



**Revised Criteria:
Change of Sex Designation on an Ontario Birth Registration
Consultation Document**

July 31, 2012

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On Sunday, August 28, 2011 the Trans Lobby Group released our `We (Still) Demand Statement` on Parliament Hill, Ottawa, Canada in recognition of the 40th anniversary of the original We Demand rally and protest by a handful of gay liberation activists. The event was organised by Queer Ontario. Our third demand was specific to the Vital Statistics Act:

“3. Amending Vital Statistics Acts and legislation governing Legal Identity Documents so that trans people can seamlessly change their sex and gender from their birth designation to their lived sex and gender identity.
The patchwork of legislation governing legal identity documents is uneven and requires immediate harmonisation and modernisation.”

The Trans Lobby Group has met with Members of Provincial Parliament, Ministry of Health and Long-Term Care and Ministry of Governmental Services staff and the Deputy Registrar General. The respondent in XY v. Ontario (Government and Consumer Services) 2012 HRTO 726 is a former Trans Lobby Group member and Legal Council, Susan Ursel has represented group members. The Trans Lobby Group has deliberated seriously in consideration of these Consultation questions and it is with great enthusiasm we send you our results. We look forward to continuing to working with the Ministry to seek out a positive resolution which meets the needs of our membership.

On June 13 2012 the Ontario Legislature amended the Ontario Human Rights Code to include ‘gender identity and gender expression’ following several years of urging by the Trans Lobby Group. This legislation sends a clear, renewed message that while in the past it was wrong to discriminate against trans people, it now is illegal. The Trans Lobby Group recommends that this principle guide the deliberations arising from the Ontario Human Rights Tribunal decision of XY v Ontario (Government and Consumer Services) 2012.



CONSULTATION QUESTIONS:

We would appreciate your responses, together with the rationale, to the questions below.

Q1. In the Tribunal's decision, the requirement for transsexual surgery in order to change the sex designation on an Ontario birth registration was found to be discriminatory. What should be the criteria required to change a person's sex designation on a birth registration so that it accords with the person's gender identity?

The settlement in *A.B. v. Minister of Transportation and Minister of Government Services (Settlement, H.R.T.O.) 2005* states, "As a result of this settlement, the Ministry of Transportation has advised the College of Physicians and Surgeons of Ontario, and will advise anyone who inquires, that it will change the sex designation on a driver's license if a physician provides a letter advising that the physician has treated or examined the person and in the practitioner's opinion the change on the license would be appropriate."

The Trans Lobby Group position is that this criterion has been in effect since 2005 without negative impact upon Ontario society while providing an important positive benefit for trans people. This is a persuasive argument for a similar amendment to the Vital Statistics Act. One drawback with the current criterion however is the disjuncture between the record of birth amending formula which the Vital Statistics Act governs and the Ontario Drivers' Licence. Consistency in amending formulas would in effect harmonise legal identification documents, an important goal for our group.

Furthermore, as access to a physician is challenging for many and not fully guaranteed, especially trans people, the Trans Lobby Group is recommending that a guarantor other than a medical practitioner be able verify an individual's request for change of sex on the record of birth.

Listed below are possible suggestions:

(a) Application from individual should include a letter from medical practitioner, psychiatrist, or person that is legally qualified and licensed in Canada such as a doctor, psychologist, social worker, nurse, school or college or university official, therapist, employer, faith community or other certified or licensed person stating that a change in sex designation on birth registration is necessary to match the applicant's gender identity.



(b) Evidence satisfactory to the Registrar General as to the identity of the applicant.

The Trans Lobby Group also recommends that the amending criterion be no different from name change criterion for the general public as a standard which protects trans people against differential treatment with the potential to leading to harassment and discrimination.

Q2. Should the criteria required to change the sex designation of a child (under 18 years of age) so that it accords with the child's gender identity be different than the criteria for an adult? If yes, how should the criteria be different?

The Trans Lobby Group cannot at this time find any reason why children under the age of eighteen should not use the same criteria as adult applicants.

If the Registrar General insists upon maintaining adult consent for a child, then the Trans Lobby Group recommends that the option of a trusted adult other than the parent be designated to corroborate a change of sex designation on a birth registration so that it accords with the person's gender identity.

Q3. The need for corroboration is a generally applicable vital statistics principle that applies any time a person seeks to amend registered vital event data (e.g., amending a birth registration). The Tribunal agreed with this principle. Who should be qualified to corroborate a change of sex designation on a birth registration so that it accords with the person's gender identity?

