



SASKATCHEWAN
advocate
FOR CHILDREN & YOUTH

REVIEW OF
MINISTRY OF EDUCATION POLICY
USE OF PREFERRED FIRST NAME
AND PRONOUNS FOR STUDENTS

September 2023



SASKATCHEWAN
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Letter of Transmittal

September 15, 2023

The Honourable Randy Weekes
Speaker of the Legislative Assembly
Legislative Building
2405 Legislative Drive
Regina, SK S4S 0B3

Dear Mr. Speaker:

Pursuant to section 14(2) and in accordance with section 28 of *The Advocate for Children and Youth Act*, it is my duty and privilege to submit to you and members of the Legislative Assembly of Saskatchewan this report, entitled *Review of Ministry of Education Policy Use of Preferred First Name and Pronouns for Students*.

Respectfully,

Lisa Broda, PhD
Advocate for Children and Youth





Review of Ministry of Education Policy

Use of Preferred First Name and Pronouns

by Students

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Mandate of the Advocate for Children and Youth

The Saskatchewan Advocate for Children and Youth (the Advocate) is an independent office of the Legislative Assembly of Saskatchewan. Under the authority of *The Advocate for Children and Youth Act*, the Advocate has a broad mandate to:

- advocate for the interests of children and youth receiving provincial public services;
- investigate any matter that comes to her attention regarding the interests and well-being of young people within the provision of public services;
- engage in public education around children's rights and the mandate of our office;
- conduct or contract for research to improve the rights, interests and well-being of children and youth in Saskatchewan, and,
- make recommendations or give advice to any minister responsible for services to young people.

In addition to being mandated by provincial legislation, the Advocate's work is grounded in the United Nations Convention on the Rights of the Child (UNCRC). The UNCRC is a legally binding international treaty setting out the civil, political, economic, social, and cultural rights of every child without discrimination of any kind.

The UNCRC is the most widely ratified international human rights treaty in history, having been ratified by all but one UN Member State. This makes the UNCRC, and the principles it espouses, universal - spanning diverse countries, religions, languages, and cultures. With the agreement of all provinces, including Saskatchewan, Canada ratified the UNCRC in 1991, thereby becoming legally obligated to respect, protect and fulfill the rights of children codified within.

Children and youth have the same human rights as all people. These are, however, additionally guaranteed special protections under the UNCRC because of their age and limited ability to participate in political processes. As a result, decision-makers have a legal duty to consider and prioritize the rights, interests and well-being of children and youth in all matters that affect them.

The Government of Saskatchewan made a provincial commitment to the UNCRC by adopting the Saskatchewan Children and Youth First Principles in 2009. These Principles recognize the UNCRC as a whole, with an emphasis on the 8 principles most applicable to Saskatchewan children and youth, some of which include putting the child at the centre of decision-making, prioritizing their best interests, and recognizing their stated views and preferences.

The UNCRC recognizes that children require nurturing and guidance as they grow and develop. It also recognizes that the family is the fundamental natural environment for this support to be provided – in accordance with respect for the rights of the child. All levels of government have an overarching responsibility to ensure the rights of children and youth are protected.

Background and Context

On August 22, 2023, the Ministry of Education (the Ministry) introduced a provincial policy entitled *Use of Preferred First Name and Pronouns by Students* (hereafter referred to as “the policy”).^{1,2} All school divisions, the conseil des écoles fransaskoises (CÉF) and all registered independent schools receiving public funding were directed to develop administrative procedures for the implementation of this policy to be effective at the start of the 2023-24 school year.

The stated intent of the policy is to outline the steps to be taken by schools to “support students who wish to change their pronouns and/or preferred first name to align with their gender identity”, while “recogniz[ing] the important role that parents and guardians have in protecting and supporting their children as they grow and develop.”

The policy seeks to achieve its purpose by requiring written consent from the parent/guardian of a student under the age of 16 before school staff are permitted to use the student’s preferred first name and/or pronouns “in the school environment”. Students over the age of 16 are able to provide their own consent for the adoption of their preferred first name and/or pronouns by their school.

The policy further states that:

In situations where it is reasonably expected that gaining parental consent could result in physical, mental or emotional harm to the student, the student will be directed to the appropriate school professional(s) for support. They will work with the student to develop a plan to speak with their parents when they are ready to do so.³

The use of a student’s preferred name and pronouns will not be permitted under this policy for a student under age 16, either on official records or in informal interactions, until that discussion occurs, and consent is obtained.⁴ A sample administrative procedure and a template consent form are provided as appendices to the policy to be used by school divisions and the CÉF as a guide.

At the same time this policy was introduced, the Minister of Education also issued a directive that parents be informed about the sexual health education curriculum and have the option to decline their children's participation, as well as for schools to pause any third-party provision of sexual health education while the Ministry undertakes a review of educational resources to

¹ Government of Saskatchewan. (2023). *Use of Preferred First Names and Pronouns by Students*. (Accessed from: <https://publications.saskatchewan.ca/#/products/121841>)

² Government of Saskatchewan. (22 August 2023). *Media Release - Education Minister Announces New Parental Inclusion and Consent Policies*. (Accessed from: <https://www.saskatchewan.ca/government/news-and-media/2023/august/22/education-minister-announces-new-parental-inclusion-and-consent-policies>)

³ Government of Saskatchewan. (2023). *Use of Preferred First Names and Pronouns by Students*. p. 4 (Accessed from: <https://publications.saskatchewan.ca/#/products/121841>)

⁴ The sample administrative procedures attached to the policy states that, “The student should be made aware that until authorization is in place, their preferred name and pronouns will not be changed.”

ensure alignment with curriculum outcomes.^{5,6} This report does not include an assessment of these matters, as the Advocate is awaiting the Ministry to complete its review before commenting further.

Prior to the release of this policy, the Ministry of Education had not provided specific direction to school divisions on processes related to the use of preferred names and pronouns, leaving it to the discretion of the divisions to develop administrative procedures in this regard.

However, the Ministry did provide guidance to schools through a voluntary professional learning resource developed in 2015, titled *Deepening the Discussion: Gender and Sexual Diversity*, and corresponding online toolkit. Collectively, these resources oppose all forms of prejudice, bullying and discrimination on the basis of a student's actual or perceived gender identity, and describe a gender-inclusive school as one that honours students' preferred names and pronouns, as well as respect for student confidentiality whenever professionally appropriate.^{7,8}

The Advocate notes that there had been a range of approaches taken among school divisions to the development of policy specific to the needs of gender diverse students.

Some school divisions did not have related administrative procedures outside of those generally regarding non-discrimination, equality, and inclusion. Others had procedures calling for safe and inclusive environments for gender diverse students, such as through prohibitions of bullying, but did not outline specifics as to how requests for the use of preferred names and pronouns would be addressed. Some separate school divisions encouraged the use of the Ministry's *Deepening the Discussion* resource, with the broad provision that practices and processes be in accordance with the teachings of the Catholic Church.

Several school divisions had developed administrative procedures specific to the use of preferred names and pronouns of gender diverse youth. Some of these divisions required parental/guardian consent for students under 16 years of age, while others did not. Some school division procedures specifically recognized that students have a right to self-identification and self-determination and that "[i]ntentionally addressing a student by the incorrect name or pronoun may be considered a form of discrimination." Some procedures directed that schools respect the confidentiality of gender diverse students by not revealing their gender identity unless the student expressly consented to doing so, or if there was a safety concern.

The Ministry of Education has stated that the new policy is meant to standardize approaches in school divisions across the province and "ensure consistency of parental inclusion, no matter

⁵ Government of Saskatchewan. (22 August 2023). *Media Release - Education Minister Announces New Parental Inclusion and Consent Policies*. (Accessed from: <https://www.saskatchewan.ca/government/news-and-media/2023/august/22/education-minister-announces-new-parental-inclusion-and-consent-policies>)

⁶ This directive did not preclude professionals employed by government ministries or the Saskatchewan Health Authority from providing instruction on sexual health in schools.

⁷ Saskatchewan Ministry of Education. (2015). *Deepening the Discussion: Gender and Sexual Diversity*. Regina, SK: Author

⁸ The *Deepening the Discussion* document was amended in 2023, following the introduction of this policy and the Minister's directive regarding third-party involvement in sexual health education. Appendices attached to the 2015 version of the document referencing the use of preferred names and pronouns and student confidentiality were removed from the 2023 version but continued to be included in the online toolkit with a forwarding link embedded in the document.

where [a] child goes to school.”⁹ The Ministry has also advised that the policy will not be applied retroactively, and that students who had already been using a preferred name and pronouns in school would be permitted to continue, but will be encouraged to develop a plan to speak with their parents/guardians going forward.

The Advocate acknowledges and respects that it is the prerogative of the Minister of Education to develop and implement policies in relation to educational services. However, considering that recognition of gender identity is a human rights issue with significant impact on young people, it is notable that children and youth – and specifically transgender¹⁰ and gender diverse children and youth – were not consulted, despite being the rights holders directly impacted. Nor was there consultation with school boards, entities representing teachers and other school staff, experts on gender diversity, or the Saskatchewan Human Rights Commission to the Advocate’s knowledge.

The Advocate was given no indication by the government that a comprehensive assessment of how this policy would impact the rights of children was conducted.

In June 2023 – two months prior to Saskatchewan’s implementation of this policy – the New Brunswick Department of Education and Early Childhood Development announced a similar policy directive on parental/guardian consent. The New Brunswick Child and Youth Advocate (NBCYA), engaged in a review of that province’s policy and released a report on August 15, 2023, titled, *On Balance, Choose Kindness: The Advocate’s Review of Changes to Policy 713 and Recommendations for a Fair and Compassionate Policy*.¹¹ The New Brunswick Advocate’s report found the requirement of parental/guardian consent for the use of a student’s preferred names and pronouns is a violation of children’s legal and human rights under the *Charter of Rights and Freedoms*, as well as the human rights legislation in that province, and infringes on the rights of the child under the UNCRC. This analysis has since been validated by other legal scholars in the field.

The NBCYA’s findings were released one week prior to the introduction of this parallel policy in Saskatchewan and were available to the Ministry of Education for consideration prior to its implementation. These findings will be referenced further throughout this report.

Since the release of the policy in Saskatchewan, the decision to require parental consent for the use of preferred names and pronouns of children at school has been widely debated in the public discourse.

⁹ Government of Saskatchewan Media Release (22 August 2023). *Education Minister Announces New Parental Inclusion and Consent Policies*. (Accessed from: [Education Minister Announces New Parental Inclusion and Consent Policies | News and Media | Government of Saskatchewan](https://www.saskatchewan.ca/news-media/2023/08/22/education-minister-announces-new-parental-inclusion-and-consent-policies))

¹⁰ “Trans or transgender is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms. It includes but is not limited to people who identify as transgender, trans woman (male-to-female), trans man (female-to-male), transsexual, cross-dresser, gender non-conforming, gender variant or gender queer.” (Ontario Human Rights Commission. (2014). *Policy on preventing discrimination because of gender identity and gender expression*. Toronto, ON: Author. (Accessed from: <https://www.ohrc.on.ca/en/book/export/html/11169>)

¹¹ New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate’s Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

The Saskatchewan School Boards Association has requested the Ministry pause the policy's implementation until a comprehensive review can be conducted in order to provide assurances that it will not violate the human rights of gender diverse students. The Saskatchewan Teachers Federation has expressed concern that schools do not have the level of professional resources available that would be required to appropriately support students in navigating consent with families, as is referenced in the policy. Additionally, legal action has been engaged by the UR Pride Centre for Sexuality & Gender Diversity.

Scope of the Advocate's Review & Methodology

The Advocate reviewed the *Use of Preferred First Name and Pronouns by Students* policy pursuant to sections 14 and 24 of *The Advocate for Children and Youth Act*.

