

## CCRC Submission: Child rights analysis of Bill C-28

### *Right to a health environment in Canada's Environmental Protection Legislation*

Prepared by Kathy Vandergrift

The Canadian Coalition for the Rights of Children (CCRC) appreciates the proposal in Bill C-28 to recognize the right to a healthy environment in Canada's Environmental Protection Legislation (CEPA). This begins to bring the legislation in line with Canada's obligations under the Convention on the Rights of the Child, which explicitly recognizes children's right to a healthy environment in Article 24, the article on the right to health.

We also appreciate the proposal to consider impacts for vulnerable groups in assessments and regulatory processes, as part of implementing the right to a healthy environment. But it is not clear that this includes consideration of stages of development, to reflect the reality that some forms of pollution do more harm to children, especially children in early stages of their development.

To more explicitly ensure that this legislation adequately protects the rights of children and fulfills Canada's duties under the Convention, we propose three ways to strengthen this legislation: (1) inclusion of a more specific recognition of Canada's obligations under the Convention; (2) inclusion of age and stages of development in the definitions and provisions relating to vulnerable groups; and (3) inclusion of a focused Child Rights Impact Assessment (CRIA) for proposals and issues that are likely to have a significant impact for children.

#### I. Age and stage of development as an important factor in environmental assessments

In Article 24, the Convention on the Rights of the Child explicitly extends the right to health and the duties of states to include "*taking into consideration the dangers and risks of environmental pollution*" (Article 24.2.c) as a component of the right to the "*enjoyment of the highest attainable standard of health.*" (Article 24.1) It is worth noting that the Convention does not limit obligations to a minimum standard for health; the standard is the highest attainable standard of health. Among the duties to take all appropriate measures to implement this right would be specific attention to impacts for children in the core mandate of CEPA to assess and regulate a wide variety of risks to the environment in which children grow up.

We note that the last review of CEPA by the Standing Committee on the Environment and Sustainability included explicit recognition that “*susceptibility can vary with the developmental stage of life*” and that “*children growing through many changes physically*” and pregnant women are “*windows of vulnerability*” that need to be considered in environmental assessments. (*Healthy Environment, Healthy Canada, Healthy Economy: Strengthening the Canadian Environmental Protection Act, 1999*: Eighth Report, Standing Committee on Environment and Sustainability, \_\_\_\_ 2017.

Internationally, the disproportional impact of pollution on children and the need to pay special attention to impacts for children in environmental legislation has been recognized by both the Committee on the Rights of the Child, in its General Comment 15 on the Right to Health, and by the Special Rapporteur on Human Rights Obligations and the Environment. In a January 2018 report to the UN Human Rights Council, the Rapporteur stated that “no group is more vulnerable than children, especially children under 5,” (p.15) and also that the cumulative effects of many forms of pollution increase over time, which also results in children being more affected than adults over time (p. 57).

## II. Children as Rights-holders in Environmental Legislation

CCRC agrees with recognizing the rights of every individual to a healthy environment, as proposed in Bill C-28. Because children are often not considered among rights-holders and they do not have a right to vote, we recommend that children and their right to a healthy environment in the Convention be explicitly recognized.

Given the greater impact of many pollutants for children, the greater susceptibility of children to such harms, and the potential for life-long harms, children are one of the vulnerable groups. The CCRC recommends explicit recognition of “stages of development” as a named consideration in order to ensure that age and stage of development are considered, as well as other factors that might be considered under vulnerable groups.

In addition, procedural elements of a rights-based approach should also be explicitly considered for children to give young people voice, in age-appropriate ways, in the decisions that affect the environment in which they live. Children are often invisible in these adult-focused processes.

Explicit recognition also implements the obligation of states to give top priority to the best interests of children, under Article 3 of the Convention. Explicit recognition is needed because differential impacts for children are often overlooked in adult decision-making processes.

### III. CCRC recommendations for Bill C-28

#### A. Recognize children's right to a healthy environment in the preamble and basic principles

The CCRC supports the proposed recognition “that every individual in Canada has a right to a healthy environment” in the preamble (Bill C-28, 2.1). We recommend that this article be expanded to also explicitly ground this legislation in Canada's obligation under the Convention on the Rights of the Child to “take into consideration the dangers and risks of environmental pollution” as part of fulfilling children's right to the “enjoyment of the highest attainable standard of health.”

Bill C-28 recognizes that the right to a healthy environment will be balanced with other considerations. The CCRC recommends that one of those considerations be the central obligation of Canada to give top priority to the best interests of children in all matters that affect their development.

To do that, the CCRC recommends that the following paragraph on balancing considerations be amended to include consideration of the best interests of children as an obligation, either in the list of the relevant factors or as a separate sub-clause.

***(2) Subsection 2(1) of the Act is amended by adding the following after paragraph (a.1):***

***(a.2) protect the right of every individual in Canada to a healthy environment as provided under this Act, which right may be balanced with relevant factors, including social, economic, health and scientific factors;***

#### B. Age and stages of development as conditions of vulnerability

The CCRC supports the proposed focus on vulnerable population groups (Bill C-28,4.2). We recommend the definition of vulnerability include explicit recognition of age and stage of development as a factor to be considered in assessments of potential impacts for vulnerable groups.

Related to this, the CCRC recommends that the bill require that the framework for implementation (5.2) , to be developed in the next two years, explicitly address how age and stages of development will be considered in all aspects of the framework, as essential to respect children's right to a healthy environment.

Also related to this, CCRC recommends that the provision mandating research studies (8.2.2) includes a reference to research impacts for different “stages of development” to ensure that appropriate attention is paid to researching differential impacts for children.

### C. Child Rights Impact Assessment (CRIA) included in Impact Assessment Processes

The CCRC recommends that the CEPA rules for the impact assessment process include specific provisions to consider potential impacts for children (73.1.a. and 76.1.2.). If a preliminary screening of any proposal or issue that falls under a CEPA review identifies potential impacts for children, the assessment process should include an identified process for a children's rights impact assessment to ensure consideration of all aspects of children's rights. This would ensure that the best interests of children are given due consideration under CEPA.