by Canada in its response to the List of Issues, and its continued avoidance of action on the establishment of a National Commissioner for Children and Youth, the CCCYA reiterates its assertion that federal government engagement and collaboration with the CCCYA is required. Canada ought to have a strong presence at the CCCYA table (whether through a National Commissioner or otherwise), recognize the expertise and jurisdictional authority of its members in matters commonly impacting young people across the country, and support its recommendations.

RE: Comprehensive National Data Collection System

As an update to the CCCYA's submission following the Pre-Session, members are pleased that the GlobalChild platform led by Dr. Ziba Vaghri under the auspices of the Committee held its Canadian launch in December 2021 and is beginning its pilot in New Brunswick. The CCCYA supports the GlobalChild tool to objectively track and measures progress in the implementation the Convention on the Rights of the Child. In particular, the capacity of the tool to assist governments in understanding what policies and programs are in place to support each right, as well as what may be missing, is of significant value. The piecemeal responses provided by Canada in both its 5th & 6th Combined Report and its response to the List of Issues (most notably reflected in the incomplete statistics

provided in its ANNEX 2 – DATA ANNEX – QUESTIONS 17 TO 21) indicate that such a comprehensive repository for data is sorely needed.

Canada's response to Question 4 outlined examples of improvements to data collection in some jurisdictions. However, there remains a need for consistency in both the type and manner of data collected by all governments, and a need for this information to be systematically communicated to the federal government for reporting purposes. Unfortunately, despite invitations from CCCYA members to provincial and territorial government officials to attend the Canadian launch of the GlobalChild platform, their presence was notably lacking.

RE: Establishment of an Office of the Commissioner for Children and Youth in Canada

Canada's narrow response to Question 4 on the Senate bill to establish a federal Office of the Commissioner for Children and Youth is disheartening. Bill S-210 (the successor to Bill S-217) did die when Parliament dissolved, and the CCCYA understands that there are no current plans for it to be reintroduced in the Senate. Considering this development, Canada's response to the List of Issues was another opportunity – among many – to finally make a commitment to closing the accountability gap and giving children and youth a voice at the federal level. Unfortunately, yet again, Canada remained silent on the matter and did not offer any response as to how it will meet this long-standing recommendation of the Committee.

Regardless of the fate of Bills S-217 and S-210, bills introduced by the Senate are intended to address matters of broad concern or national or regional interest. These types of Bills cannot impose financial obligations on government without the presence of a Royal Recommendation, which can only be obtained by a Minister of the Crown. The establishment of a federal Office of a Commissioner for Children and Youth requires significant financial investment. In contrast, Government Bills are both introduced by a Cabinet Minister and are more likely than Senate bills to be passed. We have seen several past attempts to establish such an office through a Senate or Private Members Bill – all to no avail. Accordingly, Canada must commit to introducing legislation to establish a federal commissioner for children and youth through a Government Bill.

If established, such an office would also act as, or complement, an institutional body to coordinate and monitor implementation of the child-related recommendations of the Truth and Reconciliation Commission and the National Inquiry on Missing and Murdered Indigenous Women and Girls, as referenced in the Committee's Question 6. It would also meet Call to Justice 12.9 of the National Inquiry on Missing and Murdered Indigenous Women and Girls, which calls upon Canada to establish a National Commissioner for Children and Youth.

RE: Repeal of Section 43 of the Criminal Code – Corporal Punishment

The CCCYA strongly supports the repeal of section 43 of the Criminal Code. CCCYA members have made recent renewed efforts to advocate for this legislative change by writing to Canada's Minister of Justice putting forward our position and requesting a meeting. The Minister declined due to "scheduling conflicts" and offered the same lines as expressed in paragraphs 68 and 69 of Canada's Combined 5th & 6th Report to the Committee, stating that the issue "raises differing and strongly held views across Canada." Canada indirectly reiterated this position in its response to Question 8(a) by referring to paragraphs 68 and 69 of its Universal Periodic Report and stating that it "continues to explore how best to respond to the TRC's Call to Action 6 to repeal section 43 of the Criminal Code". A preoccupation with public opinion and voter preferences, however, is no defense for continuing to violate the rights of a sector of our population – especially our most vulnerable sector – that, conveniently, does not have the ability to vote and has likely not been among those surveyed by the federal government about their views on the issue.

A solid body of research has demonstrated that corporal punishment is the most common form of violence experienced by children, and that it is strongly linked to broad and enduring personal and societal harm. Hitting children is a violation of their human rights. The right to live free from all forms of violence is clearly protected by the United Nations Convention on the Rights of the Child and the Canadian Charter of Rights and Freedoms.

Canadian adults rely on law to protect them from violence. Children have a right to the same legal protections. Canada points to child protection legislation and public education as safeguards against violence towards children. However, the message of section 43 undercuts public education and the role of child protection services when speaking about the harm of corporal punishment and the need for alternative and positive child rearing discipline.

Canada is out of step with international developments and is falling further behind its global neighbours. To date, 63 countries, as well as Scotland and Wales, have prohibited corporal punishment in all settings (homes, school, alternative care), and 27 more have committed to doing so. Canada has, unfortunately, not yet taken such action. This is despite being a Pathfinding Country under the Global Partnership to End Violence Against Children, which carries with it the commitment to implement the prohibition against all corporal punishment of children. In addition, all United Nations member states, including Canada, have adopted a target of ending all forms of violence against children under the new Agenda for Sustainable Development 2030. These commitments are not meaningful if the loopholes codified by section 43 continue to be condoned by law.

The narrowed scope of the section 43 justification arrived at by the Supreme Court in its 2004 split decision does not provide protection to all children from physical harm at the hands of parents and caregivers. The decision led to a confusing developmental and anatomical map of the permitted preconditions for assault of a child by a caregiver, which leaves children between the ages of 2 and 12 unprotected.

Canada stated that it continues to explore how best to respond to calls for section 43 to be repealed. It has taken time enough. Canada is long overdue in ensuring that our youngest and most vulnerable citizens have the same protection against violence that is often taken for granted by adults.

RE: Protection of Children from All Forms of Violence & Access to Mental Health and Suicide Prevention Services Across Provinces and Territories

General Comment No. 13 (2011) The right of the child to freedom from all forms of violence identifies suicide as a form of violence that is of particular concern to the Committee. Yet, Canada has taken no action on the recommendation of the CCCYA in its 2019 National Paper on Youth Suicide to implement a fully resourced National Suicide Strategy, inclusive of collaboration with youth in its development and implementation. Canada's response to Questions 8(b) and 10(a) continue to put forward piecemeal initiatives that fall far short of what is needed. The CCCYA's Alternative Report and Written Statement submitted to the Committee in advance of the Pre-Session explain the gaps and deficiencies in Canada's efforts to date, as well as make recommendations for a path forward.

As the COVID-19 pandemic continues, the mental well-being of children and youth continues to be threatened. Research shows that young people in Canada aged 16 to 24 are more likely to report mental health and substance use concerns since the onset of the pandemic and have greater difficulty managing pandemic stress than the general population., It is, therefore, imperative that Canada take urgent, effective action to protect children and youth from the violence that is suicide by implementing the CCCYA's recommendation.

The CCCYA appreciates the opportunity to provide this additional information and the Committee's consideration of this submission.