

**International NGO Council on Genital Autonomy  
Supplementary Country Report Submission on Canada  
to the U.N. Committee on the Rights of the Child**

In advance of the 5th and 6th Periodic Report on Canada due by 11 July 2018



Information booth at World Pride event in Toronto, Ontario June 2014

## **The International NGO Council on Genital Autonomy**

The International NGO Council on Genital Autonomy (INGOGCA) was established in 2016 to promote the consistent application of existing principles that every child is an independent holder of rights and that all children everywhere should be protected from genital cutting that is not medically necessary.

The International NGO Council includes representatives from many nations and works collaboratively with major national and international human rights NGOs. The International NGO Council is working with partners within member states to support Supplementary NGO Reports to the UNCRC of the status of the genital autonomy of children and recommends further action consistent with the principles of safeguarding the bodily integrity of each child.

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# 1 INTRODUCTION AND EXECUTIVE SUMMARY

This is an NGO Supplementary Report in response to the Concluding Observations of the Committee on the Rights of the Child (the "Committee") to the Member State of Canada on 5 October 2012<sup>1</sup> and in anticipation of the combined fifth and sixth Report of Canada to the CRC due by 11 July 2018.

This report was authored by the International NGO Council on Genital Autonomy, which was established in 2016 to support the UN Committee on the Rights of the Child (UNCRC) in a consistent application of existing principles that every child is an independent holder of rights and that all children everywhere should be protected from genital cutting that is not medically necessary. The International NGO Council includes representatives from six nations and works collaboratively with major national and international human rights NGOs. The International NGO Council works with partners within member states to provide the available evidence to the UNCRC of the status of the genital autonomy of children and recommends further action consistent with the principles of safeguarding the whole bodily integrity of each child.

This Supplementary Report is directed to the issues raised in Paragraph 52 to the Concluding Observations under the heading "Freedom of the child from all forms of violence".

In view of the recommendations of the United Nations Study on violence against children (A/61/299), the Committee recommendation was that the State party prioritize the elimination of all forms of violence against children. The Committee further recommended that the State Party take into account General Comment No 13 on "The right of the child to freedom from all forms of violence" (CRC/C/GC/13, 2011), and in particular:

- (a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;
- (b) Adopt a national coordinating framework to address all forms of violence against children;
- (c) Pay particular attention to the gender dimension of violence; and
- (d) Cooperate with the Special Representative of the Secretary-General on violence against children and relevant United Nations institutions.

The Parliament of the Council of Europe made a similar recommendation to its own Member States in 2013.<sup>2</sup>

The principle of non-discrimination in the Universal Declaration of Human Rights (UDHR) has been replicated in other human rights instruments since 1948.<sup>3</sup> It is included in Article 2 of the United Nations Convention on the Rights of the Child (UNCRC). It is essential that the Committee remains focussed on the "rights" under consideration: those of the individual child. In keeping with Article 18, the Committee should not be distracted by competing interests from parents, families or communities.

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<sup>1</sup> Committee on the Rights of the Child. (2012). Concluding observations: Canada. Retrieved from [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-CAN-CO-3-4_en.pdf)

<sup>2</sup> Resolution 1952. (2013). Retrieved from <http://www.assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20174&lang=en>

<sup>3</sup> For example: ICCPR Article 2.1; ICESCR Article 2.1.

The Member State of Canada allows non-therapeutic circumcision and genital cutting of male and intersex children while simultaneously outlawing female genital mutilation/cutting (FGM/C) of all kinds, including forms that are less damaging than the former. UDHR Article 2.2 ICCPR Article 24.1.3, and CRC Article 2.4 ensure the child's right to all appropriate protection without regard to sex. Nontherapeutic childhood male circumcision discriminates on the basis of sex. In doing so, it violates constitutional guarantees of equal protection. It is readily accepted that medically unnecessary cutting and thus harm to the genitals of an infant or child female is a serious breach of her human rights.

In recent years, genital cutting of intersex minors has been increasingly recognised by the UN as a human rights violation. A 2013 report by the Special Rapporteur on Torture recognizing intersex genital cutting as a potential human rights violation<sup>4</sup> was followed by a 2015 UN meeting in Geneva to address human rights violations against intersex persons, including intersex genital cutting.<sup>5</sup> Issues about ethics and consent to non-therapeutic surgery on intersex children were comprehensively examined in an NGO Report to the 2nd, 3rd and 4th CRC Reports of Switzerland in 2014.<sup>6</sup> In 2017 the European Parliament adopted a resolution calling for member States to prevent, ban, and prosecute female genital cutting and genital mutilation affecting intersex persons.<sup>7</sup>

In 2007 the CRC's General Comment No.8 accepted that "all forms of violence against children" should be eliminated, despite faith-based justifications raised for parental punishment.<sup>8</sup> It is noted that, despite Canada's commitments under Article 19 of the CRC, corporal punishment of children continues to be legally permitted under section 43 of the Criminal Code of Canada.<sup>9</sup>

In 2012 the NGO Council on Violence Against Children report on "Harmful practices based on tradition, culture, religion or superstition" said of child male circumcision