The intent of the Advocate's review is to independently assess whether the policy and the process through which it was developed respects and/or negatively impacts the rights of children and youth, and to make recommendations for improvement where required.

The Advocate requested information on the development of this policy from the Ministry of Education pursuant to the authority granted under *The Advocate for Children and Youth Act*. We asked that the Ministry identify the impetus for the policy's implementation, with whom it consulted regarding its development, the process used to consider the potentially competing rights of students and their parents/guardians, and whether other policies or guidelines may be revised as a result of this new direction. The Ministry's responses have been incorporated throughout the body of this report.

Our office reviewed other relevant provincial legislation and conducted an independent Child Rights Impact Assessment on how the rights of children and youth under the UNCRC are or could be affected by this policy. Due to the similar questions recently raised in the province of New Brunswick, the Advocate also reviewed the analysis, findings and recommendations of the New Brunswick Child and Youth Advocate on this issue. The Saskatchewan Advocate for Children and Youth acknowledges the extensive research, consultation, and legal analysis of the New Brunswick Advocate as referenced throughout this report.

Additionally, the Saskatchewan Advocate consulted with members of our office's Youth Advisory Council, whose perspectives are incorporated within our analysis. The Advocate acknowledges, with gratitude, this exceptional group of young people for generously sharing their experiences and wisdom on this important matter.

Our findings and recommendations have been shared with the Minister of Education, who was provided with an opportunity to make representation as per section 25 of *The Advocate for Children and Youth Act*. At the time of publication, a response had not been received by the Ministry of Education.

The Right of a Child to Parental Guidance

The primary reasons cited by the Ministry for the implementation of this policy have been to ensure parental inclusion and involvement in the education of children, including in the decision of young people to alter their name and/or pronouns within the school environment, and to standardize approaches across the province.

The Advocate agrees that parental/guardian inclusion in education and relationships of trust between families and schools is essential to creating an educational environment in which the best interests of children are served.

The Advocate recognizes the right of a child to be cared for and guided by their parents or legal guardians, as is acknowledged throughout the UNCRC.¹² However, it is critical that this be understood from a child rights perspective. Children are human beings with their own rights and legally recognized ability to make certain personal decisions in accordance with their maturity and capacity.

The care and guidance provided by parents/guardians is of utmost importance to the growth and well-being of children, however, must be exercised in accordance with respect for the rights of children and their evolving capacities. Furthermore, as the duty-bearer under the UNCRC, the government has a legal obligation, as signatories to the UNCRC, to ensure the rights of children are respected, protected and fulfilled within all child-serving systems.

From this foundation, the Advocate had three key objectives in undertaking this policy review:

- the exploration of whether the rights of children and youth have been fully considered in the development of the policy;
- whether requiring consent infringes upon the rights held by children under the *The Saskatchewan Human Rights Code, 2018*, the *Canadian Charter of Rights and Freedoms*, the UNCRC, and Saskatchewan's Children and Youth First Principles; and,
- whether the government's worthwhile objective of parental inclusion could be achieved in a way that does not infringe on or unnecessarily limit the rights of the child under these laws and principles.

Doctrine of the Mature Minor

In 2009, the Supreme Court of Canada confirmed the Doctrine of the Mature Minor as the standard to apply when individuals under the age of majority seek to make independent decisions. This Doctrine directs that (on a case-by-case basis) individuals of any age can consent to their own health care decisions provided they demonstrate the capacity to fully appreciate the nature and consequences of their decision and the service provider determines the action is in the young person's best interest.

(AC v Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 SCR 181. (Accessed from: <https://www.canlii.org/en/ca/scc/doc/2009/2009scc30/2009scc30.html>)

The report of the New Brunswick Child and Youth Advocate on these same questions, asserts that it is a violation of children's rights to require parental/guardian

¹² Articles 3, 5, 7, 14 and 18

consent, without consideration of a young person's capacity for making personal decisions. The Saskatchewan Advocate concurs with this analysis, which is further supported by our independent Child Rights Impact Assessment, laid out later in this report.

For clarity, the Advocate has not, nor would suggest, that parents should never be informed nor be involved in matters such as these. When possible, it is best for parents/guardians to be involved in their children's lives and education. The intent of the policy to provide support to a young person in having these important discussions with parents/guardians when needed and appropriate is commendable. Our office supports school staff assisting students to explore ways to increase their connection with parents/guardians.

However, the Advocate reiterates that all people, regardless of age, have an inherent human right pursuant to provincial, federal, and international law to have their gender identity and gender expression respected. The Ministry of Education and all schools in the province are bound by these legal obligations.

Family values are vitally important, and a child has a right to be guided by their parents/guardians in this regard. However, there are legal limits on the extent of parental/guardian influence when the individual rights of children and youth are impacted. If a young person demonstrates capacity to make personal decisions, their human right to have their gender identity and expression respected cannot be vetoed or taken away by another person, including their parent/guardian.

A legal analysis of the interface between parental rights and children's rights is outlined in the report of the New Brunswick Child and Youth Advocate emphasizing that a parent/guardian cannot order the state to ignore a child's rights so as to comply with their direction or value system.¹³ As stated by the New Brunswick Advocate:

The fact that the state has a duty to minimally interfere with the family is not the same as saying that the parent has unlimited rights to interfere with the child.¹⁴

In cases where a young person with capacity to make personal decisions (see textbox on the Doctrine of the Mature Minor) reasonably believes that disclosing their gender identity to a parent/guardian by seeking consent for the use of an alternate name and pronouns would cause harm, they should neither be forced to do so, nor deprived of their right to have their gender identity respected as a result.

As one of the members of the Advocate's Youth Advisory Council stated:

In most cases, where it's safe for the parent to be involved, they will be anyway, such as my parents were with me. To my knowledge, most kids in the system are not going through subterfuge to be called a different name at school than at home [...] [For those that are unable to disclose their gender identity to their parents] How will making a plan to speak with the parents prevent the potential harm of speaking to the parents?

¹³ New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate's Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author. p. 23 (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

¹⁴ Ibid. p. 12

Additionally, in instances when supporting the young person to have these conversations with parents/guardians *is* in their best interest, the process of navigating potentially competing value systems to arrive at consent may be lengthy. The young person should not be deprived of their right for the expression of their gender identity to be respected during this time.

Analysis of Impact on Children's Rights

The Importance of Identity – Risk and Protective Factors

The Canadian Paediatric Society defines gender identity as, "the deep and intimate feeling a person has of themselves" and "who you know yourself to be." It exists on a spectrum and can be masculine, feminine, non-binary (i.e. neither male nor female), or anywhere in between. This is different from "sex" which is usually assigned at birth on the basis of whether an individual has male or female anatomy.¹⁵ The World Health Organization also has a similar definition indicating that a spectrum of gender identities is globally recognized."¹⁶

The Canadian Paediatric Society states that children come to understand societal expectations of gender at a young age. They continue to develop their understanding of their own gender identity as they grow older through personal reflection and with input from their social environment, like peers, family, and friends. "As puberty begins, some youth may realize that their experienced gender is different from their assigned sex at birth."¹⁷

The word "transgender" is "an umbrella term for people with diverse gender identities and/or expressions that may differ from stereotypical gender norms."¹⁸

Gender diversity is part of the human condition, and people have challenged binary understandings of gender throughout history.¹⁹ However, transgender and gender diverse people continue to face stigmatization, prejudice, and fear. "Transgender people challenge our very [Western] understanding of the world. And we make them pay the cost of our confusion by their suffering."²⁰

Evidence shows that transgender and gender diverse youth are significantly vulnerable. If there is an incongruence between their sex assigned at birth and their experienced gender, they may experience psychological distress known as "gender dysphoria." According to the Canadian Paediatric Society and the American Psychiatric Association²¹, gender dysphoria often begins in childhood, with distress potentially increasing "as puberty begins and the body starts to take

¹⁵ Canadian Paediatric Society. (2023). *Gender identity*. (Accessed from: <https://caringforkids.cps.ca/handouts/behavior-and-development/gender-identity>)

¹⁶ https://www.who.int/health-topics/gender#tab=tab_1

¹⁷ Supra note 16

¹⁸ Saskatchewan Human Rights Commission. (2016). *Human Rights of Transgender People*. Saskatoon, SK: Author
Accessed from: https://saskatchewanhumanrights.ca/wp-content/uploads/2023/06/SHRC_Transgender-Rights.pdf

¹⁹ Godman, M. (2018). Gender as a historical kind: a tale of two genders? *Biol Philos* 33:21

²⁰ Findlay, B. in Ontario Human Rights Commission. (n.d.) *Questions and answers about gender identity and pronouns*. Toronto, ON: Author (Accessed from: <https://www.ohrc.on.ca/en/questions-and-answers-about-gender-identity-and-pronouns>)

²¹ American Psychiatric Association. (2023). *What is Gender Dysphoria?* (Accessed from: <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>)

shape.”²² The duress from not having one’s gender identity and expression respected is what leads to individuals experiencing adverse mental health problems such as anxiety, depression, and suicidality.²³

In general, suicide is the leading cause of death among young people aged 15 – 24 years,²⁴ and Saskatchewan often finds itself at the top the list in this regard. Transgender and gender diverse youth, however, are at even higher risk than the general population, being over seven times more likely to attempt suicide than their peers who identify with their assigned gender.²⁵ A previous suicide attempt is one of the biggest risk factors for a later death by suicide.²⁶

Almost two thirds of the transgender and/or non-binary youth surveyed across Canada by the University of British Columbia in 2019 reported having self-harmed (64%) and/or seriously considered suicide (64%) within the past year. In the prairie provinces (i.e. Saskatchewan and Manitoba), 94% of the transgender and non-binary youth surveyed reported experiencing an emotional or mental health concern lasting at least 12 months (i.e. chronic mental health condition).²⁷

The prairie provinces had the highest rate of youth in Canada who changed schools or started homeschooling due to lack of support for their gender at school (16%).²⁸ Data specific to Saskatchewan shows that, among all students in Grades 7-12, 2SLGBTQ+ students felt the least supported and most isolated across the domains of family, friends, community, and school.²⁹

It is for these reasons that special measures must be taken to meet the needs of transgender and gender diverse youth. Necessary steps include educating the general public on their rights and increasing safe spaces where they can be themselves.

In particular, the use of preferred names/pronouns and school connectedness have been shown to be protective factors against these risks. For instance, transgender and non-binary youth in

²² Canadian Paediatric Society. (2023). *Gender identity*. (Accessed from:

<https://caringforkids.cps.ca/handouts/behavior-and-development/gender-identity>)

²³ American Psychiatric Association. (2023). *What is Gender Dysphoria?* (Accessed from:

<https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>)

²⁴ Statistics Canada. (2023) *Leading causes of death, total population, by age group*. Ottawa, ON: Author. doi:

10.25318/1310039401-eng. (Accessed from: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310039401>

28 August 2023)

²⁵ Kingsbury, M., Hammond, N.G., Johnstone, F. and Colman, I. (6 June 2022). Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada. *CMAJ* 194 (22) E767-E774; DOI: (Accessed from: <https://doi.org/10.1503/cmaj.212054>)

²⁶ Bostwick, J.M., Pabbati, C., Geske, J.R., MacLean, A.S. (2016). Suicide Attempt as a Risk Factor for Completed Suicide: Even More Lethal Than We Knew. *Am J Psychiatry* 2016; 173:1094–1100; doi: 10.1176/appi.ajp.2016.15070854 (Accessed from: <https://ajp.psychiatryonline.org/doi/epdf/10.1176/appi.ajp.2016.15070854>)

²⁷ Taylor, A.B., Chan, A., Hall, S.L., Saewyc, E. M., & the Canadian Trans & Non-binary Youth Health Survey Research Group. (2020). *Being Safe, Being Me 2019: Results of the Canadian Trans and Non-binary Youth Health Survey*. Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre & The University of British Columbia (Accessed from: https://apsc-saravyc.sites.olt.ubc.ca/files/2020/12/Being-Safe-Being-Me-2019_SARAVYC_ENG_1.2.pdf)

²⁸ Ibid.

