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POLICY PAPER: “SEX” INSCRIPTIONS ON THE CANADIAN PASSPORT

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Egale Canada, Canada's national LGBT human rights organization, has undertaken an assessment of how best to accommodate and represent trans and gender diverse people in the Canadian passport, particularly in relation to the inscription of "sex". Specifically, the following questions have been examined:

- a) What are some of the primary concerns facing trans and gender diverse people in relation to the inscription of sex on the Canadian passport?
- b) What are the problems associated with (A) travelling with a passport with a sex marker that doesn't reflect one's appearance and (B) travelling with a passport with a sex marker that doesn't reflect one's anatomical sex?
- c) Would it be helpful to have the option of a gender neutral sex marker in the passport? If so, should this be an option for any applicant, or should it be available only to certain types of applicants?

For the purposes of this opinion, Egale Canada has reviewed the relevant standards and orders, as well as consulted widely with trans and gender diverse communities across Canada.

Primary concerns facing trans and gender diverse people

The primary concern identified by trans and gender diverse Canadians when applying for a Canadian passport is the requirement for sex reassignment surgery (SRS) prior to the issuance of a passport that reflects one's lived gender. This requirement impacts Canadians in many ways and often acts as a barrier to travel. Access to SRS varies across Canada, with some provinces covering the associated costs and others providing no assistance whatsoever. As physically transitioning can be an extremely expensive process, including access to surgery and hormones, it can be untenable for many trans and gender diverse individuals. High levels of discrimination against this demographic often inhibit access to employment, housing, education and other factors that impact earnings and, subsequently, access to medical procedures that facilitate transition. In Ontario, where the first and only available data in Canada have emerged following a study initiated in 2004, 50 % of trans people reported personal annual earnings of \$15,000 or less.¹ Given that total costs associated with SRS can range from \$30,000 to \$60,000, such procedures are simply not possible for many trans and gender diverse Canadians.

In addition, there are many within trans and gender diverse communities who choose not to undergo SRS for reasons that extend beyond the financial. Some face additional medical conditions that render the invasive medical procedures associated with SRS untenable, while others simply do not wish to alter their physiologies beyond hormone replacement therapy (HRT) or self-presentation. This is, for instance, commonly the case among female-to-male (FTM) trans people, often as a reaction to the developing nature of FTM surgical technologies. Others, regardless of their physiology, do not identify as either male/masculine or female/feminine, preferring instead to identify as, *inter alia*, trans, gender diverse or gender queer. Within this group, many do not desire surgical transition even as they may be perceived



by the general public to be male or female. Surgical transition is a matter of individual choice, when accessible, and should not be misinterpreted as necessary to legitimize one's gender identity.

A second concern pertains to the incongruity of federal/provincial/territorial policies relating to the inscription of sex on the various documents issued and administered under each jurisdiction. Given that some jurisdictions require SRS while others do not, many trans and gender diverse Canadians carry identity documents that inconsistently report their sex. In addition to the challenges this situation creates in the daily lives of many people, it also compounds risks and threats to the personal safety of trans and gender diverse Canadians when travelling abroad. For example, if the sex inscription on one's passport and provincial health card—and related travel insurance—do not match, accessing emergency health care while abroad could seriously endanger the individual, particularly in countries where hostility toward this demographic is substantial and unchallenged or even supported by the state.

Finally, an additional overarching concern relates to the lack of knowledge, training and information about gender diversity among relevant officials, both in Canada and abroad. While Passport Canada currently allows an individual to apply for a passport with a sex inscription other than that assigned at birth—provided proof of sex reassignment surgery is submitted—many Canadians report difficulty in accessing this option, particularly due to a perceived lack of knowledge among Passport Canada officials regarding this option and in relation to gender diversity more broadly. Trans and gender diverse Canadians report inconsistent responses from officials when applying to change their sex inscriptions, including denial of their applications or the issuance of a temporary passport, valid for one or two years. This practice has resulted in trans and gender diverse Canadians being subjected to increased scrutiny, surveillance and discrimination when travelling abroad.

