



# **BITING BACK: Protecting Children in Canada from Marketing of Unhealthy Food and Drink**

February 2024

Widespread changes in children’s food environments are combining with poverty and inequality to undermine children’s nutrition and health in Canada. The food environment, including how foods are marketed, plays a critical role in influencing children’s diets. Unhealthy food and drink marketing is pervasive and persuasive. It is ubiquitous in children’s daily lives – in their homes, schools, communities and gathering places. It reaches children of all ages through a wide range of media, online and in the physical environment. The food and beverage marketing landscape is dominated by promotions for unhealthy products, which shape social norms; influence product access and availability; increase children’s preference for and consumption of unhealthy products; and damage children’s health. Marketing to children violates children’s rights to protection, nutrition and health and contributes to childhood obesity and diet-related chronic diseases. As a result, childhood obesity is prevalent and persistent.

Restrictions on the marketing of unhealthy food and drink have been proven to protect children from exposure and harm. The Government of Canada needs to uphold its duty to protect children from exploitative marketing with a children’s rights-based approach to legislation and regulation:

1. Introduce legislation and reform the *Food and Drug Regulations* and any other relevant laws and regulations to protect children under age 18 from marketing consistent with World Health Assembly and WHO recommendations, specifying child rights principles; a comprehensive definition of marketing; where and when advertising is restricted; how advertising is restricted; what product categories and characteristics are encompassed; how children’s privacy and personal information must be protected; and mechanisms for complaints, enforcement and monitoring.
2. Give children better options. Provide a healthy meal at school, every school day, so that every child has access to nutritious food.
3. Apply Child Rights Impact Assessment (CRIA) to legislative and regulatory development to prioritize children’s rights and interests and engage their views.
4. Implement the International Code of Marketing of Breastmilk Substitutes, relevant World Health Assembly resolutions, and recommendations in the 2016 WHO Guidance on ending inappropriate promotion of foods for infants and young children.

## Unhealthy Diets and Unhealthy Children in Canada

Unhealthy diets, overweight and obesity are prevalent among children in Canada, reflecting a food system that promotes and provides abundant unhealthy food and drink together with inadequate policies to prioritize and protect children’s nutrition, health and development.<sup>1</sup> Canadian children have diets high in sodium, sugars, and saturated fat and dental decay is a widespread concern. Canada ranked 37th out of 41 countries for the provision of adequate nutrition in a 2017 UNICEF Report Card based on children’s access to sufficient healthy food and the rate of obesity.<sup>2</sup> Since then, the rate of obesity among children has persisted while food insecurity has risen to a new height: 24% (almost 1.8 million children) were food-insecure in

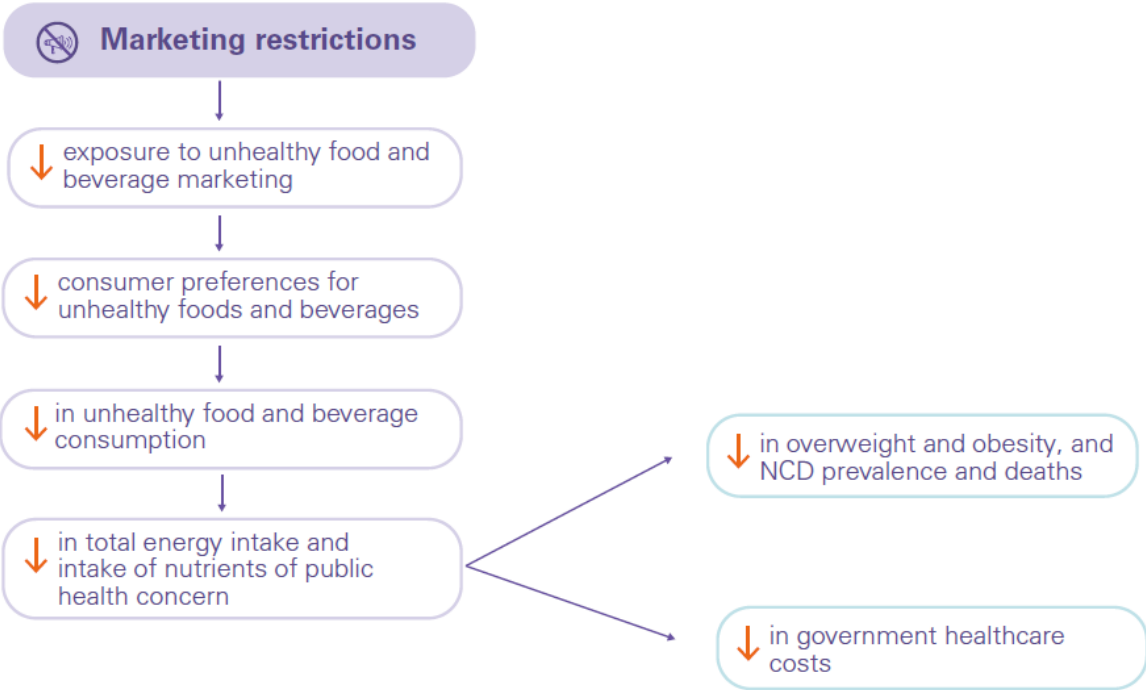
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<sup>1</sup> World Health Organization: WHO. (2021, June 9). *Obesity and overweight*. <https://www.who.int/news-room/fact-sheets/detail/obesity-and-overweight>

<sup>2</sup> UNICEF REPORT CARD 14: *Child Well-being in a Sustainable World*. (2017). UNICEF Canada : For Every Child. <https://www.unicef.ca/en/unicef-report-card-14-child-well-being-sustainable-world>

2022. In UNICEF Report Card 18 (2023), Canada ranked 33<sup>rd</sup> of 43 countries for the rate of overweight children (an indicator of poor diets) at 31%.

