

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-082257-141

DATE: January 28, 2021

BEFORE THE HONOURABLE GREGORY MOORE, J.S.C.

CENTER FOR GENDER ADVOCACY

and

**SAMUEL SINGER, SARAH BLUMEL, ELIZABETH HELLER,
and JENNA MICHELLE JACOBS**

Plaintiffs

v.

THE ATTORNEY GENERAL OF QUEBEC

Defendant

and

EGALE CANADA HUMAN RIGHTS TRUST

and

LGBT FAMILY COALITION

and

GENDER CREATIVE KIDS CANADA

Intervenors

JUDGMENT

*(Charter challenges to the Civil Code of Québec
regarding the designation of sex on the register of civil status)*

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OVERVIEW

[1] This case highlights the difference between sex and gender identity and the discrimination that can result when the law treats them as synonyms.

[2] Statistics Canada provides useful definitions:

Sex and gender refer to two different concepts. [...] For example, female sex is not the same as female gender.

Sex refers to sex assigned at birth. Sex is typically assigned based on a person's reproductive system and other physical characteristics.

Gender refers to the gender that a person internally feels and/or the gender a person publicly expresses in their daily life, including at work, while shopping or accessing other services, in their housing environment or in the broader community.¹

[3] The plaintiffs are and represent people who are transgender, non-binary, and intersex; people whose gender identity or expression does not correspond to their sex at birth or to male or female categories.

[4] Transgender people identify with the gender opposite that which is typically associated with their sex at birth:

Transwomen identify as women but were classified as males when they were born, transmen identify as men but were classified female when they were born, while other trans people don't identify with the gender-binary at all. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.²

[5] Non-binary people do not identify with the male/female gender-binary. Some are both male and female, some are neither, and some are in between.

[6] Intersex people:

are born with physical or biological sex characteristics, such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns, which do not fit the typical definitions of male or female. These characteristics may be apparent at birth or emerge later in life, often at puberty. Intersex people can have any sexual orientation and gender identity.³

¹ Exhibit P-30, pp. 12 and 16.

² These definitions, quoted in the plaintiffs' plan of argument, are provided by the United Nations. They were found online in December 2019 at: <https://www.unfe.org/definitions/>.

³ *Ibid.*

[7] The plaintiffs claim that the rights of transgender and non-binary people are infringed by several articles of the *Civil Code of Québec*.

[8] In Quebec, a person's sex is recorded on their act of birth and serves to identify them. For some people, however, their sex at birth and their gender identity do not correspond. The designation of sex on their act of birth will misidentify them, which can lead to confusion, discrimination, persecution, and violence. Because this information is shared with other ministries and organisations for use in their programs and services, a designation of sex at birth will be used to identify a person throughout their lifetime of interactions with the government. For transgender and non-binary people, the act of birth confirms that, officially, they are not who they know themselves to be.

[9] This confusion extends to a transgender or non-binary person's private life. When they use an act or a certificate of birth to register for school, to apply for a job, or to rent an apartment, they reveal that they are transgender because their designation of sex does not correspond to their gender expression (for example, their clothes, hairstyle, and mannerisms). This is personal information that a transgender person should be free to share with whom they want, when they want, and not as part of routine interactions with strangers.

[10] The plaintiffs also contest the articles of the *Civil Code* that require parents to identify themselves as mother or father on their children's acts of civil status, and those that prevent changes to a parent's own designation of sex from being reflected on their children's identity documents.

[11] Samuel Singer is non-binary. His act of birth indicated his sex as female and his given names were female. It took several attempts to change his name on his act of birth. First, Samuel was added to his female names, then, after a further application, the female names were removed.

[12] Mtre Singer is married to Sarah Blumel. Mtre Singer designated himself as the father on their child's declaration of birth, however, the child's act of birth indicates two mothers.

[13] Mtre Singer would like to be designated as "parent" on his child's act of birth because it best fits his relationship with his child. Mtre Singer does not identify completely as male and suspects that he may look more feminine as he ages. He is comfortable with this physical reality but knows that the terms male and female do not describe him, nor do father or mother.

[14] Jenna Jacobs is a transgender woman. Elizabeth Heller is her common law spouse. Ms. Jacobs designated herself as a mother on her eldest child's declaration of birth but the act of birth lists her as a father because it was processed before her change of designation of sex. She is indicated as a mother to the couple's second child. She finds it hurtful that her struggle for acceptance as a transgender person is passed on to her

eldest child who will have to explain why one of their mothers is designated as a father on their act of birth.

[15] Finally, the plaintiffs challenge certain restrictions contained in the articles of the *Civil Code* that allow people to change their name or designation of sex to align with their gender identity. Only Canadian citizens over 18 enjoy full access to these rights. Non-citizens who are domiciled in Quebec cannot change their name or designation of sex here. Transgender youth between the ages of fourteen and seventeen face legal, administrative, and family obstacles that many find insurmountable.

[16] These articles lead to the misidentification of transgender and non-binary people and create confusion about their true identity.

[17] Confusion, misunderstanding and intolerance of transgender and non-binary people can lead to persecution and violence, which some try to avoid by withdrawing from situations that require the presentation of a government-issued identity document, such as registering for school, applying for a job, or seeking medical help. Being under-educated, under-employed, and unhealthy can create new, exponential problems for transgender and non-binary people. They frequently turn to suicide to end the suffering caused by living in a world that does not acknowledge their identity and that fights their attempts to affirm it.

[18] The plaintiffs claim that the impugned articles of the *Civil Code* violate their rights to dignity, equality, privacy, life, security, inviolability, freedom, and liberty, which are guaranteed by the *Quebec Charter of Human Rights and Freedoms* and by the *Canadian Charter of Rights and Freedoms*.

[19] The Attorney General of Quebec responds that the *Civil Code* has been amended to make it easier for transgender people to change their designation of sex. In addition, the Ministry of Justice created the *Bureau de lutte contre l'homophobie et la transphobie* and published an *Action Plan* under the auspices of the Premier and the Minister of Justice that details wide-ranging initiatives to sensitize Quebecers to transgender realities, to support the transgender community, and to improve administrative practices, public service training, and documenting diversity to ensure that the government identifies and addresses transgender people and issues consistently throughout its programs across the province. On the first day of trial, the Attorney General announced various changes to the way that the registrar of civil status will analyse applications by transgender people to correct their identity documents, which, in its view, answer most of the plaintiffs' concerns.

[20] However, the government's efforts do not solve all of the issues raised by this case. The articles of the *Civil Code* that are under review reinforce the notion that there are two sexes and two corresponding genders. This categorization does not acknowledge transgender and non-binary people and denies them the dignity and equality that are owed to every human being.

[21] Some of the impugned articles are discriminatory but others are not. The obligation to designate a newborn's sex on their act of birth is not discriminatory. There is no inconsistency between a person's sex and gender at birth because newborns do not have a gender identity.

[22] As gender identity develops and crystalizes in a person's early years, the *Civil Code* allows them to change their designation of sex and their name. However, only the masculine and feminine genders are recognized, which excludes non-binary people. In addition, non-Canadians domiciled in Quebec and youth between the ages of fourteen and seventeen are discriminated against because they are treated differently from other transgender and non-binary people and from the rest of the population whose true identity is reflected on their act of birth.

[23] In addition, the Attorney General has not adequately explained why parents cannot identify themselves as "parents" on their children's acts of civil status when mother or father do not represent their gender identity.

[24] The Attorney General admits that when a parent changes their designation of sex, that change should be reflected on their children's identity documents.

[25] Some of the plaintiffs' concerns can be resolved by removing the discriminatory language from the impugned articles. Others will require legislative amendments during the coming year.

LEGAL CONTEXT

The Civil Code of Québec

[26] The plaintiffs challenge certain provisions of the *Civil Code of Québec* that require a designation of sex on acts of civil status and that permit a person to change that designation and their name to conform to their gender identity.

[27] The plaintiffs also object to their sex at birth being disclosed on drivers' licenses, health insurance cards, and students' permanent codes created by the Ministry of Education. However, they did not challenge the legislation or policy decisions that create those obligations.⁴

⁴ Since March 2020, the Ministry of Education will consider applications to modify a student's permanent code after they have changed their sex. See http://www1.education.gouv.qc.ca/doc_adm/ariane/GuideAdmin.pdf at page 9, heading 3.6 *Demande de modification de code permanent (type 22)*, which updates Exhibit P-28.

A. The register of civil status

[28] Civil status, as Mignault wrote, “est la condition d’une personne dans la société, en tant qu’elle est majeure ou mineure, [...] mariée ou non mariée, [...] vivante ou morte.”⁵

[29] The register of civil status was introduced with the *Civil Code of Québec* in 1994. Under the *Civil Code of Lower Canada*, births, marriages, and deaths were recorded by religious institutions. A person born in one parish, married in another, and who died elsewhere, would have those events recorded in three different areas of the province. To obtain evidence of those events, a person would have to make enquiries of three different parishes.

[30] With the new *Civil Code*, the legislator centralised the registration of births, marriages, civil unions, and deaths that occur in Quebec or that concern people domiciled here:

Le régime est simplifié et centralisé. Dorénavant, il revient à un seul officier, le directeur de l'état civil, de dresser les actes de l'état civil et de les modifier, de tenir un unique registre de l'état civil, de le conserver et d'en assurer la publicité.⁶

[31] Having a central register of civil status makes it easier for people to prove their civil status and thus their entitlement to legal rights and to government services.⁷

[32] The register contains information to identify the individuals who are the subjects of births, marriages, civil unions and deaths. It is a person’s “foundation identity”, a term used by Mtre Jonathan Boisvert of the registry to explain that the register of civil status is the government’s primary and most reliable source of personal information.

[33] The legislator chose sex as one means to identify a holder of civil status.⁸ However, this confuses the notions of sex and gender.

B. Identification by gender, not sex

[34] Other than on the day they are born, we do not examine a person’s genitalia to identify whether they are male or female. We look instead to their name, clothing, hairstyle, and bearing, each of which is determined by the person themself.

⁵ Pierre-Basile MIGNAULT, *Le droit civil canadien*, t.1, Montreal, C. Théoret, Éditeur, Librairie de droit et de jurisprudence, 1895, p. 161.

⁶ *Montreuil c. Québec (Directeur de l'état civil)*, 1999 CanLII 14648 (QC CA) at page 14.

⁷ See the quotation from the Civil Code Revision Office found in *Blainville (Ville) c. Directeur de l'état civil*, 1997 CanLII 8255 (QC CS) at para 4.

⁸ *Montreuil c. Québec (Directeur de l'état civil)*, 1999 CanLII 14648 (QC CA) at page 17.

[35] We also look to a person's body shape and voice but these can identify both sex and gender. As the witnesses demonstrated, transgender and non-binary people can alter their body to align with their gender identity. A transgender man or non-binary person can have chest surgery or can bind their breasts to look less feminine and can take hormones to deepen their voice. A transgender woman can have face feminization surgery.

[36] Gender is perhaps the most important means of identification that links the holder of an act or certificate of civil status to the information found on that document. A school administrator or employer who reviews a birth certificate will not double-check the birthdate, place of birth, or parents' names but is likely to verify that the person presenting the document fits the gender description.

