

Intersex Genital Mutilation in Canada: Update to LOI Report

Dear Committee on the Rights of the Child

We would like to express our grave concern regarding the Committee’s decision not to include IGM practices in the List of Issues for Canada. Accordingly, intersex children were not mentioned in the Replies to the LOI. The Committee thus misses a window of opportunity to improve the fate of intersex children in Canada.

1. UNHRC: Canada endorses calls to end harmful practices, ensure access to justice.....	1
a) UNHRC45 Statement, 01.10.2020.....	1
b) UNHRC48 Statement, 04.10.2021.....	1
2. IGM practices persist, no protections, Government fails to act.....	2
3. Canadian public health system pressuring adolescents to “consent” to IGM.....	3
4. Lack of independent data collection and monitoring persists.....	4
5. Obstacles to redress, fair and adequate compensation persist.....	6
6. 2021 Lawsuit challenging the Criminal Code explicitly allowing IGM.....	6
7. Suggested Questions for the dialogue.....	7
8. Suggested Recommendations.....	8

1. UNHRC: Canada endorses calls to end harmful practices on intersex children, ensure accountability and access to justice

a) UNHRC45 Statement, 01.10.2020

On occasion of the 45th Session of the Human Rights Council the State party supported a public statement calling to “*protect [...] intersex adults and children [...] so that they live free from violence and harmful practices. Governments should investigate human rights violations and abuses against intersex people, ensure accountability, [...] and provide victims with access to remedy.*”¹

b) UNHRC48 Statement, 04.10.2021

On occasion of the 48th Session of the Human Rights Council the State party supported a public follow-up statement reiterating the call to end harmful practices and ensure access to justice:

1 Statement supported by Canada (and 34 other States) during the 45th Session of the Human Rights Council on 1 October 2020, see UNHRC Session Report, p. 141, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session45/Documents/AUV_A_HRC_45_2.doc
Full statement, see <https://www.dfat.gov.au/international-relations/themes/human-rights/hrc-statements/45th-session-human-rights-council/joint-statement-led-austria-rights-intersex-persons>

*“Intersex persons also need to be protected from **violence** and States must ensure accountability for these acts. [...]*

*Furthermore, there is also a need to take measures to protect the **autonomy** of intersex children and adults and their rights to health and to physical and mental integrity so that they live free from violence and harmful practices. Medically unnecessary surgeries, hormonal treatments and other invasive or irreversible non-vital medical procedures without their free, prior, full and informed consent are harmful to the full enjoyment of the human rights of intersex persons.*

We call on all member states to take measures to combat violence and discrimination against intersex persons, develop policies in close consultations with those affected, ensure accountability, reverse discriminatory laws and provide victims with access to remedy.”²

2. IGM practices persist, no protections, Government fails to act

To this day **all forms of IGM practices remain widespread and ongoing** in Canada, persistently **advocated, prescribed and perpetrated** in state funded University Children’s Hospitals, **advocated and paid for by the State party** via the public health system **Medicare**.

All the **evidence of Canadian children’s hospitals offering IGM practices** documented in our NGO Report for LOI (p. 6-11) remains **unchanged**.

In addition, the **Montreal Children’s Hospital McGill** offers on its “Pediatric Urology” homepage:³

*“The Division of Pediatric Urology provides treatment **and reconstructive surgery for a wide variety of congenital and acquired genitourinary problems**. We treat congenital problems of the urinary tract such as [...] issues of the genital system of both boys and girls including **disorders of sexual differentiation, hypospadias, undescended testicles, hernias/hydroceles and circumcision.**”*

Further, the **Montreal Children’s Hospital McGill’s** Division of Urology prescribes in its **“guidebook” for parents “What you need to know about Hypospadias surgery”**, available both in French⁴ and English:⁵

*“The **treatment for hypospadias is surgery**. Surgery is done under general anesthesia. It is usually offered to **children between the ages of 6 and 24 months**. This is the ideal time for surgery because the penis is big enough. Also, **very young children do not remember the experience**. [...] Over 90% of boys with hypospadias will have the problem corrected in a single surgery. More severe forms of hypospadias may need more than one surgery. In such cases, the surgeries are usually done 6 to 12 months apart.”*