University of British Columbia. (Accessed from: <https://www.saravyc.ubc.ca/2020/03/18/being-safe-being-me-2019/>)

²⁹ Saskatchewan Alliance for Youth & Community Well-being. (2020). *Thriving Youth, Thriving Communities Report – 2019 Survey Findings*. (Accessed from: <http://saycw.com/survey-and-findings/thriving-youth-thriving-communities-survey-2019-results/>)

Canada with supportive families, safe schools, and/or a legal name change were less likely to report severe emotional distress or suicidal thoughts.^{30, 31}

The use of a preferred name and pronouns in the context of family, friends, school and/or work has been shown to predict significantly fewer depressive symptoms and less suicidal ideation and suicidal behavior. These risks decrease with every additional context in which a young person is supported to express their gender identity and were at the lowest levels when chosen names and pronouns could be used in all four contexts.³²

Non-Discrimination on the Basis of Gender Identity in Provincial and Federal Laws

Section 2 and 13 of *The Saskatchewan Human Rights Code, 2018* guarantee children and youth the right to education without discrimination on the basis of age or gender identity. These rights are specifically impacted by the new provincial policy on *Use of Preferred First Names and Pronouns by Students*.

The Advocate notes that subsection 2(2) of the Code qualifies that an age-based distinction will be discriminatory unless that distinction is permitted or required by any Act or regulation in force in Saskatchewan. Whether this applies to the issue at hand will be discussed in a later section of this report.

Provincial human rights legislation is “quasi-constitutional,” meaning that all other legislation and policy must be developed and interpreted in compliance with it. A government policy cannot contravene human rights legislation.³³

The Saskatchewan Human Rights Commission (SHRC) states that, “[u]nder *The Saskatchewan Human Rights Code*, **discrimination because of gender identity or gender expression is against the law in Saskatchewan**” [emphasis added]. The SHRC defines gender expression as “the external representation of one’s gender identity.”³⁴ The Ontario Human Rights Commission (OHRC) provides further clarity on how the use of preferred names and pronouns, as an external representation of gender identity, has been treated in case law, stating the following:

³⁰ Taylor, A.B., Chan, A., Hall, S.L., Saewyc, E. M., & the Canadian Trans & Non-binary Youth Health Survey Research Group (2020). *Being Safe, Being Me 2019: Results of the Canadian Trans and Non-binary Youth Health Survey*. Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre,

University of British Columbia. (Accessed from: <https://www.saravyc.ubc.ca/2020/03/18/being-safe-being-me-2019/>)

³¹ McDermott, E.; Kaley, A.; Kaner, E.; Limmer, M.; McGovern, R.; McNulty, F.; Nelson, R.; Geijer-Simpson, E.; Spencer, L. Understanding How School-Based Interventions Can Tackle LGBTQ+ Youth Mental Health Inequality: A Realist Approach. *Int. J. Environ. Res. Public Health* 2023, 20, 4274. (Accessed from: <https://doi.org/10.3390/ijerph20054274>)

³² Russell, S. T., Pollitt, A. M., Li, G., & Grossman, A. H., (2018). Chosen Name Use is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior among Transgender Youth. *J Adolesc Health*. 63(4): 503–505. doi:10.1016/j.jadohealth.2018.02.003 (Accessed from:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/pdf/nihms945849.pdf>)

³³ Saskatchewan Human Rights Commission. (n.d.). *A History of Human Rights in Saskatchewan*. (Accessed from:

<https://saskatchewanhumanrights.ca/history-timeline/#:~:text=The%20Saskatchewan%20Court%20of%20Appeal,legislation%20%E2%80%93%20except%20where%20otherwise%20provided>)

³⁴ Saskatchewan Human Rights Commission. (2016). *Human Rights of Transgender People*. Saskatoon, SK: Author (Accessed from: https://saskatchewanhumanrights.ca/wp-content/uploads/2023/06/SHRC_Transgender-Rights.pdf)

The law recognizes that everyone has the right to self-identify their gender and that “misgendering” is a form of discrimination. [...] **Refusing to refer to a trans person by their chosen name and a personal pronoun that matches their gender identity, or purposely misgendering, will likely be discrimination when it takes place in a social area covered by the Code, including employment, housing and services like education** [emphasis added].³⁵

The OHRC also advises that misgendering a young person is a form gender-based harassment, and that educational institutions have a duty to accommodate the needs of gender diverse students in relation to the use of preferred names and pronouns:

Gender-based harassment can involve: [...] Refusing to refer to a person by their self-identified name and proper personal pronoun” [...] All youth have a right to self-identify and express their lived gender identity while accessing education services. Under the Code, school boards, colleges and universities as well as other educational institutions have a responsibility to take steps to prevent and respond to discrimination and harassment of students because of their gender identity or gender expression. They also have a duty to accommodate **any trans students’ needs** related to gender identity and expression [emphasis added].

Educational institutions should develop policies and procedures to recognize, among other things, that:

- Trans students have the right to be addressed by their chosen name and pronoun.
- [...]
- Students have a right to privacy, and schools must keep a student’s transgender status confidential. It should not be communicated to others unless they have a “need to know” to fulfill a specific accommodation need, or if the student requests it.

[...] Sometimes they may not have the support of their family either, making a welcoming school environment all the more important.³⁶

On this basis, it is the view of the Advocate that a potential refusal to use the preferred name and pronouns of a transgender or gender diverse student would likely violate *The Saskatchewan Human Rights Code, 2018*.

³⁵ Ontario Human Rights Commission. (n.d.) *Questions and answers about gender identity and pronouns*. Toronto, ON: Author (Accessed from: <https://www.ohrc.on.ca/en/questions-and-answers-about-gender-identity-and-pronouns> 1 September 2023)

³⁶ Ontario Human Rights Commission. (2014). *Policy on preventing discrimination because of gender identity and gender expression*. Toronto, ON: Author. (Accessed from: <https://www.ohrc.on.ca/en/book/export/html/11169>)

Nationally, the constitutional rights of children and youth under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* are also engaged or impacted by this policy. Section 7 guarantees the right to life, liberty, and security of the person, while section 15 guarantees the right to non-discrimination on the basis of age and sex.³⁷

Canadian Charter of Rights and Freedoms

15 (1) 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.

References to “liberty and security of the person” under section 7 include notions of autonomy, privacy and dignity that are to be protected from unjustifiable state interference.³⁸ Regarding the equality rights protected by section 15 of the *Charter*, the Superior Court of Quebec held that gender identity is “analogous” to the grounds protected therein. The Supreme Court of Canada has recognized and expressed concern about the marginalization of transgender people and has made reference to the conclusions reached by lower courts in this regard and has given indications of the potential relevance of equality rights clauses of the *Charter* to gender identity issues.³⁹

The Advocate acknowledges that there may be justifiable reasons for restrictions or limitations on human rights. However, as will be discussed further in this report, it is the view of the Advocate that this bar has not been reached.

International Law & Child Rights Impact Assessment

In addition to being improperly discriminatory under provincial and federal law, the findings of both the Advocate’s independent **Child Rights Impact Assessment** (CRIA) (see Appendix for full CRIA), and the NBCYA’s report, clearly outlines how prohibiting school staff to use the preferred names and pronouns of students without prior consent from their parent/guardian is also a violation of their rights under United Nations Convention on the Rights of the Child.

A “Child Rights Impact Assessment” is a systematic, methodological decision-making tool that assesses the potential impacts of policies, programs, legislation, or other actions on the rights and well-being of children. A determination of the best interests of a child must include consideration of how a decision or action will impact their **full range of human rights** – whether directly or indirectly. All human rights, including all rights of children enshrined in the

UNCRC Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

³⁷ <https://laws-lois.justice.gc.ca/eng/Const/page-12.html>

³⁸ New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate’s Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author. p. 10 (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

³⁹ *Hansman v. Neufeld*, 2023 SCC 14 (CanLII) paras. 84-89 (Accessed from: <https://canlii.ca/t/jx8k0>)

UNCRC, are indivisible and interdependent. This means “that one set of rights cannot be enjoyed fully without the other.”⁴⁰ For instance, if a child is experiencing discrimination and/or their mental health is suffering, they will be less able focus on learning and, therefore, unable to fully realize their right to education.

Pursuant to Article 3 of the UNCRC, the Committee on the Rights of the Child (the UN treaty body responsible for monitoring the implementation of the UNCRC) has recommended that all levels of government in Canada “establish compulsory processes for ex ante and ex post impact assessments of all laws and policies relevant to children on the realization of the right of the child to have his or her best interests taken as a primary consideration.”⁴¹

Accordingly, the Advocate’s office has consistently recommended to the Government of Saskatchewan and its various ministries that it discharge its onus under UNCRC Article 3 by conducting a CRIA whenever amending or developing legislation and policies that will impact children.

CRIAs have been used in various jurisdictions throughout Canada, and internationally, to highlight the potential or real impacts on children – both positive and negative – of changes to legislation and/or policy. More recently, the federal Department of Justice has developed a CRIA template and online training module to promote the use of CRIA across government departments. Several law societies, including the Law Society of Saskatchewan, endorse this tool and offer professional development credits for completing the course.⁴²

In the view of the Advocate, it was incumbent upon the Ministry of Education to assess how this policy directly impacts the rights of children and youth. The Ministry has advised that its intent was to balance the rights of students and of parents/guardians to support children but did not indicate that it had conducted a comprehensive evaluation on how the policy would impact the legal rights of young people in our province.

In light of this apparent omission, our office engaged a CRIA to fill this gap.

As this CRIA details, in addition to the likely violations under provincial and federal law, the policy violates the rights of children under the UNCRC, ratified by Canada in 1991, and by extension the provinces and territories:

- not to be discriminated against on the basis of gender identity and expression;
- to have their best interests given primary consideration in decisions that affect them;
- to be heard and have their opinions given due consideration;
- to receive and benefit from an education;
- to have and maintain their own identity;

⁴⁰ United Nations Office of the High Commissioner of Human Rights. (n.d). *What are human rights?* (Accessed from: <https://www.ohchr.org/en/what-are-human-rights#:~:text=Human%20rights%20are%20rights%20owe,language%2C%20or%20any%20other%20status.>)

⁴¹ Committee on the Rights of the Child. (2022). *Concluding observations on the combined fifth and sixth periodic reports of Canada*. Geneva, CH: United Nations. CRC/C/CAN/CO/5-6. para. 19(c) (Accessed from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FCAN%2FCO%2F5-6&Lang=en)

⁴² Department of Justice Canada. (2023). *Overview of the Child Rights Impact Assessment (CRIA) tool and e-learning course*. Ottawa, ON: Government of Canada (Accessed from: <https://www.justice.gc.ca/eng/csj-sic/cria-erde/index.html#s2>)

- to privacy;
- to be free from violence and harm; and potentially even,
- their right to life and survival.

Of note, there are some positive impacts of the policy that should not be discounted. The policy requires all school divisions, including those that did not previously have specific policies in place, to respect the use of at least a subset of students' preferred names and pronouns (i.e. those who are 16 and over, or who can obtain parental/guardian consent). For these students, the policy provides the opportunity to see themselves reflected in their school community and to be able to trust and rely on teachers and other school officials, and to be less likely to be bullied, misgendered, or otherwise emotionally harmed. It also requires investigation of complaints of students being intentionally misgendered. Another positive aspect of the policy is that it encourages the provision of supports for children in speaking with their parents about their gender identity (although specifics, including funding, are not provided).