[37] Therefore, a person's sex is not a reliable means of identification but their gender is. For transgender and non-binary people, a designation of their sex at birth can create confusion, whereas their gender confirms their identity.

[38] The plaintiffs contest:

- the obligation to designate a child's sex at birth;
- the limits on non-Canadian and young people's ability to change their designation of sex or their name to conform to their gender identity;
- the presence of a designation of sex on acts and certificates of civil status; and
- the registrar's refusal to amend a person's acts of civil status after their parent changes their own designation of sex or their name to conform to their gender identity.

C. The obligation to designate a sex on a newborn's act of birth

[39] The registrar of civil status prepares acts of birth based on information, including the newborn's sex, received from attestations and declarations of birth.⁹ An attestation of birth is prepared by the person who delivered the baby. It states:

111. [...] the place, date and time of birth, the sex of the child, and the name and domicile of the mother.¹⁰

⁹ Article 108 C.C.Q.

¹⁰ Unless noted otherwise, every reference to an article number refers to the *Civil Code of Québec*.

[40] The father and mother submit a declaration of the birth of their child that states:

115. [...] the name assigned to the child, the sex and place, date and time of birth of the child, the name and domicile of the father and of the mother, and the family relationship between the declarant and the child. Where the parents are of the same sex, they are designated as the mothers or fathers of the child, as the case may be.

[41] If the father and mother are not known, the declaration of birth is prepared by a "person who gives shelter to or takes custody of the newborn."¹¹ The declaration must be made to the registrar of civil status within thirty days of the child's birth.¹²

[42] The registrar signs the declaration of birth, which is inserted in the register of civil status and serves thereafter as an act of birth.¹³

[43] The plaintiffs raise three concerns regarding the obligation to designate a newborn's sex. First, when a person uses a document prepared from the register of civil status, their designation of sex will be understood as a designation of their gender but those terms are not synonyms for transgender and non-binary people. Sex is an objective, biological fact, while gender is a subjective, internal fact that can only be revealed by the individual. Gender identity does not exist at birth but develops in the first years of a person's life.

[44] Second, the obligation to designate a sex does not take account of intersex babies who might be born with the partially formed genitalia of each sex. The plaintiffs do not claim that intersex people constitute a third sex. They assert that the obligation to designate a sex within 30 days of the child's birth rushes parents' decisions about whether their children should undergo surgery so that their genitalia will resemble a boy's or a girl's. Surgery can indirectly create a transgender child when, for example, it creates a male from someone who naturally develops a feminine identity.

[45] Third, the plaintiffs challenge parents' obligation to designate themselves as a mother or as a father on their child's declaration of birth. They advocate for the right of non-binary people to designate themselves as a parent.

[46] The plaintiffs ask the court to declare that the obligation to designate a child's sex at birth is optional. Parents should be able to choose whether to designate their child's gender identity or to allow it to develop on its own.

¹¹ Article 116 C.C.Q.

¹² Articles 113 and 116 C.C.Q.

¹³ Article 109 C.C.Q.

D. Changing the designation of sex on an act of birth

[47] When a person realises that their gender does not conform to the designation of sex on their act of birth, they can correct it:

71, paragraph 1. Every person whose gender identity does not correspond to the designation of sex that appears in that person's act of birth may, if the conditions prescribed by this Code and by government regulation have been met, have that designation and, if necessary, the person's given names changed.

[48] Following a 2013 amendment, a person need not undergo medical treatment or surgery before applying to change their designation of sex:

71, paragraph 2. These changes may in no case be made dependent on the requirement to have undergone any medical treatment or surgical operation whatsoever.

[49] Only Canadian citizens domiciled in Quebec may change the designation of sex indicated on the act of birth found on the register of civil status:

71, paragraph 3. Subject to article 3084.1, only a person who has been domiciled in Québec for at least one year and is a Canadian citizen may obtain such changes.

[50] A person who is at least fourteen years old can apply on their own to change the designation of sex on their act of birth:

71.1. An application for a change of designation of sex for a minor child may be made by the minor alone if the minor is 14 years of age or over

[51] A person between fourteen and seventeen years old must include a letter from a health professional who declares, after having evaluated or followed the person, that the change of designation of sex is appropriate:

23.2. An application for a change of the designation of sex for a minor child must be accompanied by, in addition to the documents referred to in section 4, a letter from a physician, a psychologist, a psychiatrist, a sexologist or a social worker authorized to practise in Canada or in the State in which the child is domiciled who declares having evaluated or followed the child and is of the opinion that the change of designation is appropriate.¹⁴

¹⁴ Section 23.2 of the *Regulation respecting change of name and of other particulars of civil status* CQLR c. C.C.Q., r. 4.

[52] The plaintiffs raise three concerns with article 71 and with section 23.2 of the *Regulation respecting change of name and of other particulars of civil status*. First, the requirement that a person be a Canadian citizen violates the *Charter* rights of non-Canadians domiciled in Quebec who wish to obtain an act of birth that reflects their gender identity.

[53] Second, article 71 does not allow non-binary people to change their act of birth to reflect their gender identity, which can be neither male nor female, or both. Changing the designation of sex from male to female or from female to male will not produce an act of birth that properly identifies them.

[54] Third, the requirement that minor applicants obtain a letter from a health professional does not serve a useful purpose and is an obstacle that many young people cannot overcome, which prevents them from changing their designation of sex.

[55] The plaintiffs' judicial application asks the court to declare that the obligation to designate a sex is optional or to strike article 71 and section 23.2 in their entirety. In final argument, they acknowledged that article 71 should not be struck because it serves a useful purpose for transgender people but the citizenship requirement and young applicants' obligation to obtain a letter from a health professional should be declared invalid because they prevent non-citizens and youth from obtaining accurate identity documents. They suggest that the declaration of invalidity be suspended to give the legislator time to prepare an alternative.

E. Changing a given name to conform with gender identity

[56] When a person uses a name that reflects their gender identity and that is different from their given name, they can apply to change it:

58. The registrar of civil status has the authority to authorize a change of name for a serious reason in every case that does not come under the jurisdiction of the court, and in particular where the name generally used does not correspond to that appearing in the act of birth.¹⁵

[57] Only Canadian citizens domiciled in Quebec can apply to change their name:

59. A person who is a Canadian citizen and who has been domiciled in Quebec for at least one year may be the subject of an application for a change of name.

¹⁵ Article 63, paragraph 2 C.C.Q. specifically acknowledges that a person may apply to change their given name to align with their gender identity.

[58] A minor child over the age of fourteen may apply on their own to change their name:

60. An application for a change of name for a minor child may be made by the child's tutor or by the minor child alone if the child is 14 years of age or over.

[59] However, the application will not be granted if a parent objects:

62. Except for a compelling reason, no change of name of a minor child may be granted if, as the case may be, the father and mother of the minor child as legal tutors, the tutor, if any, or the minor, if fourteen years of age or over, have not been notified of the application or if any of those persons objects to it.

[60] The plaintiffs raise two concerns with this regime. First, non-Canadians domiciled in Quebec should be able to change their name here.

[61] Second, parental consent is a very difficult issue for transgender and non-binary youth. Some parents do not understand or accept their child's gender identity and will not consent to a change of name.

[62] The plaintiffs ask the court to declare that articles 59 and 62 are invalid and of no force and effect.

F. Acts and certificates of death

[63] Acts and certificates of death are drawn up based on information that the registrar of civil status receives from attestations, declarations, and judgements of death. The attestation is drawn up by the physician who establishes that a death has occurred.¹⁶ It states:

124. [...] the name and sex of the deceased and the place, date and time of death.

[64] The declaration of death is made by the deceased's spouse, close relative or any other person able to identify the deceased. It states:

126. [...] the name and sex, place and date of birth and, if applicable, of marriage or civil union of the deceased, the name of the spouse, the names of the father and mother and the last domicile of the deceased and the place, date and time of death as well as the time, place and mode of disposal of the body.

¹⁶ Article 122 C.C.Q.

[65] When a person's death is certain but it is not possible to obtain an attestation of death, or when a person has disappeared for seven years, the court may issue a declaratory judgment of death stating:

93. [...] the name and sex of the person presumed dead and, if known, the place and date of his or her birth and, if applicable, marriage or civil union, the name of the spouse, the names of his or her father and mother as well as his or her last domicile, and the date, time and place of death.

[66] The plaintiffs state that a person may be revealed as transgender after their death if their act of death indicates a sex that does not conform to the gender that person expressed during their life. They claim that articles 93, 124 and 126 must be amended to be consistent with this judgment.

G. Certificates of civil status

[67] A person who wishes to prove their civil status may apply to the registrar for a certificate:

146. A certificate of civil status sets forth the person's name, sex, place and date of birth and, if the person is deceased, the place and date of death. It also sets forth, if applicable, the place and date of marriage or civil union and the name of the spouse.

[68] A person may also request a certificate that relates to only one act of civil status:

146, paragraph 2. The registrar of civil status may also issue certificates of birth, marriage, civil union or death bearing only the particulars relating to one certified fact.

[69] The plaintiffs allege that when a transgender or non-binary person needs a certificate of birth or of death, the designation of sex will misidentify them.¹⁷

[70] The plaintiffs seek a declaration that the obligation to set forth a person's sex on their certificates of civil status is invalid and of no force and effect.

H. Modifications to acts of civil status

[71] The plaintiffs contest the interpretation and application given to article 132 by the registrar of civil status.

¹⁷ Acts of marriage and of civil union do not include a designation of sex.

[72] Article 132 provides that the registrar will issue a new act of civil status after an important change, such as a change of name or of designation of sex:

132. A new act of civil status is drawn up, on the application of an interested person, where a judgment changing an essential particular in an act of civil status, such as the name or filiation of a person, has been notified to the register of civil status or where the decision to authorize a change of name or designation of sex has become final.

[73] The new act of civil status is substituted for the original, which will indicate that the substitution has been made.¹⁸

[74] The plaintiffs attack article 132 because the registrar of civil status would not draw up a new act of civil status for the children of parents who changed their name or designation of sex to conform to their gender identity. For example, a transgender woman would continue to be designated as “father” on her child’s act or certificate of birth.

[75] The Attorney General acknowledges that this is an error. The registrar of civil status has committed to changing a child’s act of civil status following a change to their parent’s designation of sex or name.

The Plaintiffs’ Charter rights

[76] The plaintiffs’ claim that the impugned articles of the *Civil Code* violate the following rights that are guaranteed by the Quebec *Charter*:

- life, personal security, inviolability and freedom (s. 1)
- dignity (s. 4)
- privacy (s. 5)
- equality (s. 10)

[77] The plaintiffs also claim violations of rights guaranteed by the *Canadian Charter*:

- life, liberty, security of the person (s. 7)
- equality (s. 15)

¹⁸ Article 132, paragraph 3 C.C.Q.

