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Queer Ontario Recommendations regarding Sex Designations on Ontario Birth Registrations

Table of Contents

Terminology.....	1
General recommendations.....	2
Distinguishing sex and gender.....	2
Additional categories not recommended	2
Consultation Question Responses.....	3
Assumptions	3
Question 1	3
Question 2	4
Question 3	4
Question 4	5
Implementation recommendations	5
About Queer Ontario.....	6

Terminology

Sex and gender are different concepts. A person's sex may not match their gender. Both sex and gender can change within a person's lifetime, at different times, for different reasons.

From the World Health Organization (<http://www.who.int/gender/whatisgender/en/>):

"**Sex**" refers to the biological and physiological characteristics that define men and women. ... "Male" and "female" are sex categories.

"**Gender**" refers to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women. ... "Masculine" and "feminine" are gender categories.

Ontarians are currently assigned a sex at birth, either male or female, based on their genital appearance. Sometimes this assignment turns out to be erroneous or inaccurate. A person's sex could be correctly described as male, female, intersex, or other terms.

We use the term **gender** to indicate a person's internally-felt gender identity. This is a fundamental aspect of a person, not a frivolous wish nor a fraudulent manipulation. A person's gender may not be obvious from their appearance. A person may describe their gender as masculine, feminine, neutrois, bi-gender, a-gender, two-spirited, gender-fluid, gender-queer or other terms.

Society often assumes that a person's gender is aligned with their sex: males are masculine (men), females are feminine (women). This is not true for everyone, neither at birth nor later in life. However, it is the reason why the terms "sex" and "gender" are often mixed up.

Some people change their (physical) sex, *via* surgery, hormones and other body modifications, to align their sex with their gender. (The term transsexual may apply.) Others choose not to modify their body, or do not have the financial and medical resources to do so.

We use the umbrella term **trans*** for any person whose gender does not match the sex they were assigned at birth. A trans* person may describe themselves as trans, transsexual, transgendered, intersex, gender-queer, gender-fluid, bi-gender, a-gender, neutrois, two-spirited, or other terms.

For mutual understanding, we use ServiceOntario's term **sex designation** to refer to the Male or Female indication on birth registrations. We note that this designation is being used to represent both sex (at birth) and gender, a conflation which causes problems.

General recommendations

Distinguishing sex and gender

Given that sex and gender are different concepts, we recommend that ServiceOntario consider the following questions:

- Does ServiceOntario need to record a person's sex at birth? Why?
- Does ServiceOntario need to know a person's current sex, throughout their lifetime? Why?
- Does ServiceOntario need to know a person's current gender, throughout their lifetime? Why?
- When another government organization requests birth registration information from ServiceOntario, are they asking for sex at birth, current sex, or current gender? Why do they need the information?

If ServiceOntario does not require any of the above information, we recommend eliminating the sex designation from everyone's birth registration. There would be no need for a procedure or criteria to change the designation. Moreover, trans* people would face fewer hurdles and less discrimination if neither their sex nor their gender were recorded on government identity documents.

If any of the above information is needed, we recommend naming separate data elements for birth sex, current sex and current gender (as required). There should be different procedures for changing each of those data elements.

We recommend that neither birth sex nor current sex be displayed on the wallet card birth certificate. A trans* person may be subject to discrimination by showing the wallet card to someone who requests it as identification.

Additional categories not recommended

Note that we have considered the option of sex designation categories other than Male and Female, such as Other, Undesignated, Undisclosed, or simply X.

In practice, a person who chooses a designation other than Male or Female on a document visible to others may be assumed to be trans*, and may be subject to discrimination as a result. It would be preferable to eliminate sex designations for everyone.

Any pre-set categories will fall short of representing the true diversity of sexes and gender identities. For purposes such as medicine and survey research, sex or gender could be a “write-in answer”.

Consultation Question Responses

Assumptions

We have answered ServiceOntario’s consultation questions based on the (unfortunate) assumptions that:

- The birth registration will continue to have a sex designation;
- The sex designation will be used to signify a person’s **current gender**;
- The sex designation will match the person’s birth sex, unless and until they change it to reflect their gender;
- Gender categories other than Male and Female will not be available on the birth registration;
- Trans* people will continue needing to change the birth registration as a prerequisite to changing other government documents and records and obtaining appropriate services.

Question 1

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?

We recommend the following criteria:

1. The applicant should formally declare that their gender is “male” or “female” for official (legal and administrative) purposes.
2. A corroborator (discussed in question 3) should formally declare that they know the applicant and can confirm that the chosen sex designation is a fair representation of the applicant’s gender. It would be reasonable for ServiceOntario to contact the corroborator to verify the applicant’s declaration and other information.
3. Evidence of the applicant’s identity, similar to that required for any other application for a government identity document.