The Advocate acknowledges that these aspects of the policy are something to build on. However, transgender young people unable or unwilling to seek parental consent makes the discrimination inherent in the policy all the more acute.

The Advocate's full CRIA is appended to this report.

Discrimination Based on Age

Having established that a refusal to use an individual's preferred name and pronouns is discriminatory on its face and that it violates several other rights under the UNCRC, the question then becomes whether limiting respect for gender identity on the basis of age is justified and/or saved in the Saskatchewan context by subsection 2(2) of *The Saskatchewan Human Rights Code, 2018* (i.e. whether this age-based discrimination is permitted or required by any Act or regulation in force in Saskatchewan). In the opinion of the Advocate, it is not.

There is no Act or regulation in force in Saskatchewan permitting or requiring an age-based distinction on when and how an individual can express their gender identity.

The Education Act, 1995 does not directly speak to this issue.

In general, *The Children's Law Act, 2020* imbues parent/guardians with "decision-making responsibility" for children under age 18 regarding "significant decisions about [the] child's personal well-being", including with respect to health and education. However, this Act acknowledges this power is tempered by "the child's age and stage of development".⁴³

This recognition of a child's evolving capacities is further reflected in *The Vital Statistics Act, 2009*⁴⁴ and its regulations⁴⁵ which permit individuals, regardless of age, to independently (i.e. without the consent of their parents/guardians) change their sex designation on their "statement of live birth" – and therefore their birth certificate⁴⁶ and other government

⁴³ The Children's Law Act, 2020 section 2

⁴⁴ The Vital Statistics Act, 2009 section 31.

⁴⁵ The Vital Statistics Regulations, 2010 section 11-1.

⁴⁶ The Vital Statistics Act, 2009 subsection 65(3).

documentation – to align with their gender identity, as long as a health care professional is of the opinion that the individual “has the capacity to make health care decisions.”

Effectively, the Government of Saskatchewan *already recognizes* the ability of a young person to independently determine the official expression of their gender identity without parental consent, based on their capacity to do so rather than on the arbitrary basis of age. The government also restricts a parent/guardian’s ability to access the health record of a child aged 14 years and over on eHealth without their child’s consent,⁴⁷ which illustrates the governments recognition that a child’s right to guidance from their parent/guardian does not guarantee to the parent a ‘right to know’.

Additionally, the Ministry of Social Services (MSS) has policies respecting the preferred name, pronouns and gender of children and youth in out-of-home care – as self-identified by the child. Respect for a child’s gender identity is not dependent on age and MSS policies specifically apply to children under age 16. Notably, preferred names and pronouns are respected on MSS forms and in informal interactions with children in care under Section 9 of *The Child and Family Services Act*, wherein parents retain decision-making powers in other areas.⁴⁸

The Ministry of Corrections, Policing and Public Safety also has a policy, on which our office was invited to consult, specific to meeting the needs of transgender young offenders related to admission, classification, and placement within correctional facilities. The objective of this policy includes the following statement:

Appropriate classification and placement of transgender offenders will contribute to successful offender management and ensure that the rights of these individuals are respected in accordance with *The Saskatchewan Human Rights Code* and, for youth, also in accordance with the *Convention on the Rights of the Child*.⁴⁹

The policy further recognizes that, “[a] failure to take into account a transgender offender’s needs and circumstances, and accommodate these needs short of undue hardship, may result in a violation of the *Saskatchewan Human Rights Code*.”

It states that decisions regarding the identification of a person’s gender are to be made between Ministry staff and the offender, and that “[t]he primary consideration for identifying a transgender individual is self-identification.” The policy does indicate that, for youth, these decisions “**may** also include the offender’s guardian(s) [and others] **where appropriate**”, but that “[**t**]he youth **shall** be consulted as to whom they wish to include in the decision-making process [emphasis added].” The policy does not set a limitation on the ability of a youth to self-identify their gender identity based on their age and, therefore, could apply to any young people aged 12 and over who may be admitted to a correctional facility. In contrast to the

⁴⁷ eHealth Saskatchewan. (n.d.). *MySask Health Record Frequently Asked Questions*. (Accessed from: <https://www.ehealthsask.ca/MySaskHealthRecord/MySaskHealthRecord/Pages/FAQ.aspx#:~:text=You%20will%20need%20to%20complete,with%20their%20completed%20request%20form> 5 September 2023)

⁴⁸ Saskatchewan Ministry of Social Services. (2023). *Children’s Services Manual*. Regina, SK: Government of Saskatchewan. (Accessed from: <https://publications.saskatchewan.ca/#/products/11522>)

⁴⁹ Saskatchewan Ministry of Corrections, Policing and Public Safety. (2016). *Topic: Transgender Offenders*. Regina, SK: Government of Saskatchewan. (Accessed from: <https://publications.saskatchewan.ca/#/products/116110>)

Ministry of Education’s policy, there is discretion afforded to correctional staff as to when the inclusion of their parents/guardians would be appropriate.

The approach taken under *The Vital Statistics Act, 2009* and the policies of other Saskatchewan government ministries align with the legally entrenched Doctrine of the Mature Minor, as outlined earlier in this report, dictating that the ability of a young person to make personal decisions ought to be based on their capacity to do so, rather than their chronological age.⁵⁰

It does not follow, then, that the same recognition of capacity and confidentiality regarding the use of a preferred name and pronouns as an expression of gender identity would not be respected within the school environment. This approach is incongruent with government legislation and policy in other areas. Allowing a young person to informally explore their gender identity and expression in an informal way at school is arguably less determinative than taking steps under *The Vital Statistics Act, 2009* to amend all government identification, and should not, therefore, be held to higher standards of consent.

In contrast, the *Use of Preferred Names and Pronouns by Students* policy presumes that all young people under the age of 16 lack this capacity.

Specifically, the Supreme Court has concluded that the blanket restriction of a young person under the age of 16 from making their own health decisions – without being given the opportunity to demonstrate capacity – is arbitrary and amounts to an unconstitutional “deprivation of liberty and security of the person.”⁵¹ The Doctrine of the Mature Minor has been accepted by courts in Saskatchewan, as well as the Saskatchewan medical community,⁵² the Saskatchewan Association of Social Workers,⁵³ and the Saskatchewan School Boards Association.⁵⁴

Notably, school counsellors and social workers (who are typically regulated by the Saskatchewan Association of Social Workers) are likely to be among those professional supports to which a student would be referred if they have concerns about approaching their parent/guardian for consent to use their preferred name and pronouns.

While current case law around this doctrine deals primarily with medical decisions, it is clear the Supreme Court places significant weight on respect for the decisions of mature minors of any age. Deference in this regard is to be applied on a ‘sliding scale of scrutiny,’ meaning that the young person’s ability to make an independent decision will be scrutinized more heavily as the severity of the potential consequences of their decision increases. Many medical decisions

⁵⁰ AC v Manitoba (Director of Child and Family Services), 2009 SCC 30, [2009] 2 SCR 181. (Accessed from: <https://www.canlii.org/en/ca/scc/doc/2009/2009scc30/2009scc30.html>)

⁵¹ Ibid., and B. (R.) v Children’s Aid Society of Metropolitan Toronto, 1995 CanLII 115, [1995] 1 SCR 315 (Accessed from: <https://canlii.ca/t/1frmh>)

⁵² College of Physicians and Surgeons of Saskatchewan. (2022). *Informed Consent and Determining Capacity to Consent*. Saskatoon, SK: Author (Accessed from: <https://www.cps.sk.ca/iMIS/Documents/Legislation/Policies/POLICY%20-%20Informed%20Consent%20and%20Determining%20Capacity%20to%20Consent.pdf>)

⁵³ LaRose, J. and Schirr, D. (2023). *Legal Issues on Consent and Counselling of Minors*. Saskatchewan Association of Social Workers. (Accessed from: <https://www.sasw.ca/site/about/sw/guidance>)

⁵⁴ Privacy in Saskatchewan Schools. (2023). *Counselling Services FAQs*. (Accessed from: <https://saskschoolsprivacy.com/students-parents/counselling-services-faqs/#7>)

in which this would be applied would have more significant consequences in the life of a young person than the use of a preferred name and/or pronouns as they are exploring their identity.

On this point, in response to the province of New Brunswick's policy implementation, the New Brunswick Medical Society noted that the removal of autonomy and, therefore, opportunity for young people to explore their identity in a safe space such as school, *would be harmful* as it could promote delay of development or even encourage "identity foreclosure" instead of normal exploration and eventual commitment to a clear identity.⁵⁵

The Advocate notes the discrepancy between the recognition of capacity in relation to decisions on sex designation within Saskatchewan's *Vital Statistics Act, 2009* and to the changing of one's name under *The Change of Name Act, 1995*. The latter requires an individual to be 18 years of age to legally change their name without the consent of their parent/guardian. Notably, however, a parent or guardian cannot seek to change the name of a child aged 14 or over without the child's consent. The requirement that a person be 18 before they can independently change their name could be challenged as it does not afford the opportunity for them to demonstrate capacity.

The New Brunswick Child and Youth Advocate also questioned whether that province's *Change of Name Act* prescribing the age of consent at 16 years would withstand legal scrutiny given that it "lacks an independent review process by which a minor can be assessed for capacity."⁵⁶

Regardless, the policy in question applies to the use of preferred names and pronouns in informal, daily interactions. This is different than changing one's legal name and should also not be held to higher standards of consent. Furthermore, it applies a discriminatory standard as it distinctly singles out gender diverse youth, as there is no corresponding obligation for parental consent to be obtained for the use of a middle name, shortened form of a name or nickname to accommodate the wishes of other students unrelated to the expression of gender identity.

Ministry officials have referred to the need for "guardrails when it comes to adults making decisions for children" and used examples such as requiring parental/guardian consent for students to travel on field trips or for the administration of medication. However, these types of activities involve the potential for risk of harm to a student and/or legal liability connected to that potential risk. As expression of one's gender identity is an inherent human right, it stands to reason that the use of a pronoun or preferred name does not carry the same risk. Rather, as

⁵⁵ In New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate's Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author. p. 48 (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

⁵⁶ Ibid.

discussed earlier, evidence has shown that young people are placed at higher risk if prevented from expressing their authentic selves and that the use of preferred names and pronouns is a protective factor.

Pursuant to the child rights framework, although minimum ages for different purposes are necessary, in general, “minimum ages that are protective should be set as high as possible”, while minimum ages relating to the child gaining autonomy and the State respecting their ‘evolving capacity’ require flexibility that is sensitive to the individual needs of the child.⁵⁷ When setting minimum or maximum ages, the Committee on the Rights of the Child consistently emphasizes that these decisions must be made against the backdrop of the UNCRC in its entirety and, especially, with consideration to its general principles of non-discrimination, best interests of the child, child and youth participation, and maximum survival and development.

Article 5 of the UNCRC recognizes that the rights of duties of parents to provide direction and guidance shall be respected “in a manner consistent with the evolving capacities of the child [...] in the exercise by the child of the rights recognized in the present Convention.”

⁵⁷ UNICEF. (2007). *Implementation Handbook for the Convention on the Rights of the Child*, Geneva, CH: United Nations Publications Office. pp. 5 (Available at: <https://www.unicef.org/lac/media/22071/file/Implementation%20Handbook%20for%20the%20CRC.pdf>)

Can this Discrimination Be Justified?

