

AMENDMENTS TO THE HUMAN RIGHTS ACT AND VITAL STATISTICS ACT

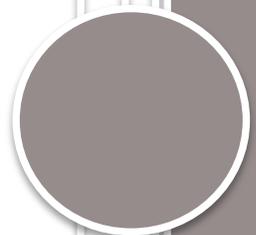
What We Heard

A summary of feedback from the consultation:
March 13 – 24, 2017

Departments of Health and Social Services and Justice

Spring 2017

Yukon
Government



Amendments to the Human Rights Act and Vital Statistics Act

What We Heard

This project is part of the bigger omnibus bill that we promised, which is the review of all legislation, policies and practices to ensure the Yukon government meets the rules and social standards for LGBTQ2S non-discrimination.

Just to lay the groundwork, we are the only jurisdiction in Canada that has not introduced legislation to remove the requirement for surgery before being allowed to change the sex designation on your birth registration. We are also one of the last jurisdictions to amend our *Human Rights Act* to include gender identity: the gender you identify with regardless of biological sex and gender expression-how you express or present your gender – behaviour and outward appearance such as wearing makeup, how you dress, your voice, etc.

In terms of the *Vital Statistics Act*, legislative schemes similar to ours have been found unconstitutional (Court of Appeal Alberta) or discriminatory (Human Rights Tribunals) across the country.

The amendments we are proposing set out requirements for applications concerning children and adults. In doing so, we are trying to reduce barriers so that all Yukoners have access to the process whether you live in Whitehorse or in an outlying community.

The consultation on the amendments to the *Human Rights Act* and *Vital Statistics Act* engagement received 328 responses: 325 to the online survey; one emailed comment; and two written responses. There was national and local media attention.

The questionnaire posed 11 questions which could be filled out by pen and paper or by completing an online survey. Additionally a letter with the same questions attached were sent to targeted stakeholders.

This paper is a summary of what we heard during that targeted consultation.

Responses

Question 1

We are proposing to amend section seven of the Human Rights Act to prohibit discrimination based on gender identity or gender expression. What do you think?

Many respondents to this question recognized the need to protect everyone's rights. One person commented on the short time frame for input but other respondents wondered why government was consulting at all when the changes needed to happen.

Some comments from respondents:

"I think this is an excellent step in the right direction. Protection from gendered discrimination is absolutely essential in our modern world."

"This makes total sense and as society grows, evolves and recognizes a broader diversity of human aspirations, cultures, beliefs and identities, it is only normal that legislation grows and evolves accordingly."

"What logical human being wouldn't agree?! Why is this even a question?"

"Please! Basic human rights should be a no brainer. Protecting trans people is a must!"

"This protection is dearly needed."

"Why are consulting the public on this when we are no according to the daily Xtra the last jurisdiction in Canada. This is a no brainer!!! Do it."

YES ... for the love of god yes. As trans rights are human rights this should be a no brainer.

"I'm not sure I agree or disagree. Isn't it already against the law to discriminate against anyone???"

"Gender is socially constructed and sexist. These terms reinforce sexist stereotypes."

"Why a psychological characteristic should suddenly become a legal matter? There is no such thing as gender identity. Sex can't be changed. If men want to go working dressed in a skirt and high heels, they just have to do so, it is not illegal and it is already protected by the law. But men in dresses are still men; if

they want the whole society believes their personal and intimate beliefs, that is different and no one can coerce somebody to share another one's belief. And the government still has a responsibility towards women's safety? Why a criminal convicted for sexual assault should be allowed to be transferred in a women's jail just because he claims a new personal and mental identity?"

Question 2

We are considering two age categories for those applying for a change in sex designation: 19 years old and over (adult) and under 19 years old (child). The age of legal majority in Yukon is 19. What do you think of this option?

Many people provided comments in questions 2 and 4 about the age of 19 being too old. Some respondents suggested that under 16 years of age and 16 years and over would be more appropriate.

