



November 17, 2023

Via email: edsc.min.feds-fcsd.min.esdc@hrsdc-rhdcc.gc.ca

The Honourable Jenna Sudds, P.C., M.P.
Minister of Families, Children and Social Development
House of Commons
Ottawa ON K1A 0A6

Dear Minister Sudds:

Re: UN Convention on the Rights of the Child

We write on behalf of the Canadian Bar Association (CBA) further to our [correspondence](#) of March 30, 2023 to Prime Minister Trudeau, reiterating the urgency for the Government of Canada to take concrete steps to implement the June 2022 Concluding Observations of the UN Committee on the Rights of the Child on Canada's fifth and sixth reports.

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 to access to justice.

Canada played a key role in the negotiations that led to the adoption of the *United Nations Convention on the Rights of the Child* (UNCRC) on November 20, 1989. It became the most widely and rapidly ratified core human rights treaty in history, with Canada ratifying in 1991. At its recent appearance before the UN Human Rights Council as part of the Universal Periodic Review (UPR), Canada reiterated its commitment to the protection of human rights, both at home and abroad.

As we approach the 75th anniversary of the *Universal Declaration of Human Rights*, which recognizes the equality in dignity and rights of *all* human beings, as well as National Child Day on November 20th, the CBA again urges the Government of Canada to demonstrate its leadership role in the promotion of children's rights by tabling a comprehensive Government Action Plan. The Concluding Observations of the UN Committee provide a detailed roadmap for a Plan. They were informed by government reports, and the evidence of experts from civil society organizations across Canada who work with children, including the CBA.¹

In its alternative reports to the UN Committee, the CBA focused on fundamental measures to implement the UNCRC, many of which were echoed by the Committee in its recommendations:

- incorporation of the UNCRC into domestic law at the federal level.² Provincial and territorial alignment could be encouraged through the Forum of Ministers on Human Rights;
- ratification of the third Optional Protocol on a communications procedure,³ a recommendation carried forward from the 2012 Concluding Observations.⁴ The Canadian delegation told the UN Committee that it remained open to ratifying the third Optional Protocol but gave no timeframe for doing so.⁵ Canada must prioritize the provincial-territorial consultation process to achieve ratification;
- expeditious establishment of an independent mechanism at the federal level for monitoring children’s rights, capable of receiving, investigating and addressing complaints by children in a child-sensitive and child-friendly manner.⁶ This aligns with the CBA [Resolution](#) in favour of establishing a National Commissioner for Children and Youth;
- use of Child Rights Impact Assessments (CRIA) for all new bills, regulations, policies and budgets that impact the rights and interests of children.⁷ The CBA congratulates the Government of Canada for launching a CRIA tool and e-learning course in July 2023, but encourages *mandatory* federal use of CRIA similar to the GBA Plus in Impact Assessment.

In its alternative reports to the UN Committee, the CBA also focused on justice-related issues:

- mandatory, comprehensive and ongoing child rights education for legal professionals, including judges.⁸ The latter could emulate Bill C-233 (“Keira’s Law”), amending the *Judges Act* to provide for continuing education for judges on children’s rights principles;
- inclusion of the best interests of the child in all legislation, court and policy decisions affecting children, a recommendation adopted in the 2022 Concluding Observations;⁹
- children’s access to justice and meaningful participation rights in court and administrative processes, including the need to inform children about their right to be heard and to independent legal representation. During the recent UPR, Canada referenced the introduction of measures increasing access to justice for all persons in Canada since its last UPR in 2018.¹⁰ As highlighted in the *2013 Report of the UN High Commissioner for Human Rights on Access to justice for children* and the *2014 Resolution of the Human Rights Council on the Rights of the child: access to justice for children*,¹¹ these initiatives must include children. This is also consistent with the 2030 Agenda and Sustainable Development Goal 16, aimed at ensuring equal access to justice for all and responsive, inclusive, participatory and representative decision-making at all levels.¹² In its Concluding Observations, the UN Committee recommended that the views of the child be a requirement for all official decision-making processes affecting the child, including custody, child welfare, criminal justice, immigration, and the environment, and that children have the possibility to voice their complaints and have access to an appeals process if their right to be heard is violated with regard to judicial and administrative proceedings.¹³

The Concluding Observations expressed serious criticisms of Canada’s failure to more fully implement the UNCRC and gave recommendations for improvement, including recommendations that it described as requiring urgent measures.¹⁴ Significantly, the UN Committee urged Canada to take measures to end structural discrimination against Indigenous groups and children of African descent, and to implement the Calls to Action of the Truth and Reconciliation Commission and the National Inquiry into Missing and Murdered Indigenous Women and Girls. These themes were also prevalent during the UPR.