Problems associated with a sex marker that does not reflect one's appearance

Travelling with a sex marker on one's passport that does not reflect one's appearance can be extremely dangerous. At the level of customs officials and security personnel, this can put a traveller under increased and unjust surveillance, scrutiny, invasive physical searches, demeaning or discriminatory questioning and hostile treatment more generally. The psychological impacts of such treatment cannot be overstated. For some, the anxiety, fear or shame incurred can limit their mobility and participation in civic life. Additionally, it can heighten personal risks in countries where laws and societal attitudes toward gender diversity are ambiguous or directly hostile. For example, some countries have enacted laws regarding access to public washrooms. For trans and gender diverse people, entering a public washroom that matches their physical sex but not their appearance is often an extremely dangerous action that puts them at risk of harassment and assault. However, in countries where laws regarding washroom access exist, such risks may be legally necessary. If one chooses to access a washroom that more closely matches physical appearance, one runs the risk of being challenged and subsequently subjected to legal action as a result of an incongruent sex inscription on the passport (i.e. in the absence of legal legitimacy for one's lived gender). This is a very real threat given that physical transition is a process, and many, if not all trans and gender diverse people will at one point in this process present



their gender in a manner that is not unambiguously male/masculine or female/feminine. For these reasons, the ability to define one's own sex on a passport is a clear safety issue.

Problems associated with a sex marker that does not reflect one's anatomical sex

In general, the majority of trans and gender diverse people in Canada would prefer to carry identity documentation that reflects their gender identity and expression. Even among those who do not identify wholly or exclusively as either male/masculine or female/feminine, many would prefer a sex indicator that subjects them to as little discrimination or inequitable surveillance as possible. This often infers a sex inscription that matches one's appearance but not one's anatomical sex. However, this is an imperfect solution, as it still entails specific risks and challenges.

In the current security and intelligence climate, both globally and in Canada, we are seeing a movement toward increased surveillance of the traveller. This includes, importantly, the introduction and widespread use of full-body scanners that reveal the physical and anatomical appearance of the individual. For trans and gender diverse individuals who may otherwise "pass" as their lived gender without scrutiny, these scanners may reveal their trans status when surgery has not been performed. As such, having a passport that reflects appearance but not anatomical sex may also put a traveller at risk. Customs officials and security personnel may consider the incongruity to be an indicator of fraud, and therefore deny entry to the traveller or subject them to increased security screenings. This can be extremely upsetting and demeaning in addition to fostering the conditions in which trans and gender diverse people are at greater risk of discrimination and ill treatment in a social climate in which such discrimination is the norm.

Gender neutral sex markers

A gender neutral option for sex inscriptions on the Canadian passport is generally supported by trans and gender diverse communities in Canada. This option could provide a more accurate reflection of the identities and lived experiences of many people. However, there are a number of concerns regarding this option.

Many Canadians are concerned that if a gender neutral option were introduced, it would be made mandatory for all trans, intersex and gender diverse individuals. A primary concern among this demographic is that whatever options are made available, they be freely chosen according to one's individual identity rather than prescribed by political, bureaucratic or medical authorities. Choice and autonomy over one's individual identity and self-expression are paramount among trans and gender diverse individuals and are, unfortunately, often denied them. Further to this point, the overwhelming feeling is that a gender neutral or gender unspecified option should be available to all Canadians, regardless of status as trans, gender diverse or intersex. This point will be expounded below under the heading "General comments and recommendations."

Secondly, it is important to recognize that many trans and gender diverse individuals do not wish to identify or be identified as trans. Trans and gender diverse people often also identify as men or women,



male or female. The recognition of trans or gender diverse as an identity category need not exclude identification as male or female, man or woman. As such, while support for a gender neutral option is widespread, many would not in fact choose it for themselves.