...a children's rights analysis suggests that non-consensual, non-therapeutic circumcision of boys, whatever the circumstances, constitutes a gross violation of their rights, including the right to physical integrity, to freedom of thought and religion and to protection from physical and mental violence.<sup>10</sup>

By General Comment 13 the CRC now interprets the words in Article 19(1) "all forms of violence" to have "No exceptions" and includes all forms of harmful practices in the legal analysis of Article 19.<sup>11</sup> On any measure, non-consensual, non-therapeutic genital

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<sup>4</sup> Human Rights Council. (2013). Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment. Juan E. Mendez. United Nations Document No. A/HRC/22/53, paragraphs 76 and 88. Retrieved from [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

<sup>5</sup> Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights. (2015). Opening remarks at the expert meeting on ending human rights violations against intersex persons. Retrieved from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16431&LangID=E>

<sup>6</sup> Zwischengeschlecht. (2014). NGO Report to the 2nd, 3rd and 4th Periodic Report of Switzerland on the Convention on the Rights of the Child (CRC). Retrieved from [http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM\\_v2.pdf](http://intersex.shadowreport.org/public/2014-CRC-Swiss-NGO-Zwischengeschlecht-Intersex-IGM_v2.pdf)

<sup>7</sup> European Parliament. (2017). Resolution 2016/2096(INI). Retrieved from <http://bit.ly/2nXWR8d>

<sup>8</sup> CRC Article 19; General Comment on Violence Against Children 18.4.11, Document CRC/C/GC8, para 29. Retrieved from [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)

<sup>9</sup> Criminal Code of Canada, Section 43 Retrieved from <http://laws-lois.justice.gc.ca/eng/acts/C-46/page-7.html#h-11>

<sup>10</sup> International NGO Council on Violence Against Children. (2012). Violating children's rights: harmful practices based on tradition, culture, religion or superstition. Retrieved from: [http://www.crin.org/docs/InCo\\_Report\\_15Oct.pdf](http://www.crin.org/docs/InCo_Report_15Oct.pdf)

<sup>11</sup> CRC Article 19; General Comment on Violence Against Children 18.4.11, Document CRC/C/GC8, para 29. Retrieved from [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf)

cutting of all children is “a form of violence” and a breach of each child’s fundamental human rights. The ritual genital cutting of a child is done without medical need and without the patient’s own informed consent.

This Supplementary Report therefore argues that Canada should transparently and fairly reconcile its protection of female children against non-therapeutic genital surgery to male and intersex children.

In spite of due diligence by the International NGO Council on Genital Autonomy, there is limited available information on the scope of this issue within Canada, due directly to the lack of regulation as well as the lack of monitoring of short- and long-term risks. As such, a necessary step by Canada will be research and reporting of the prevalence of non-therapeutic male genital cutting (circumcision), the nature and scope of adverse events associated with it, and its financial and personal costs. This Supplementary Report seeks to place before the CRC and the State of Canada conclusions drawn from research specific to Canada.

## **2 PUBLICLY AVAILABLE DATA ON CIRCUMCISION PRACTICE, COST, AND INCIDENCE OF ADVERSE EVENTS IN CANADA**

The medicalized genital cutting of infants and children was first promoted in Canada during the mid to late 19th century. Doctors encouraged the genital cutting of both male and female children to prevent masturbation as well as various diseases like epilepsy and tuberculosis.<sup>12</sup> In 1875, the American Medical Association published an article by Lewis A. Sayre, who stated that the male foreskin caused clubfoot, curvature of the spine, and paralysis of the bladder.<sup>13</sup> A medical bulletin published in 1890 announced that circumcision cured blindness, deafness, and dumbness.<sup>14</sup>

Somerville stated, “As medical knowledge about infant male circumcision and, therefore, its medical justification changed, the ethics changed”.<sup>15</sup> The Member State provides an excellent example of such a change. In 1975, the Canadian Paediatric Society (CPS) issued a position statement regarding non-therapeutic male infant circumcision, noting “there is no medical indication for circumcision during the neonatal period”. The CPS described neonatal circumcision as “a mutilative operation of questionable benefit”, and encouraged a sharp decrease in the percentage of infants being circumcised.<sup>16</sup> Canadian provinces began removing male infant circumcision from medical coverage and the rates of its incidence began to fall dramatically.<sup>17</sup> The CPS’ 1975 statement was reaffirmed in 1996, when the CPS stated, “Circumcision of newborns should not be routinely performed”.<sup>18</sup> In 1997, non-therapeutic genital cutting of female minors was

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<sup>12</sup> Darby, R. (2005). *A surgical temptation: the demonization of the foreskin and the rise of circumcision in Britain*. Chicago, IL: University of Chicago Press.

<sup>13</sup> International Coalition for Genital Integrity. (2011). *The medicalization of circumcision*. Retrieved from <http://www.icgi.org/medicalization>

<sup>14</sup> Paige, K. (1978). *The ritual of circumcision*. Retrieved from <http://www.noharm.org/paige.htm>

<sup>15</sup> Somerville, M. (1958/2000). *The ethical canary: science, society and the human spirit*. Toronto, ON, Canada: Penguin.