Similarly, the paediatric urology department of the **Quebec University Hospital** associated with the **Laval University** states on its **Guide for parents “Cures for hypospadias and chordae in**

2 Statement supported by Canada (and 52 other States) during the 48th Session of the Human Rights Council on 4 October 2021, <https://www.bmeia.gv.at/oev-genf/speeches/alle/2021/10/united-nations-human-rights-council-48th-session-joint-statement-on-the-human-rights-of-intersex-persons/>

3 <https://www.mcgill.ca/pediatricsurgery/divisions/urology>

4 https://www.hopitalpourenfants.com/sites/default/files/PDFs/hypospadias_mch_16_july2015_fr.pdf

5 https://www.thechildren.com/sites/default/files/PDFs/hypospadias_mch_16_july2015_en.pdf

children”:⁶

“Your child has had a hypospadias surgery

This surgery consists of reconstructing the urethra (the canal where urine passes) in order to centre the meatus (the opening) at the end of the penis, which can originally be found in different places on the penis.”

Last but not least, the **University of Toronto** and the affiliated **Hospital for Sick Children Toronto** are currently looking for a **“full-time paediatric urologist with a start date of January 2023”** as an **Assistant or Associate Professor for its Division of Urology**, stating:^{7 8}

“Our division provides care for neonates, children, and adolescents with a wide range of urological conditions including congenital abnormalities of [...] urinary tract, hypospadias, undescended testicles [...], but also rare conditions with high levels of complexity such as [...] disorders of sexual differentiation [...].”

3. Canadian public health system pressuring adolescents to “consent” to IGM

In addition to the **Canadian Criminal Code** still explicitly allowing IGM practices (see NGO Report for LOI, p. 11-13, as well as below, p. 6), a further aggravating circumstance contributing to the persistence of IGM is that the **Canadian public health system only pays for consensual intersex genital surgery for children until 18 years of age**, while adult intersex persons have to pay for consensual surgeries themselves, therefore **pushing intersex adolescents to quickly “consent” to unnecessary surgery**, as reported by Canadian IGM survivor Janik Bastien-Charlebois:⁹

“Shortly before my 17 birthday, my mom once told me, as we were driving in her car, that if I wanted a free surgery, I had to submit myself to one before I turned 18. Else it would be considered a cosmetic surgery and I would have to pay for it – something that would be pretty expensive to the point of being inaccessible for the young person I was. I was faced with an ultimatum. I did not desire surgery, but I was still unsure as to whether I would be loved as I was, and was afraid that finding that out after 18 would represent a risk. And then, wasn’t it what I had to do after all? «Sicknesses» and «malformations» are to be cured, not kept. And though I was offered a «choice», the very fact that it was offered where others are not conveys the message that it should be. The very fact that I had my clitoris touched and prodded in my youth had made me understand it was not entirely mine and that it would make sense that medicine remove whatever it is that it finds too much in it.

I was 17 when I went to see a doctor to have my genitals examined one last time, asking again if I «felt something». He told me that if I underwent the surgery, I would lose some sensation. I said fine. Sexuality was foreign to me, as I was submerged in a dominant and pervasive heterosexual culture. So yeah, «fine». And so I signed a consent form for a surgery at Sainte-Justine Hospital. I remember feeling uneasy about the terms, which were implying that that was my decision and my decision alone, castigating me in advance for doubts or second

6 https://www.chudequebec.ca/getmedia/946d7167-9ee4-433c-befe-154ff344a44d/823_09_007_hypospadias-chordee_pdf.aspx

7 <https://careers.insidehighered.com/job/2447321/assistantassociate-professor-paediatric-urology>

8 <https://mdwork.com/job/17078/pediatric-urology-at-the-hospital-for-sick-children-in-toronto/>

9 <https://stopigm.org/bearing-witness-to-igm-canada/>

<https://web.archive.org/web/20190624154540/https://montrealgazette.com/life/my-coming-out-the-lingering-intersex-taboo>

thoughts I could have. Dispossessed and overwhelmed, I went through the conformation machine like an automaton on rails.

The sickness of post-operative treatment and the pain of the wound hit hard. I never experienced such stabbing pains in my life, as nerves were dying out – nor was told I would be subjected to them. And I never expected my post-op genitals would look like a scary swollen «whatever» – nor was told they would look so. I remember one fleeting lucidity moment, as I lay on my bed on the first night after my surgery, looking at my hospital room ceiling thinking: «One day I'll have to deal with all of this». Self-protection is strong, however. It would not fully resurface until 18 years later, and then only in progressive steps.”