[78] For the purpose of this judgment, it will be sufficient to analyse the plaintiffs' claims that their rights to equality and to dignity are infringed. Those rights underpin all of the *Charter* rights that are claimed.¹⁹

[79] The Quebec and the Canadian *Charters* define the right to equality in different ways. Section 10 of the Quebec *Charter* frames equality in terms of the recognition and exercise of protected human rights:

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

[80] To prove a claim under section 10, the plaintiffs must demonstrate that legislation creates:

- (i) a distinction, exclusion or preference;
- (ii) based on one of the listed grounds;
- (iii) that nullifies or impairs the right to full and equal recognition and exercise of one's human rights.²⁰

[81] The plaintiffs claim that the impugned articles of the *Civil Code* deprive them of their full and equal right to dignity, which is protected by section 4 of the Quebec *Charter*:

4. Every person has a right to the safeguard of his dignity, honour and reputation.

[82] Dignity is the respect to which every person is entitled and owes themselves simply because they are human.²¹ The plaintiffs contend that gender identity is a fundamental attribute of being human and that the impugned articles of the *Civil Code* do not respect the gender identity of transgender and non-binary people.

¹⁹ See *R. v. Kapp*, 2008 SCC 41 at para 21.

²⁰ *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 at para 35.

²¹ *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211, at para 105. The Quebec Court of Appeal recently applied this notion of dignity in *Procureur général du Canada c. Manoukan*, 2020 QCCA 1486.

[83] The *Canadian Charter* guarantees equality under the law and the right to its protection and benefit, free from discrimination:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[84] The right to equality at section 15 is violated by legislation that widens the gap between an historically disadvantaged group and the rest of society or that maintains current discrimination.²²

[85] Respect for human dignity is an essential component of the right to equality and is at the heart of other *Charter* rights.²³

Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.²⁴

[86] To succeed under section 15, the plaintiffs must demonstrate that the legislation:

- (i) creates a distinction;
- (ii) based on an enumerated ground of discrimination or on an analogous ground;
- (iii) that imposes a burden or denies a benefit, which reinforces, perpetuates or exacerbates a disadvantage.²⁵

[87] The plaintiffs claim that the impugned articles of the *Civil Code* deprive transgender, non-binary, and intersex people of their right to equality because they are denied the protection and benefit of government-issued identity documents that acknowledge and allow them to prove their true identity.

²² *Quebec (Attorney General) v. A*, 2013 SCC 5 at para 332; *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para 77.

²³ See *R. v. Kapp*, 2008 SCC 41 at para 21. Respect for human dignity underpins the right to equality but is not a distinct test for discrimination (*Kapp*, para 23).

²⁴ *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, at para 53.

²⁵ *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30 at paras 19 to 21. This analysis was confirmed in *Fraser v. Canada (Attorney General)*, 2020 SCC 27.

[88] If the plaintiffs demonstrate that the impugned articles of the *Civil Code* infringe their rights, the Attorney General of Quebec will have the opportunity to justify those limits in relation to an overriding societal objective.

[89] The Quebec *Charter* acknowledges that legislation may justifiably limit a person's human rights:

9.1 [...] the scope of the freedoms and rights, and limits to their exercise, may be fixed by law.

[90] The *Canadian Charter* contains a similar provision:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[91] In the *Oakes* case, the Supreme Court of Canada designed a two-step test to determine whether a law's limits on guaranteed rights and freedoms will survive a *Charter* challenge. The test applies to the Quebec *Charter* and to the *Canadian Charter*.²⁶ The Attorney General must first demonstrate that the legislative objective behind the impugned provision is pressing and substantial.

[92] Then, the Attorney General must prove that the limits placed on the plaintiffs' rights are proportionate to the legislative objective. This is achieved by determining whether there is:

- (i) a rational connection between the law's objective and the impugned provision;
- (ii) minimum impairment of the protected right(s); and
- (iii) proportionality between the impairment of the right and the legislative objective.²⁷

[93] If the Attorney General does not succeed in justifying the limits that the law places on the plaintiffs' *Charter* rights, the court has various tools at its disposal to correct the legislation.

²⁶ *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16 at para 90.

²⁷ *R. v. Oakes*, [1986] 1 S.C.R. 103 at paras 69-70.

[94] The court may declare that the legal provision is invalid. The declaration can take effect immediately or may be suspended to give the legislator time to come up with an alternative or to prepare for the invalidity.

[95] When only certain terms in a legal provision are invalid but the remainder does not violate a *Charter* right, the court may sever the offending terms from the otherwise valid provision.

[96] When a legal provision is discriminatory because it excludes a certain group of people, the court may read in language so that the provision will apply to a broader spectrum of the population.

[97] This is a delicate exercise that must respect the primary role of the legislator in drafting legislation. The Supreme Court of Canada has cautioned that "courts should certainly go as far as required to protect rights but no further."²⁸

ANALYSIS

A. The designation of sex on the register of civil status (arts. 111, 115, 116)

[98] Articles 111, 115, and 116 require that the person who delivers a baby and the parent(s) or person who cares for the newborn declare the newborn's sex to the registrar of civil status:

111. The accoucheur draws up an attestation of birth.

An attestation states the place, date and time of birth, the sex of the child, and the name and domicile of the mother.

115. A declaration of birth states the name assigned to the child, the sex and the place, date and time of birth of the child, the name and domicile of the father and of the mother, and the family relationship between the declarant and the child. Where the parents are of the same sex, they are designated as the mothers or fathers of the child, as the case may be.

116. Every person who gives shelter to or takes custody of a newborn child whose father and mother are unknown or prevented from acting is bound to declare the birth to the registrar of civil status within 30 days.

A declaration states the sex and, if known, the name and the place, date and time of birth of the child. The person making a declaration shall also provide a note relating the facts and circumstances and indicating, if known to him, the names of the father and mother.

²⁸ *Schachter v. Canada*, [1992] 2 SCR 679 at 700. The Supreme Court of Canada reiterated this approach in *Ontario (Attorney General) v. G*, 2020 SCC 38.

[99] The plaintiffs raise two arguments against these obligations:

- i) parents who do not want to impose a gender on their child should have the right not to declare the sex of their newborn;
- ii) parents should be able to identify themselves as their child's parent when mother or father do not describe them.

A. i) The obligation to declare a newborn's sex

[100] The plaintiffs contest the obligation to declare the sex of a newborn because it can contribute to the suffering felt by a transgender, non-binary, or intersex person as they come to terms with a gender identity that does not align with the gender most commonly associated with their sex at birth.

A. i) a) *Distinction*

[101] The obligation to designate a newborn's sex on the attestation, declaration, and act of birth does not create a distinction between newborns. The designation of sex records the anatomical fact of whether the baby has a penis or a vulva. It does not distinguish between newborns based on gender identity or gender expression because they do not have a gender identity. A person's gender identity does not develop until they are between 2 and 5 years old.²⁹

[102] The designation of sex will, however, lead to a distinction later in life between people whose designation of sex corresponds to their gender identity, and transgender and non-binary people whose designation of sex and gender identity do not correspond. The former will have an act of birth that identifies them but the latter will have an act of birth that misidentifies them.

A. i) b) *Ground of distinction*

[103] The distinction between people whose designation of sex corresponds to their gender identity and those for whom it does not is based on gender identity, which is a prohibited ground of discrimination listed at section 10 of the Quebec *Charter*.

[104] Gender identity is analogous to the grounds listed at section 15(1) of the *Canadian Charter*:

²⁹ Exhibit P-15, Tab 4A, Dr. Kristina R. Olson, *Expert Report*, March 3, 2015 and updated November 23, 2018 at page 5.

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[105] An analogous ground is a personal characteristic “that is immutable or changeable only at unacceptable cost to personal identity” and “that we cannot change or that the government has no legitimate interest in expecting us to change to receive equal treatment under the law.”³⁰

[106] Gender identity is an immutable personal characteristic. Dr. Kristina Olson and Dr. Françoise Susset confirm that gender identity develops at a young age and remains constant. Transgender children, like all children, “begin to assert and state their gender identity by age 2-3 years”³¹; once installed it is stable.³²

[107] The Attorney General’s expert evidence is to the same effect:

Gender identity is a person’s intrinsic sense of self as male, female, or an alternate gender. [...] Studies in children show that by 2-3 years of age children have an idea what is male or female and refer to themselves as a boy or girl. This sense of gender and gender stability increases between ages 3-5 and then is more or less stable by age 5-6.³³

[108] Samuel Singer, Jenna Jacobs, Carter Fredericks, and N.T-G.³⁴ all testified that they knew at a young age that their gender identity did not match their sex at birth.

[109] The government cannot expect transgender or non-binary people to change their gender identity in order to benefit from the law. This case provides an eloquent, if circular, example: the plaintiffs cannot be expected to change their identity in order to benefit from legislation that allows them to prove their identity.

³⁰ *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203 at para 13.

³¹ Exhibit P-15, Tab 4A, Dr. Kristina R. Olson, *Expert Report*, March 3, 2015 and updated November 23, 2018 at page 5.

³² Exhibit PGQ-67 : QUÉBEC, ASSEMBLÉE NATIONALE, *Journal des débats de la Commission des institutions*, 1re sess., 40e légis., 23 mai 2013, “Consultations particulières et auditions publiques sur le projet de loi no 35 – Loi modifiant le Code civil en matière d’état civil, de successions et de publicité des droits”, CI-55 p. 39 (Mme Françoise Susset).

³³ Exhibit PGQ-1, page 2, *Expert Report* of Dr Karine Khatchadourian and Dr Guy Van Vliet, September 18, 2017.

³⁴ This witness’ identity is protected because he was minor at the time of trial.

[110] Legislators across Canada have added gender identity and gender expression as grounds of prohibited discrimination under their human rights laws. The Quebec *Charter*, the *Canadian Human Rights Act*³⁵ and the *Ontario Human Rights Code*³⁶ are three examples.

[111] The evidence from this case and the acknowledgement of legislators across Canada confirm that gender identity and gender expression are analogous to the grounds of discrimination listed at section 15(1) of the *Canadian Charter*.

A. i) c) *Reinforces and perpetuates disadvantage*

[112] The designation of sex on the act of birth is a constant reminder that a transgender or non-binary person is not legally who they know themselves to be and that their true identity is not recognized. The act of birth is an authentic act³⁷ that carries the authority, legitimacy, and power of the State, yet it can misidentify transgender and non-binary people.

[113] The plaintiffs bring this application because the place of transgender and non-binary people is not adequately recognized in the *Civil Code of Québec*. Samuel Singer testified that without legal recognition of his gender identity, he feels that there is no place for him in this world. This feeling, which was expressed by most of the witnesses, leads to an alarming rate of suicide ideation and attempts among transgender and non-binary people.

[114] The expert evidence of Dr. Greta Bauer, Professor of Epidemiology and Biostatistics at the University of Western Ontario, suggests that when transgender people have “at least one legal identity document with a sex designation matching their lived gender” this group will see a 27% reduction in suicide ideation and a further 62% reduction in the rate of suicide attempts, compared to current levels.³⁸

[115] Her opinion is based on data collected as part of Phase II of the Trans PULSE project. 433 transgender respondents completed an 87-page questionnaire that canvassed a broad spectrum of their life experiences.³⁹ She compared suicide ideation among the respondents who had a concordant identity document against those who did not⁴⁰ before concluding that:

³⁵ R.S.C., 1985, c. H-6, sections 2 and 3.

