



Statement Opposing Genocidal Anti-Trans Bills in Alberta, Canada

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The Albertan United Conservative Party (UCP) Government in Canada introduced three bills directly targeting transgender youth in Alberta's legislature on 31 October 2024. The Lemkin Institute condemns these bills as genocidal in nature and supports the legal challenges already planned by Egale and Skipping Stone Foundation, two Canadian organizations which advocate for 2SLGBTQ+ rights and freedoms. The Assembly of First Nations 2SLGBTQQIA+ Council has also released a statement opposing the bills. Alberta's proposed legislation is a threat to the identities, lives, and wellbeing of all trans individuals living within Alberta, especially young ones.

The three pieces of legislation are aimed at controlling different aspects of trans peoples' lives and erasing them from a variety of public spaces. The *Health Statutes Amendment Act, 2024* is designed to prevent trans individuals from accessing necessary health care. It bans the prescription of hormone therapies or puberty blockers to minors—but only when administered as gender-affirming care. When needed for other medical conditions, the bill allows their use. Although the Act itself sets out which drugs are banned, it also grants the Minister of Health unfettered discretion to ban any drugs they wish.

The bill further bans certain medical procedures on minors, but again only when administered as gender-affirming care. Gender-affirming surgery is already unavailable for minors in Canada.¹ The inclusion of these amendments in this bill are clear examples of fear mongering. Provincial Premier Danielle Smith wants Albertans to think that children who identify as trans are having genital reconstructive surgery. This simply isn't happening.

The second bill, the *Education Amendment Act, 2024* aims to erase trans youth from schools or endanger trans youth living in unsupportive homes, preventing them from accessing support of any kind by increasing governmental and parental interference and surveillance in schools.² It subjects teaching resources that mention gender and sexuality to Ministerial overview. For all

¹ This federal policy appears to be aligned with a previous version of the Standards of Care from the World Professional Association for Transgender Health. The newest Standards of Care (version 8), which is the first of the series to have a chapter dedicated solely to adolescents, recommends gender-affirming surgeries for adolescents where specific conditions are met.

² This policy does not apply to First Nations Schools, but does apply to Indigenous students in Alberta's public schools.

students, it requires schools to notify parents of any request to be referred to by a new name or pronoun. For those 15 and under, the bill prevents teachers from using a preferred name or pronoun for a student without parental consent. The bill itself acknowledges that notifying the parent of such information could cause “emotional or psychological harm” to trans youth. It thus requires that “counselling or other assistance” be provided before the parents are notified. It is silent on the question of physical harm or endangerment posed to a child whose parents and guardians are hostile to their identity. The bill also subjects sex education to parental approval.

Lastly, the *Fairness and Safety in Sport Act* has as its goal the erasure of trans women and girls from sports. It prevents women and girls who were not assigned female at birth from participating in sports both in the education system and at the provincial level. The Minister of Tourism and Sport was unable to respond to questions about how necessary this legislation actually is, as the Albertan government apparently has no idea how many trans women and girls actually participate in sports in the province.

Overall, we get the impression that the Albertan government is having a hard time understanding demographics. It has crafted three pieces of legislation designed to make life harder for a whopping 0.37% of its population.³ Whatever threat Premier Smith is worried about from the trans community, this response seems disproportionate and wasteful in addition to bigoted, mean-spirited and harmful, given how much red tape it will create.

In consulting stakeholders to craft the bills, the Albertan government appears once again to have gotten confused about population proportions. Instead of consulting groups representing the 2SLGBTQ+ community (or the trans community in particular), Premier Smith turned toward a fringe minority – “detransitioners” – to craft its policy. Studies show that regret for transitioning occurs in around 1% of cases where trans individuals had gender affirming surgery. Instead of consulting the 0.37% of trans people in Alberta, Premier Smith mistakenly consulted the 1% of that 0.37% who had undergone gender affirming surgery as the proper group of stakeholders to consult—a tiny number not remotely representative of trans people. In defense of these bills Premier Smith said “doctors aren’t always right,” likening gender- and life-affirming care to the predatory opioid crisis. In response we remind her that Premiers aren’t always right either.

Alberta’s bills are the follow-up to similar legislation which received royal assent in Saskatchewan last year. That legislation only focused on subjecting pronoun and name changes at schools to parental approval. The Lemkin Institute finds the global rise in legislation targeting the trans community to be profoundly worrisome. Policies crafted to erase the existence of a small, marginalized group or to make their lives more difficult, especially in ways which are proven to increase suicide and incidents of hate crimes perpetuated against them, are genocidal in nature in that they target a very specific identity group for eradication.