To the Advocate’s knowledge, schools were generally respecting the rights of students to gender identity and expression prior to the implementation of this policy. As the Ministry of Education reports that part of the rationale for implementing this policy was to standardize approaches across the province, the Advocate is of the view that any provincial policy should aim to direct a consistent approach that does not infringe on or unnecessarily limit the rights of the child. The Supreme Court has identified a number of tests to determine whether a rights violation can be justified. The Advocate relies upon the NBCYA’s *Charter* analysis and application of the *Oakes*⁵⁸, *Meiorin*⁵⁹ and proportionality tests in this regard. The conclusion reached by the NBCYA was that even though encouraging parental involvement is a valid, pressing, and substantive objective, this limitation on the rights of young people cannot be justified under the *Charter* or provincial human rights legislation.

Although the Saskatchewan government’s stated intent is to support the accommodation of transgender and gender diverse youth, while increasing parental inclusion, the onus is on the government to provide evidence that the policy will actually accomplish this goal. In New Brunswick, through engagement with gender diverse youth and their parents, the NBCYA concluded that the consent requirement would not rationally achieve the government’s stated – and worthy – goal of parental inclusion. Rather, it would more likely result in a decrease in the number of students using their preferred names and pronouns. As gender identity is a protected status, “a legitimate objective cannot be reducing the number of children exercising their rights to gender identity.”⁶⁰

Again, it stands to reason that the requirement of consent to use preferred names and pronouns would not address the concerns raised in the public discourse that schools are “keeping secrets from parents.” Under Saskatchewan’s policy as written, a student may disclose a gender identity different from that assigned at birth and their wish to use a corresponding name or pronoun – or express their gender identity in other ways – yet elect not to seek consent from their parent for a myriad of reasons. One of these reasons could be that the young person knows their identity would not be supported at home. Subject to concerns around ambiguity in the language of the policy discussed in the next section, the policy does not require, nor would it be appropriate for, school staff to inform the student’s parent of these circumstances unless there was some legitimate concern for the student’s safety and well-being. However, it would leave school staff in the difficult position of knowing they are violating the rights of the student by continually misgendering them in the absence of consent.

⁵⁸ The *Oakes* test was developed in *R. v. Oakes*[1986] 1 SCR 103, and later modified in *R. v. Edwards Books & Art*[1986] 2 SCR 713. This test is used by the courts to determine whether a violation of a right under the *Charter* can be justified. (<https://www.sfu.ca/~ahheard/oakes.html#:~:text=The%20Oakes%20Test%3A,be%20reasonable%20and%20demonstrably%20justified.>)

⁵⁹ *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 SCR 3, at para 57, (Accessed from: <https://canlii.ca/t/1fqk1>)

⁶⁰ New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate’s Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author. p. 55 (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

Relatedly, in consultation with the Advocate's Youth Advisory Council, one member stated that having her name and pronouns respected at school was very important to her, because this is one of the most accessible ways to change without facing barriers related to money and health care access. She explained:

Especially when it comes to the school atmosphere, knowing that if I want to change and not be misgendered, deadnamed, etcetera at school, the knowledge that my parents would have to know for that to be a possibility, that would change things. That would make me go through a lot more consideration because of the fear that if it goes badly with parents, **well, then its just not happening** [emphasis added]. [...] [I]t probably would have made me consider not wanting to bother at all, because, like, that additional hurdle can make a lot of people struggling to come out – who already are having a hard time of it – that could be one more thing discouraging them to come out at all. [...] [I]f [my parents] disapproved, then I would have been stuck for [...] years with every single teacher or employee of the school calling me with the wrong name and the wrong pronouns [...] – it's not a friendly environment.

And it puts a lot of unfair pressures on teachers where – **even if they know – they are forced to call these kids by the wrong name and pronouns – and hurt them with that every time** [emphasis added].

Other conclusions reached by the NBCYA regarding the lack of justification for the discrimination imposed by the consent requirement are also valid in Saskatchewan. As in New Brunswick, the Saskatchewan government has not shown that it is impossible to accommodate transgender and gender diverse students in a way that does not, or only minimally, impacts their rights, and that there was not a less invasive way to achieve the goal of parental inclusion.

Ambiguity of the Policy

The Advocate understands the intent of the policy is to apply specifically to the use of preferred names and pronouns by students, and not to other forms of gender expression. These parameters are implied and stated throughout the policy, and the title of the policy denotes this.

However, there are some ambiguities in language throughout both the policy and sample administrative procedure that could be interpreted more broadly and require clarification – specifically as regards references to “gender expression.”

For instance, on the matter of what constitutes a “student request”, the policy reads, “when a student requests that their preferred name, gender identity, and/or gender expression be used, parental/guardian consent will be required for students under the age of 16.” Similarly, the sample administrative procedure directs that school staff “shall: [...] [i]mmediately make the school principal aware of any student request made with respect to gender identification and/or gender expression needs.” Additionally, although under the header of “Change of Preferred Name or Pronouns”, it states that “[w]hen a **student requests that their preferred name, gender identity, and/or gender expression be used** [emphasis added]” the consent process is to be engaged.

Gender expression can be interpreted more broadly than simply the use of a particular name and pronouns. Notably, neither the policy nor the attached sample procedure includes a definition of “gender expression” outside of a definition provided for “gender identity.”

The Saskatchewan Human Rights Commission defines “gender expression” as follows:

Gender expression is the external representation of one’s gender identity. It is usually expressed through “masculine” or “feminine” behaviour, and may include clothing, hairstyle, voice or physical appearance characteristics.⁶¹

Accordingly, the policy is ambiguous as to what information school staff are expected to report to the principal regarding the “gender expression needs” of a student and does not provide guidance on what the principal “shall” do once this information is received. There is ambiguity around what “requests” for the “use” of a student’s “gender expression” might engage the need for consent.

This lack of clarity raises the question of whether a teacher would be expected to interpret a student’s choice of clothing and accessories, use of make-up, or hairstyle as a “request” to “use” their “gender expression” in a manner that engages these elements of the policy. Any determination in this regard would necessarily depend on a school staff’s own subjective understanding of what constitutes a misrepresentation of one’s gender and raises further questions as to where the line would be drawn.

It is unclear as to what might transpire if a student’s peers refer to them by their preferred name and pronouns in the absence of parental/guardian consent. There are no prohibitions of students calling each other by names other than their legal names (i.e. nicknames) without parental/guardian consent for purposes unrelated to the expression of gender identity. Thus, as previously stated, it would be discriminatory to impose this requirement singularly on gender diverse youth.

If the policy is to be strictly interpreted as applying only to the use of preferred names and pronouns, and not other forms of gender expression as defined by the Saskatchewan Human Rights Commission, these ambiguities further call into question whether the requirement of consent for this purpose will realistically accomplish the policy’s stated goal. If a young person is permitted to express their gender identity in any and all other ways without obtaining parental/guardian consent, the corresponding restriction on the use of a preferred name and pronoun until the age of 16 may not serve a purpose that would justify the discrimination against and gender-based harassment of transgender or gender diverse youth.

The Advocate notes that there are a number of elements of importance to any policy regarding the support for and accommodation of the needs of gender diverse youth that appear in the sample administrative procedure, rather than the provincial policy itself. Namely, these include definitions and a reference to the requirement to investigate complaints of intentional misgendering. Sample procedures are to be used as a guide by school divisions and the CEF but can be amended to suit the individual needs of the division. As a stated goal of the policy is to ensure consistency across the province, these elements ought to appear in the policy itself and,

⁶¹ Saskatchewan Human Rights Commission. (2016). *Human Rights of Transgender People*. Saskatoon, SK: Author (Accessed from: https://saskatchewanhumanrights.ca/wp-content/uploads/2023/06/SHRC_Transgender-Rights.pdf)

therefore, be required to be implemented as written, rather than appearing only in a sample administrative procedure that can be amended.

Accessibility of Professional Supports

As indicated earlier, it is positive that the provincial policy requires the provision of support to students to have what a student may perceive to be a difficult conversation with their parent/guardian and/or to navigate a family dynamic that may not be supportive of their gender identity.

It is also positive that the policy explicitly states this will not occur until the student is “ready to do so.” However, the Advocate is concerned that there are not sufficient professional supports available in schools to meet this additional demand.

With all of the cuts and everything, I’m like, ‘So, where are these resources coming from?’ ‘Cause I haven’t seen them.

- ACY Youth Advisory Council Member

The policy does not define what supports will be engaged. Rather, the sample administrative procedure appended to the policy encourages school divisions to determine the composition of the support team “based on the student’s individual needs and situation.” While flexibility is needed as different students may have trusting relationships with different adults in a school, it is critical that whoever is supporting a young person be adequately trained and competent in navigating the complex issues that can often arise in these situations, as well as has sufficient time available to do so in a meaningful way.

The Saskatchewan Teachers Federation (STF) has been vocal about concerns with the increasing demands on teachers related to increasing class size and complexity. These circumstances raise questions as to whether teachers will be available to offer this support. Specifically in response to the release of this policy, the STF reported that the current staffing ratios in Saskatchewan average one counsellor to every 3,000 students, stating, “We don’t have support for students who are already struggling, and now we’re going to have additional struggles in our school for some very vulnerable students.”⁶²

This statement reaffirms the lack of sufficient counsellors and Elders in schools as described by children and youth in the Advocate’s 2022 report entitled *Desperately Waiting*.⁶³ In 2022, the Government of Saskatchewan accepted our recommendation to the education and health sectors to jointly increase the presence of mental health supports in schools, however, has updated our office that it will not begin working on implementation of this recommendation until 2026.⁶⁴

⁶² Kurz, L. (30 August 2023). Relying on school supports for pronoun policy fallout not viable, says STF. *Saskatoon Star Phoenix* (Accessed from: <https://thestarphoenix.com/news/saskatchewan/sask-legal-action-over-pronouns-in-schools-likely-only-the-beginning-law-professors>)

⁶³ Saskatchewan Advocate for Children and Youth. (2022). *Desperately Waiting*. Saskatoon, SK: Author (Available at: <https://www.saskadvocate.ca/assets/desperately-waiting-special-report-march-2022.pdf>)

⁶⁴ Email communication with the Advocate for Children and Youth Office.

Delays and, potentially, denials of the use of young people's preferred names and pronouns could create situations where they experience distress, thereby further increasing demand on an already overloaded and under-resourced support system.

Additionally, many schools require parental/guardian consent for mental health counselling services contrary to the Doctrine of the Mature Minor and the position of the Saskatchewan Association of Social Workers. This requirement may put up yet another barrier to transgender and gender diverse youth getting the support and services they need. The Advocate also made a recommendation in *Desperately Waiting* for the health and education sectors to standardize their approaches to consent based on capacity, in alignment with the Doctrine of the Mature Minor, rather than age. Again, this recommendation has been accepted by government, however, officials indicate that work will not begin on its implementation until at least 2025.

Given the implications of this policy directive on young people, at the very least, it will be incumbent upon the Ministry of Education to immediately increase the supports available to young people in schools where they spend the majority of their time, such as by immediate implementation of the Advocate's recommendation in this regard.

Education and Social Work Codes of Ethics

In the context of New Brunswick, the Child and Youth Advocate there concluded the government's implementation of a parallel policy left its teachers and administrators legally vulnerable to potential violations of their codes of ethics, as well as provincial human rights legislation.⁶⁵ It is a reasonable conclusion that the same applies in Saskatchewan.