4. Lack of independent data collection and monitoring persists

The **Canadian Government still refuses to collect and disclose disaggregated data** on intersex persons and IGM practices, as summarised in a **2022 publication** in the **McGill Journal of Law and Health**, further noting a **single exception in Quebec** due to legal proceedings by an intersex advocate:¹⁰

*“It is difficult to pinpoint with certainty how many children in Canada undergo these surgeries each year, as **research on intersex issues is generally hindered by a lack of accessible health data**. In **Quebec**, however, an **access to information request** by one of the applicants in the *Egale* lawsuit [see below, p. 6] recently revealed that **over 1,385 genital surgeries were performed on children under the age of 14 since 2015, with 838 of these on children under two**. Over two thirds of the surgeries performed in Quebec were for **conditions that doctors do not define as differences of sex development**, as the sex of the child is not deemed ambiguous. Yet insofar as these surgeries involve normalizing children’s genitals—for instance, enabling boys to pee standing up—intersex activist groups view them **as falling under the umbrella of what they call intersex genital mutilation**.”*

In addition, a **2022 media report** gives **more detail on the types of IGM surgery** involved in Quebec, further quoting intersex advocates explicitly denouncing the practice as **“genital mutilation”**:¹¹

“‘Peeing standing up’

*According to RAMQ [Régie de l'assurance maladie du Québec] figures, **the most common procedure performed on children’s genitals is the repair of hypospadias**. These are boys whose urinary meatus does not open at the tip of the glans, but rather on the penis itself or in the scrotum. In many cases, the penis has a more or less pronounced curvature. **This accounts for 618 of the 838 surgeries performed in children under two years of age since 2015 and three quarters of the surgeries in 3 to 13 year olds**.*

For doctors, hypospadias does not fall into the category of variations in sexual development because, they say, the child’s sex is clear. But activists believe it is part of intersexuality because it involves different genitalia that are being pushed to be normalised.

10 Hillary Ball (28.02.2022), “The Push for Intersex Rights Recognitions in Canada”, McGill Journal of Law and Health, <https://mjlh.mcgill.ca/2022/02/28/the-push-for-intersex-rights-recognitions-in-canada/>

11 Jessica Nadeau (10.01.2022), “Plus de 1300 opérations sur les organes génitaux des enfants depuis 2015”, Le Devoir, <https://www.ledevoir.com/societe/sante/659280/societe-plus-de-1300-operations-sur-les-organes-genitaux-des-enfants>

Le Devoir met four **parents** of children in this situation. They say they were well informed by the medical team and were not pressured. They were told that they could wait until the child was able to make a decision for himself. **But they were told that the child would have no memory of this painful experience if they decided to have the operation before the age of two.**

Dr El-Sherbiny [a **paediatric urologist** at the **Montreal Children's Hospital (Centre universitaire de santé McGill (CUSM))**] confirms this argument and also mentions the risk of confusion for the child. 'If we let the child decide in adolescence, we have to imagine the impact it will have on him. **He acknowledges that in many cases, the main reason for parents is so that the boy can 'pee standing up' and 'for aesthetic reasons'.** [...]

Testicular removal and clitoroplasty

The **second most common operation is orchiectomy**, according to RAMQ figures. This involves **removing the testicles**. According to Dr. El-Sherbiny, the majority of these operations are performed on boys who are not intersex, but who are born with undescended or non-functioning testicles. These are then removed when there is a risk of cancer.

In some, much rarer cases, children will be born with external female organs and internal testicles. In such cases, doctors usually wait until the child is certain of its gender before performing such an operation, explains Dr El-Sherbiny.

'Traditionally, this surgery was linked to gender assignment,' says advocate and professor Janik Bastien Charlebois. 'If you were making little girls, you didn't want to keep internal testicles because you were afraid that pubertal development would go in a different direction. **Nowadays, doctors will generally cite a risk of cancer.'**

Other operations can be counted on the fingers of one hand. Since 2015, **less than five clitoroplasties** have been performed on children. The information from the RAMQ does not allow us to know under what circumstances they were performed. For his part, Dr Mohamed El-Sherbiny says he does not perform this type of surgery on young children and recommends waiting until the child reaches the age of legal consent, which is 14 years old.

