

Egale Canada files an application at the Ontario Superior Court of Justice in groundbreaking Intersex Human Rights case

- [Egale](#) is Canada's national 2SLGBTQI organization -

Ottawa (June 15, 2021) – Today, [Egale Canada](#) filed an application at the Ontario Superior Court of Justice to challenge the constitutionality of exemptions in the *Criminal Code* that permit 'normalizing' aesthetic surgeries on intersex infants and children, prior to these individuals being old enough to themselves consent to such surgeries. The term intersex refers to a person whose chromosomal, hormonal or anatomical sex characteristics fall outside the conventional classifications of male or female.

Led by lawyer Jennifer Klinck, a partner at Juristes Power Law, this lawsuit asks the Court to find that the exemptions – which withdraw the protection of the criminal law from intersex infants and children – violate *Charter*-protected rights to liberty, security of the person, equality, and freedom from cruel and unusual treatment.

The exemptions violate the liberty of intersex people by denying them the right (as informed and capable adolescents or as adults) to make fundamental choices about their bodily integrity, medical care, reproduction, or to align such decisions with their gender identity. The exemptions also deprive intersex people of security of the person by permitting invasive and irreversible surgeries which compromise bodily integrity. With respect to equality, the exemptions perpetuate disadvantage for intersex people and are a form of state-sanctioned intersexism. And the 'normalizing' aesthetic surgeries permitted by the exemptions are cruel and unusual treatment.

"More and more jurisdictions around the world are recognizing that genital mutilation of intersex infants and children constitutes a major human rights violation. Both Canadian and international law guarantees every person the right to bodily integrity and autonomy – it's time to recognize that this applies to intersex people, too," said **Jennifer Klinck**, the lead lawyer on this case.

These surgeries often result in **lifelong physical and psychological pain, and amount to torture or cruel, inhuman and degrading treatment under the UN Convention Against Torture**. The existing law deprives intersex children from criminal law protections against the mutilation of their bodies, and instead functions to normalize surgical interventions based on intersexist and binary assumptions about 'correct' or 'normal' bodies.

"At the age of 7, I endured things that no young person should have to when I was forced to undergo surgery because my body didn't fit what doctors deemed to be normal," said **Morgan Holmes**, plaintiff in the case, world renowned Canadian intersex



activist, professor, and writer. *"The pain I endured, both physically and mentally, has lasted a lifetime — it's something that no child should have to experience, yet today it is still legally sanctioned practice in Canada."*

"In my childhood, I laid several times on the examination table to have my genitalia be felt by doctors, something peers my age were not subjected to," said **Janik Bastien Charlebois**, plaintiff in the case, professor of sociology at the University of Quebec in Montreal, and intersex human rights advocate. *"Doctors passed judgment on my body on the sole basis of its appearance, using pathological terms to describe it. This pathologizing instills shame, which impedes the capacity to exert free consent."*

Surgeries on intersex children have been condemned by major international organizations and human rights groups such as the United Nations, Physicians for Human Rights, and Human Rights Watch, as well as every intersex-led organization in the world. Egale is urging the Government of Canada to fulfill its treaty obligations under international law, especially in respect of the UN Convention Against Torture and the International Covenant on Civil and Political Rights. *"Fundamentally, nonconsensual surgeries for 'normal sexual appearance' are inextricable from intersexism—they are both harmful and hateful, a shocking manifestation of state-sanctioned discrimination"*, said **Joshua Sealy-Harrington**, another lawyer on the case.

This lawsuit is the latest salvo in Egale's fight to bring Canadian policy in line with international standards on intersex rights. In 2018, Egale organized Canada's first national [intersex conference](#) bringing together academics, researchers, intersex children, youth, and parents to identify the needs of the intersex community in Canada. The same year, Egale put forward a [submission to the United Nations Committee Against Torture](#) urging them to hold Canada accountable for its failure to comply with human rights law. More recently, Egale launched a public awareness campaign, [Fix Hearts, Not Parts](#), to raise awareness for human rights violations faced by intersex people and encouraging everyone to take a stand against intersex surgery.

"The way we treat intersex people in Canada is shameful — the surgeries we allow to take place on intersex children are on all counts a violation of basic human rights and considered torture by the United Nations — we expect better from our government," said **Helen Kennedy**, executive director at Egale Canada.

About Egale Canada

[Egale](#) is Canada's leading organization for 2SLGBTQI people and issues. We improve and save lives through research, education, awareness, and by advocating for human



rights and equality in Canada and around the world. Our work helps create societies and systems that reflect the universal truth that all persons are equal and none is other.

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