³⁶ R.S.O. 1990, Chapter H.19, sections 1, 2, 3 and 5.

³⁷ Article 2813 C.C.Q.

³⁸ Exhibit P-15, Tab 5A, Expert Report of Greta R. Bauer, February 21, 2015 at page 4.

³⁹ Exhibit PGQ-104.

⁴⁰ Exhibit PGQ-104. Respondents were asked about suicide at section Q of the survey, which is entitled Emotional Well-Being, Questions 8 and 9 deal specifically with respondents' experience with suicide ideation and attempts.

[...] Having one or more identity documents concordant with lived gender was significantly associated with reductions in past-year ideation and attempts with the potential to prevent 90 cases of ideation per 1,000 trans persons, and 230 attempts per 1,000 with ideation.⁴¹

[116] Dr. Vivianne Namaste, Full Professor and Research Chair in HIV/AIDS and Sexual Health at Concordia University, echoes this finding. She explains the trauma caused when one's gender identity and one's identity documents do not match, and the consequential risk of suicide:

Because the individual's gender is central to their sense of self, their very being in the world, the thought of living in the world without appropriate recognition of their identity is unbearable. Research in the field of mental health includes attention to the elevated rates of suicidal ideation and suicide attempts among trans people, directly related to the violence, discrimination and lack of juridical and legal recognition they face.⁴²

[117] Dr. Namaste adds that transgender people withdraw from situations where they might have to present non-concordant identity documents and risk disclosing their gender identity. This withdrawal exacerbates their risk factors for suicide:

Many transsexuals⁴³ without the appropriate legal documentation choose to withdraw from institutional life, as a way to protect their privacy and their mental health. They [...] do not look for paid employment, do not register for school, and do not vote in elections – because each of these situations demand they produce legal papers.⁴⁴

[118] Working, studying, and voting are banal activities of daily life but they represent threats to transgender and non-binary people:

⁴¹ Greta R. BAUER et al., "Intervenable factors associated with suicide risk in transgender persons: a respondent-driven sampling study in Ontario, Canada", (2015) BMC Public Health 15:525 at page 6.

⁴² Exhibit P-15, Tab 1A, Dr. Vivianne Namaste, Expert Report : Discrimination Experienced by Trans People in Québec, as well as Consideration of the Physical, Psychological, Economic, Social and Institutional Consequences of such Discrimination, March 11, 2015 at page 54.

⁴³ Dr. Namaste's expert report focusses on transsexuals, who she defines at page 3 of her report as people "who take hormones and or undergo surgery to bring their biological sexes and their social genders in alignment." Her use of this term is not interpreted as limiting the scope of her analysis or her conclusions to this subset of the transgender community.

⁴⁴ Exhibit P-15, Tab 1A, Dr. Vivianne Namaste, Expert Report : Discrimination Experienced by Trans People in Québec, as well as Consideration of the Physical, Psychological, Economic, Social and Institutional Consequences of such Discrimination, March 11, 2015 at pages 51-52.

Such events [...], while routine for most citizens, are profoundly distressing for transsexuals without documents that reflect their appearance and their psychological identities. [...] [As a result, they adopt strategies] to avoid discrimination, stigma and violence.⁴⁵

[119] When Dalia Tourki picks up mail from the post office addressed to the male person named on her identity document, she explains that she is his sister rather than disclosing that she is transgender.

[120] Jenna Jacobs did not take part in registering her eldest child for school because the child's birth certificate indicates that Ms. Jacobs is the child's father. She did not want to risk being revealed as a transgender woman or putting her child in a position where their teachers or friends might learn that Ms. Jacobs is transgender. Ms. Heller registered the child for school on her own.

[121] Samuel Singer explained that transgender people can refrain from seeking medical attention because presenting their health card, which contains gender information obtained from the act of birth, can lead to them being misgendered or revealed as being transgender.

[122] Dr. Françoise Susset is a psychologist and family therapist, with an emphasis on transgender issues. Her expert report draws a link between the academic literature and her clinical experience. She recommends replacing regulations that prevent transgender people from obtaining identity documents that correspond to their identity. The current regime contributes to stigmatisation, harassment, discrimination and violence:

Les personnes transgenres sont parmi les personnes qui vivent le plus haut niveau de stigmatisation, de harcèlement, de discrimination et de violence, non seulement dans la sphère publique, mais trop souvent, au sein même de leur famille. Par ses règlements inadaptés à la réalité des personnes transgenres et de leurs proches, l'État civil contribue à marginaliser les individus transgenres et les membres de leurs famille en n'accordant pas l'accès à des documents officiels congruents à l'identité de genre de la personne transgenre. Il est donc recommandé que ces règlements soient modifiés afin que l'accès aux documents permettant la pleine intégration sociale des jeunes et adultes transgenres et leurs proches soit possible avec un minimum de démarches administratives.⁴⁶

[123] Dr. Susset testified that this isolation is most acute among transgender immigrants. An immigrant to a new country will want to integrate into their new culture but transgender people isolate themselves from society as a protective mechanism. They are that much more alone when, without the family, friends, and jobs they left behind, they isolate themselves further in their new country.⁴⁷

⁴⁵ *Ibid.*

⁴⁶ Exhibit P-15, Tab 2A, Dr. Françoise Susset, *Rapport d'expertise*, March 19, 2015, at pages 14-15.

⁴⁷ Testimony on January 25, 2019.

[124] The statistics drawn from the TransPULSE study regarding transgender youth are alarming. 35% of young transgender people whose parents were supportive of them had contemplated suicide in the preceding 12 months, while that number jumped to 60% among those whose parents do not support their gender identity. Among the latter group, 57% had attempted suicide.⁴⁸

[125] This expert evidence was corroborated by fact witnesses who spoke with heartbreaking candour about their own suicidal thoughts and actions.

[126] One non-binary witness⁴⁹ described himself as a sad child who did not think he fit anywhere. He did not think he would live to 30 because there was no reason for him to stay in the world.

[127] Another described being confused and depressed in high school because they did not feel like a boy or a girl. They did not want to be alive; they self-mutilated and contemplated suicide. They did not think they would be alive by graduation.

[128] This witness recognizes that they could have died as a teenager and wants to help keep transgender youth from committing suicide. They organized a support group for transgender youth who are looking for help and resources to understand their identity and to break the isolation into which they might otherwise retreat.

[129] An intersex witness realized at puberty that her body was not changing like the other boys and girls. She has been inhabited by suicidal thoughts ever since. She is in her 60s and has always kept a busy work schedule to keep her mind off hurting herself to end the pain of living in a world that does not acknowledge her existence.

[130] During the testimony of a young transgender man, he disclosed to his mother, who attended court to support him, that he contemplated suicide when he was 15.

[131] The Attorney General's expert, Dr. Brian Mishara, has developed suicide prevention strategies around the world. He argues that suicide is too complex a phenomenon to conclude that one factor, like obtaining an identity document, can have a determining effect on the reduction of suicide ideation or attempts:

No single intervention in the history of suicide prevention has ever resulted in decreases in suicide rates anywhere near the extent that Dr. Bauer has speculated. [...] It is rare that any single intervention has been associated with annual

⁴⁸ Robb TRAVERS et al., "Impacts of Strong Parental Support for Trans Youth: A report prepared for Children's Aid Society of Toronto and Delisle Youth Services", (2012) Trans PULSE Project, at p. 3, found at tab 13 of the articles cited in Dr. Greta Bauer's expert report.

⁴⁹ The identity of these witnesses will not be revealed to protect the privacy of this very personal information. This witness uses masculine pronouns.

reductions of over 1% in a population, and usually when suicide rates decrease, it is the result of a combination of many interventions and the impact is modest.⁵⁰

[132] Dr. Mishara adds that suicide prevention strategies should be based on “evidence-based actions whose impact in preventing suicide has been validated by multiple studies, which, when viewed as a whole, build a strong case for implementing each recommended action.”⁵¹ However, only one study, Dr. Bauer’s, suggests a relationship between identity documents and suicide.

[133] While he does not agree on the impact of a concordant identity document, Dr. Mishara acknowledges a link between gender identity and suicide:

There are also numerous risk factors for suicidal behaviours that appear to be more directly related to gender identity, including being victims of discrimination, victimization, stigma and social rejection by families. All of these other risk factors are in the WHO (2014) guidelines for actions to be included in national suicide prevention strategies around the world.⁵²

[134] This is consistent with Dr. Bauer’s claim that:

[...] without documents it is difficult to travel, go to the bar with friends, go to the doctor, or get a job, and fears of unexpected disclosure or violence prevent people from social participation.⁵³

[135] Without drawing any conclusions on the measurable impact of having a concordant identity document, it is clear that the inability to obtain one contributes to discrimination, victimization, stigma, and social rejection, which are all risk factors for suicide. The fact witnesses described their experiences with each risk factor; some had experienced them all.

[136] The legislator heard similar evidence, described as a “*cri du coeur*”,⁵⁴ before quickly and unanimously amending the *Civil Code* in 2013 and in 2016. The Minister of Justice confirmed that:

[...] les personnes transgenres font l'objet d'énormément de discrimination. [...]

⁵⁰ Exhibit PGQ-4, *Expert Report of Dr. Brian Mishara*, October 10, 2017 at pages 9-10.

⁵¹ Exhibit PGQ-4, *Expert Report of Dr. Brian Mishara*, October 10, 2017 at page 4.

⁵² Exhibit PGQ-4, *Expert Report of Dr. Brian Mishara*, October 10, 2017 at page 9.

⁵³ Exhibit P-15, Tab 5A, *Expert Report of Greta R. Bauer*, February 21, 2015, page 4.

⁵⁴ See the speech of Véronique Hivon, Exhibit PGQ-94, page 5.

[...] il a été démontré lors de nos échanges en commission parlementaire que des jeunes transgenres vivaient des situations terribles et qu'il était très difficile pour un jeune de vivre avec des documents d'identité qui ne correspondent pas à leur identité de genre.⁵⁵

[137] Dr. Susset recommends that the *Civil Code* be amended further so that transgender and non-binary people can obtain correct identity documents that will facilitate their social integration.⁵⁶ She explained to the legislative committee that studied the 2013 amendments to the *Civil Code* that coming out as transgender or non-binary is a marginalising event that can be assuaged by obtaining appropriate identity documents:

De ne pas accorder au moins la légitimité que l'état civil peut accorder à ces populations [...] fait en sorte que cette vulnérabilité-là est accrue.

Le fait d'avoir des papiers qui confirment leur identité, c'est un niveau de sécurité, parce que, quand l'État dit que je suis une femme ou que je suis un homme, ça a un impact et ça protège.⁵⁷

[138] Ana Alvaredo, a transgender woman from Panama who moved to Quebec, confirmed that for her "a paper is not just a paper, it is your identity."

[139] The plaintiffs have proven that an identity document that does not properly identify transgender and non-binary people contributes to their leading vulnerable and precarious lives.

[140] Legislation that does not acknowledge transgender and non-binary identity leaves them without legal existence and denies their right to dignity. Their right to equal protection and benefit of the law is infringed because they cannot obtain an act of birth that identifies them and that makes it easier for them to prove their civil status. By contributing to their vulnerability to suicide, their rights to life, security, and inviolability are also engaged.