The Saskatchewan Professional Teachers Regulatory Board's (SPTRB's) *Standards of Conduct* require that registered teachers:

- base their relationships with learners on mutual trust and respect by "honor[ing] individual identity and circumstance without prejudice";
- have regard for the safety and academic, physical, emotional and spiritual well-being of learners by "tak[ing] measures to provide and model a safe, inclusive, and respectful environment at school";
- act with honesty and integrity by "communicat[ing] openly, truthfully and respectfully with all relevant parties while maintaining necessary confidentiality"; and,
- uphold public trust and confidence in the education profession by "maintain[ing] appropriate communication and professional relationships with learners, parents, guardians, colleagues, and other stakeholders."⁶⁶

⁶⁵ New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate's Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author p. 54 (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

⁶⁶Saskatchewan Professional Teachers Regulation Board. (n.d.) *Our Legislation and Bylaws*. (Accessed from: https://sptrb.ca/SPTRB/About_Us/Legislation_and_Bylaws/SPTRB/About_Us/Our_Legislation_and_Bylaws.aspx?hkey=f9c73812-f36f-4369-8e78-dce4e8e6b0fb)

Under these Standards, registered teachers can be disciplined for misconduct for “[a]ny intentional act or omission designed to humiliate or cause distress or loss of dignity to any person in school or out of school which may include verbal or non-verbal behaviour.”

Teachers are also bound by the Saskatchewan Teachers Federation (STF) *Code of Professional Ethics* which requires them to “respect the right of students to form their own judgments based upon knowledge,” and to “support each student in reaching their highest levels of individual growth across intellectual, social-emotional, spiritual and physical domains.”⁶⁷

It is noted that the SPTRB standards, in particular, refer to appropriate communication with parents/guardians. However, as it has already been determined that refusing to honour a mature student’s preferred name and pronouns in the absence of parental/guardian consent is discriminatory, necessitating this refusal may require teachers to violate their own professional standards of conduct, in addition to human rights law.

Additionally, the *Standards of Practice For Registered Social Workers in Saskatchewan* states under “Dignity of Clients” that a social worker “will not impose any stereotypes on a client based on behaviour, values or roles related to [...] gender [...] that would interfere with the provision of professional services to the client,” and “shall use reasonable advocacy and other intervention activities to ensure that the dignity, individuality and rights of their clients are safeguarded.”⁶⁸

Mental health counsellors employed in Saskatchewan schools are often social workers and are bound by the *SASW Standards of Practice*. Under the policy, these professionals would also be required to misgender students under age 16 if they did not have parental/guardian consent for the use of their preferred name and pronouns. This dynamic would likely interfere with the efficacy of counselling to that student.

“[The counsellors office] should ultimately be a safe place where it, kind of, does not abide by the rules.”

- ACY Youth Advisory Council Member

The Advocate notes that these Standards define a “client” as an individual who is 14 years old or older, however, we are aware that this definition is being reviewed by the SASW as the intent is not to prevent a social worker from considering a mature minor.⁶⁹ It appears that any social workers in schools who could presumably be among the “professional supports” to whom a child or youth is referred to facilitate consent may also have to violate their Standards of Conduct while consent is being pursued or is denied.

⁶⁷ Saskatchewan Teachers Federation. (2021). Code of Professional Ethics. (Accessed from: https://www.stf.sk.ca/wp-content/uploads/2021/08/bylaw_6.2_code_of_professional_ethics.pdf)

⁶⁸ Saskatchewan Association of Social Workers. (2020). *Standards of Practice For Registered Social Workers in Saskatchewan*. Regina, SK: Author. p. 20 (Accessed from: <https://www.sasw.ca/document/5075/Approved%20Standards%20Document%20eff%20March%201%202020.pdf>)

⁶⁹ Email communication between the ACY and SASW.

Recommendations

For the reasons cited in this report, the Advocate for Children and Youth concludes that the implied refusal to use the preferred first name and pronouns of a student under age 16 in the absence of parental/guardian consent, without a determination of the student's capacity to consent for themselves, is a violation of their rights to gender identity and expression, contrary to law and/or is improperly discriminatory. Provincial reliance on a broad commitment to 'parental rights' on its own, does not override the rights of the child.

Accordingly, the Advocate makes the following recommendations:

Recommendation 1: The Ministry of Education amend the *Use of Preferred First Names and Pronouns by Students* policy to:

- recognize the right of all individuals to gender identity and expression;
- provide a definition of gender expression to ensure consistency in understandings across the province;
- respect decisions of students around their gender identity and expression, including the use of their preferred names pronouns based on demonstrated capacity rather than age;
- offer continued and ongoing support to students that involves their parent/guardian in these matters whenever possible and appropriate, but not against the wishes of a student with capacity;
- include the requirement to investigate complaints of misgendering in the policy, rather than only in the sample administrative procedure, to ensure consistency across the province.

Recommendation 2: The Ministry of Education develop and implement a concrete plan to increase the capacity of schools to provide professional student supports to facilitate parental inclusion regarding matters related to gender identity, when appropriate and in the best interests of the child. This may include immediate implementation of the Advocate's recommendations in *Desperately Waiting* (2022) to increase the presence of mental health counsellors and Elders in schools, and to adopt a consistent approach to "consent" for children and youth to receive mental health counselling based on the evolving capacities of the child rather than age.

The Advocate has advised the Ministry of Education that our office would be pleased to provide consultation and support in revising this policy to ensure the rights and best interests of children in Saskatchewan continue to guide the important work being done by Saskatchewan teachers and schools.

Appendix - Child Rights Impact Assessment

Saskatchewan Ministry of Education Policy - *Use of Preferred First Names and Pronouns Used by Students*

Policy Overview

On August 22, 2023, the Minister of Education introduced the *Use of Preferred First Name and Pronouns by Students* policy (the policy). All school divisions and the conseil des écoles fransaskoises (CÉF) were directed to develop administrative procedures for the implementation of this policy to be effective at the start of the 2023-24 school year.

The stated intent of the policy is to “support students who wish to change their pronouns and/or preferred first name to align with their gender identity,” while “recogniz[ing] the important role that parents and guardians have in protecting and supporting their children as they grow and develop.”

The policy seeks to achieve its purpose by requiring written parental consent for children under the age of 16 to use their preferred first name and/or pronouns within the school environment. Students over the age of 16 can consent on their own behalf. A sample administrative procedure and a template consent form are provided as appendices to the policy.

The Ministry of Education has stated that the policy arose in response to “concerns raised by Saskatchewan parents about needing to be notified and included in their children's education [...]”⁷⁰ However, the Ministry of Education had not engaged in a comprehensive analysis of how the introduction of this policy would impact the rights and interests of children and youth in Saskatchewan schools.

About Child Rights Impact Assessments (CRIA)

Canada was one of the leading nations in the development and drafting of the United Nations Convention on the rights of the Child and ratified the Convention in 1991. As such, all governments in Canada, including the Government of Saskatchewan, are considered “Duty Bearers” under the Convention. Governments bear a duty to protect and promote the rights of children (“Rights Holders” under the Convention). This duty extends to undertaking “all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention”⁷¹ including the use of a Child Rights Impact Assessment (CRIA) “as early as possible” in the development of law and policy.⁷²

A CRIA is a systematic assessment of the potential impacts – both positive and negative – of policies, programs, legislation, or other actions on the rights and well-being of children. The

⁷⁰ Government of Saskatchewan Media Release (22 August 2023). *Education Minister Announces New Parental Inclusion and Consent Policies*. (Accessed from: <https://www.saskatchewan.ca/government/news-and-media/2023/august/22/education-minister-announces-new-parental-inclusion-and-consent-policies>)

⁷¹ UNCRC Article 4

⁷² Committee on the Rights of the Child. (2013). *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration of the Committee on the Rights of the Child*. Geneva, CH: United Nations. CRC/C/GC/14

purpose of conducting a CRIA is to ensure decision-makers consider how the full spectrum of children's rights may be impacted and – using this information – make decisions in their best interest.

CRIAs have been used in various jurisdictions throughout Canada, and internationally, to highlight the potential or real impacts on children – both positive and negative – of changes to legislation and/or policy. More recently, the federal Department of Justice has developed a CRIA template and online training module to promote the use of CRIA across government departments. Several law societies, including the Law Society of Saskatchewan, endorse this tool and offer credits for professional development for completing the course.⁷³

Summary of CRIA – Use of Preferred First Names and Pronouns by Students Policy

The present Child Rights Impact Assessment (CRIA) was conducted under section 14 of *The Advocate for Children and Youth Act*. It draws heavily on the templates developed by UNICEF Canada and the federal Department of Justice and has been adapted to best assess the impacts of the *Use of Preferred First Name and Pronouns by Students* policy.

The principle that the best interests of the child should be a primary consideration in all actions taken by governments and school divisions is an established legal precedent in Saskatchewan and across Canada. It accounts for the undeniable fact that children do not have the same voice or agency as adults in our democracy, and decision-makers therefore have a duty to consider and prioritize their well-being. This is especially true for transgender children, who are often among the most marginalized of young voices. We must prioritize the voice and opinions of these children to ensure their rights are respected. That is the value of a rights-based approach, and that is the purpose of this CRIA.

While the stated intentions of this policy are admirable, the requirement for parental consent for the use the preferred first name and pronouns of students under age 16 will not likely achieve the aims of the policy and will violate the rights of young people in the process. As this impact assessment outlines, in addition to rights violations under provincial and federal law, the policy violates the rights of children under the UNCRC:

- not to be discriminated against on the basis of gender identity and expression;
- to have their best interests given primary consideration in decisions that affect them;
- to be heard and have their opinions given due consideration;
- to receive and benefit from an education;
- to have and maintain their own identity;
- to free expression;
- to privacy;
- to be free from violence and harm; and potentially even,
- their right to life and survival.

⁷³ Department of Justice Canada. (2023). *Overview of the Child Rights Impact Assessment (CRIA) tool and e-learning course*. Ottawa, ON: Government of Canada (Accessed from: <https://www.justice.gc.ca/eng/csj-sic/cria-erde/index.html#s2>)

Of note, there are some positive impacts of the policy that should not be discounted. The policy requires all school divisions, including those that did not previously have policies in place, to respect the use of at least a subset of students' preferred names and pronouns (i.e. those who are 16 and over, or who can obtain parental/guardian consent). For these students, the policy provides the opportunity to see themselves reflected in their school community and in official documentation, to be able to trust and rely on teachers and other school officials, and to be less likely to be bullied, misgendered, deadnamed, or otherwise emotionally harmed. It also requires investigation of complaints of students being intentionally misgendered. Another positive aspect of the policy is that it encourages the provision of supports for children in speaking with their parents about their gender identity (although specifics, including funding, are not provided).

The Advocate acknowledges that these aspects of the policy are something to build on. However, the fact that these positive impacts would be denied to a smaller group of transgender young people unable or unwilling to seek parental consent makes the discrimination inherent in the policy all the more acute.

For all these reasons, the overarching recommendation of the Advocate is that the policy be amended to recognize the right of all individuals to gender identity and expression, and to respect decisions of students around gender identity based on demonstrated capacity rather than age, while offering support to students to involve their families in these matters whenever possible and appropriate.

This should begin with the meaningful consultation of transgender students and their families, as well as other students, parents, and school officials. It should also involve a fulsome assessment of the impact of any revised or new policy on children's rights. The Advocate would be pleased, and has offered, to provide consultation and support to the Ministry of Education in revising this policy to ensure the rights and best interests of children in Saskatchewan continue to guide the important work being done by Saskatchewan teachers and schools.

Relevant Articles of the United Nations Convention on the Rights of the Child

This section details the specific rights of children in Saskatchewan impacted by the policy, as outlined in the UNCRC.

While all rights under the UNCRC are considered equal and interdependent, this assessment will focus on those rights most directly affected by the policy. UNCRC Articles 2 (non-discrimination), 3 (best interests of the child), 6 (life, survival, and development), and 12 (right to be heard) are considered "guiding principles" in the interpretation of the UNCRC and were therefore given special consideration in this assessment.