<sup>16</sup> Canadian Paediatric Society News Bulletin Supplement 1975; Volume 8 Number 2: Pages 1-2. <http://www.cirp.org/library/statements/cps1975/>

<sup>17</sup> The Gazette. (2006). <http://www.cirp.org/news/2006-03-23montrealgazette/>

<sup>18</sup> Fetus and Newborn Committee, Canadian Paediatric Society. (1996). Neonatal circumcision revisited. (CPS) *Canadian Medical Association Journal* 1996;154(6):769-80.



criminalized in Canada.<sup>19</sup> However, the same explicit legal protection has not yet been enacted for intersex children or male children.

Since then, strong cautions have been issued by medical regulatory bodies, such as the College of Physicians and Surgeons of Saskatchewan, which stated, “In any dialogue you have with the patients about potential circumcision of newborn male infants, be sure that you accurately and effectively convey the message that this is not a recommended procedure”.<sup>20</sup> The College of Physicians and Surgeons of British Columbia (2009) provided the following standard of practice: “Routine infant male circumcision is an unnecessary and irreversible procedure. This procedure should be delayed to a later date when the child can make his own informed decision”.<sup>21</sup> However, despite such clear guidance from medical organizations within Canada, a survey of Canadian maternity practices conducted in 2006-2007 by the national public health agency found a newborn circumcision rate of 31.9%.<sup>22</sup>

The medical discouragement of infant circumcision in Canada and delisting from provincial insurance coverage for the surgery has had a regrettable unintended outcome: the rise of controversial and prolific circumcisers engaging in circumcision marketing tactics that have resulted in multiple public protests and formal complaints.<sup>23 24 25 26 27</sup>

There is no evidence to support that the Member State compiles or maintains data sets in relation to circumcisions performed by qualified medical professionals, religious practitioners, and/or lay people, documenting incidence, date, typology, technique, haemorrhage, other adverse events, and follow-up. Moreover, although an intersex child is born every two days in the Member State, statistically representative data on intersex people is lacking as are long-term longitudinal studies on the psychological and physical impact of various treatment models on intersex people.<sup>28</sup> Furthermore, many doctors, parents and individuals make decisions about medical care, such as genital surgery, that are not evidence-based.<sup>29</sup>

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<sup>19</sup> Bill C-27. Retrieved from <http://www.parl.ca/DocumentViewer/en/35-2/bill/C-27/royal-assent/page-11>

<sup>20</sup> Kendel, D. A. Caution Against Routine Circumcision of Newborn Male Infants. Retrieved from <http://www.cirp.org/library/statements/sask2002/>

<sup>21</sup> College of Physicians and Surgeons of British Columbia. Circumcision (Infant Male) Professional Standards and Guidelines. Retrieved from <http://www.cirp.org/library/statements/cpsbc2009/cpsbc-circ-stmt2009.pdf>

<sup>22</sup> Public Health Agency of Canada. Data Tables — The Canadian Maternity Experiences Survey. Retrieved from <http://www.phac-aspc.gc.ca/rhs-ssg/pdf/tab-eng.pdf>

<sup>23</sup> Intact Wiki. (2015). Neil Pollock. Retrieved from [http://intactwiki.org/wiki/Neil\\_Pollock](http://intactwiki.org/wiki/Neil_Pollock)

<sup>24</sup> CircWatch. (2013). Stefanie Green. Retrieved from <http://circwatch.org/tag/stefanie-green/>

<sup>25</sup> Worldwide Day of Genital Autonomy Demonstration. (2014). Retrieved from <https://www.youtube.com/watch?v=A2BMqdsxwa8>

<sup>26</sup> Neil Pollock Circumcision Clinic Protest. (2012). Retrieved from [https://wn.com/neil\\_pollock\\_circumcision\\_clinic\\_protest](https://wn.com/neil_pollock_circumcision_clinic_protest)

<sup>27</sup> Loewen, J. and Harrison, D. (2003). College of Physicians and Surgeons of British Columbia complaints. Retrieved from <http://courtchallenge.com/letters/bccoll3.html>

<sup>28</sup> Rainbow Health Ontario. (2011). Intersex Health. Retrieved from [www.rainbowhealthontario.ca/wp-content/uploads/woocommerce\\_uploads/2014/08/Intersex.pdf](http://www.rainbowhealthontario.ca/wp-content/uploads/woocommerce_uploads/2014/08/Intersex.pdf)

<sup>29</sup> Ibid.

### **3 DOMESTIC & INTERNATIONAL LAW OF CANADA AS IT APPLIES TO CIRCUMCISION OF MINORS**

#### **CANADIAN CHARTER OF RIGHTS AND FREEDOMS**

The Canadian Charter of Rights and Freedoms (“the Charter”) is embodied as Part I of the Constitution Act, 1982. All Canadian laws, whether federal or provincial, must comply with the Charter. By Section 32 of the Constitution Act it applies to the Parliament and government of Canada and to the legislature and government of each province.

The Charter contains a number of pertinent sections.