[141] The designation of sex on an attestations and declarations of birth discriminates against transgender and non-binary people. It creates and perpetuates disadvantage because of the suffering it causes.

⁵⁵ Exhibit PGQ-92: QUÉBEC, ASSEMBLÉE NATIONALE, *Journal des débats de l'Assemblée*, 1^{re} sess., 41^e légis., 8 juin 2016, p. 11559 (Mme Stéphanie Vallée).

⁵⁶ Exhibit P-15, Tab 2A, Dr. Françoise Susset, *Rapport d'expertise*, March 19, 2015, page 14.

⁵⁷ Exhibit PGQ-67 : QUÉBEC, ASSEMBLÉE NATIONALE, *Journal des débats de la Commission des institutions*, 1^{re} sess., 40^e légis., 23 mai 2013, « Consultations particulières et auditions publiques sur le projet de loi n° 35 – *Loi modifiant le Code civil en matière d'état civil, de successions et de publicité des droits* », CI-55 p. 36 (Mme Françoise Susset).

A. i) d) *Justification – legislative objective*

[142] The legislative objective behind the obligation to designate the sex of a newborn, which is included on their act of birth, is to identify that person and to help them prove their civil status.

A. i) e) *Rational connection*

[143] There is a rational connection between needing to identify holders of civil status and using sex (ie. gender) as a means of identification.⁵⁸

A. i) f) *Minimal impairment*

[144] This stage of the analysis asks whether the obligation to designate a newborn's sex impairs the rights to dignity and to equality of transgender and non-binary people as little as reasonably possible in order to achieve the legislative objective of making it easier for people to prove their civil status. Are their rights impaired no more than is necessary?

[145] The Attorney General must prove that the legislative scheme is tailored to limit its impact on the rights of transgender and non-binary people. The legislator is accorded deference regarding the means of achieving its objectives: “[the National Assembly] is not required to use the perfect, or least restrictive, alternative to achieve its objective.”⁵⁹

[146] The court will respect the legislator's reasonable choice:

If the law falls within a range of reasonable alternatives, the courts will not find it overbroad merely because they can conceive of an alternative which might better tailor objective to infringement.⁶⁰

[147] The legislator enacted and refined article 71 to make it easier for transgender people to obtain an act of birth that identifies them according to their gender identity. When a person realises that they are transgender, article 71 allows them to correct their act of birth:

71. Every person whose gender identity does not correspond to the designation of sex that appears in that person's act of birth may, if the conditions prescribed by this Code and by government regulation have been met, have that designation and, if necessary, the person's given names changed.

⁵⁸ See *Montreuil c. Québec (Directeur de l'état civil)*, 1999 CanLII 14648 (QC CA) at page 17.

⁵⁹ *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 85.

⁶⁰ *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199 at para 160.

[148] This erases the distinction between them and people whose act of birth has always identified them according to their gender identity. A transgender man can change the designation of sex on his act of birth to male, and a transgender woman can change her designation of sex to female.

[149] Article 71 does not address non-binary people whose gender identity is neither male nor female. The limits of article 71 will be reviewed later in this judgment.

[150] The plaintiffs suggest that better options are available. From the transgender point of view, it is preferable not to begin life with a designation of sex that turns out to misrepresent their gender, but to allow them to declare their gender identity when they are ready. A transgender person's struggle to come to terms with their gender identity, to work at expressing it, and to face the resistance of their family and their community will be attenuated if they do not have to fight against a predetermined gender identity but are free to discover and to express it on their own.

[151] The plaintiffs cite two reasons why parents should have the option to designate the sex of their newborns rather than the obligation to do so. First, some parents do not want to designate their newborn's sex because they do not want to impose a gender on their child. Because only the individual can confirm their gender identity, they want their children to grow up with the freedom to assert their gender identity, on their own terms, when they are ready.

[152] C.P.⁶¹ is non-binary. She situates herself between the middle and the feminine end of the gender spectrum. Although she uses feminine pronouns, being called "Madame" or being otherwise misgendered as a woman is a source of distress for her. She suggests that it is not necessary to include a designation of sex on an act of birth because parents cannot guess the gender of their child. C.P. is not imposing gender on her child.

[153] Second, the obligation to declare a newborn's sex within 30 days of their birth⁶² is not tailored to intersex babies. Dr. Shuvo Ghosh explains that physicians are often unable to complete the testing required to determine the sex of an intersex baby within that timeframe. When a parent guesses at their child's sex in order to meet the 30-day deadline but is wrong, they will inadvertently create a transgender child.

[154] Monique Champoux is intersex. While females have XX chromosomes and males XY, Mme Champoux is XXY. When she was born, doctors decided to operate on her so that she could live as a boy. However, she has known all her life that she is neither male nor female. She describes feeling as if there is a twin living inside her: sometimes her masculine side is more dominant, sometimes her feminine side. She is comfortable living with both genders.

⁶¹ The identity of this witness is protected due to threats they received after being profiled in the media.

⁶² Articles 113 and 116 C.C.Q.

[155] Mme Champoux requests that intersex people be able to designate their gender when they are ready, rather than living with the designation of sex imposed by their parents, with or without adequate medical advice.

[156] The difference between article 71 and the plaintiffs' suggestion is that under the *Civil Code*, a person's act of birth will include a measure of identification from the day they are born until they designate a different sex, while under the plaintiffs' proposal, the act of birth will not identify the person according to their sex (or gender) until the person chooses a designation of sex.

[157] As the law stands, when a person becomes aware that the designation of sex on their act of birth misidentifies them, they can ask the registrar of civil status to correct it. When a transgender person's rights to dignity and to equality are violated because the designation of sex does not correspond to their gender identity, article 71 allows them to restore those rights as soon as they are ready to claim them.

[158] The legislator's policy choice to allow transgender people to correct the designation of sex on their act of birth, rather than doing away with the designation, creating a third designation, or allowing people to designate their gender later in life, is a reasonable response to this social issue to which the Court must defer.

[159] The interplay of articles 111, 115, 116, and 71 ensures that the rights of transgender people to dignity and to equality are minimally impaired.

A. i) g) *Proportionality*

[160] This stage of the analysis determines whether the benefits that articles 111, 115, 116 and 71 are intended to achieve outweigh the violations of the plaintiffs' rights to dignity and to equality.

[161] Articles 111, 115, and 116 are beneficial. They allow for the centralised recording of births that occur in Quebec or that concern people domiciled here, which makes it easier for those people to prove their civil status. Article 71 allows transgender people to correct the designation of sex on their act of birth so that document will not misidentify them as a holder of civil status.

[162] The Attorney General led substantial evidence to demonstrate the importance of the designation of sex. Witnesses from the Ministries of Education and of Justice, the *Régie de l'assurance maladie*, *Retraite Québec*, and academia explained how they use and depend on accurate information about the sex of Quebecers that is obtained from the register of civil status in order to provide the services expected of them.

[163] The dignity and equality rights of transgender people are minimally impaired by the requirement that their sex be designated on their act of birth because they can correct that designation to correspond to their gender identity. Once corrected, their act of birth

no longer misidentifies them and does not hinder their ability to prove their civil status or their entitlement to legal rights and to government services.

[164] In addition, the government is working to reduce and eliminate the violations of transgender and non-binary rights that are caused by societal attitudes. The *Bureau de lutte contre l'homophobie et la transphobie* and the *2017-2022 Action Plan Against Homophobia and Transphobia* seek to improve societal attitudes towards transgender and non-binary people.

[165] The Attorney General announced on the first day of trial that the registrar of civil status will issue birth certificates that do not include a person's designation of sex. This acknowledges their right to privacy, that is, to reveal this very personal information when and to whom they choose, rather than to strangers during the routine exchanges that call for the presentation of an identity document.

[166] Articles 111, 115, and 116 provide an important benefit to society but are only a minimal impairment of the rights of transgender and non-binary people. They survive the proportionality analysis.

A. ii) "Parent" in addition to mother and father

[167] Articles 111, 115, and 116 of the *Civil Code* require that a newborn's parents be identified by the gendered terms "mother" and "father" on attestations and declarations of birth.

A. ii) a) *Distinction*

[168] The requirement to list a newborn's mother and father creates a distinction between parents for whom those terms identify the relationship they have with their child and non-binary parents who do not identify with either term. The former will be properly identified on their child's act of birth, while the latter will not.

A. ii) b) *Ground of distinction*

[169] The distinction is based on gender identity, which is a prohibited ground of discrimination named at section 10 of the *Quebec Charter*, and which is analogous to the grounds listed at section 15(1) of the *Canadian Charter*.

A. ii) c) *Reinforces and perpetuates disadvantage*

[170] Articles 111, 115, and 116 are designed to identify and to promote the bonds and relationships between parents and children, however, by using binary vocabulary they necessarily exclude non-binary people. Excluding non-binary parents from being properly identified on their children's act of birth undermines the respect they are owed and deprives them of the full recognition of the roles they play in their children's lives.

A. ii) d) *Justification of the discriminatory distinction - legislative objective*

[171] The Attorney General explains that the legislative objective behind the requirement to name the mother at article 111 is to establish the filiation between the mother and the child and to confirm that this information is consistent between the accoucheur's attestation of birth and the parents' declaration of birth. The legislative objective behind articles 115 and 116 is to determine the baby's filiation towards both parents.

[172] Both objectives are sufficiently important to warrant further *Charter* analysis.

A. ii) e) *Rational connection*

[173] There is a rational connection between wanting to confirm the newborn's filiation and the obligation to identify the mother on the attestation of birth and the mother and father on the declaration of birth.

[174] However, excluding parents who are neither mother nor father, which are both gendered terms, is not rationally connected to the objective of identifying who will care for the child as a parent.

A. ii) f) *Minimal impairment*

[175] The obligation to identify a mother and father fails the minimal impairment test. There is no evidence that the legislator carefully tailored the requirement to identify a mother and father in order to minimize its impact on non-binary parents.⁶³

[176] The Attorney General did not suggest or prove that any terms other than "mother" and "father" were considered, however, other options are available. Article 32 C.C.Q. provides that children are entitled to the protection, security, and attention that their "parents" are able to give them. The Court of Appeal uses "parent" to designate a mother who became a father.⁶⁴

[177] The Attorney General argues that an operational change announced during the trial accommodates the plaintiffs' concern. The registrar will, on request, replace "mother" and "father" on a child's act of birth with "filiation". Both parents will be identified by the word filiation; it will not be possible to indicate filiation for one parent, and mother or father for the other.

⁶³ *Frank v. Canada (Attorney General)*, 2019 SCC 1 at para 66.

⁶⁴ *Droit de la famille – 191677*, 2019 QCCA 1386 at para 162.

[178] Samuel Singer is not satisfied by the operational change. The word filiation is not used in common parlance and might not be understood by a person reading his child's birth certificate. It does not connote parental status as strongly as mother and father do. Mtre Singer does not feel that the term respects him as a parent.

[179] Filiation is a bond, not a person. Article 130 C.C.Q., among others, refers to the "bond of filiation", as reflected in this definition:

Filiation, n.f.