Food costs; the nutritional profile of foods available at home, school, in stores and restaurants; and food advertising have a major impact on food choices and make healthy eating a challenge for many. Nutritious food choices are not typically what is the most available, affordable, convenient and widely promoted. In evidence gathered over the past 20 years, marketing of ultra-processed and nutrient-poor food and drink has been identified as a factor that contributes to poor nutrition, overweight and obesity. Consumption of ultra-processed foods among Canadian children ages 9 to 13 constitutes nearly 60% of their diet.<sup>3</sup> Food and beverage marketing, promoting items high in salt, sugars, and saturated fat, plays a critical role in childhood obesity and can impact heart health in adolescents as well as breathing difficulties, increased risk of broken bones, high blood pressure, early markers of heart disease and insulin resistance. Constant exposure to unhealthy food and drink marketing early in life also affects lifelong preferences and consumption patterns, putting children at a higher risk of developing chronic health problems including an increased risk of cardiovascular disease, stroke, cancers, disability and mortality in later life.

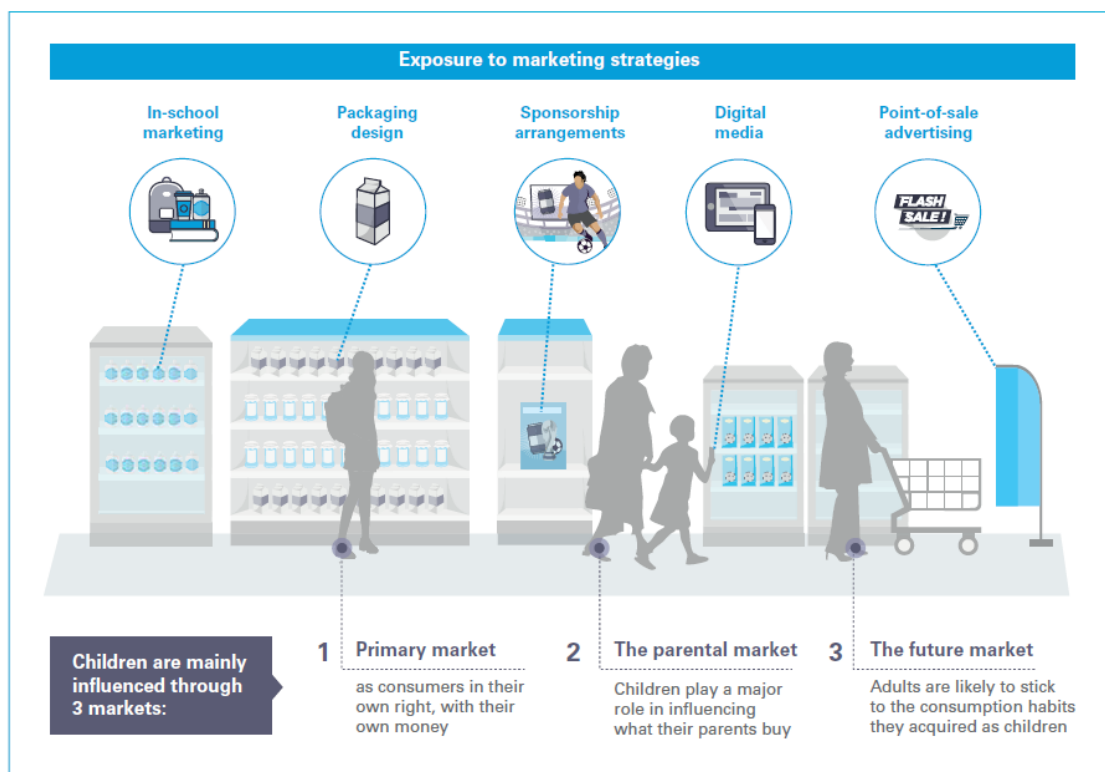


### Food Marketing is Pervasive in Canada and Harmful to Children

Food marketing is pervasive and persuasive in Canada. Children are influenced primarily through three markets: (1) the primary market, as consumers in their own right, with their own money to spend (particularly as they get older); (2) the parental market, as children play a major role in influencing what their parents buy, often referred to as ‘pester power’, the ‘nag factor’ or

<sup>3</sup> Government of Canada, Statistics Canada. (2020, November 18). *The Daily — Almost half of Canadians’ daily calories come from ultra-processed foods.* <https://www150.statcan.gc.ca/n1/daily-quotidien/201118/dq201118g-eng.htm>

'kidfucence'; and (3) the future market, as children are likely to stick to the consumption habits they acquired as children throughout their lives. The 'commodification of childhood' through marketing is all the more problematic when marketing promotes unhealthy food and drink.

