



Committee on the Rights of the Child
United Nations High Commissioner for Human Rights
1211 Geneva 10, Switzerland
By email to: registry@ohchr.org

April 20, 2022 update

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*¹ to reduce poverty by 50% by 2030 from the 2015 rate of 14.5%,² 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.³ 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.⁴ Consider life expectancy as a universal measure of the harm of poverty. While the average life expectancy in Canada is 82,⁵ 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.⁶ 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 Canada⁷ 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.⁸ 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.⁹

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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."¹⁰ 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.

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Sub-national Jurisdictions	% of National Population	Sub-national Jurisdictions	% of National Population
Ontario	38%	New Brunswick	2%
Quebec	23%	Newfoundland and Labrador	1%
British Columbia	14%	Prince Edward Island	0.4%
Alberta	12%	Northwest Territories	0.1%
Manitoba	4%	Yukon	0.1%
Saskatchewan	3%	Nunavut	0.1%
Nova Scotia	3%		

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*¹¹ ("the Convention"), nearly three decades after ratifying the most widely supported treaty in UN history.¹² 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 36¹³ 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.

1. 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.¹⁴ 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;*¹⁵

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 countries¹⁶ as well as high-income countries like Canada.¹⁷

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 food¹⁸ with the US-dollar equivalent of approximately \$800 million distributed over five years promised in the governing party's election platform in 2021.¹⁹ 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.²⁰

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.²¹ (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.²²

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.*²³

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;*²⁴

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.

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

Since the Committee's 2012 report,²⁵ 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.²⁶ 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.²⁷

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.²⁸ 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."*²⁹

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).

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.³⁰ In 2012, this Committee urged Canada to implement the *Code*.³¹ 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.³² [The rate of exclusive breastfeeding babies from birth to age six months remains low in Canada, 26%](#), despite high rates of initiation (89%).³³ 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.³⁴ 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 to 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.

4. 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,³⁵ though environmental and gender image analysis has become routine and rigorous.³⁶ 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](#)³⁷ 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.[†]

[†] The Prime Minister remains Chair of the Prime Minister's Youth Council.

Respectfully submitted,



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References

- ¹ *Poverty Reduction Act*, S.C. 2019, c. 29, s. 315, [Enacted by section 315 of chapter 29 of the Statutes of Canada, 2019, sections 9 to 12 in force July 9, 2019, see SI/2019-58.] Available at: <https://laws-lois.justice.gc.ca/eng/acts/P-16.81/page-1.html> and <https://laws-lois.justice.gc.ca/PDF/P-16.81.pdf>
- ² National Advisory Council on Poverty. Building Understanding: The First Report of the National Advisory Council on Poverty. 2020. Available at: https://www.canada.ca/content/dam/esdc-edsc/documents/programs/poverty-reduction/national-advisory-council/reports/2020-annual/Building_understanding_FINAL_Jan_15.pdf
- ³ See: Statistics Canada. *Poverty Hub*. <https://www.statcan.gc.ca/en/topics-start/poverty>
- ⁴ U.N. Sustainable Development Goals in 2021: Public Opinion on Priorities and Stakeholders' Commitment 28-Country Ipsos Survey for The World Economic Forum Available at: https://www.ipsos.com/sites/default/files/ct/news/documents/2021-06/UN%20SDGs%20in%202021%20Ipsos%20Global%20Advisor%20-%20World%20Economic%20Forum%20Survey%20Report_1.pdf
- ⁵ WHO. Life expectancy and Healthy life expectancy. Data by country. Available at: <https://apps.who.int/gho/data/node.main.688>
- ⁶ Bushnik T, Tjepkema M, Martel L. Socioeconomic disparities in life and health expectancy among the household population in Canada. *Health Rep*. 2020 Jan 15;31(1):3-14. doi: 10.25318/82-003-x202000100001-eng. PMID: 31940148. Available at: <https://www150.statcan.gc.ca/n1/pub/82-003-x/2020001/article/00001-eng.pdf> See also, Hwang SW, Wilkins R, et al. below.
- ⁷ Hwang SW, Wilkins R, Tjepkema M, O'Campo PJ, Dunn JR. Mortality among residents of shelters, rooming houses, and hotels in Canada: 11 year follow-up study. *British Medical Journal*. 2009 Oct 26;339:b4036. doi: 10.1136/bmj.b4036. PMID: 19858533; PMCID: PMC2767481. Available at: <https://www.bmj.com/content/bmj/339/bmj.b4036.full.pdf>
- ⁸ See: <https://apps.who.int/gho/data/node.main.688>
- ⁹ DeLuca PF, Kanaroglou PS. Code Red: Explaining Average Age of Death in the City of Hamilton. *AIMS Public Health*. 2015 Nov 17;2(4):730-745. doi: 10.3934/publichealth.2015.4.730. PMID: 29546133; PMCID: PMC5690439. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5690439/pdf/publichealth-02-04-730.pdf>
- ¹⁰ Statistics Canada. *Compendium of Management Practices for Statistical Organizations from Statistics Canada's International Statistical Fellowship Program*. 2016 Catalogue no. 11-634-X ISBN 978-0-660-05813-9. Available at: <https://www150.statcan.gc.ca/n1/en/pub/11-634-x/11-634-x2016001-eng.pdf?st=HAdOcDeF>
- ¹¹ The United Nations. "Convention on the Rights of the Child." *Treaty Series* 1577 (1989): 3.