Due to the responses to the questionnaire, the proposed legislation includes the categories of under 16 years of age and 16 years of age and over.

Some comments from respondents:

"Why not use 16 - the age when kids can drive, stop going to school, or at 17 go to university and live away from the Yukon, etc? Transgender folks don't make this decision lightly. But living with the wrong gender is unbearable. So, move the age to 16."

"19 is too old. Other jurisdictions set the age at 16 - I am in support of this."

"While 19 is the age of majority, youth are applying for driver's licenses and IDs earlier as independent persons. The age that this occurs should be the age.... if you have to have one."

"I think 19 is too high. And what is the purpose of the distinction?"

"16 years is a better point for a mature minor who is capable of making this decision."

"The age should be younger."

"This creates a two tiered system that disadvantages youth seeking support in their gender identity and expression and does not value the autonomy of youth in this decision making process"

“Should be 16 years or older”

“I would potentially support two age categories but feel that the cut-off of 19 is far too high.”

“I agree with this proposal; however, feel that age 14 and up with parental permission should be established”

“This should be considered based on the individual, gender identity begins at birth not when legislated”

“I think the age should be 16.”

“I think the age should be changed to 16 not 19. This would be useful when parents don't approve”

Question 3

We are proposing that applications from adults (over 19 years of age) include a letter from a supporting person who has known the applicant for at least two years (similar to applying for a passport), which states that the sex designation requested is consistent with the person's gender identity. What do you think of this proposal?

Many of the respondents were of the opinion that adult applicants should not need a supporting letter from another person. Due to the responses from Yukoners the legislation tabled only requires applicants 16 years and over to sign a declaration stating that they want to change their sex designation. They will not need a supporting person to sign the application.

Some comments from respondents:

“I believe the individual is capable of this decision on their own.”

“If the person is over 19 years of age, they should be able to decide this for themselves.”

“No. References? How humiliating! A person knows the gender they prefer- they don't need to prove that to the government”

“what difference will this make? applying for passport and applying to identify as male/female/etc, etc isn't the same thing. one is a deeply personal value intrinsic

your being and wellbeing- the other is a passport. Not the same thing-. WHY is this being considered as a rule for application?"

"A person's gender and expression is their decision, and should not be reliant on support from third parties. This is especially problematic when looking at the lack of support in some communities for Trans and Two-Spirit persons. This is a personal decision, that should reside solely with the individual."

"What if they don't have any supporters? I disagree."

"This is discriminatory. When someone applies for government identification, and has to specify their gender on a form, is a supporting letter regarding their gender identity required? This proposal basically says to applicants "we don't trust you""

"It is up to the individual; no one else needs to be involved."

"I think this is an intrusion into a person's privacy and right to self-determination."

Question 4

We are proposing that custodial parents would apply on behalf of children under 19 years of age. The application would need the consent of all custodial parents. Do you agree or disagree? Why?

Many of the respondents had mixed reactions to requiring the permission of both custodial parents to consent to an application. Additionally, many responses commented on the importance of having an avenue when parents are not consenting.

The approach of having all custodial parents consent is consistent with legislation across the country. Although the court process is not necessarily an easy one, there is a process for an applicant to get a court order to dispense with the need for consent from both parents.

Some comments we heard:

"Why?"

"If a parent disagrees, there should still be an option to pursue changes."

"Not all transgender children and youth have parents who are understanding and supportive of their identity and in some cases this can be a dangerous/increase risk of violence and abuse toward the youth to require they have parental

consent. I think there needs to be at least a second avenue for youth whose parents will not consent or who have 2 custodial parents and only one willing to consent.”

“Children and young adults are often disowned by one or both of their parents when they come out as Trans. Requiring the consent of all custodial parents could prohibit them from being able to access appropriate medical care and increases their risk of self-harm and suicide. What about situations where one of the parents lives outside the territory? I think exceptions should be made if a parent no longer has contact with the youth or if a doctor could recommend moving forward with the consent of 1 parent.”

