



**Brief submitted by UNICEF Canada  
to the Standing Senate Committee on Social Affairs, Science and  
Technology in response to Bill S-228: The *Child Health Protection Act***

1 June 2017

**INTRODUCTION**

Currently, the primary legislation in Canada governing advertising and marketing is the *Competition Act*, supplemented by the *Consumer Packaging and Labelling Act*, the *Broadcasting Act*, the *Criminal Code*, the *Food and Drugs Act* and various provincial Consumer Protection Acts.<sup>i</sup> These laws prohibit advertising and marketing that is misleading, deceptive or unfair, and can impose civil and criminal remedies in instances where violations occur.<sup>ii</sup> In addition, the *Food and Drugs Act* restricts advertising of food in a manner that is false, misleading or deceptive so that it cannot create an erroneous impression regarding the value, composition or merit of the product, among other things.<sup>iii</sup> Much of this legislation takes a broad population approach rather than recognizing the specific needs of children and youth.

Quebec's *Consumer Protection Act* is a more robust legal framework to restrict marketing directed towards children. In Quebec, all forms of commercial advertising directed at children under the age of 13 have been prohibited since 1980.<sup>iv</sup> This comprehensive approach is justified by the belief that children should grow up in commercial-free environments.<sup>v</sup> It addresses the difficulty to distinguish between healthy and unhealthy products, including foods that are healthy and those that are unhealthy, by applying a blanket ban on advertising to children.<sup>vi</sup>

On September 27, 2016, Bill S-228, the *Child Health Protection Act* was introduced in the Senate. On December 5, 2016, it received second reading and was referred to the Standing Senate Committee on Social Affairs, Science and Technology.

This Bill amends the *Food and Drugs Act* to prohibit food and beverage marketing directed at children under 13 years of age. It is patterned on the approach taken by the Province of Quebec in 1980, when it passed legislation prohibiting the commercial advertising of all products to children under age 13, which is seen as having resulted in positive outcomes in that province. However, by amending the *Food and Drugs Act*, it narrows the potential scope of protecting children from commercial marketing to focus on food and beverages.

While UNICEF Canada supports the prohibition on the marketing of all food and beverages to children, as proposed in Bill S-228, we are recommending a different age threshold: the legislative prohibition should, in our view, apply to all children 16 years and under, as proposed by the Stop Marketing to Kids Coalition.

UNICEF Canada wishes to congratulate the Senate and the Bill's sponsor for raising an important issue in Canadian society where the marketing of food and beverages to children is increasing, and having an adverse effect on our children's health and well-being.

## **ABOUT UNICEF**

As a UN agency, UNICEF is active in 190 countries and we have saved more children's lives than any other humanitarian organization. UNICEF Canada is a Canadian non-governmental organization (NGO) established over 60 years ago and is the representative of UNICEF in Canada.

We work tirelessly as part of the global UNICEF family to do whatever it takes to ensure that children and young people survive and thrive, and have every opportunity to reach their full potential. Our global reach, unparalleled influence with policymakers, and diverse partnerships make us an instrumental force in shaping a world where the rights of all children are realized.

UNICEF Canada builds awareness, raises funds, and mobilizes Canadians across the country to help save and protect the world's most vulnerable children. We promote public policy and practices in the best interests of children, informed by our global experience and international best practice, to contribute to the fulfillment of children's rights in Canada and around the world.

UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the United Nations Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

UNICEF is entirely supported by voluntary donations and helps all children, regardless of race, religion or politics. The only organization named in the United Nations Convention on the Rights of the Child as a source of expertise for governments, UNICEF has exceptional access to those whose decisions impact children's survival and quality of life. We are the world's advocate for children and their rights. For more information about UNICEF, please visit [www.unicef.ca](http://www.unicef.ca)

## **SUMMARY OF RECOMMENDATIONS SUBMITTED BY UNICEF CANADA**

**Recommendation 1: That there be an immediate legislative restriction of all commercial food and beverage marketing to children and youth 16 and under, exempting non-commercial marketing for valid public health education or public awareness campaigns.**

**Recommendation 2: That ‘marketing’ be defined as “any form of commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal and/or consumption of particular commercial products and services.”**

**Recommendation 3: That the nine “Ottawa Principles” be adopted to guide the development of policies and regulations in order to protect children 16 and under from commercial food and beverage marketing, so that such policies and regulations should:**

- 1) Afford substantial protection to children;**
- 2) Be statutory in nature;**
- 3) Take a wide definition of commercial marketing;**
- 4) Restrict the commercial marketing to children in child-focused settings;**
- 5) Take action to manage cross border media;**
- 6) Be evaluated, monitored, resourced and enforced;**
- 7) Be identified and enacted quickly through a multi-government approach;**
- 8) Ensure government is a key stakeholder in developing policy; and**
- 9) Ensure government sets clear policy guidelines**

**Recommendation 4: That a child rights-based approach be taken when considering the marketing of food and beverages to children, having regard to all of the interdependent rights in the Convention. Decisions should have the best interests of children as the primary consideration, and include consideration of children’s right to access information, their right to optimal health and development, their right to be protected from exploitation, and their right to be heard, with their views being given appropriate weight according to age and maturity.**

**Recommendation 5: That that the views obtained by UNICEF Canada from a representative group of young people between the ages of 15-17 be given appropriate weight in considering potential amendments to Bill S-228.**

**Recommendation 6 : That the methodology and process for youth engagement used by UNICEF Canada (see Appendix 1) be replicated by the federal government as part of any future consultation with young people.**

**Recommendation 7: That businesses and corporations in the private sector review their voluntary policies and practices to ensure that they are appropriately aligned with children's human rights, international business principles and best practice.**

**Recommendation 8: That the federal government adopt a process of Child Rights Impact Assessment to periodically evaluate and monitor the impact of the provisions of the *Child Health Protection Act* on children's rights and well-being.**

**Recommendation 9: That parents and caregivers be supported through immediate legislative reform in their efforts to protect their children from unfair marketing of food and beverages.**

**Recommendation 10: That other complementary measures be instituted to address contributing adverse systemic factors affecting child health and to heighten both the nutritional and media literacy of children and youth.**

## **OVERVIEW OF UNICEF CANADA'S POSITION**

Bill S-228 proposes to prohibit the advertising of all food and beverages to children under age 13, based upon the model of the existing Quebec legislation, which has been enacted since 1980 with relatively good results.