Finally, there is concern that, while in theory a gender neutral option may be ideal for some, in practice it would do little more than open up the individual to discrimination and harassment. Given the general lack of knowledge and understanding globally about gender diversity, there is a real fear that a gender neutral category would not be recognized abroad. In the absence of training and public education about gender diversity, this option may only put a traveller at greater risk where otherwise they might have “passed” without notice.

General comments and recommendations

There is an overwhelming sentiment among trans and gender diverse Canadians that the inclusion of a sex inscription on the Canadian passport, and on government-issued identity documents more broadly, is a barrier to travel and to economic and social participation and integration more generally. As a party to the *International Convention on Civil Aviation* and member state of the International Civil Aviation Organization (ICAO), Canada is not currently in a position to unilaterally remove the sex inscription from the Canadian passport. However, it is the recommendation of Egale Canada that the Government of Canada take the position in relevant international fora that the inscription of sex on machine readable travel documents is unnecessary, and the requirement for its inclusion be removed from the ICAO Standards.

Secondly, pursuant to the ICAO Standards, Canada has at present agreed to include one of three sex identifiers (“M”, “F” or “X”) on all Canadian passports. The ICAO Standards prescribe no definitional criteria for the “X” option, stating only that it will be used “[w]here a person does not wish his/her sex to be identified or where an issuing State or organization does not want to show this data”.ⁱⁱ This wording suggests that anyone, regardless of their anatomical or self-identified sex, could select the “X” category as the sex identifier on their passport. It is highly recommended that this option be enacted fully in Canada, opening up the option of “X”, indicating unspecified, to all Canadians. There is some dissatisfaction regarding this option within trans and gender diverse communities given that “X” has become an accepted indicator within the international medical establishment for people who are intersexed. The concerns and realities of people who are intersexed are in many ways distinct from those of trans or gender diverse communities, and so this option is disconcerting to some. However, given current ICAO Standards, the implementation of the “X” category is preferable to a binary system in which “M” and “F” are the only options. This practice has been adopted in a number of ICAO member states, including Australia, Bangladesh and New Zealand.

Thirdly, Egale Canada recommends that the working requirements for changing the sex identifier on one’s passport be amended to enable those who have not undergone SRS to change their identifier. There is no barrier under international law to such a practice, as the ICAO Standards do not define who



qualifies as “male” or “female”. Several countries, which are also contracting states to the ICAO, already allow individuals to designate a new sex based either on the person's long-term gender identity or based on clinical treatment in some form, but not necessarily SRS. These states include Australia, New Zealand, the United Kingdom and the United States. Further, within Canada, the language in *Schedule - Additional Information* of the Canadian Passport Order does not necessarily require the applicant to provide any medical evidence of SRS or gender identity. As noted earlier, what is most important among trans and gender diverse Canadians is the ability to choose how their lives and identities are represented.

Finally, trans and gender diverse Canadians repeatedly note the need for increased support from the Canadian government when travelling abroad. Given current widespread attitudes of discrimination and hostility toward gender diversity, none of the options or recommendations discussed herein could provide equitable levels of safety and security to trans and gender diverse travellers, or completely eliminate risks to the individual. Threats of discrimination, harassment, legal rebuke or bodily harm are unfortunately a reality for many trans and gender diverse people in many areas of the world. To date, only six countries have included gender identity and/or gender expression within their human rights legislation, and in Canada, the Northwest Territories is the only FPT jurisdiction to have done so. Trans and gender diverse Canadians urgently need assurances from the Government of Canada that they will receive equitable support and assistance when travelling abroad in order to mitigate the challenges associated with a sex inscription that does not reflect either their appearance or their anatomical sex, or with a neutral inscription that may be unrecognized or uncommon in other countries.

ⁱ Greta Bauer et al., *E-Bulletin #1: Who are trans people in Ontario?* (Ontario: Trans PULSE, July 26, 2010), 1.

ⁱⁱ *Machine Readable Travel Documents*, vol. 1, 3rd ed., Document 9303 (Montreal, Quebec: International Civil Aviation Organization, 2008), V-9 & VI-10.