

Hastily drafted pronoun policies ignore the nuances of family and child protection laws

ROBERT LECKEY, SAMUEL SINGER AND FLORENCE ASHLEY

CONTRIBUTED TO THE GLOBE AND MAIL

PUBLISHED 3 HOURS AGO

Robert Leckey teaches family law and is dean at the Faculty of Law at McGill University. Samuel Singer is a trans rights scholar and longtime advocate for trans people, and an assistant professor at the University of Ottawa's Faculty of Law. Florence Ashley is an assistant professor at the University of Alberta's Faculty of Law and John Dossetor Health Ethics Centre, and conducts research on trans law and bioethics.

The news is full of discussions about trans kids and, most recently, policies requiring parental consent for the use of children's chosen names and pronouns at school. These proposed policies and the focus on parental rights seem to ignore settled family law and child protection law. In those fields, the pursuit of children's best interests is the guiding principle. The policies also ignore robust evidence about the harms to trans and gender non-conforming children who cannot be themselves at school.

Saskatchewan Premier Scott Moe's announcement that his government will use the Charter's notwithstanding clause to pre-empt a constitutional challenge to his parental rights policy has been denounced as a hasty recourse, not to mention the broader threat to minority rights that this use of the clause represents. We emphasize that Saskatchewan's proposed legislation will push aside not only children's constitutional rights, but also the nuanced principles of family law and child protection law.

Some trans children feel safe sharing their gender identity with their parents.

But what about children who face a bad situation at home? While there is uncertainty about how precisely the policy will function, it promises to force a coming-out for students, whatever their home situation. It will give parents a veto over their child's right to respect around their gender identity at school.

Scott Moe stands against vulnerable trans youth

The concept of “parental rights” is at the heart of justifications for new pronoun policies. And it's true that parents have broad authority and responsibility to educate their children. But that authority has limits.

Such limits become highly visible when separated parents disagree about parenting. If parents' disputes about their child reaches a court, the judge will decide what the child's best interests require. But there are limits on parental authority even in other contexts.

The parental prerogative to make choices stops where such choices would harm the child. This limit applies to parental choices guided by religious beliefs. While parents may choose the religion in which to raise their child, parental beliefs are no reason to refuse life-saving medical treatment for their child, such as a blood transfusion. And even during their parenting time, a parent may be restricted from imposing religious practices that cause the child serious distress.

Children have other rights in addition to their rights to life and to bodily integrity. By virtue of provincial human rights law and the Charter, children enjoy freedom of expression, freedom of conscience, the right to liberty and security of the person, and the right to be free from discrimination on grounds including gender identity and gender expression. Children also have privacy rights.

Working out how these rights apply to minors can be complicated, and our legal system recognizes that the best interests of each child will differ depending on their individual context. Legislation and case law establish that as children gain in maturity, they become increasingly capable of making decisions for themselves. When a potential conflict between parents' authority and children's

rights arises, courts seek to balance rights and other interests, including those of our wider society.

Turning from parents and children to teachers, policies requiring parental consent for children's chosen names and pronouns may place teachers in difficult situations. Teachers would be bound to follow a policy on pronouns. But they are also bound, as they are able, to protect children from abuse. They must report suspicions that a child is being mistreated.

Teachers could understandably feel conflicted at the prospect of participating in a system that "outs" trans or gender non-conforming children to parents who will foreseeably react badly, even violently, to that disclosure. Similarly, the policy requires teachers to intentionally misgender a student if the parents withhold consent to the youth's use of their chosen name and gender, even if it causes that youth serious mental distress. Teachers' unions will undoubtedly study the policy's interference with established law, policy, practice and ethics in the school setting.

Recent proposed pronoun policies have been announced and drafted hurriedly, without meaningful consultation. Governments must stop and consider their potential harms. Given the high stakes, it's essential to have a carefully structured policy-making process that gives due attention to the complexity of considerations relating to parents, children, and teachers – and their duties under family law and child protection law.

Follow us on Twitter: [@globedebate](https://twitter.com/globedebate)

[Report an error](#)

[Editorial code of conduct](#)