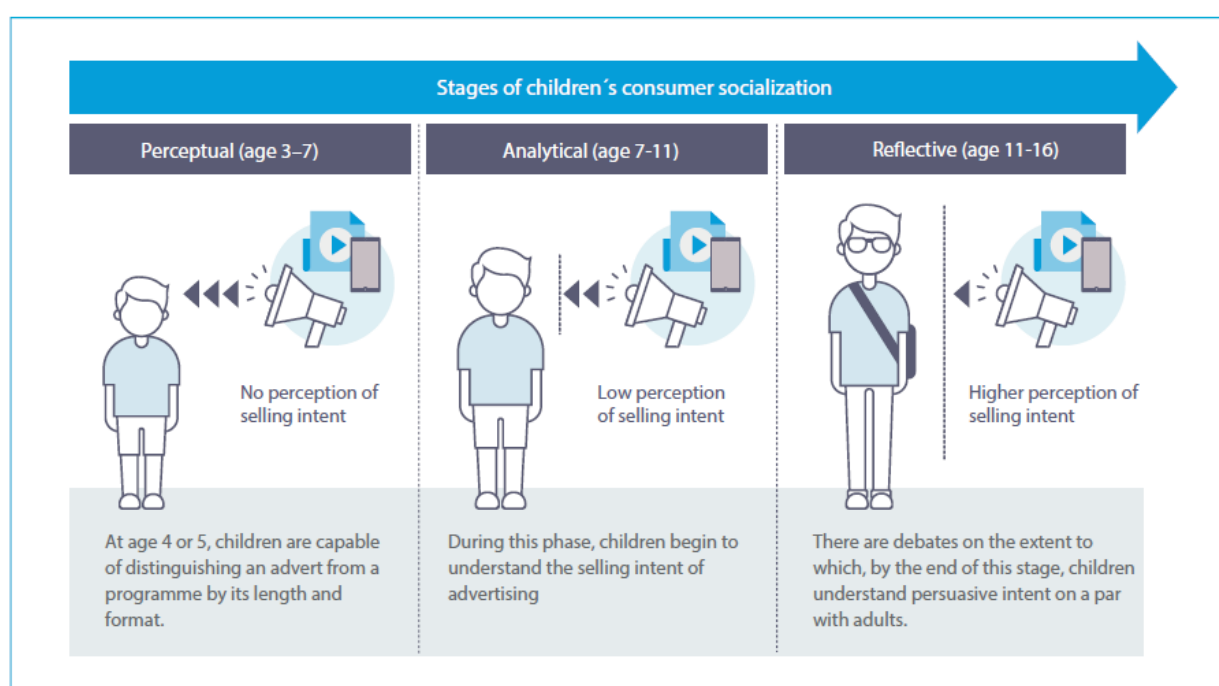


Unhealthy food and drink marketing has a powerful influence over children. Evidence from Health Canada shows that children are particularly vulnerable to food and beverage advertising that undermines healthy eating and their overall health. Children are highly vulnerable due to their developmental stage and the marketing tactics to which they are exposed. Food and drink marketing is designed to appeal to children through product design; the use of cartoon or other characters; fantasy and adventure themes; humour; placement and other marketing techniques (particularly outside Quebec where fewer restrictions are in place). Children as young as three years of age can recognize or name food and beverage brands. Children under the age of five are unable to consistently distinguish between advertising and programming. Most children do not understand the selling purpose of advertising until they reach around eight years old. By the age of 12, most children understand that ads are designed to sell products but are not yet aware of the persuasive intent of the advertisement. Children tend to become more aware of the selling intent of advertising as they get older. But many children under age 18 struggle to understand that sophisticated advertisements are biased and trying to sell them something. They are still developing the emotional and mental tools necessary to resist the intent of food marketing to which even adults are susceptible.

As a result, regulation of advertising has tended to protect younger children, typically under age 12, assuming that other children have the cognitive capacity to protect themselves from adverse advertising influence. Some countries and provinces have prohibited advertising only to younger children, including Quebec, Sweden and Norway. However, there are significant challenges associated with limited definitions of 'a child' and 'marketing to children' in regulatory responses

– or the lack thereof - due to assumptions about older children’s media literacy in recognizing and resisting marketing. An increasing number of studies, using neuroscience and behavioural psychology, have called into question whether teenagers have the cognitive capacities to identify or protect themselves from the persuasive intent of advertising. The area of the brain that prompts inhibitory control is less developed in children and adolescents than in adults. Adolescents’ brains are biased towards rewards, and they are more likely than adults to respond to marketing. They are also more likely than younger children to have the money and opportunity to purchase unhealthy products. Both younger and older children are exposed to large volumes of unhealthy food marketing. Evidence shows that unhealthy food and drink marketing is highly persuasive and powerful for children of all ages, unfairly influencing food and drink preferences, with negative consequences for their diets and health.

**52% of U-Reporters in Canada (ages 13-24) agree that “advertisements for unhealthy food and drinks tempt me to buy unhealthy products” (2023 poll).**



The efficacy of food marketing is evident in data, underscoring the extensive exposure children have to advertisements. Every year, the Canadian food and beverage industry spends around \$1 billion on marketing to children. Children in Canada are bombarded with advertisements for fast food, snacks, sugary drinks, desserts and sugary cereals and exposed to a massive and growing volume of advertisements for across a variety of media. Marketing reaches children where they live, learn, eat, play and meet – both online and in the physical environment. Children encounter unhealthy food and beverage marketing through a range of different channels from an early age. Television remains an important channel through which children are exposed: food and beverage manufacturers dedicate significant portions of their marketing budgets towards television advertising. Health Canada [data](#) confirms that television continues to be a major source of exposure to food and drink advertising. The average child viewed close to 2,000 food and beverage ads on television in 2019, an average of nearly five ads per day. However, children are increasingly exposed to marketing through other channels, including

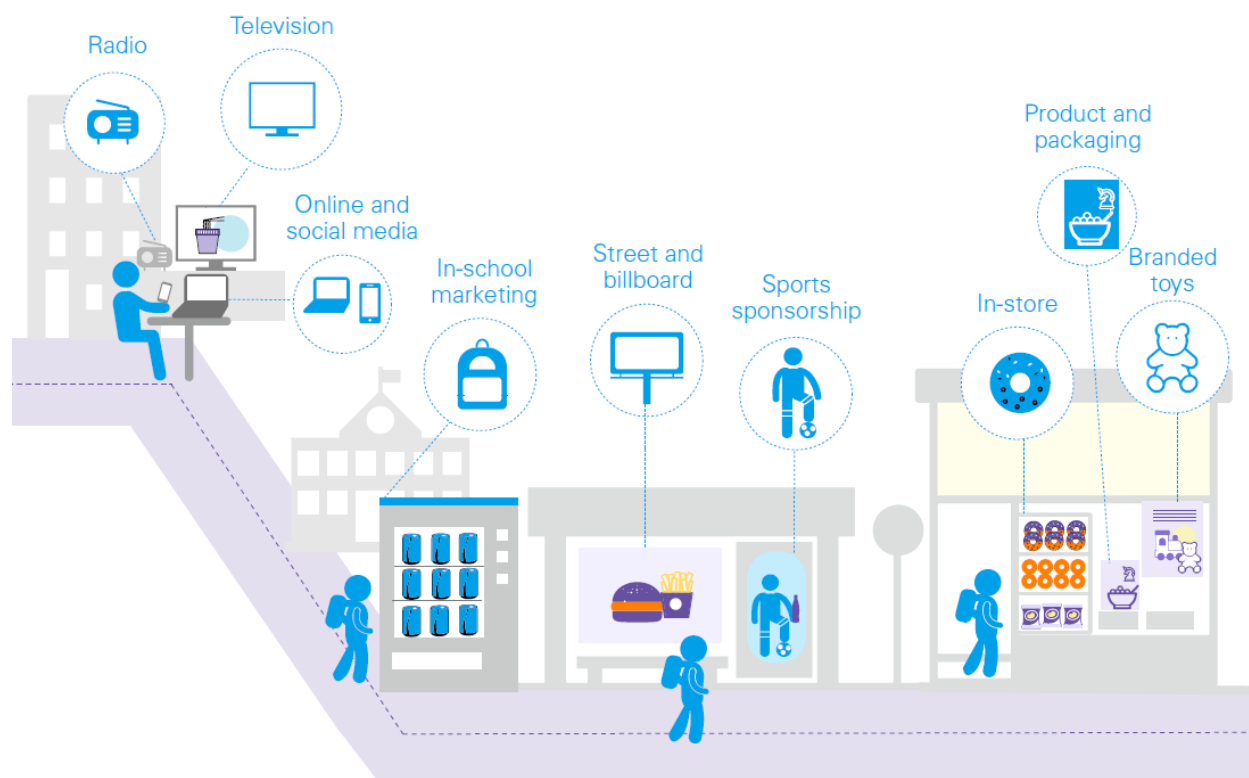
radio, street/billboard, retail, in-school marketing, product placement in media, sports sponsorship and branded toys and other products.