While cognizant of Canada's federalist structure and the division of powers, the UN Committee recommended adoption of a national strategy with a comprehensive implementation framework for all levels of government.¹⁵ Canada is responsible for acting on its international obligations and may not rely on its domestic law to avoid the commitments it has assumed under the UNCRC.¹⁶ In other words, the Government of Canada must show leadership in the areas it can change and work in partnership with provinces and territories in others. Canada specifically highlighted provincial participation in the recent UPR process as demonstrating its "integrated, cross-jurisdictional approach to the implementation of our international human rights obligations."¹⁷ This cooperation must extend to the domestic implementation of Canada's obligations under the UNCRC. This can be accomplished through the Forum of Ministers on Human Rights, the Senior Officials Committee Responsible for Human Rights and the Continuing Committee of Officials on Human Rights, with a strengthened mandate for the Interdepartmental Working Group on Children's Issues, and meaningful civil society engagement with these groups, as suggested in our June 2023 letter.¹⁸

The Government of Canada has had since June 2022 to consider the recommendations of the UN Committee, and much longer for recommendations that carried over from previous reviews. It should not wait until the next review to take meaningful steps towards implementation. At its February 2023 meeting, the CBA urged the government to follow the roadmap outlined in the Concluding Observations.¹⁹ This has been reinforced by the CBA Branches in British Columbia, Alberta, Manitoba, Ontario, Prince Edward Island and New Brunswick in correspondence to their Premiers and provincial Ministers.

On the eve of National Child Day, the CBA urges the Government of Canada to champion the advancement of children's rights through a comprehensive Government Action Plan for the realization of the recommendations in the Concluding Observations. We remain committed to working with you to achieve this goal.

Sincerely,

(original letter signed by John D. Stefaniuk and by Tamra Thomson for Caterina E. Tempesta)

John D. Stefaniuk, K.C. / c.r. (he/him/il/lui)
President, Canadian Bar Association

Caterina E. Tempesta
Chair, Child and Youth Law Section

cc. Senator Mobina S.B. Jaffer, K.C. Mobina.Jaffer@sen.parl.gc.ca
Senator Nancy J. Hartling Nancy.Hartling@sen.parl.gc.ca
Senator Ratna Omidvar Ratna.Omidvar@sen.parl.gc.ca
Senator Rosemary Moodie Rosemary.Moodie@sen.parl.gc.ca
Christopher Evelyn, Chief of Staff chris.evelyn@hrsdc-rhdcc.gc.ca
Emily Hartman, Director of Policy emily.hartman@hrsdc-rhdcc.gc.ca

¹ The Government of Canada has shown leadership in other areas through the 2021 *Missing and Murdered Indigenous Women and Girls and 2SLGBTQQIA+ People National Action Plan*, an *Action Plan* to support implementation of the *UN Declaration on the Rights of Indigenous Peoples*, the 2022 *National Action Plan to End Gender-Based Violence*, the 2022 *Disability Inclusion Action Plan*, and the *2SLGBTQQIA+ Action Plan*.

² [Concluding Observations](#), at para. 7. The Government of Canada demonstrated its capacity to do this via its enactment of the *UN Declaration on the Rights of Indigenous Persons Act* on June 21, 2021.

³ [Concluding Observations](#), at para. 48

-
- 4 Ratification of the third Optional Protocol was raised again in the context of Canada’s recent UPR appearance: see [Report of the Office of the United Nations High Commissioner for Human Rights containing a summary of stakeholders’ submissions on Canada](#), at para. 9; the [compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights](#), at para. 2; and the [Advance Questions to Canada](#) (Belgium, Liechtenstein, Panama).
- 5 UN Press Release, May 2022, [online](#).
- 6 [Concluding Observations](#), at paras. 12-13. This concern was reiterated in the [compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights](#) in advance of Canada’s UPR, at para. 9.
- 7 [Concluding Observations](#), at paras. 10(b), 19(c), 15.
- 8 This was also recommended by the UN Committee: see [Concluding Observations](#), at para. 14.
- 9 [Concluding Observations](#), at para. 19(a).
- 10 [Joint Statement by Minister Virani, Minister St-Onge and Minister Joly on Canada’s appearance before the United Nations Human Rights Council as part of the Universal Periodic Review](#).
- 11 Human Rights Council, [Report](#) of the UN High Commissioner for Human Rights: Access to justice for children. Human Rights Council, [Right of the child: access to justice](#).
- 12 The Global Goals, “Peace, justice and strong institutions”, [online](#).
- 13 [Concluding Observations](#), at para. 22.
- 14 [Concluding Observations](#), at para. 4.
- 15 [Concluding Observations](#), at para. 8.
- 16 Vienna Convention on the Law of Treaties, [1980] Can. T.S. No. 37, Arts. 26, 27.
- 17 [Joint Statement by Minister Virani, Minister St-Onge and Minister Joly on Canada’s appearance before the United Nations Human Rights Council as part of the Universal Periodic Review](#).
- 18 CBA, “Improving Dialogue between Civil Society and Ministers on Human Rights as a path for better enforcement of children’s rights”, June 16, 2023, [online](#).
- 19 CBA Resolution 23-02-A, [United Nations Convention on the Rights of the Child](#).