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June 16, 2023

Via email: hon.pablo.rodriguez@pch.gc.ca; ministredelajeunesse-ministerofyouth@pch.gc.ca

The Honourable Pablo Rodriguez, P.C., M.P.
Minister of Canadian Heritage
15, Eddy Street, 12th Floor
Gatineau QC J8X 4B3

The Honourable Marci Ien, P.C., M.P.
Minister for Women and Gender Equality
and Youth
Postal Box 8097, Station T CSC
Ottawa ON K1G 3H6

Dear Ministers Rodriguez and Ien:

Re: Improving Dialogue between Civil Society and Ministers on Human Rights as a path for better enforcement of children's rights

We write on behalf of the Child and Youth Law Section of the Canadian Bar Association (CBA Section) to express concerns over the government's consultation with civil society organizations (CSOs) on the Concluding Observations of the UN Committee on the Rights of the Child (Concluding Observations) on Canada's fifth and sixth reports. We suggest improvements for the consultation process in advance of the meeting of the Forum of Ministers on Human Rights (FMHR) and meetings between the federal, provincial and territorial (FPT) Ministers and CSOs on June 19, 2023 in Halifax. Specifically, we urge the FMHR to offer a strong signal of its intention to address Canada's international human rights obligations with new purpose and resolve by committing in Halifax to a credible plan for child rights implementation.

The CBA is a national association of over 37,000 lawyers, law students, Québec notaries and law teachers. Our primary objectives include improvement in the law and the administration of justice, promoting the rule of law and access to justice. The Child and Youth Law Section coordinates activities and responds to law, policy and legal research developments on matters affecting children in Canada.

We enthusiastically welcomed the government's initial plan to collaborate with CSOs, and hoped for engaged and meaningful dialogue on Canada's attention to the human rights of children, as well as our collective response to the Concluding Observations. The Concluding Observations are the result of evidence presented by experts including the CBA Section and CSOs across the country. The engagement of civil society in this FPT process has been all the more disappointing when viewed in comparison to the engagement work of the interdepartmental Working Group on Children's Rights on the UNCRC review itself, which has generally been much improved over previous reporting periods.

Over 160 organizations and individuals participated in the consultation meeting on May 19, demonstrating the strong desire and capacity in civil society to move the child rights agenda forward in Canada. Unfortunately, the process did not allow for meaningful dialogue. Strong criticisms about the process were raised throughout the meeting. In the CBA Section's view, several factors contributed to this missed opportunity:

- There was insufficient advanced consultation with stakeholders on the agenda and the approach to both meetings. For future meetings, we recommend adopting a co-creative process where FPT representatives, academics, CSOs and rights-holders could together determine the agenda and preparatory work.
- However the agenda is determined, it should reflect a best effort attempt on all sides to meaningfully address the CSOs and their recommendations. The CBA Section believes this must start with structural recommendations to address general measures of implementation of child rights as a first priority of government.
- The consultation agenda was too focussed and limited to allow for meaningful engagement. Given that Canada has had one year to consider the UN Committee's Concluding Observations, CSOs would expect FPT representatives to have prepared a tentative response as a suggested roadmap for implementation over the next reporting cycle. A discussion paper should have addressed each recommendation, with a status report from an FPT lens and consultation questions for CSOs on each recommendation. In addition to a national two-hour meeting, CSOs should be given an opportunity to make submissions. All of these should have been rolled up into a national consultative dialogue, based on a constructive, responsive agenda, leading to a national CSO consultative report, which could have been made available in advance of the FMHR meeting.
- Most importantly, the CBA Section regrets the lack of progress in engaging children in Canada and young persons themselves through this preparatory consultation for the FMHR meeting. Children are a particularly challenging stakeholder group to engage, because meaningful engagement with children as rights holders requires significant preparation and adapted methods, depending on the ages and stages of development of different groups of children, as well as linguistic and cultural accommodations that should be present in every human rights consultation. Canadian CSOs are among the foremost global experts in facilitating these kinds of dialogues and are willing to work with Heritage Canada and other FMHR partners in facilitating the participation of children in Canada in consultations.

The CBA Section urges Canada and all FPT partners to make a serious effort to address the recommendations in the UN Committee's Concluding Observations on Canada's fifth and sixth reports. This is a duty in accordance with the *Convention on the Rights of the Child* and the other human rights treaties to which Canada is a State Party. June 23, 2023 marks the first anniversary of the release of the Concluding Observations. The FMHR can offer a strong signal of its intent to address Canada's international human rights obligations with new purpose and resolve by committing in Halifax to a credible plan for child rights implementation.

