

Transformations in Funding for Sexual Reassignment Services

In 1998, Ontario's previous Progressive Conservative government removed sexual reassignment surgery (SRS) from the list of covered procedures by the province. [1] Complaints were made to the Ontario Human Rights Commission, but in recent history, the Commission has largely deferred to the government. Presently, a motion is being made to amend the [Ontario Human Rights Code](#) [2] to explicitly support the rights of transsexuals and to guarantee that the cost of surgeries will be covered.[3]

Since 2008, the Ontario government has been set to re-instate funding for SRS. Approximately 8-10 surgeries will be funded per year.[4] While that number may be an accurate reflection of the number of surgeries that would be necessary per year, one advocate for transsexuals points out that there is a backlog of approximately 100-200 people who were unable to get surgery while the previous government was in power. It is uncertain whether these surgeries will also be covered.[5]

An Ontario Human Rights Tribunal hearing was held in 2005 in order to assess whether denying funding for surgery to transsexuals, who had already begun their transition when delisting occurred, was discriminatory.[6] This was the first case involving transsexual issues to be heard by the Ontario Tribunal. In 2006, the Tribunal decided that stopping a surgery mid-way through was discriminatory. However, the majority ruled that denying surgery to those who were not already under-going surgery does not amount to discrimination.[7] While the majority dealt only with the three cases of incomplete operations, Mary Ross Hendriks, Vice-Chair of the Ontario Human Rights Tribunal, found that denying funding to anyone seeking the surgery was contrary to the Ontario Human Rights Code and, therefore, discriminatory. She argued that delisting was done without a valid medical reason and went against legislation and advice from the government's Regulations Committee.[8] She also found that SRS is a "legitimate, international, medically recognized non-cosmetic treatment." [9]

Kathleen Lahey points out, in *Are We Persons Yet?: Law and Sexuality in Canada*, that transgendered and trans[s]exual persons still exist in a legal vacuum:

The fact that transgendered and transsexual persons have not yet been able to bring their cases within the rubric of human rights or Charter rights suggests that they are particularly disadvantaged by the reliance on mutually exclusive concepts of 'sex' and 'sexual orientation.' Instead of being able to occupy legal space within either of these two terms or at their convergence, they have been

excluded from both.[10]

In a similar vein, scholar Dean Spade suggests that discourse around transgender has been over-medicalized, with too great a focus on physical evidence in the determination of legal status and other social markers.[11] While Spade does not intend to deny the physical realities of this group, his view suggests that the examination of transgender and transsexual issues should begin with a look at institutional and social barriers faced by transgender and transsexual people, rather than the individual's anatomy.[12]

Another perspective is that transsexuality or transgender is defined by the sense that one's essential self is trapped in the wrong body, a feeling that can result in depression and suicide. This view treats SRS as a medical imperative.[13] On the other hand, some have suggested that a desire for a sex-change comes from the same impulse as any cosmetic surgery—a desire that is superficially motivated.[14] Other times, however, the belief that the surgery is a matter of choice stems from the notion that social pressures, rather than natural impulses, will determine what gender one may want to live in.[15] While this view acknowledges that social pressures are deep-seated and not to be taken lightly, SRS is seen as only one treatment option amongst many. How far the latest Ontario government's decision will go to promote reflection on the myriad of perspectives on the significance of sexual reassignment surgery for the transsexual/transgender community remains unclear.

[1] Nicole Visschedyk, "Questions remain about sex-change coverage" (20 May 2008), Guelph Mercury, online: GuelphMercury.com <<http://news.guelphmercury.com/News/article/330083>>.

[2] R.S.O. 1990, c. H19.

[3] Antonella Artuso, "Backlog for sex-change surgeries greater: advocate; provincial government numbers contradicted" The Standard (22 May 2008), online: Canoe.ca <<http://www.stcatharinesstandard.ca/ArticleDisplay.aspx?e=1036196&auth=Antonella+Artuso>>.

[4] Ibid.

[5] Ibid.

[6] Erica Predko, "Ontario law needs trans-formation: A struggle for the affirmation of human rights" Cité Libre (18 June 2008), online: Cité Libre <<http://www.trudeausociety.com/home/Frontpage/2008/05/18/02213.html>>.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Katherine A. Lahey, *Are We 'Persons' Yet?: Law and Sexuality in Canada* (Toronto: University of Toronto Press 1999) at 23.

[11] Dean Spade, "Resisting Medicine, Re/Modelling Gender" (2003) 18 *Berkeley Women's Law Journal* 15 at 25-26.

[12] Ibid.

[13] Nina Arsenault, "Pay for my sex reassignment" *National Post* (17 June 2008), online: <<http://www.nationalpost.com/news/canada/story.html?id=592289>>.

[14] Ibid.

[15] *Supra* note 11.