

# SUBMISSION TO THE CANADIAN GOVERNMENT ON CHILDREN'S RIGHTS AND ONLINE SAFETY

THE ALLIANCE FOR THE PROTECTION OF CHILDREN'S RIGHTS  
AND SAFETY ONLINE

## FOR SUBMISSION TO:

The Right Honourable Justin  
Trudeau, Prime Minister of Canada

The Honourable Steven Guilbeault,  
Minister of Canadian Heritage

The Honourable David Lametti,  
Minister of Justice and Attorney  
General of Canada

The Honourable François-Philippe  
Champagne, Minister of Innovation,  
Science, and Industry

The Honourable Bill Blair, Minister  
of Public Safety

The Honourable Dominic LeBlanc,  
President of the Queen's Privy  
Council of Canada and Minister of  
Intergovernmental Affairs

Daniel Therrien, Privacy  
Commissioner of Canadian



# SUMMARY OF KEY POLICY RECOMMENDATIONS

The following recommendations are to support Canada in becoming a leader in protecting children's rights online while safeguarding their freedom of expression and ensuring their safety. They pertain to both the Consumer Protection Privacy Act (CPPA) as well as the upcoming 'Online Harms' led by the Minister of Canadian Heritage. Note that we recommend the upcoming 'Online Harms' bill be reframed as the 'Online Safety' bill to highlight the importance of addressing risk to children before it occurs. Addressing harm only after the fact leaves Canadian children facing an unacceptable level of risk which can and should be reduced through a more preventive approach.

## BOTH THE UPCOMING ONLINE SAFETY BILL AND THE CONSUMER PROTECTION PRIVACY ACT (CPPA) SHOULD:

- 01 Be amended to clearly state that the **"best interests of the child be a primary consideration"** in all decisions regarding the regulation of online services in Canada.
- 02 Directly **cite and uphold General Comment 25 of the UN Convention on the Rights of the Child (CRC)** on "Child Rights in the Digital Environment"[1] and Canada's obligation's as a signatory to the CRC.
- 03 **Clearly state that a child is a person under 18**, in line with international standards.
- 04 Mandate that **special provisions and protections must be in place all products and services likely to impact children** - not only for those directed at them.
- 05 Require the use of **child rights impact assessments**.
- 06 Establish that any **complaints mechanisms** or e-Tribunals are safe, confidential, gender-responsive, and inclusive as well as child-friendly to ensure that they are **fully accessible to all children**.
- 07 Require **consultation with children as key stakeholders** in accordance with their evolving capacities.
- 08 Establish a **regulator with sufficient resources and enforcement powers** to drive compliance
- 09 Consistent with the government's commitment to ensuring all policies and regulations promote gender equality in Canada, a **GBA+ analysis should be applied to both bills** to address the specific needs, interests, and rights of girls and young women in all their diversity.

The 'best interests of the child is a well-established minimum standard in Canadian and international law[2] that now extends to the digital world. It is critical, however, that the best interest determinations are done with and not for children young people, recognizing their evolving capacities and agency to participate in decision-making processes that impact them. An intersectional gender analysis should be integrated into the process to recognize and address the unique needs, interests, and vulnerabilities of particular groups, including girls, LGBTQI+, Indigenous, racialized children, and youth.

Efforts to establish a new Canadian Commissioner for Children and Youth[3] could also include a broader safeguarding mandate to ensure the best interests of children online through gender-responsive policies within Canada's internet governance framework.

Currently, the new Personal Information and Data Protection Tribunal[4] does not set out a clear regime for children to report privacy violations or online sources that promote harmful ideas impacting their wellbeing. All existing and new complaint mechanisms should be made widely known to children so that they can quickly and effectively address serious violations of their privacy or rights. All complaint mechanisms should be responsive to the unique needs of children and undergo periodic effectiveness and efficiency reviews for incremental improvements.

"DON'T MAKE IT  
INSANELY LONG TO  
REPORT AND DON'T MAKE  
IT TAKE MONTHS TO GO  
ANYWHERE"

Anonymous youth  
respondent, U-Report  
project at UNICEF Canada

"ALLOW FOR PEOPLE  
UNDER THE AGE OF 18  
TO ACCESS THE WORK  
OF THE PRIVACY  
COMMISSIONER  
WITHOUT HAVING TO  
GET PERMISSION FROM  
A GUARDIAN"

Anonymous youth respondent, U-  
Report project at UNICEF Canada

"WE ARE PHYSICALLY  
THREATENED, RACIALLY  
ABUSED, SEXUALLY  
HARASSED AND BODY  
SHAMED. ONLINE VIOLENCE  
IS SERIOUS. IT CAUSES REAL  
HARM AND IT'S SILENCING  
OUR VOICES."

# ONLINE SAFETY BILL

Children by virtue of their age and development stage experience harm differently to adults, therefore they need protections that are in line with their age and capacity and they need for society and business to take a precautionary approach. No environment will be risk-free but known and emerging risks should be designed out for products and services before harm has occurred.