Section 2 of the Charter guarantees “Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.”

Section 7 of the Charter guarantees “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

Section 15 of the Charter guarantees “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Section 24 of the Charter provides as follows: “Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.”

Section 28 of the Charter reads as follows: “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.”

There is nothing in the Charter that provides a lower age limit to the rights set out, so prima facie each Article applies equally to babies, children, adolescents, and parents.

However, in an action by an individual challenging the exercise of a power by a hospital, a professional regulatory body or a Provincial Government, the Charter operates to limit or strike down specific laws and regulations of Provinces and the National Government that are incompatible with or infringe upon the Rights and Freedoms. Section 24 (above) expressly provides for an application to a court by a person whose rights or freedoms have been infringed or defined. This might include an adult who is prohibited from carrying out FGM where that law conflicts with their rights under Section 2, or a child who as an adult seeks a declaration that the selective absence of a prohibition against their childhood circumcision infringed his rights under Section 15.



It is arguable that prosecution under a law that prohibits parents with a religious belief in the necessity for female genital mutilation (FGM) discriminates against that parent to the extent that it favours the parent who undertakes medically unnecessary male circumcision (MGM) for religious reasons. Conversely, a Court considering in a civil or criminal suit whether male circumcision conducted for any reason infringes the rights of the male child would have to consider whether exercising that child's right to protection discriminates against him by prohibiting analogous procedures on a female child.

What triggers the operation of the Charter is an action against a Government or government agency or a prosecution or other action against a parent of a child undergoing CGC/C. The Constitutional issue is raised by giving notice of a Constitutional question in a case under s.109 of the Courts of Justice Act.

The questions arose in an application in the Ontario Health Professional Appeal and Review Board<sup>30</sup>. In a case where a 7-day old boy died as the result of urethral meatus secondary to MGM/C, application was made for review of a decision of the Complaints Committee of the College of Physicians and Surgeons of Ontario to dismiss a complaint against the doctor who performed the procedure. The Board determined that the Applicant (who was neither the child nor a parent of the child) lacked legal standing to bring the complaint, as its own rights had not been infringed. It is not known why the parents did not pursue their own complaint or take their own action. Without standing, it was not possible for the Applicant in that case to appeal the Board's decision to the Divisional Court.

In dismissing the complaint for this reason the Board found that MGM/C without use of anaesthesia was "in accordance with the standard of practice in Ontario"; that it was not practical for the doctor to have kept the baby under observation to ensure his capacity to void urine despite urethral meatus arising from the procedure; and that it was not unethical for the doctor to have undertaken the procedure when he had the consent of the parents. Much of the ethical argument in this individual case rested on generalised professional views of what was "routine" and "ethical" without any statistical analysis of public data of the frequency and outcomes of MGM/C.

It is submitted that this reveals a gap in the data available by which to measure the professional justification for conducting these procedures. The case also demonstrates an assumption that MGM/C in itself is not harmful while all forms of FGM/C are presumptively harmful. The Charter itself fails to provide active protection to children undergoing harmful practices or traditional practices cloaked by the rubric of professional regularity.

## **CANADIAN CRIMINAL LAW**

Canada's criminal law is set out in the Criminal Code of Canada.

In the spring of 1997, the Federal Government amended the Criminal Code of Canada to classify FGM/C as aggravated assault under section 368(3), which reads:

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<sup>30</sup> G.C.D., M.D. and Dr X, M.D., File #08-CRV-0253, 9 November 2010.

(3) For greater certainty, in this section, “wounds” or “maims” includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where

- (a) a surgical procedure is performed, by a person duly qualified by provincial law to practise medicine, for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or
- (b) the person is at least eighteen years of age and there is no resulting bodily harm. [Emphasis Added]

While the 1997 amendment to the Criminal Code was a step in the right direction, it is problematic for several reasons.

Firstly, the language of the section, on its face, appears to permit forced genital cutting of minor girls, so long as it is “for the benefit of the physical health of the person”, or even the “normal sexual appearance of the person”. Notably, the section does not go on to clarify what constitutes a “benefit to the physical health”, or “normal sexual appearance”, or who the appropriate decision makers are in those respects.

The “normal sexual appearance” language also appears to leave the door open for the forced genital cutting of intersex children, for the express purpose of giving them “normal sexual appearance”. However, the range of appearance of healthy genital tissue across the intersex spectrum is very wide, and cutting sensitive sexual tissue to re-mould a child’s genitals into a stereotypically more male or female appearance (at either end of the spectrum) is harmful: not only does it cause physical damage to genital tissue the child or the later adult may value highly, but it also reinforces a narrow and inaccurate binary conception of sex and gender, which may have adverse consequences for the psychosexual welfare of intersex children and adults. Finally, by specifying “labia majora, labia minora or clitoris”, rather than broader terms such as “sexual/reproductive organs” or “genitalia”, or even “body parts”, the section deliberately excludes the criminalization of the forced cutting of the male genitalia of boys and intersex children, which is discriminatory on its face.

By criminalizing FGM/C to the exclusion of male and intersex children, the Criminal Code fails to account for both sections 7 and 15 of the Charter.