¹² As the most widely ratified treaty in UN history, only the United States, South Sudan and Somalia have not ratified: <https://www.hrw.org/news/2014/11/17/25th-anniversary-convention-rights-child>

¹³ *Article 1 For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*

Article 3 (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 4 States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 24.

1. *States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

2. *States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...*

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(e) To 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 and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

3. *States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”*

Article 36 State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

¹⁴ Including the former Chief Public Health Officer for Canada, the Ontario Healthy Kids Panel, a Harvard University research group, the World Cancer research Fund, the World Bank, the Organization for Economic Cooperation and Development, and the World Food Program, the House of Commons Standing Committee on Finance, the Standing Senate Committee on Social Affairs, Science and technology, and Senate Motion 358 of The Honourable Art Eggleton cited as follows:

World Scientific. *Global School Feeding Sourcebook*. Lessons from 14 countries. 2016. (Singapore/Geneva: World Scientific, 2016); and World Food Program, *State of School Feeding Programs Worldwide* (Rome: WFP, 2013): https://documents.wfp.org/stellent/groups/public/documents/communications/wfp257481.pdf?_ga=2.30297657.70688965.1531516853-1353648354.1531516853 ;

The 1997 House of Commons Standing Committee on Finance stated:

The Committee further recommends that the federal government partner with communities, parents, provincial governments, private corporations, the agri-food industry and voluntary organizations such as the Canadian Living Foundation to create a national school nutrition program. This type of partnership approach could apply to other organizations and initiatives as well. [citing Martha O'Connor, former Director General of the, now defunct, Breakfast for Learning Program:] 70% of Canadians believe that child hunger in Canada is more important than national unity or the deficit. Strategic investment in a national school nutrition program is an investment in the future of all Canadians” (at <http://www.ourcommons.ca/DocumentViewer/en/36-1/FINA/report-2/page-45#D>)

David Butler-Jones, *The Chief Public Health Officer's Report on the State of Public Health in Canada 2008*, (Ottawa: Public Health Agency of Canada, 2008) at 41 states:

When children go to school hungry or poorly nourished, their energy levels, memory, problem-solving skills, creativity, concentration and behaviour are all negatively impacted. Studies have shown that 31% of elementary students and 62% of secondary school students do not eat a nutritious breakfast before school. Almost one quarter of Canadian children in Grade 4 do not eat breakfast daily and, by Grade 8, that number jumps to almost half of all girls. The reasons for this vary – from a lack of available food or nutritious options in low-income homes, to poor eating choices made by children and/or their caregivers. As a result of being hungry at school, these children may not reach their full developmental potential – an outcome that can have a health impact throughout their entire lives.

