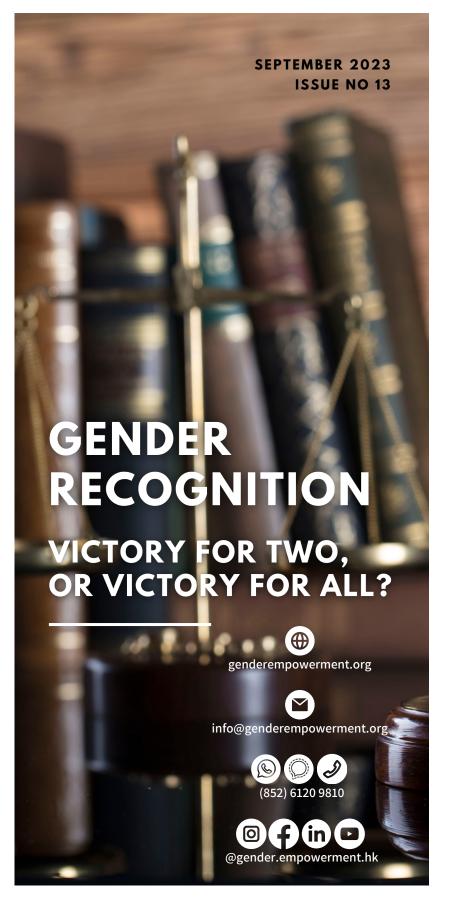


NEWSLETTER

NO.13





EVENT RECAP

5 MAY

PERIOD INCLUSIVENESS PANEL

6 JUNE

MEDITATION WORKSHOP
PRIDE MONTH @ EATON
COS PRIDE MONTH T-SHIRT
PRIDE MONTH CORPORATE SHARING

7 JULY

LEGAL CASE STUDIES SEMINAR

8 AUG

MOVIE NIGHT

JOB MATCHING PILOT PROGRAMME

9 SEP

AUTUMN CRAFTING WORKSHOP

2008

TOPIC OF THE MONTH

2013

2017

2023 🗹

DID WE WIN. REALLY?

February 2023, the Court of Final Appeal (CFA) found the government breached the rights of two transgender men (Q & Tse) by refusing them to amend their gender entry on their Hong Kong Identity Cards (HKID) without full Gender Affirming Surgery (GAS)?, marking this a landmark ruling for trans rights progression.

However, later developments revealed that the <u>Immigration Department suspended Ryousuke</u>, a deaf trans man's application to update his gender marker, despite him completing full GAS in November 2022. Ryousuke was able to change the gender marker to male eventually, but his situation raises questions - does Q & Tse's victory guarantee the rights of every trans individual in Hong Kong? What does it mean for those who have already undergone GAS?

Gender Affirming Surgery (GAS)

Previously known as Sex Reassignment Surgery, GAS is the medical process of transgender persons use to affirm their gender identity. Recently, the community has also started advocating for the use of "Gender Affirmative Care", highlighting the importance that surgery is not the only option to seek body affirmation - which can also include hormone care, speech therapy and mental health care.

Media coverage of Ryousuke's application

https://hongkongfp.com/2023/03/11/hong-kong-suspends-applications-to-change-gender-marker-on-id-cards-following-top-court-defeat/.

Judgment of the first judicial review:

https://legalref.judiciary.hk/lrs/common/search/search result detail frame.jsp?DIS=119924&OS=%2B&TP=JU&ILAN=tc

Judgment dismissing the appeal:

https://legalref.judiciary.hk/lrs/common/ju/ju frame.jsp?DIS=142010

Final appeal ruling the victory of Q & Tse:

https://legalref.judiciary.hk/lrs/common/ju/ju frame.jsp?DIS=150362

THE CHRONICLES OF O & TSE'S CASE

2008

2013

2017

2023

In 2015 & 2017*, three trans men filed for appeal because they were denied to change their ID gender to male. Two of them (Q & Tse) filed for another appeal after losing their case in 2019. The High Court once again rejected their request in 2022. The court verdict stated that the completion of gender affirming surgery (here implies (i) the removal of the uterus and ovaries and (ii) construction of some form of a penis for trans men) is the requirement of HKID gender change. The fact that the applicants' health conditions allow them to undergo said surgery but they decide not to, does not comply with the conditions for a gender change thus the argument for discrimination and inhumanity is considered void because they 'exercised choice'. The arguments and verdict in 2022 that declined Q & Tse's application:

Q & TSE's argument

Requesting Gender Affirming Surgery is an invasion of privacy

The surgery is high risk yet low successful rate. They have no urgent need to undergo surgery, thus using that as a condition to change their gender is inhumane and insulting

They have lived as a male for years, and also were issued the Gender Recognition Certificate by the British Government

Medically they do not need surgery, and said surgery has no healing purpose

The court's verdict

If the applicants reserve their reproductive systems, and if they were pregnant and gave birth will lead to legal and social issues

Surgery is a reasonable balance between public interest and personal privacy, does not go against human rights

Gender Transition requires objective medical assistance to determine if the person has completed transition. Surgery is the ultimate assurance they will not regret their decision

Society does not have sufficient facilities nor mentally prepared to accept trans people who haven't completed surgery to change their ID gender

*List of juridical citation number related to this case:

- HCAL 229/2015
- HCAL 154/2017
- HCAL 189/2017
- CACV 183-183/2019
- FACV 8-9/2022

2008

The two applicants were assigned female at birth, realised their transgender identity from a young age, later started on testosterone and underwent top surgery. They both didn't feel the urgent need to pursue bottom surgery. Their gender on the British passport was amended as male?, and they enjoy basic legal rights in the UK such as marriage and adoption as male accordingly. Nonetheless they were not able to change their gender on their HKID.

2013

2017 **d**



Applicant Q*

• Experienced gender dysphoria since 16

- Started living as a male since 2011
- Obtained a UK passport with a male gender marker in 2014
- Underwent irreversible top surgery in 2015



Applicant Tse*

2023

- Received assessments and was confirmed experiencing gender dysphoria since 2012 at 19yo
- Underwent top surgery within the years 2011-2015
- Obtained his Gender Recognition Certificate in the UK after living as a male for 4 years in 2016

Gender Recognition Act 2004

Gender Recognition Act 2004 was enacted by the UK legislative body, is an Act to make provision for and in connection with change of gender.

*Final appeal ruling the victory of Q & Tse: https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=150362

WHEN DID THE GOVERNMENT MAKE IT SO DIFFICULT TO CHANGE YOUR GENDER?

2008

Transgender issues have always been on the periphery of social equality conversations. It wasn't until 2013's <u>W v Registrar of Marriages</u>, which is widely coined as one of the turning points of transgender rights in Hong Kong.

2013

Trans woman W underwent gender affirming surgery in 2008 and changed her HKID gender to Female. Same year in November, W made an inquiry through her attorney to figure out if she can legally marry her boyfriend. The Registrar of Marriages rejected her request on the grounds that W's birth certificate assigned her as male at birth, whilst the HK government only refers to a person's birth certificate but not HKID or passport for marriage purposes. At the time HK does not recognise same sex marriage.

2017

W submitted the case to the court for judicial review, saying that her marriage and privacy rights were violated. Both the Court of First Instance and the Court of Appeal rejected W's claim. W made her case to the High Court, was ruled in favour of the case in 2013, and she could finally marry her boyfriend as a woman. The High Court issued a one-year stay of enforcement of the ruling to give the government more time to amend the Marriage Ordinance.

2023

However, the amendment Bill did not pass through the Legislative Council. At instances when trans persons can marry as their identified gender as reflected on the change of HKID gender marker only by the result of the Judicial Review, but not by law.

In response to W's victory, the government established an Inter-departmental Working Group (IWG) on Gender Recognition ("IWG") in 2014 to consider legislation and incidental administrative measures that may be required to protect the rights of transgender persons in Hong Kong in all legal contexts after W's case. The first part of its consultation paper was released in 2017.

In this consultation paper, it clearly states that in order for trans individuals to change their HKID gender, they'll have to:

(Note: The Immigration Department revised its guideline in 2012 explicitly stating the below mentioned conditions, during the appeal of the W case)

2008

Transgender women

Bilateral orchiectomy: removal of testes.