Unfortunately, Canada’s criminal law seems to reflect the prevailing cultural opinion in the country that, while forced genital cutting of male and intersex children for purely reasons that are cosmetic, cultural, or otherwise (or at least not worthy of punishment or condemnation), whereas the forced cutting of “normal” female genitalia for cosmetic purposes constitutes a serious criminal offence punishable by incarceration.

## **HEALTH CARE REGULATION**

Criminal law in Canada is under the jurisdiction of the federal government, while health care falls under the jurisdiction of the provinces. Male circumcision is essentially unregulated in the province of Ontario.

The *Health Professions Act* prohibits defined “controlled acts” as follows:

**27 (1)** No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,  
(a) the person is a member authorized by a health profession Act to perform the controlled act; or  
(b) the performance of the controlled act has been delegated to the person by a member described in clause (a). 1991, c. 18, s. 27 (1); 1998, c. 18, Sched. G, s. 6.

The “controlled acts”, listed in subsection 27(2), include “Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.”

Male circumcision would evidently fall under this description, as it involves surgically removing a large portion of healthy tissue, including mucous membrane. However, the regulations under the Act provide an explicit exemption for this practice; Section 9 of the Regulations states “Male circumcision is an activity that is exempt from subsection 27 (1) of the Act if the circumcision is performed as part of a religious tradition or ceremony.”

Meanwhile, the College of Physicians and Surgeons of Ontario has categorically determined that “The performance of, or referral for, FGC/M [female genital cutting/mutilation] procedures by a physician will be regarded by the College as professional misconduct” and that “The performance of FGC/M procedures on a female under the age of 18 by any person may constitute child abuse”.<sup>31</sup>

The same policy also sets out reporting requirements for physicians in Ontario: “who have reasonable grounds to believe that an FGC/M procedure has been performed on, or is being contemplated for, any female under the age of 18, must notify the appropriate child protection authorities, regardless of where the procedure has been or will be undertaken.”

Other provinces and territories in Canada appear to lack any regulation whatsoever regarding male circumcision. Throughout Canada, circumcision of male infants and children is treated as parental decision, allowing parents to provide proxy consent on behalf of the child.

Generally, parents may provide consent for medically indicated procedures on behalf of their children, if the child is not old enough to decide. Otherwise, the preference is to allow the child to make their own decision. However, male circumcision is a unique exception, in that even in cases where the procedure is not medically indicated, medical practitioners will perform the surgery based on the parent’s cultural, religious or “family tradition” rationale.

The Canadian Pediatric Society’s most recent policy on newborn male circumcision, initially acknowledges “In most jurisdictions, authority is limited only to interventions deemed to be medically necessary. In cases in which medical necessity is not established or a proposed treatment is based on personal preference, interventions should be deferred until the individual concerned is able to make their own choices

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<sup>31</sup> College of Physicians and Surgeons of Ontario. (2011). Female Genital Cutting (Mutilation). Retrieved from [http://www.cpsso.on.ca/Policies-Publications/Policy/Female-Genital-Cutting-\(Mutilation\)](http://www.cpsso.on.ca/Policies-Publications/Policy/Female-Genital-Cutting-(Mutilation))

...with newborn circumcision, medical necessity has not been clearly established.”<sup>32</sup> However, this position is inconsistent with their recommendation that “healthcare professionals should provide parents with the most up-to-date, unbiased and personalized medical information available so that they can weigh the specific risks and benefits of circumcising their son in the context of familial, religious and cultural beliefs.”<sup>33</sup> Yet the familial, religious, and cultural beliefs of parents who wish to cut their daughter’s genitals for those reasons are not considered sufficient justification to override the girl’s right to bodily integrity in Canadian law. In her extensive review of the current Canadian legal and ethical framework surrounding male circumcision, which is also applicable to the genital cutting of intersex children, Bouclin concludes:

Insofar as male circumcision is the removal of healthy erogenous flesh without medical purpose and without the consent of the child and given that it is a painful procedure, neonatal circumcision is unnecessary and may well violate a child’s bodily integrity.<sup>34</sup>

## 4 CANADIAN MEDICAL POSITIONS

Male infant circumcision has been classified by numerous international human rights organizations as a traditional practice involving violence and trauma against children and as a violation of children’s fundamental human rights to bodily integrity and freedom of thought and religion.<sup>35 36 37</sup> In 2015, the Canadian Paediatric Society (CPS) published an updated circumcision position statement. This statement contained similar errors to the 2012 American Academy of Pediatrics (AAP) circumcision policy statement, which was strongly criticized by international paediatric authorities.<sup>38</sup> The CPS was also faulted for its failure to establish an accurate and comprehensive policy statement on non-therapeutic male infant circumcision and numerous flaws in the statement were identified ranging from the inclusion of methodologically weak research to the exclusion of a crucial 2012 report from the International NGO Council on Violence Against Children that the CPS received in 2014.<sup>39 40</sup>

Although the CPS concluded that routine infant circumcision is not recommended, and that the benefits of the surgery do not outweigh the risks (contrary to the 2012 claim by the AAP), their position statement failed to meet the recommendations of the

<sup>32</sup> Canadian Paediatric Society. (2015). Newborn male circumcision. Retrieved from <https://www.cps.ca/en/documents/position/circumcision>

<sup>33</sup> Ibid.