J Larry Brown, William H. Beardslee, Deborah Prothrow, *Impact of School Breakfast on Children's Health and Learning: An Analysis of the Scientific Research* (Nov. 2008). Unpublished Manuscript. Harvard School of Public Health. Available at: http://www.sodexofoundation.org/hunger_us/Images/Impact%20of%20School%20Breakfast%20Study_tcm150-212606.pdf. This November 2008 scientific literature review by experts at Harvard University concluded that, even before the U.S. government strengthened its nutrition standards:

...more than 100 published research articles, provides the scientific basis for concluding that the [US] federal School Breakfast Program is highly effective in terms of providing children with a stronger basis to learn in school, eat more nutritious diets, and lead more healthy lives both emotionally and physically...significantly improves their cognitive or mental abilities, enabling them to be more alert, pay better attention, and to do better in terms of reading, math and other standardized test scores. Children getting breakfast at school also are sick less often, have fewer problems associated with hunger, such as dizziness, lethargy, stomach aches and ear aches, and do significantly better than their peers who do not get a school breakfast in terms of cooperation, discipline and inter-personal behaviors.

Senate Standing Committee on Social Affairs, Science and Technology, *Obesity in Canada*, 2016: https://sencanada.ca/content/sen/committee/421/SOCI/Reports/2016-02-25_Revised_report_Obesity_in_Canada_e.pdf recommended:

“that the Minister of Health in discussion with provincial and territorial counterparts as well as non-governmental organizations already engaged in these initiatives:... Advocate for childcare facility and school programs related to breakfast and lunch programs...and nutrition literacy courses;”

Ontario Healthy Kids Panel, *No Time to Wait: The Healthy Kids Strategy*, 2013 (Toronto: Ontario Ministry of Health and Long-term Care): http://www.health.gov.on.ca/en/common/ministry/publications/reports/healthy_kids/healthy_kids.pdf recommended:
“2.8 Establish a universal school nutrition program for all Ontario publicly funded elementary and secondary schools.
2.9 Establish a universal school nutrition program for First Nations communities.”

World Cancer Research Fund, *Policy and Action for Cancer Prevention Food, Nutrition, and Physical Activity: a Global Perspective*, (London: WCRF, 2009): https://www.wcrf.org/sites/default/files/Policy_Report.pdf recommended:

*“Provide healthy daily meals for all staff and pupils, together with facilities for active recreation, activity and sports
Incorporate food and nutrition (including food preparation and cooking skills) and physical education into the mandatory core curriculum
Ensure that teaching materials are independently originated and free from commercial bias
Do not allow vending machines that offer snacks high in sugar, fat or salt, or sugary drinks and withdraw such ‘fast’ foods and drinks from school canteens.”*

The Federation of Canadian Municipalities resolved in its 2018 annual meeting to:

WHEREAS, 1.7 million Canadian households experience food insecurity, and the current patchwork of school food programming reaches only a small percentage of our over 5 million students, with Canada remaining one of the only Organization for Economic Co-operation and Development nations without a national school food program;

WHEREAS, the Coalition for Healthy School Food is working at a national level to advocate for the creation of a cost-shared Universal Healthy School Food Program that will enable all students in Canada to have access to healthy meals at school, serving culturally appropriate, local, sustainable food to the fullest extent possible; RESOLVED, that the Federation of Canadian Municipalities advocate for a Universal Healthy School Food Program to the federal government.

See: <https://www.fcm.ca/home/about-us/corporate-resources/fcm-resolutions.htm?lang=en-CA&resolution=8cf4c343-602c-e811-adbf-005056bc2614&srch=%25food%25&iss=&filt=false>

Senator Art Eggleton's Motion M-358, which has not yet been put to a vote, states:

That the Senate urge the government to initiate consultations with the provinces, territories, Indigenous people, and other interested groups to develop an adequately funded national cost-shared universal nutrition program with the goal of ensuring healthy children and youth who, to that end, are educated in issues relating to nutrition and provided with a nutritious meal daily in a program with appropriate safeguards to ensure the independent oversight of food procurement, nutrition standards, and governance.