Penectomy: removal of the penis.

Vaginoplasty: creation of vaginal space.

2013



Top surgery was not mentioned as a mandatory procedure in the consultation paper - ironically, it is more of a concern when it comes to surgical intervention for most trans men

2017

2023

Given the rigidity of these conditions, it inadvertently created obstacles for the transgender community to acquire necessary gender recognition (ie changing their gender markers on their HKID). This guideline, although has explicit definition and distinction between gender and sex, the result of defining a person's gender identity and in extension, in providing gender recognition guidelines, at the end was referred back to their sex characteristics.

?Gender vs Sex

Transgender men

(English and Cantonese version as exact extract from the consultation paper)

- Hysterectomy: Removal of uterus/ovaries and upper vagina. This can be done first, or after (2) below.
- Phalloplasty: Construction of a phallus like structure from the forearm skin with a urethral tube that does not yet connect to the original female urethra.
 - Some patients may opt for metoidioplasty (ie, elongating the enlarged clitoris), which is a less invasive surgery, instead of phalloplasty. Urethroplasty may or may not be conducted after metoidioplasty.
- Urethroplasty: After three months or more, and after the hysterectomy, a urethroplasty procedure will connect up the tube previously made in the phallus to the original urethra.
- Optional glansplasty, ie, creation of a more 'natural' looking penile tip.
- 5 Optional scrotal implants.
- Optional penile implants for those who want to have a phallus capable of 'erection'. To be conducted at least one year after the phalloplasty to allow protective sensation to develop.

Despite the rigidity of the definition in the paper, here's a more commonly accepted definition by the trans community:

Gender is your psychological sense of self. Who you, in your head, know yourself to be, based on how much you align (or don't align) with what you understand to be the options for gender.

Sex (sometimes called biological sex, anatomical sex, or physical sex) is composed of things like genitals, chromosomes, hormones, body hair, and more.

GENDER RECOGNITION - WHAT DOES YOUR HKID ACTUALLY DO?

Technically, your HKID only serves administrative purposes but not legal purposes. It serves as a document of proofing your identity - you'd be asked to show your HKID at the bank to show that you actually own the bank account; you'd be asked to show your HKID when you apply for a job, and HR wants to know if you can be legally employed in HK. Administrative documents (HKID) can be used in legal proceedings or as a form of identification, but its purpose is different from legal documents such as birth certificates, contracts, deeds, leases, wills, etc.



HKID is one of the most important indicators for the transgender community in obtaining gender recognition. Gender recognition entitles that transgender persons' gender identity to be recognised and protected by the law, and be displayed on statutory identification documents such as ID cards and passports. Even after the landmark ruling in Feb 2023, a trans person can change their HKID (binary) gender without full GAS, it does not automatically guarantee them a comprehensive legal affirmation and protection, which could include right to marriage and family, free movement in and out of the country, right to social security (eg insurance coverage) and equal opportunities etc.

Instead of "creating public unrest" or "damaging traditional values" as the previous rulings mentioned, the absence of an affirmative HKID gender only creates inconvenience on day-to-day activities - worrying the possibility of getting detained at passport control; suffering from questions and looks when the bank teller tries to make sense of why you look different from your HKID gender; feeling anxious having to come out during a job interview... Having a HKID that matches the gender that you're living as, not only does it elevate the euphoric affirmation that strengthens a trans person's mental health, but also remove barriers and constraints for trans persons to live a fulfilling life.

The three pillars of Transgender issues

Gender Identity, Gender Transition and Gender Recognition are the three pillars when discussing issues regarding the transgender community.



LOCAL AUTONOMY - WHAT ARE HONG KONG'S OPTIONS?

In both W's and Q & Tse's cases, the jurisdictional representatives took gender recognition legislation references from outside of Hong Kong. Apart from the UK Gender Recognition Act 2004, examples from Asia-Pacific, Europe, North and South America have also been referenced to.