<sup>34</sup> Bouclin, S. (2005). An examination of legal and ethical issues surrounding male circumcision: the Canadian context. Retrieved from [http://www.mensstudies.info/OJS/index.php/IJMH/article/viewFile/473/pdf\\_145](http://www.mensstudies.info/OJS/index.php/IJMH/article/viewFile/473/pdf_145)

<sup>35</sup> International NGO Council on Violence Against Children. (2012). Violating children’s rights: harmful practices based on tradition, culture, religion or superstition. Retrieved from: [http://www.crin.org/docs/InCo\\_Report\\_15Oct.pdf](http://www.crin.org/docs/InCo_Report_15Oct.pdf)

<sup>36</sup> UNICEF International Child Development Centre. (1997). Innocenti digest no. 2: Children & violence. Retrieved from <https://www.unicef-irc.org/publications/pdf/digest2e.pdf>

<sup>37</sup> Parliamentary Assembly of the Council of Europe. (2013). Children’s right to physical integrity. Retrieved from: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20174&lang=en>

<sup>38</sup> Frisch, M., et al. (2013). Cultural bias in the AAP’s 2012 technical report and policy statement on male circumcision. *Pediatrics*, 131(4), 796.

<sup>39</sup> Earp, B. D. (2015). Strengths and weaknesses in the 2015 Canadian Paediatric Society statement regarding newborn male circumcision. *Paediatrics & Child Health*, 20(8), 433-434.

<sup>40</sup> Children’s Health & Human Rights Partnership. (2015). Canadian children’s rights group questions new circumcision policy. Retrieved from <http://chhrp.org/index.php/news/canadian-childrens-rights-group-questions-new-circumcision-policy/>

International NGO Council on Violence Against Children, which classifies non-therapeutic male child circumcision as a harmful practice. In their report, the Council noted,

Knowledge of the law, of children's rights and of the harmful impact of these practices should be built into health and educational programmes serving children, families and communities and into the training – initial and in-service – of all those working with and for children and families. [...] Health practitioners should be encouraged to work actively to eliminate these harmful practices as part of their codes of ethical conduct.<sup>41</sup>

This recommendation aligns with that of the United Nations Convention on the Rights of the Child (UNCRC), which specifically argues that ratifying countries "...shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children".<sup>42</sup> Canada played a significant role in drafting and promoting the UNCRC and ratified the treaty in 1991, but has recently been faulted for a failure to prioritise the best interests of children.<sup>43</sup>

Illustrating this shortcoming, the Canadian Paediatric Society has yet to take any unequivocal measures to end non-therapeutic male infant circumcision — unlike national associations in other ratifying nations like the Netherlands, Finland, Sweden, Norway, Denmark, and Germany.<sup>44 45 46 47 48</sup> Possible reasons for this inconsistency may lie in the fact that, among Canadian physicians, the circumcision status of the physician's own sons and circumcision status of male physicians plays a significant role in whether they advocate for children's genital integrity or not.<sup>49</sup> As such, further investigation into Canadian physician bias and its impact on the human rights of children in the Member State may be warranted.

In addition to personal bias, many Canadian physicians are insufficiently trained to recognize and treat acquired foreskin pathology with conservative measures, thereby negating the concept of prophylactic removal.<sup>50</sup> In addition, the CPS has noted that "phimosis" may be considered an erroneous term, since a non-retractile foreskin is

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<sup>41</sup> International NGO Council on Violence Against Children. (2012). Violating children's rights: harmful practices based on tradition, culture, religion or superstition. Retrieved from: [http://www.crin.org/docs/InCo\\_Report\\_15Oct.pdf](http://www.crin.org/docs/InCo_Report_15Oct.pdf)

<sup>42</sup> United Nations Convention on the Rights of the Child. (1990). Article 24.3. Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>43</sup> KidsRights Foundation. (2016). KidsRights Index 2016 Report. Retrieved from [http://www.kidsrightsindex.org/Portals/5/The\\_KidsRights\\_Index\\_2016\\_-\\_Research\\_Report.pdf?ver=2016-05-12-160259-830](http://www.kidsrightsindex.org/Portals/5/The_KidsRights_Index_2016_-_Research_Report.pdf?ver=2016-05-12-160259-830)

<sup>44</sup> Royal Dutch Medical Association (KNMG). (2010) Non-therapeutic circumcision of male minors. Retrieved from <http://www.knmg.nl/Publicaties/KNMGpublicatie/77942/Nontherapeutic-circumcision-of-male-minors-2010.htm>

<sup>45</sup> Central Union for Child Welfare. (2003). Position Statement on the Circumcision of Boys. Retrieved from <http://www.cirp.org/library/statements/finland2003/>