**77% of U-Reporters in Canada (ages 13-24) agree that they see a lot of advertisements for unhealthy food and drinks in stores (2023 poll)**

In recent years, digital marketing has come to the forefront. Online food and beverage marketing includes advertising through online games; placement of ads on websites popular among children; and promotion of food products on branded websites and through mobile devices and social media websites. Online marketing has become an integral component of the marketing mix for food and drink brands: it has not replaced other forms of more traditional food marketing but has been added to increase brand presence across a larger, more diverse range of media. One survey of 130 food company websites found that 48% had designated children's areas, featuring a variety of marketing techniques including 'advergaming', interactive programmes, branded spokes-characters and tie-ins to other products. Among companies with child-oriented sites, 87% promoted unhealthy food. Social networking sites enable companies to encourage children to 'like', make references to and promote their brands, co-opting children as brand ambassadors. With the growth of digital media and the use of mobile devices, children in Canada are increasingly exposed to online ads. Studies have measured children's exposure to digital marketing: in 2015-16, more than 50 million food and beverage ads were displayed on children's top 10 websites. On average, young children in Canada see four ads per day on social media and adolescents see 27 ads.

**38% of U-Reporters in Canada (ages 13-24) see online advertisements a few times a day for unhealthy food and drinks (2023 poll)**

The more children are exposed to food and drink advertising, the more likely they are to request or consume advertised products. Children's preferences for a favoured brand and can influence the foods parents buy through pestering or nagging (referred to as "pester power"). Constant pressure from industry competes with parents' and educators' efforts to promote healthy eating.



Most food and beverage products promoted to children are unhealthy (high sodium, sugars and saturated fat). More than 90% of food and beverage ads consumed by children are for ultra-processed foods and other foods that do not meet Health Canada’s nutrition criteria. Television exposure for Canadian children (ages 2 to 11) predominantly features advertisements for fast food (43%), candy and chocolate (12%), sit-down restaurants (8.8%), and soft drinks (5%).<sup>4</sup>

### A Children’s Rights Approach to Marketing Policy and Regulation

Governments have the duty to act in the best interests of children; protect every child's rights to nutrition and the highest attainable standard of health; and address the harms associated with the marketing of unhealthy food and drink to children.<sup>5</sup> Such marketing has a detrimental impact on various intersecting rights outlined in the Convention on the Rights of the Child and other legally binding human rights instruments. Marketing unfairly targets and manipulates children at a stage of cognitive development when it is exploitative and highly influential. It impairs their right to access information that supports their healthy development and their right to be protected from exploitation, and in turn undermines their rights to optimal nutrition, health and development. The most negatively affected rights include rights to health (article 24), adequate and nutritious food (articles 24 and 27), privacy (article 16), freedom from exploitation (article 2)

<sup>4</sup> Pauzé, E., & Kent, M. P. (2021). Children’s measured exposure to food and beverage advertising on television in Toronto (Canada), May 2011–May 2019. *Canadian Journal of Public Health*, 112(6), 1008–1019. <https://doi.org/10.17269/s41997-021-00528-1>

<sup>5</sup> *Shifting the Narrative: A playbook for effective advocacy on the prevention of childhood overweight and obesity | UNNutrition: the United Nations interagency coordination mechanism for nutrition.* (n.d.). <https://www.unnutrition.org/library/publication/shifting-narrative-playbook-effective-advocacy-prevention-childhood-overweight>

and a sustainable planet.<sup>6</sup> Additionally, rights to education, leisure and play and participation in cultural life may be compromised. The impacts are inequitable and discriminatory, since children facing systemic barriers tend to have greater exposure to marketing and less access to healthy and affordable food systems.<sup>7</sup>

The Committee on the Rights of the Child General Comment 25 (2021) on children’s rights in relation to the digital environment states that “States Parties should ... regulate targeted or age-inappropriate advertising, marketing and other relevant digital services to prevent children’s exposure to the promotion of unhealthy products, including certain food and beverages”.<sup>8</sup> This call is echoed by the United Nations Special Rapporteurs on the Right to Health and on the Right to Food<sup>9</sup> which has urged governments to “impose strong regulatory systems to ensure that the food industry does not violate citizens’ human rights to adequate food and nutrition”.

UNICEF has emphasized the importance of applying a child rights-based approach to tackling food marketing. A child rights-based approach should recognize children as essential rights-holders and governments as duty-bearers to uphold their rights and prioritize children’s best interests. It applies two key elements: recognizing children as rights-holders with corresponding duties for governments, and applying international human rights principles in policy formulation. As rights-holders, children are entitled to legal protection, obligating governments to prioritize, uphold, safeguard and fulfill their rights.<sup>10</sup>

Compliance with the Convention on the Rights of the Child demands that decisions concerning children, including the regulation of food marketing, prioritize the best interests of the child and ensure proper allocation of accountability for limiting unhealthy food marketing. The Convention on the Rights of the Child – interpreted in light of the WHO recommendations on the marketing of food and beverages to children – requires governments to protect children from the negative impacts of marketing unhealthy food.

International resolutions and frameworks on the prevention of overweight, obesity and noncommunicable diseases support the implementation of restrictions on the marketing of unhealthy foods to children. In 2010, the World Health Assembly (WHA) endorsed the *WHO Set of recommendations on the marketing of foods and non-alcoholic beverages to children*, followed by the 2012 framework implementation report, which called for States to develop policies to protect children from the marketing of unhealthy food and drink. As noted in the recommendations, governments are in the best position to set direction and overall strategy to achieve population-wide public health goals and should therefore set the scope of a country’s marketing restrictions. However, in 2016 the WHO Commission on Ending Childhood Obesity highlighted the failure of Member States to seriously implement the recommendations.