There are also some rare **vaginoplasties**. For the creation of a non-existent vagina, the doctor waits until the child is 14 years old. But in some cases, the vagina is there, but sealed. He can then proceed. 'It's a reversible operation, and we can undo it easily if the child decides later to be a boy,' says Dr El-Sherbiny.

Labioplasty, to reduce their volume, is also a less frequent operation (**less than five**) since **2015 in children under 2 years of age, but there are 30 in children aged 3 to 13 years.**"

Yet another **2022 media report** notes the **considerable difficulties in obtaining above numbers** and the **interest of the medical establishment in keeping statistics secret:**¹²

"The Solidarity MP [Manon Massé], who supported advocate and sociology professor Janik Bastien Charlebois at the Université du Québec à Montréal in her application under the Access to Information Act to obtain data on the number of surgeries performed on children,

12 Jessica Nadeau (11.01.2022), "Québec se dit sensible aux réalités intersexes", *Le Devoir*, <https://www.ledevoir.com/societe/659706/quebec-se-dit-sensible-aux-realites-intersexes>

notes that it was *‘quite a headache’ to obtain these figures, which are listed according to specific codes for each procedure.*

She also recalls that these figures have long been the ‘preserve’ of doctors and is pleased to see that the veil is slowly being lifted on this crucial information. ‘If we were able to agree on common terms to be able to have the data, it would be something interesting.’

The Collège des médecins and the other opposition parties in Quebec City did not wish to comment on the issue.”

5. Obstacles to redress, fair and adequate compensation persist

In addition to the **Canadian Criminal Code still explicitly permitting IGM practices** (see NGO Report for LOI, p. 11-13, as well as below), also in **Canada the statutes of limitation** still prohibit survivors of early childhood IGM practices to call a court, because persons concerned often **do not find out** about their medical history until much later in life, and **severe trauma** caused by IGM practices often prohibits them to act in time once they do.¹³ So far, in Canada there is still **no case** of a victim of IGM practices succeeding in going to court, despite survivors criticising the practice in public.

6. 2021 Lawsuit challenging the Criminal Code explicitly allowing IGM

As shown in our NGO Report for LOI (p. 11-13), the legal situation in Canada is particularly horrifying, as not only there are **no protections for intersex children from harmful practices**, but in contrary the **Canadian Criminal Code explicitly allows IGM**, notably within the very **Section that criminalises FGM (!)**.

Specifically, the definition of “*aggravated assault*” under **Section 268 of the Criminal Code**¹⁴ contains in Section **268 (3) (a)** an exemption that **explicitly legalises IGM “for the purpose of [a] [...] person having [...] [a] normal sexual appearance [...]”**.

Therefore, it’s very welcome that in June 2021 two Canadian intersex advocates and IGM survivors, **Morgan Holmes** and **Janik Bastien-Charlebois**, together with NGO **EGALE Canada** filed a **Lawsuit at the Superior Court of Justice Ontario**¹⁵ aimed at **nullifying** above mentioned exemption “*permit[ting] state-sanctioned mutilation of the genitalia of intersex infants and children, which would otherwise amount to aggravated assault*” (para. 60) on **constitutional grounds**, further referring to Canada’s International Treaty obligation, including the **Convention on the Rights of the Child (CRC)** (para 109), and consistently describing involuntary intersex surgery as “*genital mutilation*” (see paras 9, 26, 53, 60, 61, 62, 89, 102, 104, 105, 106).

Also elsewhere, **Canadian intersex advocates and NGOs** consistently refer to involuntary intersex surgery as “*Intersex Genital Mutilation (IGM)*”.^{16 17 18 19 20 21 22 23 24 25}

13 Globally, no survivor of early surgeries **ever** managed to have their case heard in court. All relevant court cases (3 in Germany, 1 in the USA) were either about surgery of adults, or initiated by foster parents.