<sup>46</sup> Huffington Post. (2014). Ritual circumcision ban recommended in Sweden and Denmark by medical associations. Retrieved from [http://www.huffingtonpost.com/2014/01/27/circumcision-ban-sweden-denmark\\_n\\_4674547.html](http://www.huffingtonpost.com/2014/01/27/circumcision-ban-sweden-denmark_n_4674547.html)

<sup>47</sup> Child Rights International Network. (2011). Norway: Ombudsman proposes setting minimum age for male circumcision. Retrieved from <https://www.crin.org/en/library/news-archive/norway-ombudsman-proposes-setting-minimum-age-male-circumcision>

<sup>48</sup> German Academy for Pediatrics and Adolescent Medicine. (2012). Expert statement. Retrieved from [http://arclaw.org/sites/default/files/BVKJ\\_Statement\\_Official\\_Translation.pdf](http://arclaw.org/sites/default/files/BVKJ_Statement_Official_Translation.pdf)

<sup>49</sup> Muller, A. (2010). To cut or not to cut? Personal factors influence primary care physicians' position on elective newborn circumcision. *Journal of Men's Health*, 7(3), 227–232.

<sup>50</sup> DeMaria et al. (2013). Are physicians performing neonatal circumcisions well-trained? *Canadian Urological Association Journal*. 7(7-8): 260–264.

developmentally normal throughout childhood for many boys, with gradual separation from the glans occurring among 95% of boys by 17 years of age. As national datasets on all infant and child circumcisions performed in Canada on the basis of phimosis are not maintained, the scope of this particular issue is unknown.

## 5 EVIDENCE OF HARM TO CANADIAN CHILDREN

An early Canadian newspaper report of 1903 documents the tragic death of a Toronto infant, who was ritually circumcised by a local butcher and died in “terrible agony” after carbolic acid was applied to the profusely bleeding wound.<sup>51</sup> The case of Canadian David Reimer was publicly discussed in 1997, and played a significant role in decreasing infant gender assignment surgeries. David was born with male genitalia, but suffered catastrophic damage to his penis during nontherapeutic infant circumcision. Forced gender reassignment surgery was subsequently performed and he lived unhappily as a female until he was 15 years old. He spent the next 18 years sharing his story publicly in order to discourage what had been standard practice, finally ending his own life in 2004.<sup>52</sup> A year prior to David’s tragic death, a British Columbian died following circumcision surgery<sup>53</sup> and in 2013, yet another baby died due to hemorrhage as a result of circumcision, after a physician persuaded the parents to have the surgery performed.<sup>54</sup> A study that is just now being released provides the most conclusive data to date regarding deaths caused by circumcision, reliably concluding that 10.2 deaths occur per every 500,000 circumcisions.<sup>55</sup>

In 1999, Canadian pathologist Dr. John R. Taylor and American pathologist Dr. C.J. Cold published a groundbreaking paper which discussed the function, anatomy, and embryology of the male and female prepuce, concluding “the prepuce is primary, erogenous tissue necessary for normal sexual function”.<sup>56</sup> Although the authors come from a culture well-immersed in circumcisions,<sup>57</sup> the hegemonic view that genital circumcision is a normative and acceptable practice, no attempts are made to rationalise the practice of forced genital cutting. Indeed, they explicitly state that the “excision of normal, erogenous genital tissue from healthy male or female children cannot be condoned, as the histology confirms that the external genitalia are specialized sensory tissues”.<sup>58</sup>

The work of Cold and Taylor was not widely publicized, nor did it succeed in stopping the now highly profitable business of removing the genital tissue of healthy children and

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<sup>51</sup> The Globe Toronto. (1903). Jewish infant’s death. Retrieved from <http://www.courtchallenge.com/refs/gm1903a.pdf>

<sup>52</sup> Colapinto J. (2004). Gender gap. Retrieved from [http://www.slate.com/articles/health\\_and\\_science/medical\\_examiner/2004/06/gender\\_gap.html](http://www.slate.com/articles/health_and_science/medical_examiner/2004/06/gender_gap.html)

<sup>53</sup> Vogel-Hockley, S. (2013). Death of local baby subject of investigation. Retrieved from <http://www.cirp.org/news/thewestern08-31-02/>

<sup>54</sup> Blackwell, T. (2015). Ontario newborn bleeds to death after family doctor persuades parents to get him circumcised. Retrieved from <http://nationalpost.com/health/ontario-newborn-bleeds-to-death-after-family-doctor-persuades-parents-to-get-him-circumcised>

<sup>55</sup> Earp, Brian. (2019). Factors associated with early deaths following neonatal male circumcision in the United States, 2001-2010. Clinical Pediatrics. In press.

<sup>56</sup> Cold, C. J., & Taylor, J. R. (1999). The prepuce. BJU International, 83 Suppl 1(S1), 34-44. doi: 10.1046/j.1464-410x.1999.0830s1034.

<sup>57</sup> Wisdom T. Questioning circumcisionism: feminism, gender equity, and human rights. Righting Wrongs 2012; 2(1): 2.