UNICEF Canada supports the principle that there should be legislation in place to restrict the commercial marketing of all food and beverages to children and youth, but supports the policy recommendation of the Stop Marketing to Kids Coalition that such restriction should apply to all children and youth 16 and under, except in the case of non-commercial marketing for valid public health education or public awareness campaigns. We also support the federal government adopting the nine Ottawa Principles to guide the development of policies and regulations in this area. The challenges of doing so should not limit the resolve to do so.

While the use of legislation to restrict the commercial marketing of all food and beverages to children might seem like an overly-broad action at first glance, it is a critical component of a

multi-pronged strategy to improve children's health and nutrition and reduce the risk of obesity and serious health-related risks into adulthood. There are good examples of activities where age is a protective barrier because a certain developmental capacity is required, such as driving.

The Canadian Heart and Stroke Foundation estimates that more than 90 per cent of products viewed by children and youth online are for unhealthy food and beverage products. Having regard to the distinction between restricting the commercial marketing of all food and beverages to children or only unhealthy food and beverages, we have come down on the side of prohibiting the commercial marketing of all food and beverages on the basis of the importance of protecting children from exploitation and the difficulties of defining and identifying healthy and unhealthy products.

As to the age threshold for this marketing restriction, we take the view that 16 and under is the appropriate age threshold, as recommended by the Stop Marketing to Kids Coalition. While there are different interpretations of children's evolving cognitive capacities, there is research evidence that teens are exposed to more ads than younger children and they remember them better. While teens can also critique ads when prompted, nonetheless, on their own, they are still likely to believe misleading claims, just as many adults are. They may also be more adept at nagging their parents to purchase unhealthy products they have seen advertised and better positioned to purchase these unhealthy foods and drinks independently. It is noteworthy that the young people who participated in a consultation with UNICEF Canada expressed the view that the appropriate age threshold should be higher than under age 13 – and recommended that it be set at age 15 and under - a position much closer to the age standard of 16 and under proposed by UNICEF Canada.

While UNICEF Canada has taken a different position than that recommended by the group of young people it engaged, we ask that their views be given appropriate weight in considering amendments to Bill S-228 and that the federal government consult further with young people.

UNICEF Canada urges that a child rights-based approach be taken when considering the marketing of food and beverages to children, having regard to all of the interdependent rights in the Convention. States parties must ensure to the maximum extent possible that children can enjoy these interdependent rights. If restricting the marketing of food and beverages to children would better support their rights to survive, develop and grow, as research and the experience of other jurisdictions suggests, then Canada would be justified in doing so. In the case of

businesses and corporations in the private sector, they should, in our opinion, review their policies and practices to ensure that they are sufficiently aligned with children's human rights, international business principles and best practice.

UNICEF Canada is proposing that the federal government adopt a process of Child Rights Impact Assessment to periodically evaluate and monitor the impact of the provisions of the *Child Health Protection Act* upon children's rights and well-being. Applying a Child Rights Impact Assessment methodology to the *Child Health Protection Act*, once enacted, would be consistent with Principle 6 of the Ottawa Principles, which calls for policies and regulations to "[b]e [independently] evaluated, monitored, resourced and enforced."

Given that it is becoming increasingly difficult for parents and caregivers to control and monitor their children's access to media where the commercial marketing of food and beverages is taking place, we are proposing that parents and caregivers be supported through immediate legislative reform in their efforts to protect their children from the incessant barrage of such messaging.

Finally, we acknowledge the need for more youth education and are proposing that other complementary measures be employed to heighten both the health and media literacy of children and youth.

## **MARKETING OF FOOD AND BEVERAGES IS HARMFUL TO CHILDREN'S HEALTH AND WELL-BEING**

Marketing to children is unfair. There is limited evidence that it is good for children, and considerable evidence that it is harmful to children. There is undeniable evidence that marketing contributes to unhealthy weight. Unhealthy weight among Canada's children is a persistent and pervasive problem. In 2016, 1 in 3 boys and 1 in 4 girls in Canada were at an unhealthy weight for their age, a rate that has tripled over the past three decades.<sup>vii</sup> Of these children, 13 per cent were obese and 20 per cent were overweight.<sup>viii</sup>

Numerous studies have found strong associations between increases in advertising of non-nutritious foods and rates of childhood obesity.<sup>ix</sup> One study by Yale University found that children exposed to junk food advertising ate 45% more junk food than children not exposed to such advertisements.<sup>x</sup> Another study found that the positive effects of an advertisement for healthy foods can be muted by a commercial for snack foods shown immediately afterward.<sup>xi</sup>

Research suggests that rising caloric intake due to processed, energy-dense, nutrient-poor foods and sugar-sweetened beverages in increasingly large sizes have contributed to rising obesity levels.<sup>xii</sup> Unhealthy eating of snacks and beverages that are affordably priced can replace healthier foods at school and family meals, contributing to the problem.<sup>xiii</sup>

In its report on childhood obesity, the World Health Organization is definitive that advertising has played a significant role in the rising rates of obesity among children:

*There is unequivocal evidence that the marketing of unhealthy foods and sugar-sweetened beverages is related to childhood obesity. Despite the increasing number of voluntary efforts by industry, exposure to the marketing of unhealthy foods remains a major issue demanding change that will protect all children equally. Any attempt to tackle childhood obesity should, therefore, include a reduction in exposure of children to, and the power of, marketing.*<sup>xiv</sup>

