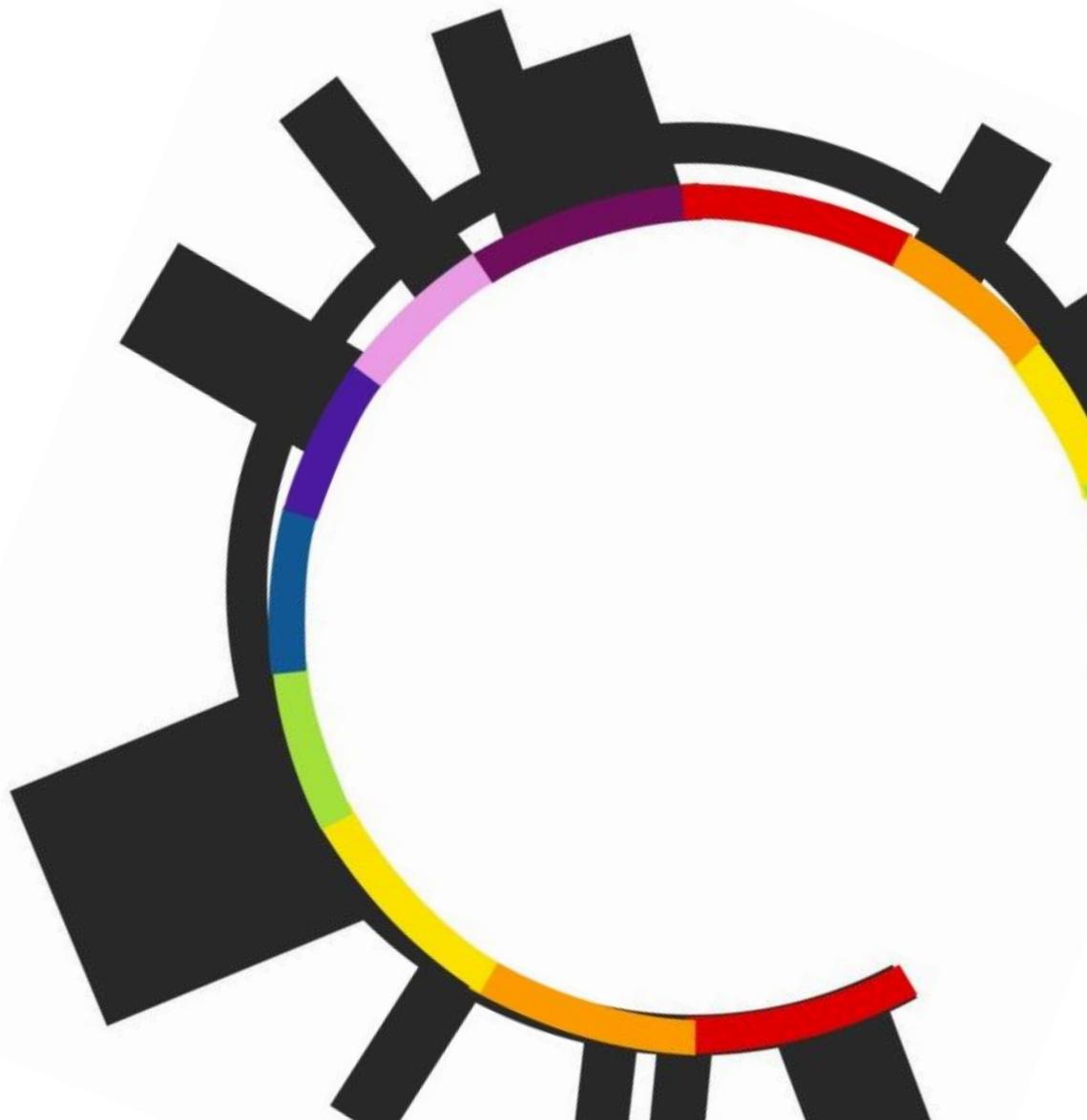


# SUMMARY REPORT

Policy Recommendation: Changing Saskatchewan's *Vital Statistics Act* in order to Reduce the Discrimination of Transgender Persons