“I agree that parents could apply on behalf of their children. However, I do not agree that the consent of both custodial parents should be mandatory.”

“We've seen cases (e.g. in Alberta) where one parent is not supportive of a transgender child & the courts have backed that, at least initially (e.g. case where child was initially forced to dress as gender assigned at birth). This proposal seems dangerous because there are a lot of people who are not supportive of trans* rights & I'd hate to see a child's wishes not honoured due to a parent's willful ignorance.”

“Many parents from an older generation do not understand what it means to be transgender, they may think it's a phase or a choice, or they may outright disown a child if they choose to live as who they identify as. Parents should not have the authority to choose the gender of their children, that's something that comes from within a person and cannot be altered. Parental consent allows the child's gender to be decided based on the feelings and beliefs of the parents and not on how the child feels. It is also possible that parents may disagree with each other and this may cause more emotional trauma for the child. Gender decisions need to come from the individual themselves, even if they are not 19.”

“I'm not sure what custodial means. At any rate, any parent or step-parent should have a say.”

“I agree that parents should give consent, but I think age 16 may be a more appropriate cut-off age.”

Question 5

We are proposing that applications for children (under 19 years of age) include one letter from a supporting person who has known the child for at least two years and one letter from a list of individuals that could include: medical practitioner, psychologist, nurse, nurse practitioner, school counsellor, teacher, social worker, lawyer, or a chief or counsellor of a Yukon First Nation. What do you think of this proposal?

All jurisdictions across Canada require supporting documentation for children.

Many of the respondents questioned the need for two letters, one from a supporting person and one from the expanded list. Due to the responses from many Yukoners the legislation tabled only requires support from one person from an expanded list of professionals. It does not have to be a medical doctor or psychologist. To reduce barriers and make it accessible to Yukon children no matter where they live the expanded list of persons include teachers, school counsellors, First Nations chiefs and counsellors, registered nurses, psychologists, medical practitioners, nurse practitioners, and social workers.

Some comments we heard:

“Again, I don't think a "supporting person who has known the child for at least two years" makes any difference. What if an 8 year old doesn't have a supporting person other than her guardian? I don't see how a "supporting person" matters, particularly if a second letter is required in this case.”

“Not too much of an imposition I think.”

“No problem.” yes - this is very important.”

“Having elected officials weigh in as a bad, bad idea. What do they know about the physiology of a transgender child? Leave it to medical practitioners or psychologists ... the people who can reliably and professionally make the call.”

“Also think there should be a wait period on children to ensure it is the wish of the child.”

“Again, an individual should be of the minimum age of 19 to apply”

“While 19 yrs of age may be the age of majority, is not the age at which consent can be given for healthcare treatment."In all Canadian provinces and territories the determining factor in a child's ability to provide or refuse consent is whether the young person's physical, mental, and emotional development allows for a full

appreciation of the nature and consequences of the proposed treatment or lack of treatment, whether or not the patient has attained the age of majority", CMPA 2014."

"I would also include workers at group homes and probation officers, as they both can have significant interactions with trans youth."

"The more, the better."

"gender is hardwired by three...you're just making more hoops for some kid to jump through....a declaration is good enough...."

Question 6

We are proposing that applications made for children over the age of 12 will require the written consent of the child. Do you agree or disagree?

Some comments we heard:

"I think that all applications should require the written consent of the child, regardless of the child's age."

"I do agree but I'm wondering about why the proposal is not including children younger than 12 to give consent. I don't think that proposals by parents of trans children should be done without consent of the child - what would that consent look like?"

"No problem."

"yes - this is very important"

"Also think there should be a wait period on children to ensure it is the wish of the child."

"Again, an individual should be of the minimum age of 19 to apply"

"Children should not be eligible"

"Gender "re-assignment" should not be allowed for anyone under at least 16, period."

"While the child may not be able to consent themselves, they should be a part of the process throughout."

“While the child may not be able to consent themselves, they should be a part of the process throughout.”

“This is all it should require!”