Canada is one of only three industrialized countries where the childhood obesity rate is higher than 20 per cent.<sup>xv</sup> In UNICEF's 2013 Index of Child Well-being, Canada ranked 27 of 29 affluent nations in the childhood obesity rate<sup>xvi</sup>. This is a serious cause for concern, as unhealthy weight in childhood is linked to poor well-being outcomes including bullying and poor mental health. These relationships are complex, but it is clear that unhealthy weight leads to health problems throughout the life cycle, including higher risk for diabetes, heart disease, stroke and cancer, lower life expectancy and exorbitant health care costs.<sup>xvii</sup> In contrast, countries such as the Netherlands, Switzerland and Denmark have rates of childhood obesity of less than 10 per cent.<sup>xviii</sup> Many affluent nations where the rate of unhealthy weight is a concern have taken legislative and other measures in a bold effort to address it, and are seeing declining rates of obesity. Canada demonstrated resolve to curb smoking and now has among the lowest rates of youth smoking in the world. Public policy measures can also help to reduce Canada's rate of childhood obesity.<sup>xix</sup>

Children are often the target of marketing of food and beverages high in fat, salt and sugar. A significant focus of marketing is unhealthy food and beverages. However, children are less likely than adults to have developed the cognitive capacity to understand that they are being marketed to, and are generally more vulnerable to advertising's influence.

The Canadian Heart and Stroke Foundation estimates that more than 90 per cent of products viewed by children and youth online are for unhealthy food and beverage products.<sup>xx</sup>



## POLICY RECOMMENDATION OF THE STOP MARKETING TO KIDS COALITION AS SET OUT IN THE OTTAWA PRINCIPLES

The Stop Marketing to Kids Coalition was founded in 2014 by the Heart and Stroke Foundation, in collaboration with the Childhood Obesity Foundation. This Coalition is made up of 11 non-governmental organizations with written endorsements from dozens of additional organizations and individuals. In its 2017 report, *The kids are not alright*, the Coalition sets out its policy recommendation, which is grounded in the Ottawa Principles:

*The coalition has developed the Ottawa Principles, which outline the policy recommendation of restricting commercial marketing of food and beverages to children and youth 16 and under, with marketing being defined as any means of advertising or promoting products or services. The restrictions would not apply to non-commercial marketing for valid public health education or public awareness campaigns. The Ottawa Principles also include a set of definitions, scope and principles to guide policy development.<sup>xxi</sup>*

The nine Ottawa Principles<sup>xxii</sup> provide that in Canada, policies and regulations should satisfy the following criteria:

1. **Afford substantial protection to children:** Children are particularly vulnerable to commercial marketing. Policies and regulations need to be sufficiently powerful to provide them with a high level of protection. Child protection is the responsibility of every sector of society – parents and guardians, non-governmental organizations, the private sector, and government
2. **Be Statutory in nature:** Only legally enforceable regulations have sufficient authority and power to ensure high-level protection of children from marketing and its persuasive influence over food preference and consumption. Industry self-regulation is not designed to achieve this goal and has proven insufficient.
3. **Take a wide definition of commercial marketing:** Policies and regulations need to encompass a broad range of commercial targeting of children (e.g. television, advertising, print, competitions, loyalty schemes, product placements, celebrity endorsements, financial inducements and incentives, relationship marketing games, packaging, Internet) and be sufficiently flexible to include new marketing methods as they evolve.

4. ***Restrict the commercial marketing to children in child-focused settings:*** Policies and regulations need to ensure that the commercial marketing to children (the specific types to be determined) is restricted in child-focused settings such as schools, childcare, early childhood education facilities, and sports and recreation centres.
5. ***Take action to manage cross border media:*** Cross-border media or communication channels, such as Internet, satellite and cable television, and free-to-air television broadcast from neighbouring countries, should be managed wherever possible. This is not a pre-requisite for restrictions to be implemented.
6. ***Be evaluated, monitored, resourced and enforced:*** Policies and regulations need to be independently evaluated to ensure the expected effects are achieved, independently monitored to ensure compliance, and fully resourced and enforced.
7. ***Be identified and enacted quickly through a multi-government approach:*** All levels of government are urged to take action, with a view to have full compliance, as soon as possible.
8. ***Ensure government is a key stakeholder in developing policy:*** Governments should provide leadership in setting the policy framework, while protecting the public interest and avoiding conflict of interest.
9. ***Ensure government sets clear policy definitions:*** The setting of clear definitions would facilitate uniform implementation and consistency, irrespective of the implementing body.

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## **EFFECTIVENESS OF MARKETING AND RELATIONSHIP TO CHILDREN'S DEVELOPING COGNITIVE CAPACITIES**

Marketing strategies are designed to increase the recognition, appeal and consumption of particular products, and are an effective means of advertising and promoting products and services.<sup>xxiii</sup> US companies spend an estimated \$17bn annually marketing to children, a marker of its increasing volume, variety and pervasiveness (data not available for Canada). A Canadian study estimated that children are exposed to 25 million food and beverage advertisements annually on their top 10 favourite websites<sup>xxiv</sup>.