Engagement with civil society is critical to realizing the 2030 Agenda and Sustainable Development Goal 16 aimed at improving inclusive access to justice and building accountable and inclusive institutions and inclusive societies. We borrow words of the special rapporteur on the Rights to Freedom of Peaceful Assembly and of Association:

Civil society voices should be included in the determination of how they participate, defining the local needs, setting of priorities, development of strategies and policies,

implementation of projects and programmes, monitoring of outcomes and impact as well as reviewing the lessons learned.¹

All organizations endorsing this letter would have welcomed a meaningful opportunity to collaborate with Canada to develop and coordinate urgently needed action plans. We hope for further and better opportunities to do so. We draw your attention to a foundational principle of the Engagement Strategy on Canada's International Human Rights Reporting Process establishing "a collaborative approach with civil society and Indigenous representatives and groups, while allowing members of the Continuing Committee of Officials on Human Rights (CCOHR) to take into account their unique challenges, capacities and priorities."²

We urge you to live up to Heritage Canada's mandate and to this principle of collaborative engagement. The FMHR meeting in June presents a new opportunity to address international human rights development differently. The Concluding Observations to Canada's fifth and sixth reports repeat in large measure the recommendations from the first two reporting cycles (2002, 2012), documenting Canada's lack of progress on significant measures of child rights implementation over thirty years. In order to achieve a different result, different approaches, processes and centres of responsibility are needed. In advance of the FMHR, the CBA Section recommends the following priority actions be considered:

Recommendation 1: A new coordinating mechanism

A recent report by the Institute for Research on Public Policy cites federalism as the first of five significant barriers to a more successful program of international human rights implementation in Canada.³ The CCOHR should be replaced by a multisector forum with representation from municipalities and Indigenous governments as well as academic, CSO and rights holder representation. For child rights implementation in Canada, the Belgian Child Rights Commissioner's stakeholder table could be an instructive model.

Recommendation 2: A single federal centre of responsibility for child rights

The Institute for Research on Public Policy report⁴ recommends the establishment of a Human Rights secretariat at the federal level to coordinate human rights implementation across all of government. The CBA Section welcomes this suggestion but cautions that integrating responsibility for child rights implementation within a general human rights secretariat at the federal level will not serve children well. Children are an often overlooked and underserved human rights constituency and their rights would be best defended by a Minister specifically mandated to promote and defend their rights and interests, for instance through a strengthened mandate to the Minister of Children and Families.

¹ Human Rights Council, Civil society participation in the implementation of Agenda 2030 on Sustainable Development, A/HRC/41/41/Add.2, 2019 at para 33.

² Engagement Strategy on Canada's International Human Rights Reporting Process, Foundational principles

³ Neve, Alex, *Closing the Implementation Gap: Federalism and Respect for International Human Rights in Canada*: 17 May 2023, [online](#).

⁴ *Ibid.*

Recommendation 3: An action plan and revised strategy for child rights implementation and rapid ratification of the third Optional Protocol to the UNCRC

In 2024, Canada will mark the 20th anniversary of its first and only national strategy for child rights implementation, A Canada Fit for Children. FMHR ministers should seize this opportunity to respond meaningfully to the recommendation in the Concluding Observations for a national plan for child rights coordinated federally and with relevant plans and strategies at the provincial and territorial level. With proper planning we will be able to see swift progress on matters that have eluded progress since Canada's ratification of the Convention. Without a plan, our efforts will remain stunted. Corollary to implementation are the right to remedy and the right of children to complain directly to the UN Committee on violations of their rights in Canada. Canadian Ministers responsible for human rights can send a clear signal when they meet in June that child rights matter, by expediting efforts for the Third Optional Protocol's early ratification.

Recommendation 4: Meaningful participation of children and youth

Finally, the CBA Section urges all levels of government and the FMHR to commit to a genuine process of civic engagement of children and youth, including meaningful accommodations to ensure equal opportunities for every child in Canada who wants to be heard on these matters to have their say. Active engagement of this kind is the surest means to keep the conversation real and oriented toward meaningful progress.

While the consultation process leading up to the FMHR events in Halifax this month have left many CSOs with a sense of disillusionment and disengagement, the CBA section welcomes the opportunity that this post-pandemic process has allowed for a large number of interested CSOs to come together for a first time in setting a new human rights agenda for children in Canada. We remain convinced that improved processes, and broad and meaningful engagement of CSOs and rights holders, will move conversations forward more quickly. Progress on this front is fundamentally important in maintaining the rule of law in Canada, ensuring the legal and social conditions necessary for the economic prosperity of future generations, and maintaining the competitive advantage of the nation as a whole.

We urge the government to review its consultation process and to take these comments and recommendations into consideration in plotting a path forward for child rights implementation in Canada.

Meaningful engagement with civil society is essential to bring about change and enhance protection of human rights. We invite FPT Ministers to consider this aspect of human rights implementation as an essential condition of a rights respecting State.

Yours truly,

(original letter signed by Véronique Morissette for Sarah Dennene)

Sarah Dennene
Chair, CBA Child and Youth Law Section

The above letter is endorsed by the following civil society organizations:

- Amnistie International Canada Francophone
- Children First Canada
- Coalition Canadienne pour les droits des enfants

- Colour of Poverty- Colour of Change
- Defence for Children International - Canada
- Dr. Keiko Shikako, McGill University, Canada Research Chair in Childhood Disability
- Fondation Dr Julien
- Irwin Elman
- Justice for Children and Youth
- Laidlaw Foundation of Ontario
- South Asian Legal Clinic of Ontario
- The David Asper Centre for Constitutional Rights – University of Toronto
- Wisdom2Action

cc: The Honourable David Lametti, P.C., M.P. (email: mcu@justice.gc.ca)
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