¹⁵ UN Human Rights Council. Report of the Special Rapporteur on the right to food, Olivier De Schutter on his Mission to Canada. A/HRC/22/50/Add.1. Online at: <http://www.srfood.org/en/gender-and-the-right-to-food-3>

¹⁶ For example, Wall C, Tolar-Peterson T, Reeder N, Roberts M, Reynolds A, Rico Mendez G. The Impact of School Meal Programs on Educational Outcomes in African Schoolchildren: A Systematic Review. *International Journals of Environmental Research in Public Health*. 2022 Mar 19;19(6):3666. doi: 10.3390/ijerph19063666. PMID: 35329356; PMCID: PMC8948774. Available at: <https://pubmed.ncbi.nlm.nih.gov/35329356/> and Pongutta S, Ajetunmobi O, Davey C, Ferguson E, Lin L. Impacts of School Nutrition Interventions on the Nutritional Status of School-Aged Children in Asia: A Systematic Review and Meta-Analysis. *Nutrients*. 2022 Jan 28;14(3):589. doi: 10.3390/nu14030589. PMID: 35276948; PMCID: PMC8839996. Available at: <https://www.mdpi.com/2072-6643/14/3/589/pdf?version=1643527683> ; and Wang D, Fawzi WW. Impacts of school feeding on educational and health outcomes of school-age children and adolescents in low- and middle-income countries: protocol for a systematic review and meta-analysis. *Syst Rev*. 2020 Mar 16;9(1):55. doi: 10.1186/s13643-020-01317-6. PMID: 32178734; PMCID: PMC7075040. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7075040/pdf/13643_2020_Article_1317.pdf

¹⁷ Colley P, Myer B, Seabrook J, Gilliland J. The Impact of Canadian School Food Programs on Children's Nutrition and Health: A Systematic Review. *Can J Diet Pract Res*. 2019 Jun 1;80(2):79-86. doi: 10.3148/cjdp-2018-037. Epub 2018 Nov 15. PMID: 30430855.; Cohen JFW, Hecht AA, McLoughlin GM, Turner L, Schwartz MB. Universal School Meals and Associations with Student Participation, Attendance, Academic Performance, Diet Quality, Food Security, and Body Mass Index: A Systematic Review. *Nutrients*. 2021 Mar 11;13(3):911. doi: 10.3390/nu13030911. PMID: 33799780; PMCID: PMC8000006. Available at: <https://www.mdpi.com/2072-6643/13/3/911> ; Chaudhary A, Sudzina F, Mikkelsen BE. Promoting Healthy Eating among Young People-A Review of the Evidence of the Impact of School-Based Interventions. *Nutrients*. 2020 Sep 22;12(9):2894. doi: 10.3390/nu12092894. PMID: 32971883; PMCID: PMC7551272. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7551272/pdf/nutrients-12-02894.pdf> ; Ronto R, Rathi N, Worsley A, Sanders T, Lonsdale C, Wolfenden L. Enablers and barriers to implementation of and compliance with school-based healthy food and beverage policies: a systematic literature review and meta-synthesis. *Public Health Nutrition*. 2020 Oct;23(15):2840-2855. doi: 10.1017/S1368980019004865. Epub 2020 Apr 22. PMID: 32317047. Available at: <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/F12530A91D8E7B0F1D4F7A48E7616877/S1368980019004865a.pdf/enablers-and-barriers-to-implementation-of-and-compliance-with-school-based-healthy-food-and-beverage-policies-a-systematic-literature-review-and-meta-synthesis.pdf> ; O'Brien KM, Barnes C, Yoong S, Campbell E, Wyse R, Delaney T, Brown A, Stacey F, Davies L, Lorien S, Hodder RK. School-Based Nutrition Interventions in Children Aged 6 to 18 Years: An Umbrella Review of Systematic Reviews. *Nutrients*. 2021 Nov 17;13(11):4113. doi: 10.3390/nu13114113. PMID: 34836368; PMCID: PMC8618558. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8618558/pdf/nutrients-13-04113.pdf>; Capper TE, Brennan SF, Woodside JV, McKinley MM. What makes interventions aimed at improving dietary behaviours successful in the secondary school environment? A systematic review of systematic reviews. *Public Health Nutrition*. 2022 Mar 31;1-50. doi: 10.1017/S1368980022000829. Epub ahead of print. PMID: 35357283. Available at:

<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/B9EBFAE8B2DBB1846E563935BBB2CF6B/S1368980022000829a.pdf/what-makes-interventions-aimed-at-improving-dietary-behaviours-successful-in-the-secondary-school-environment-a-systematic-review-of-systematic-reviews.pdf>.