We recommend that the criteria and requirements *not* include:

- Body modification such as surgery or taking hormones
- Psychiatric care, psychotherapy or counselling
- A medical certificate
- Conforming to gender-presentation norms (such as feminine clothes or a masculine voice)
- A waiting period
- Paying a fee
- A change of sex or gender designation on other government documents

Rationales:

- Some people use words other than “male” or “female” to describe their gender. ServiceOntario should acknowledge that the sex designation is for official purposes, and may not accurately describe the person’s gender.
- Not all trans* people undergo surgery or other physical changes. They may not want such changes, may not have access to appropriate health care, or may not have completed their transition/self-actualization process.
- Once a person has identity documents with an accurate gender, it becomes much easier for them to live as their gender. Thus, a person may wish to change their sex designation as soon as they realize that the sex that was assigned to them at birth was wrong.
- The reasons for not requiring medical certificates or psychotherapy have been well-documented elsewhere. Queer Ontario opposes the medicalization and pathologization of gender identity.
- There should be no fee for changing sex designation. It is a necessary process for people whose gender does not match the sex they were assigned at birth.
- Waiting periods, medical certifications and fees add to the many unnecessary and unfair barriers that trans* people face.
- It is unlikely that people will apply for a sex designation change for fraudulent or frivolous reasons.

Question 2

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?

No, the criteria should be the same for people of all ages.

In particular, a minor should not require the permission of parents or guardians to change their sex designation. Due to discrimination or ignorance, some parents & guardians are not supportive of their child’s trans* reality. Note however that the corroborator discussed in Question 3 will be a supportive adult.

Question 3

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 purpose of corroboration, as we understand it, is to verify that the applicant is who they say they are, and has a real need to change their sex designation.

This is similar to needing a guarantor when applying for a passport. Therefore, we recommend that ServiceOntario’s criteria for a corroborator be similar to the current Passport Canada criteria for a guarantor (<http://www.ppt.gc.ca/info/section2.aspx?lang=eng>). The corroborator would be an adult who has known the applicant long enough, and well enough, to vouch for their identity and need to change the sex designation. The applicant must choose the corroborator, to avoid being “outed” to an unsupportive person.

The corroborator does not need to belong to any registered profession (engineer, teacher, etc.), nor do they need to be a public official or religious authority. Applicants may not know any

professionals well enough to request their assistance, especially not on the sensitive matter of gender.

In particular, the corroborator does not need to belong to any medical or health profession. Gender is not a medical question, and is not determined by a person's anatomical sex. Not all trans* people change their bodies with surgery or hormones, nor do they all need mental health treatment. It is unnecessarily invasive, as well as unfairly difficult, to require medical certification of a gender identity.

Question 4

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?

Yes, this change should be permitted more than once. It will happen rarely, as in the case of a genderqueer or genderfluid person.

The formal declaration and corroborator would again prevent fraudulent and frivolous changes.

Implementation recommendations

1. Changing one's sex on identification should be a simple process with few steps.
2. Trans* people often change their name as well as their sex designation. The two changes could be combined into one process.
3. Make it easy for the public to learn about the policy & procedure for changing sex designation to the public, *via* a webpage, printed material, inquiry contact centres, and other appropriate methods.
4. Issue an official "Change of Gender Designation Certificate", similar to a Change of Name Certificate, so that trans* people have an easier time making the change with other government organizations.
5. Provide sensitivity training, developed and conducted by trans* people, for all ServiceOntario staff interacting with applicants for a sex designation change.
6. In the change of sex designation process, use fraud prevention and monitoring procedures that are no more stringent than for other changes to birth registration, and that comply to the Ontario Human Rights Code.
7. We do not recommend that ServiceOntario staff question an applicant about their change of sex designation. However, if ServiceOntario decides this is necessary for fraud prevention, the questioning must be conducted with the utmost sensitivity to the difficult nature of the applicant's personal choice.
8. Treat a person's former sex designation, and the fact that they have changed sex designation, as highly sensitive personal information.
9. Because sex, gender identity and gender expression are now protected grounds under the Ontario Human Rights Code, government decisions & processes must not disadvantage a person because of their former sex designation, or the fact that they have changed sex designation



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About Queer Ontario

Queer Ontario is a provincial network of gender and sexually diverse individuals — and their allies — who are committed to questioning, challenging, and reforming the laws, institutional practices, and social norms that regulate queer people. Operating under liberationist and sex-positive principles, we fight for greater accessibility, recognition, and pluralism in society.