All 47 Member States of the Council of Europe provide legal recognition to a change of gender and to respect the right to marry of a post-operative transgender person in their gender In China, Taiwan and Singapore, post-In the US, only 3 states explicitly forbids operative transgender individuals are marriage of transgender individuals allowed to marry in their affirmed gender International gender recognition systems Gender recognition systems varies across the world?, in reference to the UK's 1. Self declaration Gender Recognition Act 2004, individuals 2. Expert assessment are allowed to change their legal gender 3. Completion of GAS under expert assessment 4. No change of gender at all

The case \underline{R} (McConnell) v Registrar General for England and Wales which refers to a trans man who was successfully pregnant through intrauterine insemination and successfully carried the child to term, was used in Hong Kong's Q & Tse case as challenging traditional family values.

Question to self: What does being a 'mother', 'father', 'parent' or 'single parent' or 'adoptive/ foster parent' mean?



Read McConnell's story here: https://www.theguardian.com/society/2019 /apr/20/the-dad-who-gave-birth-pregnanttrans-freddy-mcconnell

IS THERE ONLY ONE SIZE FIT ALL?

As mentioned in the 2017 consultation paper, the IWG recommended a 'Dual-track gender recognition scheme' ("Dual-track scheme"), providing two options for two outcomes:



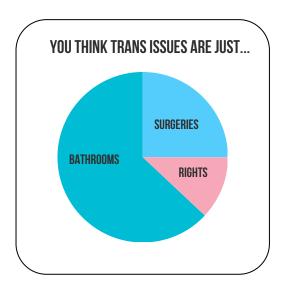
However, in Hong Kong's context, with an average waiting time of 10 years to undergo GAS (bottom surgery), where per year only 6 individuals have the scheduled opportunity to receive surgical treatment. More so, the trans community comes in all forms - there is no one gender transition journey that fits all. When we examine the diversity and inclusiveness within the community, is there a possibility to implement a multi-track scheme, so that the applicant can choose what works best for them:

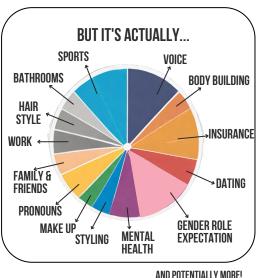


WHAT'S NFXT?

Despite W's, Q & Tse's well-deserved victory after years of legal battle, there are still questions whether the ruling automatically guarantees an inclusive gender recognition system is truly inclusive and that can benefit the most. With W's right to marry, acknowledgment of her female identity, does it also imply trans women can participate in sports competition as their identified gender? In the case of insurance coverage, is it safe to assume that the community can get covered according to their physical condition whilst recognised as their identified gender? Or will there be unreasonable extra loading incurred for the same coverage for cis folks?

Gender Transition is a journey, it is also a series of decisions that can vary differently across the community. Whilst a clear-cut ruling provides clarity on the particulars on this certain court case, it might not provide sufficient insights on the realistic practices. In the current gender binary Hong Kong, there is very little to no room for nonbinary folks to explore any potential affirmative gender recognition practices. This might be of a consideration as the abovementioned multi-track scheme, where "other" could be a consideration of offering third gender or gender X options. This is a practice that a number of countries have adopted, including Australia, Canada, Iceland and more, and most recently in Mexico. Perhaps, an inclusive gender recognition system should be beneficial to most - to cater our individuality, and truly recognise the diversity within the transgender community.







組織通訊

第13期





活動回顧

5月 月事共融講座

身心靈工作坊:《3M》 逸東酒店驕傲月活動 COS 驕傲月T袖 驕傲月企業分享

7月《跨性別法案平權》講座

8月 電影分享會 就職配對實驗計劃

9月 秋季手作活動

2008

2013

2017

2023

今期專題

勝訴 = 人人都有人權?

2023年2月,終審法院裁定,兩位跨仔(Q和TSE)在未完成所有性別肯定手術[?]的情況下無法修改香港身份證上的性別標記,是侵犯了他們的基本人權。 這場勝利標誌著跨性別社群平權之路的里程碑。

然而,僅僅數個月後,<u>入境處暫緩處理聾啞跨仔Ryousuke更新性別標</u> 記的申請,儘管他已在2022年11月完成了所有性別肯定手術。雖然 Ryousuke 最終能夠將性別標記更改為男性,但這個情況難免會令人疑 惑 — Q和TSE的勝利是否保障了香港每一位跨性別者的權益? 對於已 經完成所有性別肯定手術的社群朋友,這個判決又意味著什麼?