³ This, according to CBC News, based on 2021 census data, in which 12,480 Albertans answered that they do not identify with the gender they were assigned at birth. One of the founders of Skipping Stone, Lindsay Peace, told CBC that the number is probably higher in actuality. Regardless, it would be a statistical miracle if the true number of trans Albertans amounted to even close to 1% of the population.

These anti-trans policies are new manifestations of the recent upwards trend of the use of the “notwithstanding clause” by Canadian provincial governments.⁴ This clause, famously detested by Prime Minister Pierre Trudeau, allows Canadian governments to pass legislation that violates many of the rights and freedoms guaranteed by the *Charter of Rights and Freedoms*. Such legislation must be renewed every five years pursuant to the self-contained sunset clause of section 33. The federal government has never invoked this clause. Until about five years ago, it was virtually never used.⁵ The recent worldwide rise in political extremism and faux populism has resulted in what could become a golden era for use of the notwithstanding clause, and has at the same time sparked a backlash against the existence of the clause across the country.

The rights and freedoms subject to the notwithstanding clause include the equality guarantee, fundamental freedoms, and legal rights. Court challenges which determine that Alberta’s anti-trans bills are discriminatory or infringe the right to life or the right to be free from cruel and unusual punishments can therefore not invalidate the legislation. Those challenging this legislation – and other legislation adopted in derogation of *Charter* rights – must therefore be more creative in their approach. For example, just this year, the English Montreal School Board appealed to the Supreme Court of Canada (SCC) a Quebec Court of Appeal (QCCA) decision which found that Quebec’s Bill 21 was mostly valid.⁶ One argument which was rejected by the QCCA was that Bill 21 was unconstitutional because it was contrary to the *unwritten principles of the Constitution and the fundamental constitutional architecture*. If a law is found to violate those norms or the fundamental architecture, it cannot be saved by section 33. As former Chief Justice of the SCC Beverley McLachlin once said, genocidal laws would clearly violate unwritten constitutional principles.⁷

Alberta is well aware that its policies will cause harm to trans individuals, especially trans youth, as evidenced by its explicit mention of such risks in the *Education Amendment Act, 2024*. We find the offer of counselling prior to the unnecessary exposure to parents and the consequent risk of abuse to be insulting and cynical. Premier Smith has positioned these policies as a win for “parental rights.” The Lemkin Institute for Genocide Prevention would add a caveat: These policies are a win for the rights of *abusive* parents. Parents who have their children’s best interests in mind do not want their children to choose between being forcefully outed or remaining in the closet. Weaponizing the abusers of a marginalized, vulnerable group through

⁴ The notwithstanding clause, also known as section 33, was added to the Canadian *Charter of Rights and Freedoms* at the behest of the nine provinces who were included in the agreement for repatriation of the Canadian Constitution in 1981. This agreement, known as the Night of the Long Knives (or the Kitchen Accord, depending on who you ask), resulted in the adoption of the *Charter* the next year.

⁵ After the repatriation of the Canadian Constitution without Quebec’s approval in 1982, Quebec’s National Assembly inserted a notwithstanding declaration into all Quebec legislation until 1985. This was not a substantive use of the notwithstanding clause, however.

⁶ Bill 21, also known as the *Act Respecting the laicity of the State*, bans the wearing of religious symbols by certain public employees, including teachers, government lawyers, and judges.

⁷ It might seem highly ironic to argue that anti-genocide is one of the unwritten principles of a constitution founded on genocide. However, based on living tree doctrine, the Canadian constitution must be interpreted in a broad and progressive way so as to be capable of adapting to modern times. Given Canada’s purported commitment to human rights, reading anti-genocide in the constitution today is not a big stretch.

law is a clear manifestation of genocidal intent: It justifies, normalizes, and legalizes hostility for an identity group, empowering family members to use coercion against other, less powerful, family members, thereby encouraging the destruction of a young trans person both at home and in public. The UCP would like to see trans youth disappear — either by becoming invisible, committing suicide, or being exposed to parental or guardian abuse.

Premier Smith is guilty of strawmanning by banning specific gender affirming surgeries for youth which are *already* unavailable for youth. This, along with the law intended to erase trans women from sports without any prior study into their presence in Alberta sports, demonstrates that these policies are crafted with a single intention in mind: to exaggerate the presence of and threat posed by an already marginalized group and then to erase their existence. This is genocidal intent in action. The Lemkin Institute for Genocide Prevention and Human Security opposes it and stands in solidarity with its targets. We warn all Canadians that genocidal jaws rarely remain tethered to the initial target group — they tend to expand like a fungus to engulf ever-growing numbers of unwanted peoples. Genocidal anti-trans laws are just the beginning of a greater assault on the rule of law as such and on the value of individual life, whether trans or not.