<sup>58</sup> Cold, C. J., & Taylor, J. R. (1999). The prepuce. BJU International, 83 Suppl 1(S1), 34-44. doi: 10.1046/j.1464-410x.1999.0830s1034.x



selling it to research and cosmetics companies.<sup>59</sup> The next major research to be presented on the sexual harm caused by forced genital cutting was published in 2007, demonstrating the sensory loss caused by male circumcision. The evidence proving that "...circumcision removes the most sensitive parts of the penis and decreases the fine-touch pressure sensitivity of glans penis"<sup>60</sup> could be considered another missing piece in discussing forced genital cutting.

The work of Frisch, Lindholm, and Grønbæk found that male genital cutting was associated with frequent male and female orgasm problems, female dyspareunia, and incomplete sexual needs fulfillment in female partners.<sup>61</sup> The authors concluded:

The more frequent orgasm difficulties of circumcised men and their partners are not only a concern from a sexual pleasure perspective. The ability to achieve orgasm is a major determinant of overall sexual life satisfaction and marital satisfaction, and persons who rarely experience orgasm may even be a group with increased overall mortality.<sup>62</sup>

In 2008, research was published which concluded that feminizing genital surgery performed on intersex children led to significant sensitivity impairment as well as sexual dysfunction.<sup>63</sup> The interventions intersex children are often subjected to can involve years of repeated surgeries and hormonal therapies, often resulting in long-lasting physical and psychological trauma.<sup>64</sup> It is noted that the CPS has no policy or position statement on intersex children and genital cutting.

## 6 CONCLUSION & RECOMMENDATIONS

On 24 October 2016 the UN Committee on the Rights of the Child and the Secretary-General's Special Rapporteur on Violence Against Children, Ms. Marta Santos Pais, were two of eleven signatories to a call for an urgent end to human rights violations against intersex children and adults. Their statement included the following as it relates to intersex children:

[intersex children] are subjected to medically unnecessary surgeries, hormonal treatments and other procedures in an attempt to forcibly change their appearance to be in line with societal expectations about female and male bodies. When as is frequently the case these procedures are performed without the full, free and informed consent of the person concerned, they amount to violations of fundamental human rights.

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<sup>59</sup> Euringer, A. (2007). Foreskin Facecream. Retrieved from <http://thetyee.ca/Views/2007/01/30/Foreskin/>

<sup>60</sup> Sorrells, M. L., Snyder, J. L., Reiss, M. D., Eden, C., Milos, M. F., Wilcox, N., & Van Howe, R. S. (2007). Fine-touch pressure thresholds in the adult penis. *BJU International*, 99(4), 864-869. doi: 10.1111/j.1464-410X.2006.06685.x

<sup>61</sup> Frisch, M., Lindholm, M., & Grønbæk, M. (2011). Male circumcision and sexual function in men and women: A survey-based, cross-sectional study in Denmark. *International Journal of Epidemiology*, 40(5), 1367-1381. doi: 10.1093/ije/dyr104

<sup>62</sup> Ibid.

<sup>63</sup> Crouch, N. S., Liao, L. M., Woodhouse, C. R. J., Conway, G. S., & Creighton, S. M. (2008). Sexual function and genital sensitivity following feminizing genitoplasty for congenital adrenal hyperplasia. *The Journal of Urology*, 179(2), 634-638. doi: 10.1016/j.juro.2007.09.079

<sup>64</sup> Human Rights Watch & InterACT. (2017). I want to be like nature made me: Medically unnecessary surgeries on intersex children in the US. Retrieved from <https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us>

States must as a matter of urgency prohibit medically unnecessary surgery and procedures on [intersex children]...  
[intersex children] should be the only ones who decide whether they wish to modify the appearance of their own bodies...when they are old or mature enough to make an informed decision for themselves.

With respect, our Council adopts these sentiments as they relate to the genital autonomy of all children; girls and boys as well as intersex girls and boys.

Recommendations for the federal government of Canada:

1. Direct all provinces and territories to create and maintain data sets, establishing systems for the collection of data in relation to circumcisions performed by qualified medical professionals, religious practitioners, and lay people. Data will include: incidence, date, typology, technique, haemorrhage, other complications, and follow-up with subsets of public hospitals versus private clinics. Particular note should be taken of all infant and child circumcisions performed on the basis of “phimosis”.
2. In recognition of the fact that children have no control over the environment they are born into, and that their sex in relation to their environment currently dictates whether or not they may be harmed by forced genital cutting, it is recommended that the Member State provide equal protection for all children by harmonizing Canadian law irrespective of gender.
3. Offer technical and financial support to those NGOs within its jurisdiction working to eliminate non-therapeutic circumcision of healthy children and to cooperate with international efforts which share that goal.
4. Enact national legislation forbidding individuals and private clinics from performing non-therapeutic circumcision of male minors before age 18 and cautioning against the use of erroneous diagnosis (e.g. phimosis).
5. Urge the Canadian Paediatric Society to update its male circumcision policy to address the following:
  - Medical ethics
  - Emphasis on important functions of the male foreskin, its normal development, appropriate care by parents and professionals, and conservative non-surgical alternatives to circumcision to treat pathological conditions
  - Recognition of physical and psychological harm due to circumcision
  - Male children's human right to bodily integrity under UNCRC