? 性別肯定手術 (GAS)

過去被稱為性別重置手術,是性別過渡期間的 其中一種醫療干預,以減低跨性別者的性別不 安、或令其身體與性別認同更一致。 最近, 社群也開始使用「性別肯定照護」一詞,強調手 術並不是尋求身體肯定的唯一選擇 — 還可以 包括荷爾蒙治療、言語治療和心理輔導。

跨仔Ryousuke更改身份證性別被暫緩處理的報導:

https://hongkongfp.com/2023/03/11/hong-kong-suspends-applications-to-change-gender-marker-on-id-cards-following-top-court-defeat/

第一次司法覆核的判詞:

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp? DIS=119924&QS=%2B&TP=JU&ILAN=tc

駁回上訴的判詞:

https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=142010

最終上訴勝訴的判詞:

https://legalref.judiciary.hk/lrs/common/ju/ju frame.jsp?DIS=150362

在2015及2017年,三位跨仔就入境處拒絕更改其身份證上的性別為男性而提出司法覆核,2019年敗訴後其中兩人(Q&Tse)提出上訴。前後共5年,上訴庭於2022年駁回兩人的上訴。判詞中表示,完成性別肯定手術(此指跨仔需要 (i) 移除子宮卵巢和 (ii) 製造人工陰莖)是更改身份證性別的條件,兩人在身體狀況適合進行上述手術而選擇不進行手術,是他們的「個人選擇」,致未能滿足更改性別的條件,故歧視及不人道待遇的論點不適用於此案。2022年Q&TSE上訴失敗,正反雙方的論點如下:

兩位上訴人Q & TSE的論點

性別肯定手術與其私生活權利相抵觸

手術風險大、成功率低,兩人無迫切 手術需要,故要求以手術作更改性別 標記為準則是殘忍、不人道或侮辱之 處理

上訴人已以男性身份生活多年,並在 英國透過專家評估而獲得《性別承認證 書》

醫學角度上當事人並不需要手術,而 手術亦沒有治療效果

上訴庭駁回上訴的論點

若當事人保留子宮及卵巢,一旦懷孕 及誕下孩子,將會造成重大的法律、 社會及實際問題

手術政策是在公共利益和上訴人的隱 私利益之間取得的合理平衡,並沒有 違反《香港人權法案》

跨性別人士是否或何時全面過渡成為 其認同性別需要客觀的醫療指引,而 手術政策能確保當事人不會反悔

社會在心態和設施上未有充分準備接 受未進行手術的跨性別人士在身份證 明文件上表明其認同性別

兩位上訴人Q&TSE出生時被指定為女性,成長期間發現自身跨性別的身份,已使用男性荷爾蒙多年及完成上身手術,但沒有進行下身手術的迫切需要及意願。兩人的英國護照上的性別標記均為男性[?],以男性身份在當地擁有基本法律權利,例如結婚或領養孩子。唯他們卻無法因此而更改其香港身份證上的性別。



上訴人 Q*

- 從16歲起就經歷性別不安
- 2011年開始以男性身份生活
- 2014年更改英國護照上的性別標記爲男性
- 2015年接受不可逆轉的上身手術

《性別承認法2004》

英國立法機構認可的《性別承認法 2004》(Gender Recognition Act 2004)是一項就性別認同而可更改 身份證明文件上性別標記的法案。

上訴人 Tse*

- 2012 年 19 歲時接受評估並確認有 性別不安症
- 2011-2015年間進行上身手術
- 2016年以男性身份生活四年後,在 英國獲得性別承認證書*

*與此案相關的判決記錄:

- HCAL 229/2015
- HCAL 154/2017
- HCAL 189/2017
- CACV 183-183/2019
- FACV 8-9/2022

制

度

2008

2013

歷

史

跨性別議題一向不是社會平權對話的焦點 - 直至2013年<u>W v 婚 姻 登 記 官</u>一案,始成爲跨性別平權之路的轉振點。

跨女W小姐於2008年完成性別肯定手術,並將身份證及護照上的性別改為「女」。同年11月W小姐透過律師向婚姻登記處確認她是否可以與她的男友結婚。婚姻登記官拒絕了W的申請,理由為W的出世紙上標示出生時被指定性別為「男」,而政府在處理婚姻事務上,只會以個人出世紙上所顯示的性別作準,並不會考慮當事人的身分證或護照,而當時的香港亦不承認同性婚姻。

W就此案入稟法院提出司法覆核,表示自身的婚姻權和私隱權被侵犯。<u>高等法院</u>原 訟庭和上訴庭均駁回W的訴求,W再上訴至終審法院,並於2013年被裁定勝訴,終 可以女性身份與她的男友結婚。<u>終審法院</u>亦同時下令暫緩執行裁決一年,以給予 政府有更多時間修改婚姻條例中的相關條款。然而,最終該修訂卻未能通過立法 會,致更改了身份證性別標記的跨性別人士的婚權只在法院判決上成立,而非根 據明文法律。

另外,W小姐一案後,香港政府在2014年就著跨性別人士所面對的困難,成立了性別承認跨部門工作小組,研究在本港與性別承認相關的法律範疇。<u>第一部份的</u>諮詢文件於2017年發表。

在此諮詢文件,更改性別標記的條件列明如下:

(此爲入境處於2012年,W小姐一案仍在終極上訴中的時候所修訂的指引版本,原指引只含糊地提到需提供手術證明而沒有明言手術部位)

跨女 雙側睾丸切除術(即切除睾丸) 2 陰莖切除術(即切除陰莖) 3 陰道成形術(即創造陰道空間)

跨仔

(中英版本大有不同,以下文字為諮詢文件原文)

子宮切除術(卽除去子宮/卵巢和 陰道上段)

陰莖成形術(即構建一根陰莖狀的組 織)或陰核釋出術(即拉伸放大陰蒂)

諮詢文件中並沒有提到上身手術(切除乳房)為 其中一項強制性手術 – 諷刺的是,這卻是大 部分跨仔都較在意並會選擇的手術項目

如此黑白分明的條件,無意間其實令跨性別社群更難獲得法律認同(此指更改身份證上的性別標記)。文件中雖然明確劃分性別身份(Gender)及生理性別(Sex)兩者之別?,但現存的所謂性別承認制度中肯定性別認同的種種要求,最終卻也回歸到一個人的生理性別特徵。

? 性別認同 vs 生理性別

撇除文件的定義, 计群中較常用的定義如下:

性別認同是自身心理對自己性別的意識。個人根據對自己的認識,從而產生對任何一個性別的共鳴(與否)。

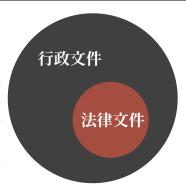
性,或可稱為生理性別、解剖性別、或身體性別,是由性器官、染色體、荷爾蒙等等的部分組成。

性別承認跨部門工作小組於2017年發表的第一部份諮詢文件:

https://www.iwggr.gov.hk/chi/pdf/consultation01.pdf

香港身份證 -- 行政用途?法律用途?

嚴格來說,香港身份證僅用於行政用途,而非法 律用途。它作爲證明你身份的文件 - 例如在銀行 出示香港身份證,以表明你本人是該銀行賬戶的 持有人;當你申請工作時,你會被要求出示香港 身份證,讓人力資源部門確認你是否有在香港合 法就業的資格。行政文件(香港身份證)可用於 法律程序或作爲身份證明,但其用途和效力不同 於其他法律文件如出生證明、合同、契約、租 約、遺囑等。



香港身份證對於跨性別社群來說是十分重要的性別承認文件。性別承認法可以 使跨性別者得到法律的承認和保障,包括在身份證、護照等法定身份證明文件 上顯示其認同的性別標記。 即使2023 年2 月歷史性的裁決予跨性別者可以在沒 有完成所有性別肯定手術的情況下更改其香港身份證(二元)性別,但這並不 代表跨性別者能受到全面的法律肯定和保障,其中可能包括婚姻和擁有家庭的 權利、自由出入境的權利、及社會保障的權利(例如保險)和平等參與等。