Article 2: Non-discrimination

The policy pertains explicitly to "students who wish to change their pronouns and/or preferred first name to align with their gender identity." As such, the question of potentially discriminatory treatment—the focus of Article 2 of the UNCRC—is highly relevant to this analysis.

Positive impacts of the policy

The policy would support the more equitable treatment of transgender children and youth, provided they are able to obtain parental consent using "Form 1" or, if over the age of 16, are able to complete Form 1 themselves. It guarantees respect for the gender identity and expression of at least a subset of young people, including in those schools that may not have previously had affirming policies in this regard.

In particular, the sample administrative procedure provided as an Appendix to the policy outlines in detail steps that should be taken to ensure that all official records reflect a student's preferred name/pronouns, that all teachers and staff are made aware of a student's preferred name/pronouns and expected to use them, and that any intentional failure to use a student's preferred name/pronouns "are taken seriously, investigated, properly documented, and dealt with in a timely manner."

Negative impacts of the policy

The policy clearly discriminates against transgender children who are unable or unwilling to seek parental consent for the use of their preferred name and pronouns.

Children and youth are guaranteed the right to education without discrimination pursuant to both the UNCRC and *The Saskatchewan Human Rights Code, 2018*. Human Rights Commissions across the country have stated that:

Refusing to refer to a trans person by their chosen name and a personal pronoun that matches their gender identity, or purposely misgendering, will likely be discrimination when it takes place in [...] services like education.⁷⁴

Although *The Saskatchewan Human Rights Code, 2018* allows age-based distinctions if permitted or required by an Act or regulation in force in the province, there is no such statute legislating when and how an individual can express their gender identity.

It is inequitable for some young people to have their human right to gender identity and expression respected while for others it is not. The fact that a young person's teacher can use the preferred name and pronouns of the transgender student seated next to them, only to turn and misgender them as required by school policy, is a clear case of discrimination.

The very same children who are denied their self-identity at home are therefore also denied their identity at school. In this way, the most vulnerable transgender students are further marginalized by the policy. The policy will therefore both create new inequities and exacerbate existing ones.

As outlined earlier, the literature is clear that children who are discriminated against in this way will experience increased anxiety and depression, are likely to feel unsafe and disrespected, and likely grow resentful of their teachers, principals, guidance counsellors,

⁷⁴ Ontario Human Rights Commission. (n.d.) *Questions and answers about gender identity and pronouns*. Toronto, ON: Author (Accessed from: <https://www.ohrc.on.ca/en/questions-and-answers-about-gender-identity-and-pronouns> 1 September 2023)

coaches, peers, and others who refuse to use their preferred name or pronouns. The policy will therefore decrease the number of trusted adult allies in the lives of precisely those transgender children and youth who need such allies the most.

Additionally, this policy applies a distinctly different standard toward gender diverse youth as there is no corresponding obligation for parental consent to be obtained by students to use a preferred name for reasons unrelated to the expression of their gender identity (ex. middle name, shortened form of a name or nickname).

Article 3: Best interests of the child

Article 3(1) of the UNCRC states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Negative impacts of the policy

The policy does not mention the best interests of the child and prioritizes other considerations—specifically parental consent in the name of inclusion—in institutional actions concerning transgender children.

Beyond the UNCRC, the principle of the best interests of the child is a well-established legal precedent for decision-making in Canada. The Ministry has not provided credible evidence as to why this established precedent should not apply to the decision to refuse to use the “preferred name and pronouns” of transgender students in Saskatchewan.

The Government of Saskatchewan has adopted Saskatchewan’s Children and Youth First Principles in 2009 which not only commit to making the best interests of children a “paramount consideration,” but also to making children and youth “the primary client, and at the centre, of all child-serving systems.” An individual’s human right to respect for their gender identity and expression cannot be vetoed or taken away by another person, including their parent/guardian. Allowing parents of children under age 16 to do so by virtue of withholding consent – when an age-based distinction is not justified – unjustly prioritizes the interest of the parent and does not put the child or their best interest at the centre.

Article 5: Respect for family guidance and direction

Parents, extended families, and communities have “distinct responsibilities, rights and duties” under UNCRC Article 5(1) to provide “appropriate direction and guidance” to children “**in the exercise of their rights under the Convention** [emphasis added].” The policy “recognizes the important role that parents and guardians have in protecting and supporting their children as they grow and develop” and requires the consent of parents of children under the age of 16 before a school will use the child’s “preferred name, gender identity, and/or gender expression.”

Positive impacts of the policy

The policy correctly recognizes the importance of parents and guardians in supporting a child’s development and indicates that school professionals have a role to play in supporting or facilitating conversations between students and their parents on the topic of gender identity. Outside the context of the remainder of the policy, these two aspects highlight how Saskatchewan schools *could* support children and their families who are struggling with gender issues.

Negative impacts of the policy

While parental guidance is undeniably in a child’s best interest, and certainly parental involvement is at the core of the intent, the crux of the policy centers on parental consent to a child’s right to self-identity (Article 8), free expression (Article 13), to be heard in decisions that affect them (Article 12), to be free of violence and emotional harm (Article 19), and non-discrimination (Article 2), among others. UNCRC Article 5 clearly states that parents have a right to provide guidance to children *in the exercise of their rights under the Convention*. This is different than having the right to prevent a child from exercising their rights. The policy as it stands clearly misunderstands the purpose of parental guidance.

Unclear or ambiguous impacts of the policy

Requiring parental consent for the use of a student’s preferred name or pronouns may further exacerbate existing familial tensions surrounding gender identity. Children whose parents choose to “veto” the use of their preferred name or pronouns at school may be less inclined to seek, receive, and benefit from parental guidance in the future. This unintended consequence undermines the Ministry’s stated desire for more parental involvement.

Article 6: Life, survival, and development

Every child has the inherent right to life, and governments must ensure the survival and development of the child to the maximum extent possible. Development is meant to be seen as a holistic concept encompassing “the child’s physical, mental, spiritual, moral, psychological

and social development” and directs that “[i]mplementation measures should be aimed at achieving the optimal development for all children.”⁷⁵

Negative impacts of the policy

Transgender and gender-nonconforming youth experience far more suicidal ideation than their peers and may be over seven times more likely to attempt suicide.⁷⁶ Bullying, family dysfunction, and barriers to accessing support services are all cited as risk factors for suicidality that disproportionately affect transgender youth.⁷⁷ Research and evidence shows that a refusal to respect the gender identity and expression of a young person is likely to exacerbate these risks and can, therefore, reasonably be understood to impact the survival of transgender children and youth.

Children who do not identify with the name, pronouns, or gender identity by which their teachers, counsellors, coaches, principals, and administrative staff refer to them will have difficulty relying on those professionals to access mental health support services.

Requests for parental consent for preferred name and pronoun use are also likely to exacerbate familial tensions in at least some homes - even where school supports are provided to students in discussing the topic.

Demands on under-resourced school supports already struggling to meet students’ needs will increase due to policy requirements. This increase will result from both the need to facilitate family connections and from the need to support students who will likely experience distress from being denied respect for their identity. Without increased investment into these supports, the student population in general – and transgender students in particular – will face longer wait times for support services which will put them at increased risk.

Unclear or ambiguous impacts of the policy

Providing professional support for students in developing a plan to speak with their parents about their gender identity is a potentially positive aspect of the policy.

However, it is unclear how this support would differ from the resources already made available to students in Saskatchewan. Further, as the support would be offered before parental consent is sought, school officials would presumably be required to use the student’s name and/or pronouns that they do not identify with, severely limiting the efficacy of such supports and the likelihood of such supports being sought by students.

⁷⁵ Committee on the Rights of the Child. (2003). *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child*. Geneva, CH: United Nations. CRC/GC/2003/5 (Accessed from: <https://www.refworld.org/docid/4538834f11.html>)

⁷⁶ Kingsbury, M., Hammond, N.G., Johnstone, F. and Colman, I. (6 June 2022). Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada. *CMAJ* 194 (22) E767-E774; DOI: (Accessed from: <https://doi.org/10.1503/cmaj.212054>)

⁷⁷ *Ibid.*

Article 8: Identity

Article 8 outlines the right of every child to preserve their identity, and the duty of governments to provide appropriate assistance and protection to children who have been deprived of some element of their identity.

Gender identity has been repeatedly recognized by the United Nations Committee on the Rights of the Child as forming an important part of a child’s identity and respect for such should inform any determination of a child’s best interests.⁷⁸

Positive impacts of the policy

The policy would support the right of transgender children and youth to fully express their gender identity, provided they are able to obtain parental consent using “Form 1” or, if over the age of 16, are able to complete Form 1 themselves.

Family relationships are also an important part of one’s identity. Any support that can be provided to facilitate positive connections with family would be positive.

Negative impacts of the policy

The proposed policy clearly restricts the right of children to express their gender identity, by making school acknowledgement of that identity contingent on parental consent. For those unable or unwilling to seek parental consent under the policy, this would amount to an explicit denial of this right.

Many transgender children and youth who feel that their gender identity would not be supported by their parents will therefore choose not to officially request that the school use their preferred name and/or pronouns and will instead be forced either to lead separate lives among their peers and among their teachers/school officials, or to keep their gender identity “closeted” from their school life altogether.

As a result, rather than achieving the stated intent of the policy to increase parental inclusion, the requirement of consent is likely to decrease the number of students using their preferred names and pronouns. As gender identity is a protected status, “a legitimate objective cannot be reducing the number of children exercising their rights to gender identity.”⁷⁹

⁷⁸ See UNCRC General Comments 14, 15, and 20.

⁷⁹ New Brunswick Child and Youth Advocate. (2023). *On Balance, Choose Kindness: The Advocate’s Review of Changes to Policy 713 and Recommendation for a Fair and Compassionate Policy*. Fredericton, NB: Author. p. 55 (Accessed from: <https://static1.squarespace.com/static/60340d12be1db058065cdc10/t/64dba253048a5831dfebc552/1692115539961/On+Balance+Choose+Kindness+-+Advocate+Review+of+Policy+713.pdf>)

Article 12: Right to be heard

Article 12 of the UNCRC states that all children should have the opportunity to be heard and to have their views given due weight, in accordance with their age and maturity, in all decisions that affect them. This article is considered one of the four “guiding principles” of the UNCRC and is of particular relevance to children who have historically been marginalized and remain at risk of having their rights violated, such as transgender children.

Negative impacts of the policy

The negative impacts of the policy on children’s right to be heard and to have their views given due weight in decisions that affect them cannot be overstated. The policy would have a devastating effect on the fulfilment of Article 12 for two key reasons.

The first is the nature of the decision in question. As the rest of this CRIA demonstrates, the right of a child to have a voice in their best interests, self-identity, expression, education, privacy, safety, protection, and more are all implicated in the policy’s requirement for parental consent. In fact, the majority of rights violations highlighted in this assessment flow directly from the denial of the child’s right to have their views given due consideration. As the discussion on Article 6 in this CRIA highlights, the consequences of this violation are potentially a matter of life and death for some children in Saskatchewan.

The second issue is the nature of the refusal. Children need adults in their life outside of their immediate family that they can trust and rely on for support. This is especially true of gender-nonconforming children who do not receive the full support they need at home. For many children, these trusted adults are found in the school environment: teachers, principals, coaches, counsellors, and the like. The policy will require these adults to look a transgender child in the face and tell them that they cannot respect their voice and identity because their parents have not filled out the appropriate form. Again here, the effects of those interactions will have a long-term impact on a child’s life and could be a barrier to accessing the potentially life-saving resources that would otherwise be available to them.