Children are more easily influenced by marketing than are adults. Several studies have confirmed that children recall content from advertisements they view and demonstrate product preferences after even a single commercial viewing.<sup>xxv</sup> In one study, more than 50 per cent of children remembered an ad for toys, cereals and ice cream that was shown only once during a television program.<sup>xxvi</sup> Stronger product preference effects are known to occur with repeated exposure.<sup>xxvii</sup> Furthermore, even after children's recollection of an advertisement has faded, they have been shown to demonstrate positive attitudes towards the advertised product up to a week after viewing.<sup>xxviii</sup>

Certain advertising strategies are known to improve the effectiveness of marketing to children in particular, such as the use of characters, celebrities and premium offers - for example, advertising a toy in a cereal box, a practice that continues despite the promotion of voluntary industry restrictions on them.<sup>xxix</sup> Research demonstrates that this exposure exerts influence on children's attitudes and behaviours, including on their product purchase requests, which in turn influence parents' purchasing decisions.<sup>xxx</sup>

Marketing aimed at children is effective, and problematic, because of children's developing cognitive capacities. Children are less likely than adults to identify advertising as a marketing strategy.<sup>xxxi</sup> The vast majority of adults can recognize advertising as distinct from an objective source of information; can perceive that advertising's aim is to persuade and promote; and can understand that these aims are based on the advertiser's interests.<sup>xxxii</sup> In contrast, children's ability to render these judgments is an evolving capacity. During this developmental stage they are more susceptible to manipulation than adults with fully developed cognitive capacities.<sup>xxxiii</sup>

Children are uniquely vulnerable to commercial persuasion up until the point where they achieve two specific information-processing skills: first, the ability to perceive the difference between commercial and non-commercial content; and second, the ability to understand the persuasive intent behind advertising.<sup>xxxiv</sup> The ability to distinguish between commercial and non-commercial content is the ability to understand the difference between a TV show and a commercial, or between a print article and a print advertisement. Research has found that children are unable to make this distinction below the age of 4 or 5 years.<sup>xxxv</sup> The use of separation devices (such as wording to indicate that a program will be breaking for messages) does not affect the ability of children to distinguish between the two categories.<sup>xxxvi</sup> At 4 or 5 years old, children have been found to exhibit a low awareness of commercials as distinct from other content.<sup>xxxvii</sup>

The second skill required to understand marketing, the ability to recognize persuasive intent, tends not to develop until a child is at least 7 or 8 years old.<sup>xxxviii</sup> This entails not only the ability to recognize an advertisement as a distinct form of content, but also to understand that the content aims to persuade the viewer into taking a certain action. Even when media literacy training was delivered to children in a trial, it was concluded that children below the age of 7-8 years generally do not have the cognitive capacity to perceive persuasive intent. Once this skill is developed, children must still learn about bias before they can have a fully mature understanding of advertising and marketing.<sup>xxxix</sup> The ability to view advertising skeptically by analyzing the bias present within it requires an even higher level of cognitive ability.<sup>xl</sup>

In arriving at an appropriate age threshold for limiting the commercial marketing of food and beverages, it is important to recognize that teens are also affected. According to research from the Rudd Centre for Food Policy and Obesity at the University of Connecticut, teens are exposed to more ads than younger children and they remember them better.<sup>xli</sup> They can also critique ads when prompted, but on their own are likely to believe misleading claims.<sup>xlii</sup> They may also be more adept at nagging their parents to purchase unhealthy products they have seen advertising and better able to purchase these unhealthy foods and drinks independently.

Both young children and teens should be protected from food industry tactics. While young children may be particularly impressionable, teens are also susceptible.<sup>xliii</sup> There are good examples of activities where age is a barrier to participating because a certain developmental capacity is required to make appropriate decisions – such as driving.<sup>xliv</sup>

## **CHILDREN'S RIGHTS AND MARKETING**

The United Nations Convention on the Rights of the Child (the Convention) grounds regard for children as persons with their own set of rights and not simply as objects of concern or of charity requiring protection. A rights-based perspective requires approaching issues affecting a child or children with the full range of rights in mind, and balancing any competing interests or conflicting rights that might be held by other children, adults, corporations, or governments. This balance must be anchored in the best interests of the child as the primary consideration, taking into account the child's right to be heard and taken seriously, and the recognition of the evolving capacities of children and young people.

The Convention, which was ratified by Canada in 1991, defines a number of children's rights which may be impeded by marketing practices. Children's rights to optimal survival and development; access to unbiased information; protection from exploitation; and the highest attainable standard of health may be undermined by marketing practices.

Article 6(2) of the Convention provides that:

*States Parties shall ensure to the maximum extent possible the survival and development of the child.*

Article 36 stipulates:

*States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child welfare.*

Article 24(1) delineates the child's right to health:

*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.*

The Committee on the Rights of the Child further elaborates on the child's right to health in its General Comment 15:

*Childhood is a period of continuous growth from birth to infancy, through the preschool age to adolescence. Each phase is significant as important developmental changes occur in terms of physical, psychological, emotional and social development, expectations and norms. The stages of the child's development are cumulative and each stage has an impact on subsequent phases, influencing the children's health, potential risks and opportunities. Understanding the life course is essential in order to appreciate how health problems in childhood affect public health in general.<sup>xlv</sup>*

Article 13(1) of the Convention protects the child's right to freedom of expression and information:

*The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*

Article 17 further articulates this right:

*States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.*

Some have argued that advertising is a means of sharing information, which children are entitled to receive. While advertising may sometimes convey information, the persuasive intent, which children are generally unable to recognize and understand given their evolving capacity, can undermine the "freedom" integral to this right on the child's side. The right to information must be balanced and understood in relation to other rights.

At the extreme, purposefully manipulative advertising is a violation of children's right to privacy. Article 16 of the Convention states that:

- 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.*
- 2. The child has the right to the protection of the law against such interference or attacks.<sup>xlvi</sup>*

When advertising aimed at children permeates every area of their lives, with few measures of control available to children, their right to privacy is undermined. Advertising appears on food products, on clothing, on the internet, as part of television programming, in schools, on teams and in public spaces. Children have little capacity to control their exposure. Restricting marketing to children would increase children's ability to enjoy privacy and freedom from exploitation.

Parents have primary responsibility for the care and upbringing of their children. This is provided for in article 5 of the Convention:

*States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*<sup>xlvii</sup>

Yet a parent cannot protect their child from exposure to advertising in today's world. A parent can instruct their child in healthy eating practices and educate them about the role and impacts of advertising. However, by virtue of children's evolving capacities, their ability to apply that knowledge is limited until they reach a certain developmental stage. As well, the pervasiveness and volume of advertising can work against education and modelling at home, at school and elsewhere.