“I would hope that any person making application would be signing or in some way consenting to the application.”

Question 7

Many transgender youth do not have the support of their custodial parents. We are proposing to allow youth to apply on their own if they do not have the consent of their custodial parents. They would have to get an order from court stating that parental consent is not needed. Do you think this is a good idea?

Best practices indicate that youth who do not have the support of their parents need a remedy to allow them to apply. To further reduce barriers and in light of responses to the survey, we changed the age of applicants from 19 years of age and over to 16 years of age and older and under 16 years of age.

Some comments we heard:

“This answers my concern about youth who do not have support of their custodial parents.”

“I think that allowing a youth who is not supported by her parents to apply on her own is a great idea; however I worry about how difficult it would be to navigate the system to get a court order permitting this. I wouldn't know where to begin, myself.”

“Again, an individual should be of the minimum age of 19 to apply”

“Children should not be eligible”

This one is tricky, but mostly, my thought it HOW would they acquire a court order, and would the process of obtaining one seem too daunting, too overwhelming, too publicized?

“There is a realistic need to have medical as well as legal support.”

“Might be difficult for youth to apply for an order from the court. Would have to ensure that they are given the supports needed to submit the legal documentation.”

“Might be difficult for youth to apply for an order from the court. Would have to ensure that they are given the supports needed to submit the legal documentation.”

“They should be able to apply on behalf of self”

“You guys are insane. What's wrong with you. Stay away from my family. We don't believe in your social constructionist ideology.”

“That is the worst idea I have ever heard. Youth are not legal to vote, or drink, but you wish to allow them to apply to change their gender? The reason youth cannot vote, or be charged for offenses as an adult is because their brains are not fully developed to the point where we, as a society, believe they are capable of truly grasping the consequences of their decisions. This is, of course, backed up by science! So how can we possibly think its a good idea to let kids decide to permanently alter their sex? Its lunacy!”

Question 8

We are proposing to introduce a gender-neutral option for sex designation i.e., male, female, or X (unspecified) for all Yukoners. What do you think of this option?

Allowing in legislation for the introduction of an X as a third gender marker will allow Yukoners to obtain passports with an X. Citizenship documents are still required to have a reference to gender. Additionally a third gender marker allows for persons who do not identify with strictly male or female but somewhere along the gender spectrum to be included. Northwest Territories and Alberta have introduced provisions for a third gender marker.

Some comments we heard:

“Could choosing an unspecified gender cause problems for passports or travelling on airplanes? If so, persons who make that choice should be advised of the risks.”

“As a non-binary person, I am very happy to see this proposal and strongly support it.”

“Great idea--I'd use it. I'm not too sure about "X" though.”

“About time for too many.”

“Some university applications have applicants state gender as: male, female, unknown. Come up with something more than X.”

“Not everyone fits in the box.”

“It's unnatural.”

“It should be a personal choice- many people are much more fluid that it previously appeared now that people are being given more freedom to express themselves.”

“It should be a personal choice- many people are much more fluid that it previously appeared now that people are being given more freedom to express themselves.”

Important

“It is simply immoral. Those of need to change gender shall be seeking psychological help.”

Question 9

Intersex babies are babies who are born with ambiguous sexual reproductive organs. We are thinking of allowing for identification at birth as other than male or female. Do you think that this is a good idea?

Some comments we heard:

“I strongly agree with this, giving the child and family time for identity to form as the child ages and for that child to let the world know how they identify when they know themselves.”

“It should be an option open to parents. Not everyone will choose the alternative designation, but at least they can if they wish. This may lessen the burden on parents who may feel pressured to 'pick a gender'. It could also be more beneficial to a child who, as time passes, may not identify with the chosen gender.”

“Obviously.”

“Yes. This is a little-known problem. Hasty, arbitrary or "secret" (without the parents knowing) surgery here is a mutilation. There is no danger in being intersex and the only reason why surgery is practiced so soon is because we have an arbitrary legal demand for sex designation as soon as the baby is born!”