Canada has committed to acting in the best interest of Canadian children and ensuring they are a priority in policy and regulatory decisions by ratifying the United Nations Convention on the

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<sup>6</sup> Public Health Agency of Canada. (2021, November 5). *The United Nations Convention on the Rights of the Child: An Overview for Children and Teenagers*. Canada.ca. <https://www.canada.ca/en/public-health/services/national-child-day/united-nations-convention-rights-of-the-child.html>

<sup>7</sup> Safety, N. a. F. (2023, July 7). *Taking action to protect children from the harmful impact of food marketing: a child rights-based approach*. <https://www.who.int/publications/i/item/9789240047518>

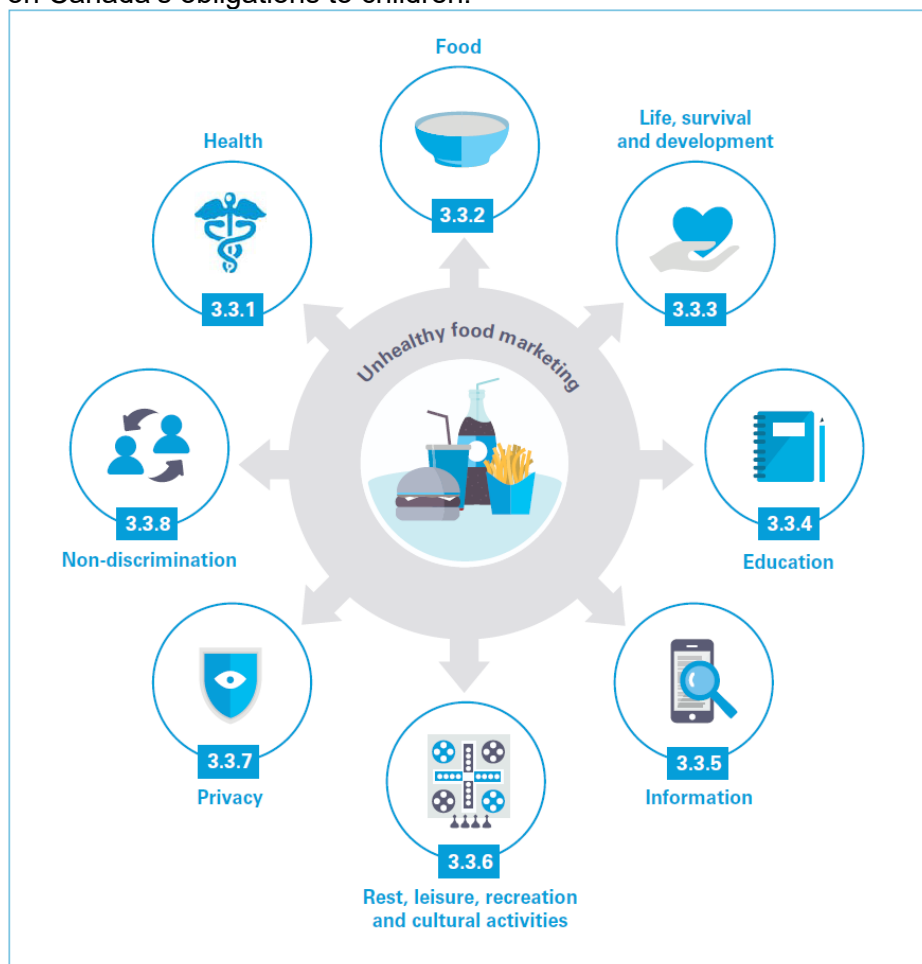
<sup>8</sup> *Taking Action to Protect Children from the Harmful Impact of Food Marketing*. (2023). UNICEF. <https://www.unicef.org/documents/nutrition/food-marketing-toolkit>

<sup>9</sup> Ibid

<sup>10</sup> *Taking Action to Protect Children from the Harmful Impact of Food Marketing*. (2023). UNICEF. <https://www.unicef.org/documents/nutrition/food-marketing-toolkit>



Rights of the Child. It has pledged to achieve the Sustainable Development Goal targets by 2030, which include ensuring adequate nutrition, and adopted WHA resolutions. Protecting children from exploitative marketing of unhealthy food and drink is an important means to deliver on Canada's obligations to children.



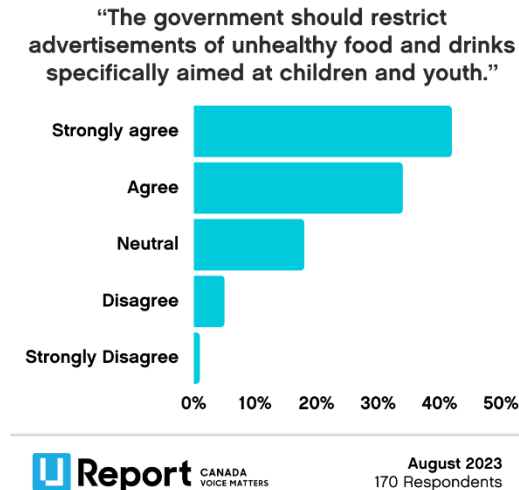
### Protecting Children and Supporting Health and Nutrition through Regulations

Global evidence shows that, if properly implemented, marketing regulation can be a low-cost, high-impact intervention that facilitates childhood nutrition. Government-led restrictions have worked in jurisdictions such as Quebec and Chile, while self-regulatory schemes in Canada and globally have failed to protect children from exposure to unhealthy food and drink advertising.<sup>11</sup> The majority of Canadians have expressed a strong desire for government intervention to protect children from marketing. In a 2016 poll commissioned by the Heart and Stroke Foundation, 77% of Canadian parents found it challenging to oversee and regulate advertising aimed at children.<sup>12</sup> In a 2020 poll, 75% of Canadians supported federal restrictions on food and beverage companies to prevent the marketing of items high in salt, sugars and saturated fat to

<sup>11</sup> *Designing legislative responses to restrict children's exposure to unhealthy food and non-alcoholic beverage marketing: a case study analysis of Chile, Canada and the United Kingdom | Globalization and Health.* (2022.). <https://rdcu.be/dyEgq>

<sup>12</sup> Heart & Stroke. (2021, December). *Protecting our Children: Restricting Food and Beverage Marketing to Kids.* <https://www.heartandstroke.ca/-/media/pdf-files/canada/2022-policy-statements/marketingtokidspostionstatement.pdf?rev=c685af1a18db41dc999767aa370cbcb6>

children under age 13.<sup>13</sup> A Senate Bill (S-228) to protect children from marketing unhealthy food and drink was advanced in 2019 but failed to move to a vote in the Senate before Parliament was prorogued for a federal election. Currently, marketing to children is addressed in Private Member’s Bill C-252, along with a parliamentary study.