States parties must ensure to the maximum extent possible that children can enjoy these interdependent rights. If restricting marketing, or marketing of food and beverages, to children would better support their rights to survive, develop and grow, as research and the experience of other jurisdictions suggests, then Canada would be justified in doing so. In this regard, the World Health Organization notes:

*Government and society have a moral responsibility to act on behalf of the child to reduce the risk of obesity. Tackling childhood obesity resonates with the universal acceptance of the rights of the child to a healthy life as well as the obligations assumed by State Parties to the Convention on the Rights of the Child.*<sup>xlviii</sup>

It is always a challenge to decide approaches to legislation and other measures where there is good reason to treat children as a distinct group, including consideration to establish minimum ages in law. The approach we recommend is to consider the interdependent rights in the



Convention, identify the differential impacts on children, prioritize their best interests, balance rights to protection with recognition of children's evolving capacity and rights to participate in decisions, ask children for their views wherever possible, and pursue the course of action that seems to best support these considerations. Article 12(1) of the Convention specifically recognizes children's evolving capacity and agency:

*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.<sup>xlix</sup>*

Children mature at differing speeds, and an assessment of each child's individual capacity at progressive stages of their life can determine when a child is prepared to make decisions concerning their own well-being. The Committee on the Rights of the Child elaborates on this right:

*The Committee recognizes that children's evolving capacities have a bearing on their independent decision-making on their health issues. It also notes that there are often serious discrepancies regarding such autonomous decision-making, with children who are particularly vulnerable to discrimination often less able to exercise this autonomy. It is therefore essential that supportive policies are in place and that children, parents and health workers have adequate rights-based guidance on consent, assent and confidentiality.<sup>1</sup>*

Case-by-case decision making about or with children is the optimal approach wherever possible, but in those cases where it is impossible or impractical to do so, a broad age limit in law makes sense in order to balance children's rights and interests. In the context of marketing, while some children may have greater or lesser capacity to discern the persuasive intent, children are not exposed to marketing on a case-by-case basis. Restricting marketing to children on the evidence that the majority of children will not have the cognitive capacity or other protective measures to prevent its influence on diet and health is justifiable in their best interests.

It's also worth noting that in instances where public health is a primary concern, Canada has set a precedent of restricting certain individual actions in the interest of the public good. For example, minimum ages are used to discourage access to tobacco and alcohol, while more universal laws and regulations such as restricting their use in public spaces protect the health of the general public.



**Recommendation 4: That a child rights-based approach be taken, when considering the marketing of food and beverages to children, having regard to all of the interdependent rights in the Convention. Decisions should have the best interests of children as the primary consideration, and include consideration of children's right to access information, their right to optimal health and development, their right to be protected from exploitation, and their right to be heard, with their views being given appropriate weight according to age and maturity.**

## **YOUTH ENGAGEMENT - WHAT YOUNG PEOPLE SAY**

On March 7, 2017, five young people between the ages of 15-17 discussed 3 possible policy options related to the restriction of marketing of food and beverages to youth:

- 1) Option 1: A ban on marketing to children with incrementally implemented restrictions;
- 2) Option 2: A ban on marketing of all food and beverages to children; and
- 3) Option 3: A ban on marketing unhealthy food and beverages to children

These young people were from the Greater Toronto Area, and represented diversity in age, gender, ethnicity, background and experience. See Appendix 1 for the process used to engage these young people.

The young people determined that **a ban on marketing limited to unhealthy food and beverages to children ages 15 and under** was their preferred approach.

Their statement and rationale is below:

We believe that a ban on marketing limited to unhealthy food and beverages to children (option 3) is the best option because it will:

- Increase the promotion of healthy foods to youth
- Reduce obesity rates
- Encourage unhealthy food and beverage companies to adapt and become healthier to fit into the advertisement criteria
- Create more space for healthy advertisements

***Why not option 1: A ban on marketing to children with incrementally implemented restrictions?***

We believe that Option 1 will take too long, not be considered as a priority and get pushed back. We want to see a change happen immediately, and for it to have an immediate impact.

***Why not option 2: A ban on marketing of all food and beverages to children?***

We think that you can't completely eliminate food and beverage marketing because youth need to know about food and beverages in general. At some point, they are going to have to purchase food and beverages themselves, and need to be informed.

We think a marketing ban should be for children and youth **15 and under** for the following reasons:

- It will allow time for them to build their skills and knowledge to differentiate between bias and their own opinions
- It will give them time to figure out their own opinions
- Youth ages 15-18 already know how to differentiate and what's healthy or what's not healthy, a lot of them buy their own food at this point, and their opinions are usually not as influenced by marketing at this point
- There is research that indicates that our minds are more vulnerable to advertisements when we're younger

**Recommendation 5: That that the views obtained by UNICEF Canada from a representative group of young people between the ages of 15-17 be given appropriate weight in considering potential amendments to Bill S-228.**

**Recommendation 6 : That the methodology and process for youth engagement used by UNICEF Canada (see Appendix 1) be replicated by the federal government as part of any future consultation with young people.**

## **RESPECT FOR CHILDREN'S RIGHTS BY THE BUSINESS SECTOR**

State actors have the primary duty to ensure the respect of children's rights within their boundaries. There is no legally binding international instrument that frames the business sector's responsibilities when it comes to promoting human rights.<sup>li</sup> Yet the responsibility to

respect the rights of children extends beyond the state to private actors and business enterprises.<sup>lii</sup> <sup>liii</sup> States must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations.<sup>liv</sup> Likewise, business enterprises should not undermine States' ability to meet their obligations towards children under the Convention on the Rights of the Child.<sup>lv</sup>

The International Chamber of Commerce, in their International Code of Advertising Practice, states that advertisers should take responsibility for their advertising.<sup>lvi</sup> In particular that:

*Publishers, medium-owners or contractors, who publish, transmit or distribute advertisements should exercise due care in the acceptance of advertisements and their presentation to the public.*

*Those employed within a firm, company or institution coming under the above three categories and who take part in the planning, creation, publishing or transmitting of an advertisement have a degree of responsibility commensurate with their positions for ensuring that the rules of the Code are observed and should act accordingly.<sup>lvii</sup>*

They also dedicate a section of the code to practices related to advertising directed towards children and young people, noting that this is an area requiring special care on the part of the business so as not to take advantage of children's inexperience or credulity.<sup>lviii</sup>

To assist organizations as they strive to respect children's rights, UNICEF and the private sector developed the Children's Rights & Business Principles, a comprehensive framework for understanding and addressing the impact of business on the rights and well-being of children.<sup>lix</sup> The principles serve as best practices for business, and principle #6 addresses the issue of marketing and advertising:

*All businesses should use marketing and advertising that respect and support children's rights.*

*The corporate responsibility to respect includes:*

- a. Ensuring that communications and marketing do not have an adverse impact on children's rights.*
- b. Complying with the standards of business conduct in World Health Assembly instruments related to marketing health.*

*The corporate commitment to support includes:*

- c. *Using marketing that raises awareness of and promotes children's rights, positive self-esteem, healthy lifestyles and non-violent values.<sup>lx</sup>*

The principles also encourage companies to consider the effects of using unrealistic or sexualized body images and stereotypes in their marketing. In the UK, the Bailey Review investigated this concern, addressing parental worries about the impacts of an increasingly sexualized culture.

The Committee on the Rights of the Child clarifies the types of information that support children's rights in its General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights:

*58. The mass media industry, including advertising and marketing industries, can have positive as well as negative impacts on children's rights. Under article 17 of the Convention, States have obligations to encourage the mass media, including private media, to disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles. The media must be regulated appropriately to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualized images of children, while recognizing children's right to information and freedom of expression. States should encourage the mass media to develop guidelines to ensure full respect for the rights of the child, including their protection from violence and from portrayals that perpetuate discrimination, in all media coverage...*

*59. Children may regard marketing and advertisements that are transmitted through the media as truthful and unbiased and consequently can consume and use products that are harmful. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.*

Advertisers in Canada are aware of the sensitivities of advertising to children, and have put in place important voluntary measures to mitigate them. For example, Advertising Standards Canada, the national not-for-profit advertising self-regulatory body, published the Broadcast Code for Advertising to Children.<sup>lxi</sup> This Code contains prohibitions on advertising to children, such as restrictions on the use of characters to endorse products; restrictions on the scheduling,

timing and placement of advertising related to children; and a restriction on portraying values inconsistent with the moral, ethical or legal standards of contemporary Canadian society.<sup>lxii</sup>

The Canadian Marketing Association's Code of Ethics and Standards of Practice, a compulsory self-regulation framework for its member organizations, states that, 'Marketing to children must not exploit children's credulity, lack of experience or sense of loyalty'.<sup>lxiii</sup> The Canadian Children's Food and Beverage Advertising Initiative is not mandatory for food and beverage marketers and researchers have raised concerns about its criteria and its volume of marketing.<sup>lxiv</sup> Research conducted by UNICEF has found that in general, industry voluntary codes appear to be at least somewhat enforced and effective internationally.<sup>lxv</sup> However, witnesses at the Senate study on obesity in Canada cited research suggesting that industry self-regulation in Canada is ineffective.<sup>lxvi</sup> There is some evidence that between the adoption of voluntary measures in 2007 and 2014, the volume of advertising to children has increased<sup>lxvii</sup>.

Despite the salutary impacts of the existing policy environment, the fact remains that the high levels of overweight and obesity among Canadian children suggests that these self-regulatory models and current legislation are not effective enough in and by themselves to protect children from marketing, including food and drink marketing

**Recommendation 7: That businesses and corporations in the private sector review their voluntary policies and practices to ensure that they are appropriately aligned with children's human rights, international business principles and best practice.**

## **BENEFITS OF CHILD RIGHTS IMPACT ASSESSMENT<sup>lxviii</sup>**

UNICEF Canada is proposing that the federal government adopt a process of Child Rights Impact Assessment to periodically evaluate and monitor the impact of the provisions of the *Child Health Protection Act* upon children's rights and well-being.

A Child Rights Impact Assessment is a tool for assessing/reviewing the impacts of an existing or proposed policy, law, program, or particular decision on children and their rights. The Convention on the Rights of the Child is the framework used to assess these impacts. The impacts revealed can be positive or negative; intended or unintended; direct or indirect; and short-term or long-term. The focus is to understand how the matter under assessment will contribute to or undermine the fulfillment of children's rights and well-being – and to be able to maximize positive impacts and avoid or mitigate negative impacts.

Currently, Child Rights Impact Assessments are being used across all government departments in New Brunswick whenever a proposed law, regulation or policy is being considered by Cabinet from any provincial government department. In Saskatchewan, a Child Rights Impact Assessment has been used within the Ministry of Social Services to support child welfare and adoption legislative reform. It continues to be used on an ongoing basis in the development of new legislative amendments and policy initiatives. In both provinces, new Child Rights Impact Assessment tools have been developed to facilitate this work.

There are a number of benefits of Child Rights Impact Assessments that have been documented in the literature:

- a) Placing children at the centre and making them visible in all forms of public policy decision-making;
- b) Bringing the voices and lived experience of children into the process;
- c) Maximizing positive impacts and avoiding/mitigating negative impacts for children, including identifying unintended negative consequences of proposals;
- d) Determining the cumulative 'best interests of the child' through a structured comprehensive analysis;
- e) Bringing research evidence and best practice knowledge to bear on public policy decisions that affect children;
- f) Avoiding/minimizing discrimination and inequitable treatment of different groups of children by considering the variable impacts for different groups of children;
- g) Improving cross-ministry government coordination by considering impacts upon the 'whole child' since children cross over into various service sectors;
- h) Protecting the integrity of the proposed law or policy against later allegations of Charter and Convention breaches, particularly through an early impact assessment process; and
- i) Increasing the legitimacy of and public support for government decisions affecting the rights and well-being of children through greater accountability and transparency.