“What would other be? Surely this happens infrequently enough that a better way could be thought up to deal”

“We absolutely need to recognize that bodies can biologically come out "different" than male or female. But we need to recognize that gender identity as we are currently discussing is a psychological issue. Not biological.”

“Or, as above, why have any designation at all?”

“I don't think gender should be on ID. It's not relevant.”

“I agree as long as there is a way that it can easily be amended once the individual determines which sex they identify with. I don't think they should be forever branded intersex if they fully lives as male or female.”

“Generally, this is a good proposal, but I am a little concerned about what documents will include this information. I wouldn't want children getting teased because this information is included on their health care card or on their learner's permit when they are 16.”

Question 10

Are there any Vital Statistics Act or Human Rights Act provisions related to transgender persons that are not mentioned in this document that you think Yukon should consider adopting?

Are there any provisions that you think Yukon should not consider adopting?

“I can't think of one right now. History, experts and transgender persons should be consulted on that point.”

“I don't know”

“Like the federal government stop collecting gender based data.”

“Ask the individuals who are request ion this what is missing.”

“Choosing no only because I don't know of anything, not because there isn't a need.”

“There should be just bathrooms Not female or male”

“Indigenous consultation for Two-Spirit recognition. Two-Spirit identity is very different from Transgender identity, and it is disappointing to see no mention of it within this form in a community with such a high Indigenous population.”

“They are people who already fall under the provisions of these acts and I don't see any need to make a special place for them there or anywhere for that matter. I have another question for you. Can you please deconstruct gender for me? It seems to me that there are only 2 to choose from and pretty much all the scientists in the world believe that to be true eligible as well. So why are we spending time and money on an Ideology?”

“I am not familiar enough with all the provisions to comment.”

“The territory should also create a strategy for addressing barriers to gender affirming surgeries.”

Question 11

Do you have any other comments or questions?

Some comments we heard:

“Children under 19 should not be able to apply for a different gender designation. The human rights act should be all encompassing, using specific language about gender narrows its scope”

“I think it is about time that Yukon transgender people had the support of Government”

“I don't agree with the overall proposal.”

“I agree that nobody should be discriminated against based on gender identity; HOWEVER, a person's natural birth sex should be completely legally protected until at least age 16 regardless of any circumstance, children should be assigned either a male or female designation at birth based on a blood test, and at no point should taxpayers have to pay for anything regarding someone having gender "re-assignment" or relating to any other issues relating to gender identity. Protecting

someone from being harassed IS NOT the same as footing the bill for all their personal identity wants and needs.”

“The Religious community is obviously not taken into consideration when something of this ethical and moral magnitude is being proposed.”

“The Yukon should just have a declaration for applicants to sign and to hell with the other hoop jumping bureaucratic nonsense...it ain't difficult...and you're making it difficult!”

“I would like this to be available to do more then once or put on pause and come back to it.”

“For future, a simple "yes" or "no" is not always the best approach in survey design. Some respondents may not feel that they have adequate knowledge to respond in such black and white terms. You may be forcing responses where respondents may have answered differently if a "N/A" or "not sure" had been provided which will skew your results. Thank you for providing contact info and big thanks for tackling this issue!”

“publicly consulting on this odd since the majority of the public are not impacted in any way by the proposed amendments to the vital stats act. Why are you asking for voices that have no stake in this to weigh in on topics they know nothing about? If it was about race you would never ask the public to weigh in on whether radicalized folks should have human rights protections.”

“Vast majority of people identify themselves as members of one or another religious affiliation. Please consult these (or leaders of such) as well, as for someone who keenly identifies themselves as Christian, for example, the whole concept (including transgender) might seem extremely offensive. (I.E 1.5-2% of people would welcome a gender neutral washroom, but for 60% it might be unacceptable etc. even if it's not 60%, but let's say it's the same 2% who oppose - who gets to decide whose side to take?)”

“ANYTHING that creates any barriers. Do not over-legislate or develop too many requirements.”