## THE ONLINE SAFETY BILL SHOULD:

- 10 Introduce a **statutory duty of care** with the ability for a named regulator to create **statutory codes of practice**
- 11 Ensure any new regulator is informed by a **multi-stakeholder commission that includes child-rights and gender expertise as well as young people themselves.**
- 12 Introduce **information-gathering powers** and **algorithmic oversight of automated systems** for the regulator to **address amplification of harmful content** for children.
- 13 **Include legal but harmful material in scope.** This should include misinformation and disinformation, financial harms, and definitions of hate speech
- 14 Introduce **standards for age assurance mechanisms**, terms and conditions, moderation, and reporting systems and security settings

A statutory duty of care is necessary to ensure that business have legal accountability to provide special protection for children for all products and services that may impact them.

The multi-stakeholder Commission should develop codes of practice on harmful content to enable children to safely access a diversity of content from a variety of credible sources in accordance with their civil and political rights[5]. The Commission should include children in the decision-making process, and in accordance with their evolving capacities.

The Online Safety bill currently focuses on five categories of illegal content that must be regulated for both children and adults. However, it does not include content that is legal and may be seriously harmful to children. Automated algorithms that share or promote legal but harmful content, including instructions on self-harm, or disinformation about the pandemic, should be flagged and addressed in accordance with their evolving capacities while recognizing children's right to information, freedom, and expression[6].

# THE CONSUMER PROTECTION AND PRIVACY ACT (CPPA)

Data protection is a key mechanism by which to define children's online experience. How their data is processed, how default privacy settings are set, the security of connected devices, and the way in which automated systems are optimized, are all levers by which children can be offered greater safety and privacy online. The following are urgent amendments to the privacy bill that should be adopted to place Canada on par with best practices in protecting children globally and ensuring that Canadian legislation at minimum recognizes that special protection for children's data is required.

## THE CONSUMER PROTECTION AND PRIVACY ACT SHOULD:

- 15 Firmly articulate and **affirm the right to privacy** for children under 18.
- 16 Clearly **state that special protection and consideration must be given to the collection and use of children's personal data for all purposes.**  
Special protections should include ensuring that default privacy settings must be high; children's data must not be shared unless determined to be in the child's best interest; children's own data must not be used to offer material that is harmful or detrimental to their well-being and that the collection of children's data be minimized and driven by purpose limitation.
- 17 Mandate that the Privacy Commissioner, working with the Minister of Heritage and the Minister of Innovation, **develop a 'Kid's Code' or a code of conduct for industry implements safety and privacy by design** to safeguard children's rights online.

The CPPA currently does not clarify the right to privacy for adult Canadians and has so far not recognized the right to privacy for children in particular. A child's right to privacy is endorsed in the UN Convention on the Rights of the Child (UNCRC)[7], to which Canada is a signatory.

Children require special protections within the CPPA as they may be less aware of the potential risks and consequences posed by sharing their data and less able to safeguard their rights and access remedies. Evidence from around the world and in Canada points to a high proportion of girls and young women between the ages of 15 to 24 facing multiple types of online abuse and harassment, pointing to the critical need of putting in place well evidenced intersectional safeguards, taking into account the unique challenges faced by them.[8]

The language of 'special consideration and protection' must be incorporated into the Act as a legal imperative for Canada to establish best practice codes of conduct related to the collection and use of children's data. Special consideration should extend to the use of personal data of children for the purposes of marketing and employing persuasive techniques that encourage addiction

The CPPA should also include special requirements for obtaining children's consent to collect and use their data, and set out clear parameters for substitute-decision making.

The Privacy Commissioner should be mandated to develop a statutory code of practice, that requires companies to perform data protection impact assessments (DPIA) that take into account differing ages, evolving capacities<sup>[9]</sup> and development needs in order to assess, mitigate or remove the risks posed by online services that would likely impact children.

The code of conduct should draw upon best practices from the UK's 'Age-Appropriate Design Code' and restrict the misuse of children's personal data that have been shown to be detrimental to their wellbeing. It could also potentially include a broader range of issues in relation to legal, but harmful content such as harassment, amplification and diversity of content.

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## ABOUT THE ALLIANCE

The Alliance for Protecting Children's Rights and Safety Online is a flexible network of organizations, institutions, thought-leaders, child rights experts and practitioners who have come together with the shared purpose of creating a safer internet for children. We believe that children's rights and well-being must be at the centre of the effort to strengthen internet governance in Canada and around the world.

I AM A LITTLE SCARED  
OF THE FACT THAT ALL  
YOUR ACTIONS ONLINE  
ARE PERMANENT-  
PICTURES YOU POST,  
SEARCH HISTORY"

Anonymous youth respondent, U-Report project at  
UNICEF Canada

[1] CRC General Comment 25: "States shall ensure that in all decision-making regarding the provision, regulation, design and management of the digital environment that may impact children's rights, the best interests of the child shall be a primary consideration"

[2] Article 3(1) of the CRC states: "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".

[3] <https://parl.ca/DocumentViewer/en/43-2/bill/S-210/first-reading>

[4] The new entity that can impose administrative monetary penalties for privacy violations under the Digital Charter Implementation Act (C-11)

[5] Article 17 of the CRC states that, "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".

[6] General Comment 25: "States should require business to develop and implement guidelines to enable children to safely access a diversity of content while protecting them from such harmful material in accordance with their evolving capacities, and recognizing children's right to information and freedom of expression"

[7] CRC Article 16

- 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.
- The child has the right to the protection of the law against such interference or attacks.

[8] Free to be Online, <https://plan-international.org/publications/freetobeonline>

[9] "Evolving capacities" is an established in the UN CRC and is an important guiding principle in General Comment 25 in relation to child rights in the digital environment

[10] <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/>