Applying a Child Rights Impact Assessment methodology to the *Child Health Protection Act*, once enacted, would be consistent with Principle 6 of the Ottawa Principles, which calls for policies and regulations to "[b]e [independently] evaluated, monitored, resourced and enforced", and at the same time, fulfill the UN Committee on the Rights of the Child's recommendation to Canada in its 2012 Concluding Observations:

*...to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to the public or private social welfare institutions, courts of law, administrative authorities and legislative bodies...*

**Recommendation 8: That the federal government adopt a process of Child Rights Impact Assessment to periodically evaluate and monitor the impact of the provisions of the *Child Health Protection Act* on children's rights and well-being.**

## **LIMITED CAPACITY OF PARENTS TO PROTECT CHILDREN FROM MARKETING TACTICS**

The World Health Organization concluded in 2006 that, "food promotion influences children's food preferences, and encourages them to ask their parents to purchase foods they have seen advertised".<sup>lxix</sup> When unhealthy products are advertised more pervasively and more frequently than healthy ones, and effective advertising strategies are used to market unhealthy food and beverages, the result is a rise in diet-related non-communicable diseases.<sup>lxx</sup>

Most Canadians agree that parents face a difficult challenge in protecting their children from marketing messages. One poll conducted by the Heart and Stroke Foundation indicates that 77% of Canadians believe it is hard to monitor and control the advertising that is directed at children.<sup>lxxi</sup> In the same poll, 71% of Canadians believe that because the food and beverage industry spends so much money on advertising to children, it has an unfair advantage over parents when it comes to influencing children's eating and drinking habits.

The effectiveness of advertising unhealthy foods to children and its association with high rates of childhood obesity is a strong reason to support parents in restricting marketing aimed at children. Canada's Standing Senate Committee on Social Affairs, Science and Technology came to the same conclusion after hearing testimony from a wide array of experts on the issue of obesity in Canada:



*With the exception of the food industry, witnesses unanimously supported strict controls on the advertising of unhealthy food and beverages to children, although the specifics of such an approach varied to some degree.<sup>lxxii</sup>*

Research also demonstrates that children's attempts to influence their parents' purchasing decisions often has a high degree of success, which contributes to childhood obesity.<sup>lxxiii</sup>

As well, with advancing technology, it is becoming increasingly more difficult for parents to monitor their children's access to media which promote the consumption of unhealthy food and beverages. Many of the devices children and youth have at their disposal can evade parental scrutiny, as they are small and almost always close at hand, such as laptops, smartphones and tablets. According to Media Smarts data collected in 2013, over one-quarter of students in Grade 4 have their own smartphones and this number jumps to 85% by Grade 11.<sup>lxxiv</sup> While these devices help parents stay connected to their children during the day, they also provide more opportunities for food and beverage companies to connect with them.<sup>lxxv</sup>

One additional consequence of marketing to children is the impact it can have on parent-child interaction. Conflict can occur when parents frequently must refuse their child's product requests, placing strain on the relationship (the "nag" factor).<sup>lxxvi</sup> Healthy relationships are critical to a child's overall well-being and additional stressors are a concern given the high family stress and difficult relationships children in Canada experience<sup>lxxvii</sup>.

**Recommendation 9: That parents and caregivers be supported through immediate legislative reform in their efforts to protect their children from unfair marketing of food and beverages.**

## **COMPLEMENTARY MEASURES**

The challenge of reducing the rate of unhealthy weight among children in Canada is complex and evolving, and there is no single solution. Legislation, while an exceedingly important component, is only one part of the equation. Too often, unhealthy weight is seen as a simplistic caloric equation, framed as the sum of individual choices and behaviours, whether by children or parents. This ignores a number of underlying systemic factors - such as the degree of influence of societal conditions, including broad income inequality and poverty, homelessness, unemployment, lack of support for breastfeeding past the first three months of life, increasing restrictions on free outdoor play and less investment in children's programs and services in contrast to other industrialized countries with more positive child well-being outcomes.



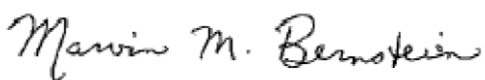
Additional measures could be used to complement legislative restriction on marketing to children, including addressing these underlying systemic factors, while promoting health and nutrition literacy and media literacy. Nutrition literacy would help ensure that appropriate and accessible information about nutrition and healthy eating is taught to young people, ideally through a core curriculum in a school setting, and reinforced through public health messaging.<sup>lxxviii</sup> Media literacy involves instructing children on how advertising influences their lives and decision-making practices, and how they can protect themselves from unwanted commercial influence.<sup>lxxix</sup> Instructing children in these two areas will support their right to information and increase their capacity to make informed decisions, but will not substitute for reducing exposure to marketing.

**Recommendation 10: That other complementary measures be instituted to address contributing adverse systemic factors affecting child health and to heighten both the nutritional and media literacy of children and youth.**

## CONCLUSION

Industrialized countries like Denmark, Norway and Austria have managed to reduce their rates of overweight children in the past decade through the use of policy solutions.<sup>lxxx</sup> Canada can do likewise and create stronger policies that promote and support breastfeeding; encourage free outdoor play and recreation; make healthy food more affordable and available; and develop a universal healthy school food program.<sup>lxxxi</sup> The government's commitment to restrict marketing to children, particularly marketing of food and drink, is a strategy which is likely to curb the rate of childhood obesity in Canada given the link between marketing practices and consumption choices.<sup>lxxxii</sup> There is a compelling urgency to put children's well-being above other interests and immediately enact legislation that will prohibit all commercial food and beverage marketing to children and youth 16 and under, except in the case of non-commercial marketing for valid public health education or public awareness campaigns. It's time to be bold and do the right thing for our children and youth, so that they can reach their full potential and enjoy long healthy lives.