在過去的裁決中,所謂的「引起公衆不安」、「損害傳統價值觀」等等的論點,只是令跨性別社群無法得到法定性別身份的承認,而造成種種日常生活上的不便:擔心在入境檢查時因護照上的性別身份而被拘留;被銀行職員用質疑的目光打量你的樣貌,並對比你身份證上的資料;在工作面試時擔心是否需要出櫃而感到焦慮……擁有與其性別認同相匹配的香港身份證,不僅可以保障跨性別者的心理健康,還可以減低跨性別者日常的社交不便,去活出最真實的自我。

跨性別議題的三大要點

性別認同、性別過渡、性別 承認是對於跨性別社群最主 要的三大關注點。



落地討論:香港可以點實行性別承認法?

在W案和Q&Tse案中,性別承認跨部門工作小組參考了香港以外地區的性別承認法。除了先前提到的英國《2004年性別承認法案》外,亦參考了亞太地區、歐洲、北美和南美的例子。

歐洲委員會所有 47 個成員國均在法律上承認可更改性別,並尊重手術後跨性別者以其性別認同結婚的權利

在美國,只有 3 個州明確禁止 跨性別者結婚 術後的跨性

在中國、台灣和新加坡,完成性別肯定手 術後的跨性別者可以按其性別認同結婚

國際上有各種性別承認制度,而英國的《2004 年性別承認法案》,允許個人在專家評估後更改其法定性別

國際間的性別承認制度

- 1.自我宣認
- 2.專家評估
- 3.完成性別肯定手術
- 4.完全無法更改性別

R(McConnell)v 英格蘭和威爾士總登記官案中,一名跨性別男子通過宮內授精成功懷孕並生下一個孩子。此案被用於香港Q & Tse的判決書內,指McConnell的經驗挑戰傳統家庭觀念。

思考題:究竟作爲「母親」或「父親」、「雙親」或「單親」、 「親生」或「領養/寄養」代表什麼?



閱讀<u>McConnell</u>的故事(只有英文): https://www.theguardian.com/society/2019/ap r/20/the-dad-who-gave-birth-pregnant-transfreddy-mcconnell

難道可以一法走天下?

2017年公佈的諮詢文件中,性別承認跨部門工作小組提出以「雙軌制」考慮性別 承認的可能性:



不過,現時香港唯一的性別診所等候時間為十年以上(此指下身手術),每年只會排期處理六個個案。再者,每位跨性別者都是獨立的個體,性別過渡中充滿著不同的抉擇點,每個人的旅程都可以不一樣。當考慮到社群的多元性和共融,也許「多軌制」可以提供不同的選擇,以滿足不同的需要?



W小姐、O&Tse的勝利絕對值得慶祝,但是次裁決仍然留下不少疑問:是否 所有跨性別者都自動擁有全面的性別承認保障?是否能滿足最多人的權為? W小姐成功争取與男朋友結婚,確認她作爲女性的身份,是否代表跨女就可 以以其性別認同參加運動比賽?如提及保險,是否所有跨性別者都能以其身 體狀況受到保障?會否有額外不合理的保費?

性別過渡是一個過程,是一系列的抉擇,而每個社群成員都是獨一無二的個 體。白紙黑字的裁決固然可以提供淸晰的指示,但實際的可行性又如何?現 實中計群的多樣性又有否被加入考量?現時香港性別二元的制度,留予非二 元性別者的法律空間少之又少 — 香港的性別承認制度根本不適用於這社群身 上。或者可以考慮的是,上述提及過的「多軌制」中,當中的「其他」可以是用 作研究提供非二元性別的選項。不少國家都有提供「第三性別」或是「X」性別 的選項,當中包括:澳洲、加拿大、冰島等等,以及最新在2023年5月開始 提供「X」性別選項的墨西哥。也許,一個「完善」的制度可以體諒到每個人的 獨立性,亦真正體現跨性別計群的多樣性。