Unclear or ambiguous impacts of the policy

The policy would ostensibly support the Article 12 rights of transgender children who are able to consent on their own or obtain parental consent for the use of their preferred first name and/or pronouns. However, on the whole, the effects of the policy would be ambiguous, even for children who have their preferred name and pronouns used. This is because these students under age 16 will no doubt be aware that this change was achieved not only because they spoke up, but also because—decisively—their parents consented to their wishes. This ambiguity would be further highlighted by interactions with their transgender peers who are denied parental consent.

Article 13: Freedom of expression

Gender expression is considered a foundational aspect of gender identity, and children have the right to freedom of expression subject only to certain restrictions “as are provided by law and are necessary” to protect the rights of others, or “for the protection of national security or of public order [...], or of public health or morals.”

Positive impacts of the policy
The policy would support the freedom of transgender children and youth to express their gender identity in ways in which they see fit, provided they are able to obtain parental consent using “Form 1” or, if over the age of 16, are able to complete Form 1 themselves.
Negative impacts of the policy
<p>The policy would arbitrarily restrict the freedom of expression of transgender children who are unable or unwilling to seek parental consent for the use of their preferred name and pronouns. This restriction would not be justified under the limitations outlined under Article 13, as free gender expression poses no risk to public health, nor to the rights or reputation of others.</p> <p>The Advocate emphasizes that, as gender identity is a protected ground in <i>The Saskatchewan Human Rights Code, 2018</i>, it forms part of the freedoms and morals upon which our society is based. Therefore, the suppression of its expression cannot be said to be necessary in the protection of our society’s morals.</p>

Article 16: Privacy

Children and youth have the right to protection against arbitrary or unlawful interference with their privacy. Schools are public places, and there are limitations to the amount of privacy that children can reasonably expect with regard to their gender identity and expression. However, schools also contain private spaces, such as the offices of counsellors and spiritual leaders, which must be protected. The policy fails to articulate the threshold at which the policy is engaged, as it is unclear what constitutes a “student[’s] request that their preferred name, gender identity, and/or gender expression be used.”

The policy has been presented in the media, including by the Minister, as an issue of parents having the right to know about and be involved in their children’s lives at school. However, details about what information can be shared with whom, and when, are absent from the policy as written. The intent to increase parental involvement is not the same as requiring consent. One can be done without the other.

Positive impacts of the policy

The policy would increase the ability of students in Saskatchewan to keep certain aspects of their history private, including “dead names” and gender identity history, provided they are able to obtain parental consent using Form 1 or, if over the age of 16, are able to complete Form 1 themselves.

The sample administrative procedure provided as an appendix to the policy outlines in detail the steps that should be taken to ensure that all official records reflect a student’s preferred name/pronouns. If properly implemented, such procedures would restrict access to personal information about transgender students.

Negative impacts of the policy

The policy raises numerous concerns about the privacy of transgender students, especially those unable or unwilling to seek parental consent for the use of their preferred name and/or pronouns.

Unlike their transgender peers who are able to receive parental consent via Form 1, these children will have their “dead name” and gender history revealed to others, even if they use their preferred name and/or pronouns in other aspects of their life, including among their school peers. If a student under the age of 16 decided to use a different name and pronouns after having used their legal name and assigned pronouns in the same school for some time, the Advocate acknowledges their peers would likely be aware of this information anyway. However, these circumstances could impact a student who changes schools and desires to go by a preferred name and pronouns at the new school to align with their otherwise expressed gender identity. If they do not receive parental/guardian consent, their assigned gender would be revealed to peers who may not have otherwise been privy to this information.

Teachers and other school officials should not be expected to mislead parents/guardians about how a student behaves at school, and that would generally include how a young person expresses their gender identity. However, if a student believes that sharing such information with their parents is not in their best interests, and explicitly requests that their teacher/school officials not do so, it would be entirely reasonable and appropriate for a teacher to respect the wishes of the young person in this regard, and if specifically asked, to respond that “your child has asked that I not discuss that aspect of their school life with you, and out of respect for them I will not do so.”

Unclear or ambiguous impacts of the policy

The lack of clarity in the policy about what constitutes a “request that their preferred name, gender identity, and/or gender expression be used” raises some of the most pressing privacy concerns. For instance, it is unclear whether the principal would need to be informed and/or whether parental/guardian consent would need to be sought if a student openly uses a preferred name and pronouns among their peers, or wears clothing that a staff person feels misrepresents their assigned gender, but never makes an official request of the school to respect their name and pronouns.

Article 18: Responsibility of parents

Article 18 of the UNCRC recognizes that parents “have the primary responsibility for the upbringing and development of the child.” It also places responsibility on the parents to ensure that “the best interests of the child will be their basic concern.” Governments also have a responsibility to “render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.”

Positive impacts of the policy

The policy correctly recognizes the importance of parents and guardians in supporting a child’s development and indicates that school professionals have a role to play in supporting or facilitating conversations between students and their parents around the topic of gender identity.

Negative impacts of the policy

The policy fails to acknowledge the responsibility of both parents/guardians and the Saskatchewan school system to give primary consideration to the child’s best interests.

This failure sets a precedent that risks crossing over into other areas of children’s lives. If parental consent overrides a child’s best interests when it comes to gender expression, it could easily be argued that the same should apply to educational curriculum, freedom of thought and consciousness, freedom of association, and many other areas of a child’s life.

Article 19: Freedom from violence, injury, abuse, neglect, and exploitation

Article 19 of the UNCRC obligates all levels of government to “take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse” at all times. This definition has been expanded in recent years to recognize the impact of emotional harm on children and youth, and to acknowledge the duty of governments to protect them from it. In particular, the Committee on the Rights of the Child has identified suicide as a form of violence about which it is particularly concerned.⁸⁰

Positive impacts of the policy

The promotion of safe school environments is a stated intent of the policy. While many education systems have general policies in this regard, it is still somewhat unique to have a provincial policy “intended to support students who wish to change their pronouns and/or preferred first name to align with their gender identity.” The use of preferred names/pronouns and school connectedness are protective factors against the increased risk

⁸⁰ Committee on the Rights of the Child. (2011). *General comment No. 13 (2011) The right of the child to freedom from all forms of violence*. Geneva, CH: United Nations. CRC/C/GC/13. Para. 28 (Accessed from: https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.13_en.pdf)

of depression, suicide and self-harm experienced by gender diverse youth.^{81,82, 83} Therefore, respect for gender identity and expression will mitigate this harm among the subject of youth who are able to obtain consent under the policy or consent for themselves.

Negative impacts of the policy

Transgender and diverse youth are at increased risk of depression, self-harm, and suicide.^{84,85}

Having their gender identity – and its expression through the use of preferred names and pronouns – respected is a protective factor against these risks.

Those students who are unable to obtain parental/guardian consent or consent for themselves will be denied the protection from mental distress garnered by having their gender identity and expression respected.

Furthermore, they will have to endure further discrimination caused by watching school staff respect the rights of some of their transgender peers, while theirs are denied. As the present CRIA has found across multiple UNCRC articles, the positive impacts of the proposed policy for those transgender children who receive parental/guardian consent to use their preferred name and/or pronouns emphasizes the negative impact young people whose parents/guardians are unable or unwilling to do so.

Unclear or ambiguous impacts of the policy

Transgender, non-binary and otherwise gender-nonconforming children and youth are already at elevated risk for many forms of violence, including peer bullying, physical violence, emotional neglect, and self-harm. The normalization of diverse gender expression in Saskatchewan schools, combined with ongoing anti-violence and anti-bullying initiatives, may lead to reduce levels of violence and harm experienced by transgender children and youth. However, as outlined above, the small minority of transgender youth who are denied their full expression by parental veto under the proposed policy will almost certainly find themselves further isolated and at greater risk for all forms of violence and harm.

⁸¹ Taylor, A.B., Chan, A., Hall, S.L., Saewyc, E. M., & the Canadian Trans & Non-binary Youth Health Survey Research Group. (2020). *Being Safe, Being Me 2019: Results of the Canadian Trans and Non-binary Youth Health Survey*. Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre,

University of British Columbia. (Accessed from: <https://www.saravyc.ubc.ca/2020/03/18/being-safe-being-me-2019/>)

⁸² McDermott, E.; Kaley, A.; Kaner, E.; Limmer, M.; McGovern, R.; McNulty, F.; Nelson, R.; Geijer-Simpson, E.; Spencer, L. Understanding How School-Based Interventions Can Tackle LGBTQ+ Youth Mental Health Inequality: A Realist Approach. *Int. J. Environ. Res. Public Health* 2023, 20, 4274. (Accessed from: <https://doi.org/10.3390/ijerph20054274>)

⁸³ Russell, S. T., Pollitt, A. M., Li, G., & Grossman, A. H., (2018). Chosen Name Use is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Behavior among Transgender Youth. *J Adolesc Health*. 63(4): 503–505. doi:10.1016/j.jadohealth.2018.02.003 (Accessed from:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/pdf/nihms945849.pdf>)

⁸⁴ Kingsbury, M., Hammond, N.G., Johnstone, F. and Colman, I. (6 June 2022). Suicidality among sexual minority and transgender adolescents: a nationally representative population-based study of youth in Canada. *CMAJ* 194 (22) E767-E774; DOI: (Accessed from: <https://doi.org/10.1503/cmaj.212054>)

⁸⁵ Taylor, A.B., Chan, A., Hall, S.L., Saewyc, E. M., & the Canadian Trans & Non-binary Youth Health Survey Research Group. (2020). *Being Safe, Being Me 2019: Results of the Canadian Trans and Non-binary Youth Health Survey*. Vancouver, BC: Stigma and Resilience Among Vulnerable Youth Centre & The University of British Columbia (Accessed from: https://apsc-saravyc.sites.olt.ubc.ca/files/2020/12/Being-Safe-Being-Me-2019_SARAVYC_ENG_1.2.pdf)

Article 28: Right to education

Children in Saskatchewan have the right to receive an education on the basis of equal opportunity. This right imposes on the government the responsibility to encourage regular attendance and reduce drop-out rates, and to ensure that the human dignity of children in the school system is respected.

Positive impacts of the policy

The subset of transgender students who are able to benefit from the policy and, as a result, are treated with dignity and have their gender identity respected in their classrooms are more likely to achieve academic success, seek support from school officials, attend class regularly, and complete secondary school.

Negative impacts of the policy

The policy violates the right to education of those transgender students who fail to receive parental consent for the use of their preferred name and/or pronouns in school, and are therefore, expressly denied respect for their gender identity in education. All rights enshrined in the UNCRC are indivisible and interdependent. This means “that one set of rights cannot be enjoyed fully without the other.” Accordingly, if a child is experiencing discrimination and/or their mental health is suffering, they will not be able to focus on learning and therefore, will be unable to fully realize their right to education. A lack of respect for their dignity is likely to decrease regular attendance and school completion rates among transgender children, in direct contradiction of Article 28(1)(e) of the UNCRC.

Article 29: Aims of education

Article 29 of the UNCRC details that the aim of a child’s education should be directed to the full development of “the child’s personality, talents and mental and physical abilities”; the development of “respect for human rights and fundamental freedoms”; the development of “respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living”; and “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”

Positive impacts of the policy

Transgender children who are able to receive parental consent for the use of their preferred name and/or pronouns are likely to benefit from the policy. For a student to have their gender identity recognized in their school environment is consistent with the stated aims of education under the UNCRC Article 29.

Negative impacts of the policy

The policy violates Article 29 as it is inconsistent with the full development of the personal identity of transgender children, particularly those who fail to receive parental consent for the use of their preferred name and/or pronouns.

More broadly, the policy risks having a detrimental impact on the rights of all children in Saskatchewan schools, as they will bear witness to the discriminatory treatment of their classmates that is incongruent with “respect for human rights and fundamental freedoms,” “the national values of the country in which the child is living,” and “preparation for life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples.”

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