Respectfully submitted on behalf of UNICEF Canada by:

A handwritten signature in black ink that reads "Marvin M. Bernstein".

Marvin M. Bernstein, B.A., J.D., LL.M.  
Chief Policy Advisor, UNICEF Canada

## **Appendix 1: Youth Engagement Process on Bill 228: The *Child Health Protection Act***

### Introduction

- Introduce myself, UNICEF Canada, participants share names
- Play an icebreaker, activity to be determined depending on number of participants

### Why are we here?

We are here today to talk about the marketing of stuff (food and beverage products) to children and youth in Canada. In Canada, provincial and federal governments, the House of Commons and the Senate of Canada are trying to improve the well-being of children and youth by changing the way things are marketed/advertised to children and youth. Bill S-228 is an Act to amend the Food and Drugs Act (prohibiting food and beverage marketing directed at children under 13). UNICEF is asking for your opinion to help us determine our position.

### Discussion

1. What is marketing? What is advertising?
2. What is your experience with marketing in general?
  - a. What kinds of things do you see marketed the most? (Prompts if necessary – Clothes? Shoes? Food? Drink? Unhealthy or healthy? Movies? Shows? Sports events?)
3. Where do you see marketing? Where the most?
4. What is your experience with marketing of food and beverages specifically (both healthy and unhealthy)?
5. What is good/do you like (if anything) about marketing?
6. What is annoying or concerning (if anything) (e.g., timing, amount, where it occurs, what is marketed, how it is marketed)?
7. Do you think marketing affects your preferences? How? Why?
8. Do you think marketing affects people you know/your age? How? Why? (e.g., food, fashion, competition, employment)
9. What are your marketing preferences in general? What catches your eye?

10. What are your marketing preferences for food and beverages (both healthy and unhealthy)?

#### Activity: Marketing in our lives

- Ask each young person to individually find a food and/or beverage advertisement. This advertisement can positively or negatively influence young people. It can also be for healthy or unhealthy food or beverages.
- Each participant will share back
- Does this ad positively or negatively influence young people?
- Facilitate discussion around what factors can positively/negatively influence young people.

#### True or False Activity: Why are we trying to change the way foods and beverages are marketed?

Ask participants to form a line and step forward if they think the statement is true, and stay in the same spot if they think it is false.

1. **T:** Canada ranked 27<sup>th</sup> out of 29 countries for child obesity (UNICEF, 2016).
2. **F:** Obesity rates among children and youth in Canada have nearly doubled in the last 30 years (Government of Canada, 2016).

Obesity rates among children and youth in Canada have nearly tripled in the last 30 years (Government of Canada, 2016).

3. **T:** Approximately 1 in 3 boys and approximately 1 in 4 girls are overweight or obese (HBSC, 2016).
4. **F:** The Canadian Heart and Stroke Foundation estimates that more than 60% of products viewed by children and youth online are for unhealthy food and beverage products (Canadian Heart and Stroke Foundation, 2017).

The Canadian Heart and Stroke Foundation estimates that more than 90% of products viewed by children and youth online are for unhealthy food and beverage products (Canadian Heart and Stroke Foundation, 2017).

5. **T:** A study by Yale University found that children exposed to junk food advertising ate 45% more junk food than children not exposed to such advertisements (The Guardian, 2012).
6. **T:** Children recall content from advertisements they view and demonstrate product preferences after even a single commercial viewing (American Psychological Association, 2004).
7. **F:** In one study, more than 80% of children remembered an ad for toys, cereals and ice cream that was shown only once during a television program (American Psychological Association, 2004).

In one study, more than 50% of children remembered an ad for toys, cereals and ice cream that was shown only once during a television program (American Psychological Association, 2004).

8. **T:** Children are more easily influenced by marketing than are adults.

#### Youth Perspectives on Policy Options: What do you think?

There are 3 options...

**Which one is in the best interests of children and young people** (more respectful of their human rights and most likely to improve outcomes in child health and well-being)?

- Facilitate discussion around different options
  - Contextualize with age threshold: What would it look like if it was for young people under 13 years of age? What would it look like if it was for everyone under 18?
  - What are your thoughts on proposed age cut-off of under 13 (for purposes of banning the marketing of all food and beverages, whether healthy or unhealthy)?
1. Option #1: An initial ban on marketing to children potentially leading to increasing restrictions over time, but only if appropriate, based on evaluation and ongoing feedback
    - Start with something smaller
    - Consult with different stakeholders

- Evaluate and expand it over time, but only if appropriate according to evolving data and consultative input of stakeholders, including researchers, child and youth advocates and children and youth
- Should this ban apply to all children/youth under age 18; or to all children/youth under age 13; or to some other age group; or not at all? Can you provide reasons?

2. Option #2: A ban on marketing of all food and beverages to children

- Whether they are healthy or unhealthy, positive or negative
- Should this ban apply to all children/youth under age 18; or to all children/youth under age 13; or to some other age group; or not at all? Can you provide reasons?

3. Option #3: A ban on marketing limited to unhealthy food and beverages to children

- Foods that are high in saturated fats, sugars, salt, and other ingredients.
- Should this ban apply to all children/youth under age 18; or to all children/youth under age 13; or to some other age group; or not at all? Can you provide reasons?

Additional information on age threshold:

Children are vulnerable to commercial persuasion up until the point where they achieve two specific information-processing skills:

1. The ability to perceive the difference between commercial and non-commercial content – 4-5 years old
2. The ability to understand the persuasive intent behind advertising – 7-8 years old
3. The ability to learn about bias – generally not until around age 13

### Concluding Activity

Ask young people to write a statement with their preference(s).

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