14 <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-268.html>

15 <https://egale.ca/wp-content/uploads/2021/06/EGALE-2021-06-15-FILED-Notice-of-Application.pdf>

16 Hillary Ball (28.02.2022), “The Push for Intersex Rights Recognitions in Canada”, McGill Journal of Law and Health, <https://mjlh.mcgill.ca/2022/02/28/the-push-for-intersex-rights-recognitions-in-canada/>

17 Jessica Nadeau (10.01.2022), “Plus de 1300 opérations sur les organes génitaux des enfants depuis 2015”, Le

However, when confronted with this Lawsuit, and despite the longstanding criticism of the exception clause in Section 268 (3) (a) of the Criminal Code explicitly legalising IGM practices (see NGO Report for LOI, p. 11-13), so far the **Canadian Government refuses to act**, or even to take an official position:²⁶

“Both Justice Minister David Lametti’s and Diversity Minister Bardish Chagger’s offices avoided giving definitive statements of support one way or another when asked about EGALE Canada’s recent court challenge.”

It is our understanding that the **Lawsuit is still underway**, with the court currently inviting **expert testimonies**.

Conclusion: We would therefore like to **urge the Committee** to unmistakably recommend the Canadian Government to **urgently repeal the exception clause in Section 268 (3) (a) of the Criminal Code** explicitly legalising IGM practices, as it is clearly **not in line with CRC Art. 24(3) and CRC-CEDAW JGC 18/31** “on harmful practices”.

7. Suggested Questions for the dialogue

Harmful practices: Intersex Genital Mutilation

- **Please provide data on irreversible medical or surgical treatment of intersex children, disaggregated by type of intervention and age at intervention, including on hypospadias “repair”.**
- **Which criminal or civil remedies are available for intersex people who have undergone involuntary sterilising procedures or unnecessary and irreversible medical or surgical treatment when they were children, and are these remedies subject to any statute of limitations?**
- **Does the State party plan to amend or repeal Subsection 268 (3) (a) of the Criminal Code explicitly legalising IGM practices, and if yes, by when?**

Devoir, <https://www.ledevoir.com/societe/sante/659280/societe-plus-de-1300-operations-sur-les-organes-genitiaux-des-enfants>
 18 https://adobeindd.com/view/publications/3677a87d-c144-483d-a0e5-bac1ad7d59a8/kq4j/publication-web-resources/pdf/Intersex_Rights_in_Canada.pdf
 19 <https://egale.ca/egale-in-action/intersex-awareness-day/>
 20 <https://egale.ca/egale-canada-urges-the-federal-government-to-meet-domestic-and-international-human-rights-requirements-of-intersex-people-on-international-intersex-awareness-day/>
 21 <https://impactethics.ca/2020/04/15/covid-19-intersex-and-essential-medical-care/>
 22 <https://ottawacitizen.com/news/national/justice-for-intersex-people>
 23 <https://www.mcgilldaily.com/2021/11/proposed-bill-2-faces-resistance/#close-modal>
 24 <https://openjournals.uwaterloo.ca/index.php/cgjsc/article/download/3754/4705/20155>
 25 https://ruor.uottawa.ca/bitstream/10393/37597/3/Orr_Celeste_E_2018_thesis.pdf
 26 <https://www.hilltimes.com/2021/08/04/normalizing-surgeries-on-intersex-infants-amounts-to-torture-says-new-legal-challenge-but-ministers-wont-commit-to-change/309818>

8. Suggested Recommendations

The Rapporteurs respectfully suggest that, with respect to the treatment of intersex persons in Canada, the Committee includes the following measures in their recommendations to the Canadian Government (in line with this Committee's previous recommendations on IGM practices).

Harmful practices: Intersex Genital Mutilation

With reference to the joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2014) on harmful practices, and taking note of target 5.3 of the Sustainable Development Goals, the Committee urges the State party to:

- **Explicitly prohibit under criminal law the performance of unnecessary medical or surgical treatment on intersex children where those procedures may be safely deferred until children are able to provide their informed consent, and provide reparations for children who received unnecessary treatment, including by extending the statute of limitations.**
- **Amend or repeal Subsection 268 (3) (a) of the Criminal Code explicitly legalising IGM practices.**
- **Provide adequate health care and psychosocial support to intersex persons who have been subjected to intersex genital mutilation.**

Thank you for your consideration and kind regards,

Daniela Truffer & Markus Bauer (StopIGM.org / Zwischengeschlecht.org)