Restricting food advertising to children has been a Minister of Health mandate since 2015. As part of its multi-faceted [Healthy Eating Strategy](#) announced in 2016, the federal government indicated its intent to limit the ability of the food and beverage industry to advertise unhealthy food and drink to children, in a similar approach to Quebec’s ban on advertising to children that has been in effect for decades.<sup>14</sup> Three of the strategy’s four pillars have been achieved; protecting children from marketing is outstanding. The 2021 Liberal election platform and the Minister of Health’s December 2021 Mandate Letter included a commitment to advance the Healthy Eating Strategy, supporting restrictions on food advertising to children.

Health Canada intends to amend the *Food and Drug Regulations* to restrict advertising to children of foods that contribute to excess intakes of sodium, sugars and saturated fat. In April 2023, [Health Canada](#) published a policy update outlining its proposed “first step” approach to regulating food advertising to children on television and digital media.<sup>15</sup> This approach prioritizes media where children spend much of their time and where they are highly exposed to food advertising, including ads that air during a children’s television program or on a children’s website. The update does not propose to protect all children under age 18 nor limit the broader exploitation of children through marketing. It excludes children’s exposure to unhealthy food and drink advertising at point of sale, food packaging and labelling and other marketing tactics.

A limited focus for regulatory ambition would lay a basic foundation to protect children from food and beverage marketing. Experience shows that, although partial restrictions may be perceived as a basis for cumulative gains over time, they leave many children inadequately protected and may actually have counterproductive effects. For example, partial restrictions have been shown to lead to an increase rather than a decrease in children’s exposure to food marketing in some

<sup>13</sup> Ibid

<sup>14</sup> Health Canada. (2016, October 24). *Healthy eating strategy*. Canada.ca. <https://www.canada.ca/en/health-canada/services/publications/food-nutrition/healthy-eating-strategy.html>

<sup>15</sup> <https://www.canada.ca/en/health-canada/services/food-nutrition/healthy-eating-strategy/policy-update-restricting-food-advertising-primarily-directed-children.html>

instances. Narrow policy criteria allow gaps that encourage companies to shift their marketing investment to those areas that are not covered (e.g., types of broadcast media, types of settings and types of tactics that appeal to children) and to older children who are left unprotected. The WHO recommendations note that a comprehensive approach to unhealthy food and drink marketing “has the highest potential to achieve the desired impact”. A gradual approach would be less effective in protecting children than a comprehensive approach because it allows gaps in the regulatory framework.

To protect children’s rights, Canada needs comprehensive federal legislation and regulations that restrict all forms of unhealthy food and drink marketing, to all children, in all media and in the primary settings where children live and play. The WHO recommendations urge governments to address two components of marketing: (1) ‘exposure’, or the reach and frequency of the marketing message; and (2) ‘power’, the creative content, design and execution of the message.

Regulation should specify:

- Who are children?
- What is food marketing?
- What types of marketing should be restricted and in what circumstances?
- Which media will be covered?
- What foods are to be restricted from marketing?
- What are the objectives of the restrictions?
- How will they be enforced and monitored?

Policy objectives should include recognition of children’s rights, such as:

- acknowledging the priority afforded to children’s best interests and equity;
- restricting commercial practices that exploit children’s specific vulnerabilities and evolving capacities;
- enabling children to access information without exposure to advertising material that is harmful to their health; and
- protecting children’s personal data and ensuring non-interference in their right to privacy.

Marketing restrictions should protect **children of all ages** from exposure to unhealthy food and beverage marketing. Children should be protected up to the age of 18 years, as per the definition of a child under the Convention on the Rights of the Child. There is good evidence to justify this age range, and legal precedence for broad restrictions on the marketing of certain products to ensure protections from harm: general prohibitions on advertising, promotion or sponsorships for tobacco products and breast-milk substitutes are two examples.

Marketing restrictions should include a **comprehensive definition of marketing**, across all settings and media to which children are exposed. A broad definition of marketing to children would explicitly include the WHO conditionalities: “any form of direct or indirect commercial communication or message that is designed to, or has the effect of, increasing the recognition, appeal, and/ or consumption of particular products and services. It comprises anything that acts to advertise or otherwise promote a product or service.” This encompasses marketing techniques (including advertising, direct marketing, product placement and timing, branding, design and packaging, cartoon characters, promotions and deals, gifts, toys, prizes and digital geo-tracking); communication media (including television, social media, billboards, movies and

websites); and settings (including point of sale, childcare facilities, schools and school grounds, playgrounds, family and child health services, and during any children’s sporting and cultural activities). The WHO recommendations specifically request governments to define settings where children gather and ensure that they are free from all forms of unhealthy food and drink marketing.

Restrictions should apply to **marketing that is not directed exclusively or primarily at children**. For example, broader time-based restrictions on marketing may be considered for television, radio and cinema, because restrictions that rely on measuring the percentage of children in the audience, or definitions of child programming, are unlikely to stop marketing when the highest numbers of children are watching or listening. Where time-based restrictions are less practical, where time of day is neither a determining factor in what content is consumed nor a proxy for establishing who is likely to consume it, restrictions may need to apply to all food marketing communications on these channels.

Regulation should be informed by the best available **evidence; expert opinion without conflict of interest; and consultations with young people**. Similar to the WHO Code of Marketing of Breastmilk Substitutes, conflict of interest parameters should be enacted during the process of formulating regulations: stakeholders should be engaged in consultation, but industry should not be invited to co-design or be part of decision-making processes. Health Canada recognizes that safeguarding against possible conflicts of interest in nutrition policies and programs is key to maintaining public trust in healthy eating initiatives. Several recent advances have been made to support efforts in this area, and similar process should be followed by other departments engaged in regulatory development.

