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### Vital Statistics Responds to Human Rights Complaint

"The government claims the right to be wrong, knowing it is trans and intersex people who have to bear the burden of their mistake," says Kori Doty, one of eight trans and intersex complainants in a human rights case to have birth certificates issued without "m" or "f".

Yesterday, the BC government filed a response in the case of Cunningham v Vital Statistics Agency. In their Response, the Ministry of Health is stating that putting gender markers on birth certificates, is not discriminatory.

"The government knows that the current system of designating gender at birth for a document that follows you throughout life is predictably incorrect for many trans and intersex people. The government knows exactly how much hardship and danger these systems can cause in our lives. It is thoroughly disappointing that they are choosing to ignore this, while fully aware of the risk of harm that this choice leaves on those impacted" says Doty.

Doctors assign the sex of a baby as "m" or "f" based on an inspection of the baby's genitals at birth. This assigned sex is recorded in the birth registry of the Vital Statistics Agency. When a Birth Certificate is issued, it contains the gender marker "m" or "f". Science now knows that one's gender is determined by one's innate sense of themselves. That is called 'gender identity'. One's gender identity may or may not "match" one's genitalia. and one's gender identity does not develop for years after birth. Some people have a gender identity that is neither "m" nor "f". Some people labelled "m" identify as female; and some labelled "f" identify as male.

So: the doctor assigning "m" or "f" is sometimes wrong.

The birth certificate based on the doctor's guess is also sometimes wrong.

Misgendering identity documents contributes to the severe mistreatment and discrimination that trans and intersex people experience.

"We're not saying we want gender taken off all ID. What we are saying is that when you assign sex at birth, you will get it wrong in some of the cases. Until you can ask someone what their gender is, you cannot know it. Getting it wrong discriminates against trans and intersex people" says Felix Gilliland, one of the Complainants. The Complaints say that putting "m" or "f" on birth certificates is a violation of privacy and inexcusably exposes trans and intersex people to harm.

Milan Halikowski, a 13 year old Complainant says "Having a gender marker on my birth certificate has directly impacted my life in a negative way. It has caused my exclusion and bullying in sports, school and in my daily life. I thought the government's job was to help keep kids safe and the current policy puts us at risk."

The Complainants are now waiting on the BC Human Rights Tribunal to set a date for Hearing.

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## Backgrounder

The Human Rights Complaint has been underway since November, 2013, when the complaint by eight B.C intersex and transgender people, including the Trans Alliance Society, was accepted by the BC Human Rights Tribunal. The Complainants as a remedy requests that gender be taken off all new birth certificates. The parties engaged in an Early Settlement process, to attempt to come to a resolution outside of a Hearing. The Vital Statistics Agency declined to continue the voluntary Settlement process in August 2015. The Trans Alliance Society, a coalition of groups and individuals across the province, represents over 200 trans\* people in British Columbia. Similar cases are underway in other jurisdictions, including a claim to remove gender markers from passports.

Biologists are understanding sex to be far more complex than “male” and “female”.<sup>1</sup> For example, a meta-survey of applicable medical literature has demonstrated that at least 1/100 (1.728% of live births) people are intersex.<sup>2</sup> This is a higher incidence than the rate of red hair.<sup>3</sup>

## Glossary

*These are not dictionary definition, and only contains some of the terms used to describe gender. It captures the current usage of the terms; but some of the terms are contested or in flux as the understanding of the complexity of gender increases.*

Term	Meaning
Cisgender	A cisgender person is one whose gender identity is congruent with their body.
Gender identity	One’s perceived sense of gender, whether or not it “matches” one’s

<sup>1</sup> Ainsworth, Claire. “Sex redefined.” *Nature, International Weekly Journal of Science*. Feb 18, 2015.

<http://www.nature.com/news/sex-redefined-1.16943>

<sup>2</sup> Blackless, Melanie et al. “How Sexually Dimorphic Are We? Review and Synthesis.” *American Journal of Human Biology* 12: 151-166 (2000).

<http://sites.oxy.edu/clint/physio/article/HowSexuallyDimorphicAreWeReviewandSynthesis.pdf>

<sup>3</sup> The United States affiliate of the Organization of Intersex International. “How Common is Intersex? An Explanation of the Stats” <http://oii-usa.org/2563/how-common-is-intersex-in-humans/>.

	genitals or other sex markers such as chromosomes.
Intersex	<p>Intersex is a variation in sex characteristics including chromosomes, gonads, or genitals that do not allow an individual to be distinctly identified as male or female. Such variation may involve genital ambiguity, and combinations of chromosomal genotype and sexual phenotype other than XY-male and XX-female. There are a variety of medical conditions grouped as ‘intersex’ some of which are detectable at birth, others at puberty, and some only accidentally.</p> <p>Being intersex is a normal part of the range of sexes.</p>
Non-binary	<p>A gender identity which is neither, or both, male and female. People can feel they are both, neither, or some mixture thereof. It might be easier to view gender as a 1-dimensional spectrum with male on one end, female on the other, and androgynous in the middle- but the reality is that gender is more complex, and 3-dimensional models with axes for male, female, and how strongly you feel attached to that gender identity have been suggested.</p>
Transgender	<p>Transgender is an umbrella term. Transgender is the state of one's gender identity or gender expression not matching one's assigned sex.</p> <p>Transgender is independent of sexual orientation; transgender people may identify as heterosexual, homosexual, bisexual, etc; some may consider conventional sexual orientation labels inadequate or inapplicable to them.</p>
Transsexual	<p>Transsexual people are colloquially described as being ‘born in the wrong body’.</p> <p>Transsexual people experience a gender identity inconsistent or not culturally associated with their assigned sex, i.e. in which a person's assigned sex at birth conflicts with their psychological gender. A medical diagnosis of gender dysphoria can be made if a person experiences discomfort as a result of a desire to be a member of the opposite sex, or if a person experiences impaired functioning or distress as a result of their gender identification.</p>