



THE CANADIAN  
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March 31, 2023

Emails: [minister-ministre@wage-fegc.gc.ca](mailto:minister-ministre@wage-fegc.gc.ca)

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

Dear Minister Ien:

**Re: Consultation on non-consensual, medically unnecessary surgeries on intersex children**

We are writing on behalf of the CBA's Sexual Orientation and Gender Identity Community Section (SOGIC), Health Law Section, Criminal Justice Section and Child and Youth Law Section (the CBA Sections) to request that the Government of Canada launch a public consultation on non-consensual, deferrable and medically unnecessary surgeries on intersex children.

The CBA is a national association of 37,000 members, including lawyers, notaries, academics and students across Canada, with a mandate to seek improvements in the law and the administration of justice. SOGIC works to address the needs and concerns of lesbian, gay, bisexual, transgender two-spirited, queer and intersex (2SLGBTQI+) people in the CBA. The Health Law Section addresses legal issues relating to health care, health care institutions and the health professions. The Criminal Justice Section includes lawyers specializing in criminal law, and a balance of Crown and defense lawyers. The Child and Youth Law Section coordinates activities, provides advice and responds to law, policy and legal research developments on matters affecting Canadian children.

In 2019, CBA Sections wrote to offer input to the House of Commons Health Committee study of 2SLGBTQI+ health in Canada.<sup>1</sup> The CBA Sections added their voice to other 2SLGBTQI+ organizations to recommend, among other things, amendments to the *Criminal Code* to ban non-consensual and medically unnecessary surgeries on intersex children until they can meaningfully participate in the decision – except where there is immediate risk to the child's health and medical treatment cannot be delayed.

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<sup>1</sup> CBA, LGBTQI2S Health in Canada, [online](#).

The CBA Sections commend the federal government for the important progress in the last two years. We welcomed the news in Canada's first Federal 2SLGBTQI+ Action Plan<sup>2</sup> that Justice Canada would launch a public consultation on criminal law reform issues identified by 2SLGBTQI+ communities, including:

1. the criminalization of purely cosmetic surgeries on intersex children's genitalia until they are mature enough to consent; and
2. limiting prosecutions of persons who fail to disclose their HIV status before otherwise consensual sexual activity.

The CBA Sections are pleased that Justice Canada followed through in January 2023 with organizing public consultation on criminal law reform regarding HIV non-disclosure.

However, the public consultation on non-consensual and medically unnecessary surgeries on intersex children has yet to be announced. How to deal with the profound harm that can result from surgical interventions to "correct" the bodies of intersex children is a complex issue that deserves thoughtful and level-headed input from various stakeholders. The CBA Sections ask that Justice Canada organize a public consultation on this important human rights and children's rights issue. We urge you to start the consultations in time for an announcement of corresponding reform initiatives by Intersex Awareness Day on October 26, 2023.

The federal government should also consider adopting the "non-consensual, deferrable and medically unnecessary surgeries" terminology instead of "purely cosmetic surgeries", as used in the 2SLGBTQI+ action plan. These surgeries are non-consensual, deferrable and medically unnecessary alterations of an infant's genitalia. They are not time sensitive. They deny the affected child the opportunity to develop their own sense of sex, gender, gender identity and gender expression, and the autonomy to determine what if any surgical procedures they want or need to help them achieve embodied coherence. The motivation for these procedures often relate to the "social emergency" of immediate indeterminacy of the infant's sex/gender. Framing the issue as cosmetic in nature also has implications for the trans community, for whom surgeries to align primary and secondary sex characteristics with gender identity are needed, and understood to be medically necessary, for the person's sense of self, embodied wholeness, safety, integrity and embodied recognition, but are often maligned as "purely cosmetic"

Kind regards,

*(original letter signed by Véronique Morissette for Hossein Moghtaderi, Valerie D. Wise, Sarah Dennene and Kevin B. Westell)*

Hossein Moghtaderi  
Chair, Sexual Orientation and Gender  
Identity Community Law Section

Valerie D. Wise  
Chair, Health Law Section

Sarah Dennene  
Chair, Child and Youth Law Section

Kevin B. Westell  
Chair, Criminal Justice Section

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<sup>2</sup> See Women and Gender Equality Canada, Canada's first 2SLGBTQI+ action plan ... Building our future, with pride, August 2022, [online](#).

- cc. The Honourable Sean Casey, M.P., Chair, Standing Committee on Health (email: [sean.casey@parl.gc.ca](mailto:sean.casey@parl.gc.ca))  
The Honourable Blake Desjarlais, M.P., Co-chair, Parliamentary Caucus for 2SLGBTQI+ issues (email: [blake.desjarlais@parl.gc.ca](mailto:blake.desjarlais@parl.gc.ca))  
The Honourable René Cormier, Senator, Co-chair, Parliamentary Caucus for 2SLGBTQI+ issues (email: [Rene.Cormier@sen.parl.gc.ca](mailto:Rene.Cormier@sen.parl.gc.ca))  
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