OUTSaskatoon  
2015



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## **Policy Recommendation: Changing Saskatchewan's *Vital Statistics Act* in order to Reduce the Discrimination of Transgender Persons**

In December 2014, *The Saskatchewan Human Rights Code*, S.S. 1979, c. S-24.1 (the Code) was amended to include 'gender identity' as prohibited grounds for discrimination. In so doing, the Government of Saskatchewan joined six other Canadian provinces/territories in providing explicit protection for gender identity in its anti-discrimination policy. According to the Saskatchewan Human Rights Commission, gender expression is also protected under this legislation.

This policy change served as an important first step toward alleviating widespread discrimination. However, action against discrimination should not end with the Code amendment. In fact, legal protections for gender identity and gender expression have prompted governments across Canada to revise other policy areas, such as the provision of birth certificates and the requirements for changing sex designations on legal identification documents. At present, six provincial governments (British Columbia, Alberta, Manitoba, Ontario, Quebec, and Nova Scotia) have removed the surgical requirement in order for an applicant to change their sex designation on their birth certificate and other government issued ID.

However, Saskatchewan's *Vital Statistics Act* still requires an individual to undergo sex reassignment surgery (and thus sterilization procedures) before they can apply to have their legal sex designation align with their gender identity and gender expression. This practice not only presents a number of issues for transgender (trans\*) individuals, but it has become internationally recognized as a violation of human rights.

This report summarizes a policy recommendation to remove the requirement for sex reassignment surgery in order to change legal sex designations in Saskatchewan. The full report provides five policy options, while only the top two options are summarized here.

Foregrounding these recommendations is the recognition that the surgical requirement for changing legal sex designations does not comply with *The Saskatchewan Human Rights Code*, which now explicitly protects gender identity and gender expression as prohibited grounds for discrimination. Compliance with anti-discrimination legislation includes an obligation to respect the rights of all citizens, regardless of their gender identities (or expressions), to be recognized as a person before the law, and to not be subject to discriminatory health practices. More specifically, compliance with the Code requires that trans\* citizens have the right to obtain properly gendered government documents, and the right to retain their fertility and/or bodily integrity when seeking changes to their legal sex designations.

We conclude that an amendment to *The Vital Statistics Act*, 2009, S.S. 2009, c. V-7.21 to remove the surgical requirement will produce positive and long-term results including increasing the sociocultural, political, and economic inclusion of trans\* and gender diverse people in Saskatchewan.

### **Transgender Identity and Gender Variance**

There are many people who do not fit within a binary understanding of gender and sex: i.e., man/woman or male/female. For the purpose of this summary report, *trans\** is used as an umbrella term to encompass the wide variety

of gender variant identities and expressions that exceed a binary understanding of gender and sexual identity. Trans\* identities include but are not limited to: transgender, transsexual, intersex, two spirit, genderqueer, and cross dresser. In some cases trans\* may refer to binary identified (or transsexual) individuals, as well as to people who describe themselves as being on a gender continuum rather than identifying with the biological binary of “male” or “female,” and/or the social binary of “man” or “woman.” Trans\* individuals may or may not pursue and undergo hormone treatment and/or sex reassignment surgeries and may express their gender, sexual identity, and sexuality in a wide variety of ways.<sup>1</sup>

### Current Policies in Saskatchewan

Current policy arrangements in Saskatchewan have overlapping sociopolitical and economic implications that result in discrimination against trans\* people. Therefore, an amendment to *The Vital Statistics Act* should be considered in relation to other policies that affect trans\* people.

