Human Rights in Question as Alberta Delists Gender Reassignment Surgery

The Alberta government has removed gender reassignment surgery from the list of medical procedures covered by the Alberta Health Care Insurance Plan. On April 15, 2009, members of the transgender community responded by rallying outside the legislature and filing a complaint with the Alberta Human Rights and Citizenship Commission.[1] Their campaign against the delisting may eventually lead to a constitutional challenge.

The concerned citizens were in attendance as NDP MLA Rachel Notley addressed the legislature. Expressing the concerns of the transgender community, Notley suggested that gender reassignment surgery is a matter of life and death for many who identify as pre-operative transsexual. She said that by denying access to transgender medical treatment, the Alberta government "could be complicit in raising [the] risk of depression and suicide."[2]

The cut is estimated to save Alberta $700,000 on its annual Health and Wellness budget of $12.9 billion.[3] Notley said, "delisting the surgery trims a tiny fraction from the health budget but slashes at the very foundation of human rights."[4] She later remarked that the savings would be insignificant compared to the cost of legal challenges that would likely result.[5]

While there is no prior Canadian constitutional challenge against restrictions on transgender funding, human rights legislation was invoked in a successful suit against the Government of Ontario. In 1998, Ontario removed sexual reassignment surgery from its list of covered medical procedures. In 2008, The Ontario Human Rights Commission ruled, on the basis of the province's Human Rights Code,[6] that the funding cut was discriminatory.[7]

Alberta's human rights legislation has a provision similar to Ontario's.[8] Nonetheless, the Ontario decision is not binding on the Alberta Human Rights Tribunal.

The section 7 *Charter* right to security of the person is a potential point of constitution litigation when government action (or sometimes inaction) raises

concerns for an individual's health and wellbeing. In *R v Morgentaler* (1988), the Supreme Court of Canada considered the psychological stress that a pregnant woman endured because the *Criminal Code* restricted her access to an abortion.[9] Chief Justice Dickson, writing for the majority, identified the potential for a breach of an individual's right to security of the person where state action causes a serious and profound effect on one's psychological integrity. However, the Court ruled that the anxiety caused by the particular restrictions imposed by the state on access to abortion did not infringe on the individual's right to security of the person.

If a *Charter* challenge is ever initiated by Alberta's transgender community, the courts may be asked to revisit the question of when a state action has a sufficient effect on an individual's psychological integrity that it violates their right to security of the person.

FURTHER READING

- Alexandra Bailey, Transformations in Funding for Sexual Reassignment Services, Centre for Constitutional Studies (19 June 2008).
- GENDER IDENTITY: Your Rights and Responsibilities, Ontario Human Rights Commission.

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[1] "Transgendered Albertans file human-rights complaints," *cbc.ca* (15 April 2009).
[2] Legislative Assembly of Alberta, Alberta Hansard (14 April 2009) at 618.
[3] "Health Funding," Government of Alberta, Ministry of Health and Wellness.
[4] Legislative Assembly of Alberta, Alberta Hansard (14 April 2009) at 618.
[5] Legislative Assembly of Alberta, Alberta Hansard (4 May 2009) at 934.
[6]R.S.O. 1990, c. H. 19 at section 1: "Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability."
[7] *Hogan v Ontario*, 2006 HRTO 32.
[8] *Human Rights, Citizenship and Multiculturalism Act*, RSA 2000, c H-14 at section 4: "No person shall (a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or(b) discriminate against any person or class of persons with respect to any

goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that person or class of persons or of any other person or class of persons."

[9] [1988] 1 SCR 30.