1. *Lien de parenté qui unit l'enfant à ses parents.*⁶⁵

[180] The Quebec Court of Appeal recently explained the differences between *parenté* (relationship), filiation, and *parentalité* (parenthood):

La *parenté* se rattache à la filiation. Construction du droit positif, la « filiation » du *Code civil* – par le sang, par procréation assistée, ou par adoption – est le lien de droit qui unit un enfant à ses mères et pères. Elle inscrit l'enfant dans un ensemble ordonné de relations familiales (parfois qualifié, de manière quelque peu trompeuse, d'« ordre généalogique »), qui consacre divers liens de parenté, en ligne directe et collatérale, fondés sur le lien juridique de filiation dans ce qu'on pourrait appeler sa famille élargie.

La *parentalité*, elle, renvoie à une idée plus large que la parenté et la filiation, touchant plus généralement la fonction parentale ou la situation d'une personne qui tient le rôle de parent pour un enfant.⁶⁶ [Footnotes omitted]

[181] The words mother and father connote both filiation and parenthood. They indicate a child's lineage and identify the people who will take care of them. The word filiation only reflects part of the rich and important role that a parent plays in a child's life.

[182] Despite the government's best intentions, the operational change does not resolve this issue, nor does it amend articles 111, 115, and 116.

A. ii) g) *Proportionality*

[183] The infringing effects of excluding non-binary parents are out of proportion with the benefits that come from identifying a mother and father on the attestation and declaration of birth.

⁶⁵ Hubert REID, *Dictionnaire de droit québécois et canadien*, 5 ed., Montreal, Wilson & Lafleur, 2015, p. 279.

⁶⁶ *Droit de la famille – 191677*, 2019 QCCA 1386 at paras 100-101.

[184] By declaring that they are the “mother” and “father”, parents claim the child as their own and announce that they will guide the child through life. Both have important legal and personal consequences. On the other hand, forcing people who have the same bond and want the same responsibilities to declare that they are “mother” or “father” when they cannot identify with either term, diminishes the roles that they play in their children’s lives. Being a parent is a fundamental aspect of one’s identity. Being properly identified on a child’s act of birth is a benefit that non-binary parents do not have but that every other parent does.

[185] Articles 111, 115, and 116 are unconstitutional because they do not allow non-binary people to be identified by the word “parent” on attestations, declarations, and acts of birth.

A. ii) h) *Remedy*

[186] The plaintiffs ask that the word “parent” be read into articles 111, 115, and 116 but this raises many issues that were not canvassed at trial. For instance, should parent be read in as a replacement for mother and father or added to them?

[187] The word “mother” at article 111 refers to the person who gave birth to the child. Simply writing “the mother or parent” will distort the purpose of the attestation because “parent” can also refer to the person who did not give birth. In addition, how will the accoucheur know that the person who gives birth to the child does not want to be identified as a mother?

[188] Simply adding the word “parent” to articles 115 and 116 would be cumbersome. Article 115 provides that a declaration of birth must state “the name and domicile of the father and of the mother.” Adding “or of the parent” could lead to confusion as to whether only one parent’s name and domicile need be stated. Adding “or of the parents” might suggest that neither parent could be identified as a mother or as a father. It could also imply a distinction between the father and mother who have a biological link to the child, and the parents who have a relationship.

[189] The legislator is best-equipped to develop appropriate amendments and to express them in the proper legislative style.

[190] The plaintiffs do not challenge articles 113 or 114, which require that a father or mother prepare a declaration of birth and declare the child’s filiation towards them. When amending articles 111, 115, and 116, the legislator might consider whether articles 113 and 114, and any other articles that use the words “mother” and “father”, should also be amended so as to be consistent with this judgment.

[191] For these reasons, articles 111, 115, and 116 are invalid and of no force or effect because they oblige non-binary parents to identify themselves as a mother or father. Because establishing the filiation of a newborn and its parents remains an important

objective, the declaration of invalidity must be suspended so that those articles remain in place until the legislator enacts more inclusive language. The declaration of invalidity is suspended until December 31, 2021.

B. Changing a designation of sex (article 71)

[192] Article 71 allows transgender people to change their designation of sex to conform to their gender identity. The plaintiffs contest three aspects of that article:

- i) article 71, paragraph 1 does not allow non-binary people to change their designation of sex to a designation of gender identity;
- ii) article 71, paragraph 3 prohibits non-citizens domiciled in Quebec from applying to change their designation of sex; and
- iii) section 23.2 of the *Regulation respecting change of name and of other particulars of civil status*,⁶⁷ requires that people between the ages of fourteen and seventeen obtain a letter from a health professional declaring that a change of designation of sex is appropriate.

B. i) Article 71, paragraph 1 excludes non-binary people

[193] Article 71, paragraph 1 allows people to change their designation of sex to correspond to their gender identity:

71. Every person whose gender identity does not correspond to the designation of sex that appears in that person's act of birth may, if the conditions prescribed by this Code and by government regulation have been met, have that designation and, if necessary, the person's given names changed.

[194] However, there is no designation of sex that corresponds to the gender identity of non-binary people. Séré Beauchesne-Lévesque changed their designation of sex but describes the new designation as "la moins pire des deux prisons."

B. i) a) *Distinction*

[195] Article 71, paragraph 1 creates a distinction between transgender people who can change the designation of sex on their act of birth to correspond to their gender identity, and non-binary people who cannot. For non-binary people, neither the masculine nor the feminine gender identifies them. A transgender person can obtain an act birth that identifies them on the basis of their gender identity but a non-binary person cannot.

⁶⁷ CQLR c. C.C.Q., r. 4.

B. i) b) *Ground of distinction*

[196] Gender identity is listed as a ground of prohibited discrimination as section 10 of the Quebec *Charter* and is analogous to the grounds listed at section 15 of the *Canadian Charter*.

B. i) c) *Reinforces and perpetuates disadvantage*

[197] Depriving non-binary people of the benefit of being properly identified on their act of birth denies them the dignity they deserve simply because they are human. A person's identity is the essence of their individuality and of their humanity.

[198] A non-binary person who cannot obtain an act or a certificate of birth that identifies them cannot prove who they are, nor their entitlement to legal rights and to government programs and services.

B. i) d) *Justification - legislative objective*

[199] The legislative objective behind article 71, paragraph 1 is to allow people to correct the designation of sex on their act of birth to correspond to their gender identity, which will help them prove their civil status and their entitlement to legal rights and to administrative services. This is pressing and urgent.

B. i) e) *Rational connection*

[200] There is no rational connection between allowing people to correct their designation of sex to correspond to their gender identity, and a legal provision that limits the scope of possible gender identities. Article 71 begins by saying that "every person" can apply to change their designation of sex to correspond to their gender identity but limits that right unjustly to people who identify as male or female.

B. i) f) *Minimal impairment*

[201] The Attorney General has not demonstrated that the legislator considered non-binary people when it enacted article 71, paragraph 1, nor that it tailored that provision to limit any violation of their rights.

[202] The ability of non-binary people to change their designation of sex to correspond to their gender identity is totally impaired.

B. i) g) *Proportionality*

[203] This stage of the analysis asks whether the importance of the legislative objective is equal or greater than the infringement of the plaintiffs' rights.

[204] Here, the legislative objective is important but non-binary people are excluded. Their acts of birth do not identify them according to their gender identity and they remain in the vulnerable state that the legislator has been working to improve since the *Civil Code of Québec* introduced the ability to change a person's act of birth to correspond to their gender identity.

[205] The violation of their rights to dignity and to equality is out of proportion with the importance of the legislative objective.

B. i) h) *Remedy*

[206] The plaintiffs seek a declaration that article 71 is invalid and of no force or effect or, alternatively, that the obligation to designate a sex is optional.

[207] Article 71 should not be declared invalid immediately. It allows transgender people to change the designation of sex and the name on their act of birth, which is a legal recognition of their true identity. Striking article 71 would set Quebec back thirty years to a time when it was not possible to change the designation of sex on an act of birth.

[208] Nor is it possible to read in an option not to designate a person's sex on their act of birth. Doing so raises a series of administrative issues that were not canvassed at trial but that the legislator is well-placed to consider, such as:

- if a non-binary person wishes to change the designation of sex on their act of birth because it misidentifies them, should the designation simply be removed?
- should it be replaced by a designation of gender identity?
- which term(s) should be employed to designate a person's gender identity?

[209] It will be more appropriate to declare that article 71 is unconstitutional because it forces non-binary people to be identified by a sex that does not correspond to their gender identity but to suspend the declaration of invalidity. The legislator will need time to amend article 71 so that every person whose gender identity does not correspond to male or to female may correct their act of birth.

[210] Given the work needed to redraft article 71, paragraph 1 to account for the rights of non-binary people, and the importance of that article to those who can benefit from it as currently drafted, article 71 is declared invalid but this declaration is suspended until December 31, 2021.

[211] In the meantime, the registrar of civil status has undertaken to issue certificates of civil status that do not include a designation of sex, pursuant to article 146, paragraph 2.

[212] This accommodation addresses what might otherwise appear as a paradox in the plaintiffs' case. They claim the right to publicize their gender identity in the register of civil status but also the right to keep their gender identity private when they use acts or certificates that are prepared from the register. They resolve this paradox by suggesting that the designation of sex should be optional so that only those who want to disclose their sex at birth or their gender identity will see it on their act of birth. However, as discussed, that solution is not available.

B. ii) Non-citizens domiciled in Quebec

[213] Article 71, paragraph 3 prevents non-citizens from changing the designation of sex and their name on the act of birth that is kept in the registry of civil status:

71, paragraph 3. Subject to article 3084.1, only a person who has been domiciled in Québec for at least one year and is a Canadian citizen may obtain such changes.

[214] A non-citizen who has filed their act of birth (drawn up outside Quebec) with the registrar of civil status pursuant to article 137 C.C.Q. cannot apply to the registrar to change the designation of sex that appears on their act of birth.

B. ii) a) *Distinction*

[215] Article 71 creates a distinction between Canadian citizens domiciled in Quebec, who can apply to change the designation of sex on their act of birth to conform to their gender identity, and non-Canadians domiciled in Quebec who cannot.

B. ii) b) *Ground of distinction*

[216] Non-citizenship is a ground of discrimination that is analogous to those listed at section 15(1) of the *Canadian Charter*.⁶⁸

B. ii) c) *Reinforces and perpetuates disadvantage*

[217] Article 71, paragraph 3 deprives non-citizen transgender and non-binary people of the benefit and protection that come from having an identity document that properly identifies them, and of the dignity and respect owed to them as human beings free to express their individuality.