Many within the trans\* community in Saskatchewan have pointed to obstacles to receiving coverage for sex reassignment surgery (SRS). Saskatchewan Health claims to provide some coverage for sex reassignment medical services, but this is based on assessment and positive recommendation from a limited selection of medical doctors. If a Saskatchewan trans\* citizen is approved to pursue transition and meets the eligibility requirements for sex reassignment surgery, then the cost of the surgeon and operating room time *may* be reimbursed, which usually works out to approximately twenty five percent of the total cost of the surgical process. Whether or not individuals seek

reimbursement, many lack access to the funds required, either for the total cost (for those not seeking a Saskatchewan Health reimbursement), or the upfront cost and the remaining seventy five percent (for those seeking a Saskatchewan Health reimbursement). Bank loans typically require permanent employment and steady income and employment is difficult for trans\* people to obtain without having undergone some SRS procedures or without a legal sex designation that matches their gender expression.

In Saskatchewan, changing a sex designation on a person’s birth certificate is possible as long as the person in question has undergone sex reassignment surgery (i.e. sterilization procedures and genital re-construction surgeries). According to *The Vital Statistics Act*, an individual who has undergone sex reassignment surgery may apply to have the designation of sex amended to be consistent with the results of the surgery. Two medical certificates or supporting letters must accompany the application. The first must be from a physician who is licensed to practice in the jurisdiction in which the surgery took place, and who performed the surgery on the applicant in question. The physician must explain the surgical procedures carried out, certify that he or she performed the surgical procedures on the applicant, and affirm that the designation of the sex of the applicant should be changed as a result of the surgery. The second certificate must be from a physician who did not perform the surgery on the applicant or assist in performing that surgery. This physician must certify that he or she has examined the applicant, that the results of the examination verify that sex reassignment surgery has taken place, and that their sex designation should be changed.

As a result of these requirements, many trans\* people in Saskatchewan find themselves in a “catch 22” situation. *The Vital Statistics Act* expects citizens to fit into male and female sex categories, but the surgeries needed to satisfy this requirement are hardly funded by the government. These policies create obstacles for trans\* people seeking full participation in society, notably those who have not yet

<sup>1</sup> Increasingly “sexual reassignment surgeries” are reframed as “gender-confirming surgeries” in order to show that surgery itself is not the primary indicator for one’s sex or gender identity. This new language foregrounds self-identification throughout an individual’s lifespan. In this report we have used the language of sexual reassignment surgery; however, we support the language of “gender-confirming surgeries” and expect it to become common parlance in the future.

undergone sex reassignment surgery, who cannot afford surgeries, or those who do not wish to undergo sexual reassignment surgeries at all.

### Policy Options & Discussion

The overlapping implications of Saskatchewan's current policy arrangements suggest that an amendment to *The Vital Statistics Act* will offset the "catch 22" situation identified above. Moreover an amendment to remove the surgical requirement for changing sex designations on birth certificates is necessary to uphold the province's anti-discrimination policy when it comes to gender identity and gender expression.

Outlined below are two of the five policy options listed in the full report, all of which recommend an amendment to *The Vital Statistics Act* (**See the full report for the complete list of Policy Options**).

**POLICY OPTION #1** recommends that an adult applicant seeking a change of sex designation on their birth certificate would need:

- To be 16 years of age or older
- Their birth to have been registered in Saskatchewan
- A completed Application For a Change of Sex Designation on a Birth Certificate
- A signed Statutory Declaration
- A completed Supporting Letter/Form signed by a practicing physician, nurse practitioner, psychologist, physiatrist, or registered social worker, confirming that a change of sex designation (from Male to Female, or Female to Male) is appropriate and recommended
- To return all previously issued birth certificates
- A completed application form for a new birth certificate, submitted with applicable fees

A child/youth applicant seeking a change of sex designation on their birth certificate would need:

- To be 15 years of age or under
- Their birth to have been registered in Saskatchewan
- A completed Application Form for Change of Sex Designation on a Birth Certificate
- A Statutory Declaration completed by a parent or person with custody of the child
- Written consent of the child
- Written consent of all persons with legal custody of the child, unless dispensed by the Queen's Bench or an appointed registrar, who may waive a parental consent requirement if the parent is dead, of unsound mind, missing or cannot be found; if the parent has deserted or neglected to provide proper care and maintenance for the applicant; or is a person whose consent in all circumstances of the case ought to be dispensed with, if it is in the interest of the applicant to do so (Note: The process of obtaining such an order should be accessible without legal council).
- A Supporting Letter/Form signed by a practicing physician, nurse practitioner, psychologist, physiatrist, or social worker, confirming that a change of sex designation (from Male to Female, or Female to Male) is appropriate and recommended
- To return all previously issued birth certificates
- A completed application form for a new birth certificate, submitted with applicable fees

**POLICY OPTION #2** recommends that an applicant seeking a change of sex designation on their birth certificate would need:

- Their birth to have been registered in Saskatchewan
- A completed Application For a Change of Sex Designation on a Birth Certificate
- A signed Statutory Declaration
- A completed Supporting Letter/Form signed by a practicing physician, nurse practitioner, psychologist, physiatrist, or registered social worker, confirming that a change of sex designation (from Male to

Female, or Female to Male) is appropriate and recommended. If the applicant is under the age of 16, the professional must confirm that the applicant has the capacity to make health care decisions

- To return all previously issued birth certificates
- A completed application form for a new birth certificate, submitted with applicable fees

### Short-Term & Long-Term Impacts

A legally recognized sex/gender identification that aligns with a person's gender identity serves to effectively alleviate distress and prevent discrimination. Removing the obstacles to changing a person's legal sex designation makes more attainable the positive outcomes of an accurate legal sex designation. In the short-term, an amendment to *The Vital Statistics Act*, 2009, S.S. 2009, c. V-7.21 would provide trans\* and intersex people of all ages with improved societal participation. A legal sex/gender designation that corresponds with a person's gender identity and expression would dissolve the barriers trans\* people face in official settings (e.g. travelling; encounters with police; registration for voting; application processes for jobs, bank accounts, education, etc.). In the long-term, removing the surgical requirement may result in higher employment rates, higher levels of education, and ultimately increased participation in society.

An amendment to *The Vital Statistic Act* is not only necessary to ensure compliance with anti-discrimination legislation, but it would also align Saskatchewan's policies with the models in other Canadian provinces.

### Recommendation

We recommend that Saskatchewan's *Vital Statistics Act* be amended in line with Policy #2 identified above. This option would consider applicants 16 years or older as adult applicants, and would not include a parental consent requirement for applicants under the age of 16. Instead, prescribed professionals would have the authority to assess the maturity and readiness of youth applicants. Further, "prescribed professionals" would include

psychologists, psychiatrists, nurse practitioners, and social workers, along with physicians and surgeons as potential referees. Policy Option #2 not only removes unnecessary barriers for trans\* persons seeking a change to their legal sex designation, but it reflects a balanced and forward-thinking combination of the policy decisions in other Canadian provinces.

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### Terminology

**Sex:** the biological classification of people as male or female.

**Gender:** the social classification of people as man or woman, masculine or feminine. Includes an array of socially constructed roles and relationships, personality traits, attitudes, behaviors, values, relative power and influence.

**Gender identity:** a person's sense of self, and the sense of being male or female, man or woman, or neither. Differs from sexual orientation and may differ from a person's birth-assigned and/or biological sex.

**Gender expression:** the external manifestation of one's internal gender identity, usually expressed through masculine, feminine, or androgynous behavior, clothing, haircut, voice and other physical characteristics.

**Cisgender (adj):** refers to a gender identity that matches a person's birth-assigned sex (and the sex's typical gender expression).

**Transgender (adj):** Describes individuals who are uncomfortable and disagree with, in whole or in part, their birth-assigned sex and/or their socially prescribed gender identities. May include people who identify as transsexual, or those who describe themselves as being on a gender continuum. Transgender individuals may or may not pursue and undergo hormone treatment and/or sex reassignment surgeries.

**Trans (adj):** An umbrella term that encompasses transgender, transsexual, and gender variant identities.

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