Some governments, such as in Brazil, Quebec (Canada) and Norway, have gone beyond restricting only unhealthy food and drink marketing by aiming to **protect children from all commercial exploitation** through prohibition of specific forms of marketing directed at children. These policies cover both food and other products and industries such as toys, clothing, technology, sports equipment and entertainment.

To ensure that children’s best interests are adequately considered, proposed legislation or regulations should be subject to an ex-ante **Child Rights Impact Assessment (CRIA)**. The federal Department of Justice CRIA process would support comprehensively considering and balancing potential impacts on diverse children and ensuring that the best interests of the child are a primary consideration. A CRIA is also necessary to ensure that the principles of indivisibility, universality, participation and accountability are taken into account in the process of enacting food and drink marketing restrictions. If planned appropriately, such restrictions can contribute to the realization a range of children’s rights without undermining any.

In countries that have introduced restrictions on food and drink marketing that specifically protect children, their exposure to advertising and their consumption of unhealthy food and drink has fallen substantially. Legislation is the key lever that has worked to protect children in Canada in relation to tobacco exposure, seat belt use and other public health issues. In unhealthy food and drink marketing, it is time to put children’s best interests first. The evidence is clear that mandatory regulations can protect children from the harmful impact of food marketing – and countries have shown that it is feasible to develop and implement them.

## UNICEF Resources

- Taking Action to Protect Children from the Harmful Impact of Food Marketing: A Child Rights-Based Approach (2023)
- Shifting the Narrative: A Playbook for Effective Advocacy on the Prevention of Childhood Overweight and Obesity (2022)
- UNICEF Policy Brief: Marketing of Unhealthy Foods and Non-Alcoholic Beverages to Children (2021)
- A Child Rights Based Approach to Food Marketing: A Guide for Policymakers (2018)
- Advertising and Marketing to Children: Global Report (November 2016)

## About UNICEF Canada

UNICEF stands for every child, everywhere. UNICEF is the world's farthest-reaching humanitarian organization for children. Across 190 countries and territories, and in the world's toughest places, we work day in and day out to defend children's human rights and a fair chance to fulfil their potential, guided by the 1989 Convention on the Rights of the Child. UNICEF Canada was founded in 1955 to fundraise for UNICEF's highest priorities and to secure the human rights of children in Canada. As part of the UN family, our ability to work neutrally with to work neutrally with governments, civil society, the private sector and young people generates results on a scale that is unparalleled. Our mission has always been for children as the highest priority – regardless of race, religion or politics – and has always relied on voluntary contributions. UNICEF's primary strategy to transform food systems to secure children's rights to food, nutrition, health, information, protection and a livable future is by creating a policy environment and programs that are aligned with the best interests of children and the planet.

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## LEGISLATING AGE LIMITS TO ADVERTISING IN QUEBEC

The Province of Quebec's Consumer Protection Act, adopted in 1971, was revised in 1978 to mandate that no one may make use of commercial advertising directed to children, defined as any person under age 13.<sup>[1]</sup> Since the revised legislation became effective in 1980, it has been periodically supplemented by guidance documents, as well as updated regulations.<sup>[2]</sup>

**The prohibition on advertising to children covers all goods and services, and applies to all media for distributing or broadcasting commercial advertising – including any new formats that might emerge in advertising technologies, as well as current media such as radio, television, the Internet, mobile phones and printed materials.** It also applies to all individuals connected to the advertising process, from those

who request the promotion of goods or services to those involved in designing, distributing, publishing or broadcasting the advertisement.<sup>[3]</sup>

While Quebec's legislation does not apply exclusively to food marketing, it has had a positive impact: reducing children's exposure to unhealthy food marketing. This contributed to an estimated 11 per cent drop in the likelihood of purchasing 'fast food', consequently reducing fast food consumption by \$88 million per year.<sup>[4]</sup>

Section 249(a–c) of the Consumer Protection Act addresses the question of what constitutes advertising to children, taking the context of the presentation into account, according to the following questions:

- For whom are the advertised goods or services intended?

Do these goods and services appeal to children?

- Is the advertisement designed to attract children's attention?
- Are children targeted by the advertisement or exposed to it?
- Are children present at the time and place the ad appears or is broadcast?<sup>[5]</sup>

Despite its broad scope, there are several gaps, for example, an advertisement directed at children is exempt if it appears in a store window or a display, or on a container, wrapping or label. Under certain conditions, the regulations allow advertising in magazines for children. Also, the ban does not apply to advertisements transmitted from outside Quebec.

[1] Government of Quebec, 'Consumer Protection Act' (Chapter P-40.1), Official Editor of Quebec, Updated 1 March 2017, section 248. Available at <<http://legisquebec.gouv.qc.ca/en/showdoc/cs/P-40.1>>.

[2] For regulations that focus specifically on advertising to children (defining 'child' as a person under age), see: Government of Quebec, 'Regulation Respecting the Application of the Consumer Protection Act' (Chapter P-40.1, r. 3), Official Editor of Quebec, Updated 1 April 2017, sections 87–91. Available at <<http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/P-40.1,%20r.%203>>.

[3] Office for the Protection of the Consumer, 'Advertising Directed at Children Under 13 Years of Age: Guide to the application of sections 248 and 249 – Consumer Protection Act', Government of Quebec, 2012, pp. 2–3. Open PDF from <[www.opc.gouv.qc.ca/fileadmin/media/documents/consommateur/sujet/publicite-pratique-illegale/EN\\_Guide\\_publicite\\_moins\\_de\\_13\\_ans\\_vf.pdf](http://www.opc.gouv.qc.ca/fileadmin/media/documents/consommateur/sujet/publicite-pratique-illegale/EN_Guide_publicite_moins_de_13_ans_vf.pdf)>.

[4] Dhar, Tirtha, and Kathy Baylis, 'Fast Food Consumption and the Ban on Advertising to Children: The Quebec experience', *Journal of Marketing Research*, vol. 48, no. 5, October 2011, pp. 799–813.

[5] Office for the Protection of the Consumer, 'Advertising Directed at Children Under 13 Years of Age', Government of Quebec, 2012, p. 4.