[218] In *Lavoie*, the Supreme Court of Canada held that discriminating against non-citizens perpetuates the stereotype that they are not committed to living and to contributing to their new country:

⁶⁸ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

[...] the claimants in this case felt legitimately burdened by the idea that, having made their home in Canada, their professional development was stifled on the basis of their citizenship status. [...] the distinction can reasonably be associated with stereotypical assumptions about loyalty and commitment to the country, even if that is not Parliament's intention. [...] ⁶⁹

[219] The Court explains the harm to non-citizens caused by legal barriers to their integration into Canadian society:

[...] Immigrants come to Canada expecting to enjoy the same basic opportunities as citizens and to participate fully and freely in Canadian society. Freedom of choice in work and employment are fundamental aspects of this society and, perhaps unlike voting and other political activities, should be, in the eyes of immigrants, as equally accessible to them as to Canadian citizens. Discrimination in these areas has the potential to marginalize immigrants from the fabric of Canadian life and exacerbate their existing disadvantage in the Canadian labour market. [...] ⁷⁰

[220] Discrimination based on non-citizenship must be analysed from the plaintiff's point of view:

- does she feel diminished because of her status as a non-citizen?⁷¹
- has she demonstrated that her subjective experience has "a rational foundation [...] in the sense that a reasonable person similarly situated would share that experience"?⁷²

[221] The experience of Dalia Tourki and Ana Alvaredo, two transgender women who immigrated to Canada, echoes the ruling in *Lavoie*. They explained the difficulties felt by transgender people in finding and keeping satisfying employment when their identity documents misidentify them.

[222] Dalia Tourki is a citizen of Tunisia. By graduating first in her university, she earned a scholarship to pursue graduate studies abroad. She chose to come to Quebec, based on her research into the respect granted transgender people here. At home, her feminine mannerisms, and later her gender identity, were not accepted by her family. She described having been chased by a group of teenagers throwing rocks at her and the failure of passersby to intervene.

⁶⁹ *Lavoie v. Canada*, 2002 SCC 23 at para 52.

⁷⁰ *Ibid* at para 52.

⁷¹ *Ibid* at para 46.

⁷² *Ibid* at para 47.

[223] She believed that she could live freely in Quebec according to her gender identity. She spent her first years here focussed on her studies, then began a social transition before undergoing surgery. Ms. Tourki now works as an advocate and educator with the Center for Gender Advocacy. She feels like her true self and describes her life as "*que du bonheur*".

[224] Ms. Tourki acknowledges that this is not true for all transgender people in Quebec, many of whom live on the margins of the marginalized. The contradiction between their gender expression and their identity documents leads them to avoid situations where they are required to use those documents, such as applying for a job or signing a lease. When they do disclose their identity documents, they are at risk of discrimination and violence, either by the person who received the document or by others who learn of the disclosure.

[225] Ms. Tourki explained that transgender people's fear of being outed by their identity documents and persecuted leads them not to apply for jobs and not to leave unsatisfying employment because they will have again to disclose their sex at birth to a new employer and run the risk of discrimination, persecution and violence. Ms. Tourki explained that many transgender people only have three career options: artist, sex worker, or community activist. She wants transgender people to have employment opportunities based on their ability and ambition, like everyone else.

[226] When Ms. Tourki looked into legally changing her name and her designation of sex in Quebec, she grew angry and then bitter to learn that this would not be possible until she became a Canadian citizen. She feels that Quebec accepted her as a permanent resident but also rejects who she really is.

[227] Ana Alvaredo came to Quebec from Panama and became a Canadian citizen seven or eight years after being granted refugee status here. She described her struggle to be recognized as a transgender woman and the additional burden that the citizenship requirement imposed.

[228] She planned her transition so that if her application for refugee status was denied, she would not have to return to Panama as a transgender woman and face further persecution. All of the transgender people she knew in Panama are now dead. Once she was recognized as a refugee, she transitioned, then applied for Canadian citizenship and then to the Quebec government to change her name and designation of sex.

[229] She explained that after surgery, it was more difficult for her to find a job. Employers were wary to hire someone whose official documents did not bear the name or gender of their potential employee.

[230] Ms. Alvaredo described the stress associated with the citizenship exam and its heightened importance, given that without citizenship, she could not change her name or her designation of sex, both of which would allow her to live fully and to be recognized as

a transgender woman. She took the online practice exam every day. On the day of the actual exam, she panicked when confronted with an unexpected question and pleaded with the invigilator to be lenient because she did not want to have to re-write the exam the following year, nor to continue facing the burden of non-concordant identity documents eight years after her transition.

[231] Now that Ms. Alvaredo has changed her name and her designation of sex, she feels free and happy. She can live as her true self in every social and professional interaction. She feels that she is able to contribute more to society.

[232] Difficulty in finding fulfilling work is one example of how the citizenship requirement imposes a burden and denies an advantage that reinforces, perpetuates and accentuates a disadvantage suffered by transgender people.⁷³

[233] The citizenship requirement locks transgender non-citizens in a state of vulnerability that article 71 is intended to mitigate. It infringes the rights of non-citizens to dignity and to equality.

B. ii) d) *Justification – legislative objective*

[234] The Attorney General cites four legislative objectives behind the citizenship requirement:

- international law;
- stability of one's name and of the register of civil status;
- state control over the identification and individualisation of its citizens; and
- public security.

[235] Because they are stated in general terms, each objective must be developed further to permit an evaluation of whether it is pressing and substantial. The Supreme Court of Canada has confirmed that "the integrity of the justification analysis requires that the legislative objective be properly stated."⁷⁴ Otherwise, any objective that is framed in broad terms of public welfare would pass this first stage of the *Oakes* test.

⁷³ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

⁷⁴ *Frank v. Canada (Attorney General)*, 2019 SCC 1 at para 46.

International law

[236] In 1991, the Minister of Justice explained that the citizenship requirement respected the fact that legal capacity flowed from one's citizenship.⁷⁵ However, his statement is not supported by the *Civil Code of Lower Canada*, which applied at the time. Article 6 provided that Quebec law determined the status and capacity of those who are domiciled here, while those who are domiciled elsewhere remain governed by the law of their country:

6 (4) An inhabitant of Lower Canada, so long as he retains his domicile therein, is governed, even when absent, by its laws respecting the status and capacity of persons; but these laws do not apply to persons domiciled out of Lower Canada, who, as to their status and capacity, remain subject to the laws of their country.

[237] Today, article 3083 C.C.Q. applies the same rule of private international law: a person's civil status is governed by the law of their domicile, not their country of citizenship.

[238] The requirement at article 71 that a person be domiciled in Quebec for at least one year before applying to change their name or their designation of sex respects private international law. There is no need to resort to citizenship.

[239] "International law" does not stand up to scrutiny as a pressing and substantial legislative objective to justify overriding the plaintiffs' *Charter* rights.

Stability of names and of the register of civil status

[240] The stability of names and of the register of civil status is not a satisfactory legislative objective, either.

[241] First, the Attorney General relies on the *Koulmyeh-Abaneh* case, which defines "stability" as the opposite of changing one's name on a whim.⁷⁶ The government has never suggested that transgender people wish to change their designation of sex or their name for superficial reasons.

[242] In fact, a guideline published by the registrar of civil status acknowledges that changing a name to align with a person's gender identity is a serious reason that does not violate the principle that a person's name should remain stable.⁷⁷

⁷⁵ Exhibit PGQ-64 : QUÉBEC, ASSEMBLÉE NATIONALE, *Journal des débats, Commissions parlementaires*, 1^{er} sess., 34^e légis., 29 août 1991, "Étude détaillée du projet de loi 125 – Code civil du Québec", SCI-118 (M. Gil Rémillard).

⁷⁶ *Koulmyeh-Abaneh c. Directeur de l'état civil*, 2006 QCCA 165.

⁷⁷ Exhibit P-4, *Directive de l'état civil CCQ 58-1* at paragraph 8.

[243] Second, articles 59, 71, and 3084.1 allow people to change their name in certain circumstances, so it is contradictory to assert that names must remain stable.

[244] The “stability of names and of the register of civil status” is not sufficiently important to justify the violation the plaintiffs’ *Charter* rights. The plaintiffs’ case seeks to align the social and legal names of transgender and non-binary people, which promotes stability.

State control over identification and individualisation

[245] This objective is similar to “international law”. While the registrar of civil status may be reluctant to re-certify facts that occurred when a person was born years ago in another jurisdiction, it is best-positioned to record and to certify the gender identity of a person who is domiciled in Quebec.

Public security

[246] The Attorney General suggested that Quebec must be wary of changing the identification of someone who might be a foreign criminal. However, a representative of the registrar of civil status admitted that she did not know if her office could access foreign databanks to find out whether a non-citizen applicant to change their name or designation of sex has a criminal record.⁷⁸

[247] Public security is ensured by the domicile requirement. Applicants must be domiciled in Quebec for at least one year, which suggests that they are permanent residents or refugees who must pass a security check as part of their application for permanent residence.⁷⁹ In addition, the registrar would be able to ask Quebec and Canadian authorities to perform a security check of the applicant concerning their time in Canada.

[248] There is no evidence that prohibiting non-citizens from applying to change their designation of sex will enhance public security, nor that allowing non-citizens to apply will threaten it.

[249] The Attorney General has not demonstrated that there is a pressing and substantial legislative objective behind the citizenship requirement that might justify the violations of the rights of transgender non-citizens who are prohibited from applying to change their designation of sex and their name.

⁷⁸ See the cross-examination of Véronique Morel from February 7, 2019.

⁷⁹ See sections 34 to 37 and 101(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[250] This stage of the proportionality analysis overlaps with the rational connection test. Even if any of the foregoing legislative objectives were sufficiently important to warrant further *Charter* analysis, these comments demonstrate that the citizenship requirement is not rationally connected to any of them.

B. ii) e) *Remedy*

[251] The plaintiffs ask that article 71 be declared invalid and of no force or effect. However, the transgender community supported the legislative changes that are incorporated in article 71. Indeed, transgender citizens who are domiciled in Quebec need them to remain in place so that they can establish and prove their true identity.

[252] In such circumstances, the Supreme Court of Canada recommends excising the unconstitutional portion of the legal provision and upholding the remaining measures that do not violate the plaintiffs' *Charter* rights:

Where the offending portion of a statute can be defined in a limited manner it is consistent with legal principles to declare inoperative only that limited portion. In that way, as much of the legislative purpose as possible may be realized.⁸⁰

[253] The citizenship requirement can be struck from article 71, paragraph 3 without disturbing the other elements that allow transgender people to change the designation of sex on their act of birth.

[254] Consequently the words "and is a Canadian citizen" ("*et ayant la citoyenneté canadienne*") are invalid and are struck from article 71, paragraph 3.

[255] The Attorney General has not demonstrated that the immediate removal of the citizenship requirement would be disruptive or administratively difficult. There is no reason to suspend the declaration of invalidity.

B. iii) The declaration that a change of sex is appropriate for a young person

[256] The plaintiffs challenge section 23.2 (2) of the *Regulation respecting change of name and of other particulars of civil status*,⁸¹ which requires that minors between fourteen and seventeen who apply to change their designation of sex submit a declaration from a health professional that the change is appropriate:

23.2, paragraph 2: An application for a change of the designation of sex for a minor child must be accompanied by, in addition to the documents referred to in section 4, a letter from a physician, a psychologist, a psychiatrist, a sexologist or a social worker authorized to practise in Canada or in the State in which the child is

⁸⁰ *Schachter v. Canada*, [1992] 2 S.C.R. 679 at 697.

⁸¹ CQLR c. C.C.Q., r. 4.

domiciled who declares having evaluated or followed the child and is of the opinion that the change of designation is appropriate.