¹⁸ Mandate letter: <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-families-children-and-social-development-mandate-letter>

¹⁹ "Establishing a national school nutritious meals program" in the [2021 Liberal election platform at pages 7 and 76](https://liberal.ca/wp-content/uploads/sites/292/2021/09/Platform-Forward-For-Everyone.pdf) at <https://liberal.ca/wp-content/uploads/sites/292/2021/09/Platform-Forward-For-Everyone.pdf>

²⁰ The April 2022 Federal Budget <https://budget.gc.ca/2022/pdf/budget-2022-en.pdf> at page 190.

²¹ Ironically, the federal authority over public health matters derives from federal criminal powers. P.W. Hogg, *Constitutional Law of Canada*, (Toronto: Thompson, Carswell: Loose-leaf) at 15-20.2 to 15-21, 16-12, 16-19, 16-21, 16-22, and 18-7 to 18-11.

²² 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*, CRC/C/GC/15, United Nations, 17 April 2013.

²³ Committee on Economic, Social and Cultural Rights. General Comment No. 12 on 'The right to adequate food (art 11)' (12 May 1999) UN Doc E/C.12/1999/5, at para 6.

²⁴ Human Rights Council Twenty-fifth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on the right to food, Olivier De Schutter. *Final report: The transformative potential of the right to food** A/HRC/25/57 24 January 2014 at page 26.

Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/105/37/PDF/G1410537.pdf?OpenElement>

²⁵ Committee on the Rights of the Child, United Nations Human Rights Council, Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012), CRC/C/CAN/CO/3-4, December 6, 2012. Online at <https://tinyurl.com/CRC-Canada2012>

64. The Committee recommends that the State party address the incidence of obesity in children, by inter alia promoting a healthy lifestyle among children, including physical activity and ensuring greater regulatory controls over the production and advertisement of fast food and unhealthy foods, especially those targeted at children.

²⁶ Liberal political leadership of the current federal government supported an individual Conservative Senator's bill to restrict advertising of some food to children, but was unable or unwilling to ensure that bill proceeded to a final vote legislative proposal for restrictions on the advertising and promotion of certain foods to children of yet-to-be defined nutrient-poor foods. *Bill S-228* was proposed by (now-retired) Senator Nancy Green Raine, an Olympic gold medalist skier who was voted Athlete of the 20th Century by *Maclean's Magazine* (a leading national news magazine). The federal government successfully urged the Senate to [expand protections in the bill to protect some teenagers, then narrowed it to cover only pre-teens](#) before possibly allowing it to [be defeated altogether for want of a single final vote in the Senate chamber before the October 2019 election](#). Reportedly, the bill was defeated by a procedural convention that allows a minority of unelected Senators to delay a vote indefinitely.

²⁷ Bill Jeffery. Testimony on Bill S-228 before the Standing Senate Committee on Social Affairs, Science and Technology Available at: https://sencanada.ca/content/sen/committee/421/SOCI/Briefs/Bill_Jeffery_brief_e.pdf Bill Jeffery, Protecting Quebec Kids from Advertising: The Charter of Rights and the Supreme Court Make Canadian History, 2017:2, *Food for Life Report* at 22-23.

Even if the bill were still passed in its current form in a subsequent Parliament, its full implementation would be delayed several years, hampered by major loopholes, and vulnerable to legal challenge. A future Parliament would need to restart the legislative approval process. Then, a future cabinet would need to promulgate regulations to stipulate nutrition criteria for eligible advertisements, but an express exemption for sports team sponsorships and place/brand advertising (restaurants and mascots), and a foreseeably loophole for cross promotions (e.g., nutritionally vacuous diet

drinks resembling sugary beverages) could greatly diminish the impact of the law in a marketing environment that is heavily dominated by soft drink and fast food restaurant ads on television. The law would likely be effective at preventing ads for candy and cheese, the nature of which products are less suited to the foreseeable loopholes. However, a proposed approach to front-of-pack nutrition labelling which would spare the vast majority of sugar cereals to carry a high-sugar warning, could become a lever for food companies to legal challenge in the courts stricter proposed nutrient limits for child-directed advertising.

²⁸ The Quebec legislation is not proactively enforced, but complaints from the Quebec-based NGO Coalition Poids have led to effective enforcement actions against McDonald's, Coca-Cola, Burger King, Saputo, and General Mills, etc. See: <https://www.cqpp.qc.ca/en/our-priorities/food-marketing/marketing-to-kids/complaints-lodged/>

²⁹ *Attorney General of Québec v. Irwin Toy, Ltd.*, [1989] 1 *Supreme Court Reports* 927 at 988-9.