The Trans Lobby Group recommends that a third party may corroborate the change of sex designation on the record of birth and that that party could be any of the following: a doctor, psychologist, social worker, nurse, school or college or university official, therapist, employer, family member, faith community member, or other certified or licenced person that has known the applicant for 12 months.

Another possible mechanism of collaboration might be the swearing of an oath in front of commission(er) able to undertake the swearing oath.

These are the same recommendations we propose for question 1.



Q4. Should a person be permitted to change the sex designation on their birth registration so that it accords with the person's gender identity more than once?

According to [38] "Over the five year period preceding the hearing in this matter Ms. Hartman testified that the office of the Registrar General processed an average of approximately 40 requests for change of sex designation on a birth registration per year."

The Trans Lobby Group holds the position the number of people requiring the change of sex designation is limited in proportion to the Ontario population and that those who will make this request more than once will be extremely rare. We believe that any restriction on changing sex designation on the record of birth would infringe upon trans people and be deemed discriminatory based upon the enumerated grounds of 'gender identity and gender expression'.

For greater certainty, any restriction would be deemed differential treatment from those requesting a change in name.

Additional Considerations:

1. Trans Lobby Group members expressed considerable frustration with the differential treatment experienced when attempting to access information and paperwork regarding transition related changes to the record of birth. For example, to change the record of sex, an applicant must first request the paperwork at a Service Ontario kiosk, then wait for the post to deliver the application in the mail before applying to request an amendment. Members report experiencing wrong pronoun and salutation usage along with a general lack of sensitivity surrounding the trans experience.

The Trans Lobby Group recommends that information and paperwork regarding changing the record of birth be posted on the website for trans people to access and complete as necessary.

2. The Trans Lobby Group recommends that once a change in the sex designation on the record of birth is adopted that the new sex record not be a barrier to accessing insured health services.

While rare, there are some sex specific health coverage items such as prostate examinations for trans women or pap smears for trans men which will require medical access. A simple notation on the electronic patient record could achieve this access without using an indicating marker the individual's health card which



would make visible the person as trans and subsequently increase rather than reduce differential treatment, harassment and discrimination.

3. The Trans Lobby Group also recommends barriers be reduced for trans people born outside of Ontario yet currently residing living in Ontario and meet the criteria for amending the record of sex.

Currently, Ontario provides a certificate of name change for individuals who were born outside of the province. We recommend Ontario implement a Change of Sex Designation process, similar to the currently available Change of Name process. As already noted in Question 1, consistency in amending formulas would help harmonise legal identification documents and reduce differential treatment. This remains an important goal for our group.

Conclusion:

The Ontario Human Rights Code was amended to include 'gender identity and gender expression' on June 13, 2012. Funding for Sexual Reassignment Surgery (also known as: transsexual surgery) was announced on May 14 2008. The province of Ontario now has the opportunity to amend the Vital Statistics Act so that trans people can amend their legal identity documents to match their lived gender expression. This amendment will significantly reduce differential treatment for trans people.

The Trans Lobby Group believes that these three legislative changes form the foundation for social inclusion into Ontario society for trans people. Let us work together to achieve this important goal.

Respectfully Submitted

July 31, 2012
Trans Lobby Group Steering Committee



Attachment:

We (Still) Demand Statement
by the Trans Lobby Group
Sunday, August 28, 2011
Parliament Hill, Ottawa, Canada

We Demand:

1. Explicit Trans Human Rights protection at Federal, Provincial, Municipal, & Territorial jurisdictions via the amending of human rights codes, acts, and hate crime provisions to include 'gender identity and gender expression'.
2. Access to health care for trans people across Canada; best delivered in community based settings wherever possible, including access to primary care, hormones, counselling, and sexual/genital reassignment surgery.

Informed consent is imperative in delivering health care and is especially critical in addressing needs of Intersex persons who frequently are assigned a sex and gender at birth by medical professionals which is medically unnecessary, intrusive, and irreversible. We Demand this practice stop immediately.

Finally, the patchwork of provincial health care delivery is uneven in implementation and requires immediate harmonisation and modernisation.

3. Amending Vital Statistics Acts and legislation governing Legal Identity Documents so that trans people can seamlessly change their sex and gender from their birth designation to their lived sex and gender identity.

The patchwork of legislation governing legal identity documents is uneven and requires immediate harmonisation and modernisation.

We Demand these legislative amendments immediately to improve the everyday lives of trans people residing in Canada. Our lives, our respect, our dignity, and social justice enshrined in the Canadian Charter of Rights and Freedoms depends on it!

For More Information:
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