## Selected Children's Rights Negatively Impacted by Marketing

### *The right to health*

Every child has the right to enjoy the highest attainable standard of health (article 24). Although article 24 does not explicitly mention childhood obesity or food marketing regulation, it refers to the imperative for State Parties "to combat disease and malnutrition", of which child obesity prevention has become a major component. Subsequently, the Committee on the Rights of the Child has noted that States should address obesity in children; that foods "high in fat, sugar or salt, energy-dense and micronutrient-poor foods, and drinks containing high levels of caffeine or other potentially harmful substances" should be limited; and that marketing, particularly when focused on children, should be regulated (General Comment 15). This has since been echoed by several other United Nations

organizations and the Special Rapporteurs on the Right to Health and the Right to Food, including in a joint statement by the Special Rapporteurs on the Right to Food and the Right to Health, the Working Group on Discrimination against Women in the Law and in Practice, and the Committee on the Rights of the Child.

#### *The right to adequate and nutritious food*

Apart from the right to be free from hunger, the right to food (article 24) recognizes the need for food to be adequate and nutritious. By marketing food high in saturated fats, trans-fatty acids, free sugars or salt, both media and food business actors undermine children's access to adequate food and healthy diets. The CRC makes clear that the right to health and to adequate nutritious food is a fundamental human right, and that special protections must be extended to children to ensure their right to enjoy the highest attainable standard of health. The Committee on the Rights of the Child has issued several general comments to support governments in combating malnutrition and safeguarding every child's right to a healthy food environment. Everyone, including children, has the right to physical and economic access, at all times, to adequate food or means for its procurement (General Comment 12).

#### *The right to privacy*

Every child has the right to the protection of the law against arbitrary or unlawful interference with their privacy (article 16). The digital age has expanded the understanding of privacy to include a right to the protection of children's personal data. Many everyday actions generate data, and the relationship between privacy and data online is becoming highly complex. Marketing in the digital era relies on the collection of personal data that allow the identification of individual preferences, choices and behaviours used to target and tailor food advertising, posing a major threat to children's right to privacy. Despite the existence of so-called privacy policies, children of all ages and their parents are rarely able to make free and informed decisions about online participation, and to protect themselves from the extensive extraction and sale of their personal data.

#### *The right to be free from exploitation*

Every child has the right to be free from economic exploitation and all other forms of exploitation (articles 32 and 36). Exploitation refers to people or entities taking unfair advantage of a child by encouraging or coercing the child, by whatever means, to undertake an activity that provides that person or entity with a benefit. Manipulative marketing practices promote economic gain by taking advantage of children's vulnerabilities, including their emotions, and their limited ability to process and evaluate information. The use of personal data and the techniques that digital media deploy to capture children's attention, target them and engage with them directly in the transmission of marketing (e.g. peer-to-peer techniques) allow brands to influence children, while increasing profits at low costs. These practices therefore constitute a form of economic exploitation.

## **Overview of the Policy Environment for Marketing to Children in Canada**

### *Statutes and codes regulating advertising/marketing:*

Statutes: The Competition Act is the main federal statute governing marketing and advertising. Other statutes include: the Consumer Packaging and Labelling Act, Precious

Metals Marking Act, Textile Labelling Act, Broadcasting Act, Criminal Code, and various Provincial Consumer Protection Acts.

Codes: the Canadian Code of Advertising Standards (“CCAS”), the Canadian Marketing Association Code of Ethics, the Broadcast Code for Advertising to Children (“BCAC”), and the Quebec Consumer Protection Act (“QCPA”).

*Regulator’s position with regards to advertising/marketing to children:*

The CCAS contains section 12 (stating that advertising directed at children must not exploit their credulity and lack of experience) and section 13 (stating that products which cannot be sold to children must not be advertised in a way to appeal to children).

The BCAC contains several requirements and prohibitions with regards to advertising to children, including the requirement to not portray values that are inconsistent with the moral, ethical or legal standards of contemporary Canadian society.

Section 248 of the QCPA prohibits any commercial advertising directed at individuals under 13 years of age (except under prescribed conditions).

*Restrictions on advertising/marketing products that are harmful to children:*

The Tobacco Act prohibits advertising tobacco products, although it permits ‘information advertising’ in publications that are mailed to adults and in places where young persons are not permitted by law.

Several provincial restrictions relate to the advertising/marketing of alcoholic products. BCAC and QCPA prohibit advertising of drugs to children.

The federal Food and Drugs Act (“FDA”) prohibits advertising HFSS products in a manner that is false, misleading or deceptive.

*Timing/placement of advertising in publications aimed at children:*

BCAC contains a number of scheduling restrictions in relation to the timing and placement of publications.

CCAS also contains restrictions in relation to the timing of advertisements aimed at children. No legislation exists on the time/placement of advertising in publications aimed at children.

*Advertising/marketing in places children frequently visit e.g. schools:*

The Broadcast Code for Advertising to Children defines a child as an individual under 12, whereas the Quebec Consumer Protection Act defines a child as under 13.

*Restrictions on using advertising/marketing techniques to appeal to children:*

BCAC and QCPA contain restrictions relating to the use of cartoon characters in connection to advertising alcoholic beverages, and restriction in other techniques that appeal to children (such as the word ‘new’).

*Use of children in advertising/marketing:*



No specific legislation regarding the use of children in advertising/marketing.

*Product labelling relevant to children:*

The Canada Consumer Product Safety Act prohibits manufacturing, importing, advertising or selling children's toys that are a danger to human health.

*Administrative bodies overseeing compliance of regulations:*

The Competition Bureau is responsible for the enforcement of the Competition Act, the Consumer Packaging and Labelling Act, Precious Metals Marking Act, and Textile Labelling Act.

Advertising Standards oversees the CCAS and BCAC.

The Office de la Protection du Consommateur oversees the QCPA.

(a) Do advertisements require clearance before publication:

— Advertisements directed at children require preclearance from the Children's Committee of Advertising Standards Canada.

(b) Sanctions for breaches of codes or regulations:

— Sanctions include removal of the advertisements alongside fines.

(c) Mechanisms for children and their representatives to file complaints:

— Advertising Standards Canada accepts and responds to consumer complaints relating to children's advertising.