³⁰ In 1981, the World Health Assembly adopted the *International Code of Marketing of Breast-milk Substitutes*, reinforced and clarified by subsequent resolutions of the World Health Assembly and subsequent resolutions of the World Health Assembly: WHA33.32 (1980), WHA34.22 (1981), WHA35.26 (1982), WHA37.30 (1984), WHA39.28 (1986), WHA41.11 (1988), WHA43.3 (1990), WHA45.34 (1992), WHA46.7 (1993), WHA47.5 (1994), WHA49.15 (1996), WHA54.2 (2001), WHA55.25 (2002), WHA58.32 (2005), WHA59.21 (2006), WHA61.20 (2008), and WHA63.23 (2010).

³¹ Committee on the Rights of the Child, United Nations Human Rights Council, Concluding observations on the combined third and fourth periodic report of Canada, adopted by the Committee at its sixty-first session (17 September – 5 October 2012), CRC/C/CAN/CO/3-4, December 6, 2012. Online at <https://tinyurl.com/CRC-Canada2012>

62. *The Committee recommends that the State party:*

(a) *Establish a programme to promote and enable all mothers to successfully breastfeed exclusively for the first six months of the infant's life and sustain breastfeeding for two years or more as recommended by the Global Strategy for Infant and Young Child Feeding;*

(b) *Strengthen the promotion of breastfeeding and enforce the International Code of Marketing of Breast-milk Substitutes, and undertake appropriate action to investigate and sanction violations...*

³² UNICEF/World Health Organization, and the International Baby Food Action Network. *Marketing of Breast-Milk Substitutes: National Implementation of the International Code Status Report 2018*, (New York: UNICEF, 2018) Online at: <http://apps.who.int/iris/bitstream/handle/10665/272649/9789241565592-eng.pdf?ua=1> The others being: Australia, Israel, Japan, New Zealand, and the United States.

³³ According to World Health Organization experts, every year, sub-optimal breastfeeding leads to the deaths of approximately 823,000 babies worldwide especially due to diarrhea and respiratory infections, and more than 20,000 mothers due to breast cancer. Cesar G Victora, Rajiv Bahl, Aluísio J D Barros, Giovanny V A França, Susan Horton, Julia Krusevec, Simon Murch, Mari Jeeva Sankar, Neff Walker, Nigel C Rollins, for The Lancet Breastfeeding Series Group*, Breastfeeding in the 21st century: epidemiology, mechanisms, and lifelong effect, *The Lancet* 2016; 387: 475–90.

³⁴ Preparation instructions are often systemically misleading on steps to minimize this risk, e.g., by instructing parents to mix with water heated to only 37°C to preserve questionable probiotic benefits, rather than 70°C that the WHO recommends to kill bacteria such as *salmonella* and *cronobacter*. It is also possible that the long-term health risks of formula feeding and the ill-effects on the development of children's immune systems of formula-feeding have been under-estimated in Canada.

See [World Health Organization guidance](#) and [Health Canada guidance](#) on its website that also advocates heating water to 70°C. However, Health Canada and the Canadian Food Inspection Agency allow formula companies to undermine these precautions by recommending on labels that water be heated only to 37°C, warm tap water. The [Canada Safety Council advises setting home water heaters to no more than 49°C](#) to avoid scalding injuries that can occur at the factory default setting of 60°C.

³⁵ The sub-national government of New Brunswick has implemented a cabinet-level child rights impact assessment tool to vet new provincial regulatory and program decisions, but this covers only 2% of Canadian children in provincially regulated issues.

³⁶ Federal and provincial governments do routinely conduct mandatory environmental impact assessments and the federal government has recently implemented a system of Gender-Based Analysis Plus (GBA+) for vetting federal budget-making which it proposes to entrench in legislation following the upcoming federal election.

³⁷ UNICEF. *Building the Future: Children and the Sustainable Development Goals in Rich Countries*. (UNICEF: New York, 2018) online at: https://www.unicef-irc.org/publications/pdf/RC14_eng.pdf