B. iii) a) *Distinction*

[257] This creates a distinction with people over 18 who must instead present an affidavit from a person who has known them for more than one year and who can confirm that the applicant is serious in their desire to change their designation of sex:

23.2, paragraph 1: An application for a change of the designation of sex that appears in an act of birth of a person of full age must be accompanied by, in addition to the documents referred to in section 4, an affidavit of a person of full age who attests to having known the applicant for at least one year and who confirms that the applicant is fully aware of the seriousness of the application.

B. iii) b) *Ground of distinction*

[258] Age is a prohibited ground of distinction under both the Quebec and Canadian Charters.

B. iii) c) *Reinforces and perpetuates disadvantage*

[259] The plaintiffs claim that it is difficult to obtain a declaration of appropriateness when a young person does not have access to health professionals who are familiar with transgender issues. Without a declaration, the young person cannot apply to change their designation of sex and remains vulnerable to the discrimination, marginalisation and risk of suicide faced by transgender people whose legal and social identities do not match.

[260] To obtain a letter from a health professional, a young person must:

- navigate the health and social services system to find a professional who is able to help them;
- get out of school or work to attend the appointment;
- travel to the appointment; and
- pay for the professional's services if they are not publicly funded.

[261] The plaintiffs demonstrate that young transgender people are often not supported by their parents, which makes each of the above steps harder to achieve and places the ability to change their designation of sex farther out of reach.

[262] N.T-G. visited three health professionals before finding one who was familiar with transgender issues and who was willing to provide a declaration that a change to his designation of sex was appropriate. The others were either not comfortable with the issue

or tried to persuade him against going ahead. A less resilient person may have given up and continued to live the vulnerable life of a transgender youth.

[263] Because only the individual can affirm or confirm their gender identity, a declaration from a health professional does not serve a useful purpose but imposes an administrative hurdle that transgender youth might not be able to overcome.

B. iii) d) *Justification – legislative objective*

[264] The Attorney General justifies the declaration of appropriateness based on the legislative objective of ensuring that a young person is serious about wanting to change their designation of sex.

[265] The legislative objective behind the declaration of appropriateness is of sufficient importance to warrant further analysis.

B. iii) e) *Rational connection*

[266] There is no rational connection between the legislative objective of ensuring the seriousness of a transgender youth's application to change their designation of sex, and the requirement that the young person obtain a declaration from a health professional that the change is appropriate.

[267] First, the legislative objective seeks to ensure that the young person is serious in their desire to change their designation of sex but section 23.2 asks a health professional to determine if the change is appropriate. Only the applicant can determine whether the change is appropriate. Moreover, youth aged fourteen and over can determine their best interests and make important decisions in line with them. Article 23.2 takes this decision away from the young person and imposes it on a health professional, who may, as will be demonstrated below, have only a fleeting acquaintance with the young person and their gender identity.

[268] Second, section 23.2 is enacted pursuant to article 71, which was amended in 2013 such that a person may apply to change their designation of sex without having undergone any medical treatment. By requiring that a young person consult a health professional and obtain a declaration that their change of designation of sex is appropriate, section 23.2 contradicts its enabling legislation and subjects young people to the law as it applied prior to the 2013 amendment. The regulation must not frustrate the purpose of the law it serves.

[269] Third, none of the evidence suggests that being transgender or non-binary is a health issue, the appropriateness of which could be confirmed by a health professional. Dr. Shuvo Ghosh states that there are no medical tests to confirm an applicant's gender identity. Dr. Françoise Susset adds that only the transgender person can confirm their gender identity and whether it is appropriate for them to change their designation of sex.

[270] Dr. Susset described the conflict of interest that the Regulation creates for a health professional. Professional orders expect their members to perform thorough evaluations, yet it need only take a few seconds to ask whether the person is transgender and to obtain a satisfying answer. If a professional pursues their evaluation in order to meet the standards expected of their Order, it raises ethical and legal questions about whether the transgender person gave informed consent to that further evaluation.

[271] H  l  ne Beaupr   is a social worker at the Center for Gender Advocacy. Her professional order issued a guideline for preparing the declaration required by section 23.2. The social worker must conduct a quick psycho-social evaluation that lets the young person explain how they feel, their life, and how changing their designation of sex will improve their life. When Mme Beaupr   prepares her declaration, she only repeats what the person told her. The letter does not add value to what the person tells her. In her experience, young people do not take the decision to change their designation of sex lightly but to end their suffering.

[272] Fourth, the Regulation does not provide any guidance as to what a health professional should mention in their declaration to the registrar. Indeed, the variety of professionals listed at section 23.2 makes it difficult to determine what common purpose they serve other than being able to listen to the young person explain their gender identity. V  ronique Morel of the registrar's office testified that they do not expect that every declaration will be similar because each case will be evaluated on its merits.

[273] The sample declarations in evidence demonstrate that a declaration with limited substantive usefulness will satisfy the requirement at paragraph 23.2, paragraph 2. One psychiatrist stated simply that:

Demande de changement de nom⁸²

Je declare avoir   valu   [nom caviard  ] et que je suis d'avis que le changement de la mention est appropri  .⁸³

[274] Young applicants are thus subject to a less stringent substantive obligation than adults who must submit an affidavit from someone who has known them for at least one year and can attest to the seriousness of the application.

[275] There is no rational connection between seeking confirmation that a young person is serious about wanting to change their designation of sex and requiring a declaration from a health profession that the change is appropriate for the young person.

⁸² Although applications to change a *name* do not require a declaration of appropriateness, this particular psychiatrist did not make the distinction and the registrar accepted the declaration as part of an application to change a designation of sex. The evidence does not indicate whether this is a clerical error or a demonstration of the physician's confusion regarding gender issues.

⁸³ Exhibit PGQ-95, filed under seal.

B. iii) f) *Minimal impairment*

[276] Section 23.2 is not a minimal impairment of the rights of young transgender people. Instead, it can exacerbate the violations of their rights.

[277] A young person who cannot find, afford, meet with, or confide in a health professional who is knowledgeable about transgender issues, will have their application to change their designation of sex rejected. They will continue to live with the violations of the rights to dignity and equality described above.

[278] The Attorney General did not explain why young applicants could not be subject to the same requirement as adult applicants. The seriousness of a young person's application could be confirmed by an adult relative, friend, teacher, etc. without the added stress of the logistical and substantive hurdles that the Regulation places in their way.

B. iii) g) *Proportionality*

[279] The legislative objective behind section 23.2 is not proportional to the violation of young transgender people's rights.

[280] By seeking to confirm whether a change in designation of sex is appropriate for a young person, the Regulation second-guesses the applicant who is the only person who can attest to their gender identity. As discussed above, transgender youth are particularly vulnerable; section 23.2 makes it harder for them to have their identity and their place in society validated.

[281] The legislative objective behind section 23.2 is worthwhile but requiring a declaration from a health professional is not a constitutionally valid means to achieve it.

B. iii) h) *Remedy*

[282] Simply striking the obligation to file a declaration from a health professional will create a new distinction between applicants of full age and minors. Adults will have to submit an affidavit but minors would not have to provide confirmation from a third party that their application is serious or appropriate.

[283] In addition, section 23.2 applies to all minors but the plaintiffs did not raise any concerns about its impact on children younger than 14. In the absence of a constitutional challenge, its validity towards them is presumed.

[284] The declaration of invalidity will be suspended until December 31, 2021 to allow the legislator time to develop an alternative means of ensuring that applicants aged fourteen to seventeen are serious in their desire to correct the designation of sex on their act of birth to conform to their gender identity.

C. Change of name

[285] Some transgender and non-binary people wish to assert their gender identity without changing their designation of sex. They can do so by changing their name.

[286] The plaintiffs challenge two aspects of the *Civil Code's* change of name provisions:

- i) article 59 prohibits non-citizens domiciled in Quebec from changing their name here; and
- ii) article 62 requires that applicants between fourteen and seventeen years old notify their parents who can object to their child's application.

C. i) Non-citizens (article 59)

[287] The plaintiffs challenge article 59 C.C.Q., which prevents non-citizens domiciled in Quebec from changing their name here:

59. A person who is a Canadian citizen and who has been domiciled in Québec for at least one year may be the subject of an application for a change of name.

[288] The same arguments are raised for and against the citizenship requirement at article 59 as for article 71, paragraph 3, which was found to violate the plaintiffs' *Charter* rights. Consequently, it must fall for the same reasons.

C. ii) Parental objection to a change of name (article 62)

[289] The plaintiffs challenge article 62, paragraph 1, which requires that the registrar reject a young person's application to change their name if a parent objects, unless there is a compelling reason to disregard the parent's objection:

62. Except for a compelling reason, no change of name of a minor child may be granted if, as the case may be, the father and mother of the minor child as legal tutors, the tutor, if any, or the minor, if fourteen years of age or over, have not been notified of the application or if any of those persons objects to it.

[290] The plaintiffs assert that parents often do not understand or accept their children's transgender identity and therefore do not support their applications to change their name. Carter Fredericks' parents did not support him. He is estranged from his father. His mother openly criticizes transgender identity and its proponents. He waited until he was eighteen to change his name because he knew that his mother would not support him.

C. ii) a) *Distinction*

[291] Article 62 distinguishes between applicants on two grounds. First, youth between fourteen and seventeen are treated differently from applicants of full age who can change

their name regardless of their parents' objection. Second, young people whose parents object to their change of name are treated differently from those whose parents do not.

C. ii) b) Grounds of distinction

[292] Age is a prohibited ground of distinction under both the Quebec and the Canadian *Charters*.

[293] Any distinction between young people based on parental support for their application to change their name would be based on the reason behind an individual parent's objection. It cannot be predicted and is impossible to categorize in general terms.

C. ii) c) *Reinforces and perpetuates disadvantage*

[294] The plaintiffs argue that section 62 allows parents who do not support their child's gender identity to veto their application to change their name, which will prevent the young person from affirming who they truly are. The evidence demonstrates that transgender and non-binary people who do not have the support of their parents face worse mental health outcomes than those who do. Dr. Kristina Olson concludes that:

research is now fairly consistently showing a relationship between social support – from family, peers, and society – and mental health and well-being. Conversely, a lack of support, discrimination, and harassment, is associated with worse mental health and well-being.⁸⁴

[295] However, the plaintiffs miscast article 62 as requiring parental consent when it grants a right to object. Young people are not required to obtain their parents' consent to change their name. They are required to notify their parents of their application, after which a parent may object.

[296] The effect of a parent's right to object cannot be evaluated until the facts specific to a particular application play out. Will a parent assert their right to object? Will the registrar or the court accept the objection? If the answer to either question is "no", the young person's application to change their name will be evaluated on its merits.

[297] Will the parent's objection be based on their view of their child's gender identity? If not, and if the register accepts the objection, the rejection of the young person's application will be based on a reason other than gender identity.

[298] Furthermore, the legislation allows a young person to circumvent their parent's objection.⁸⁵ Article 62 permits a young person to request permission not to notify their

⁸⁴ *Expert Report* of Dr. Kristina R. Olson, dated March 3, 2015 and updated November 23, 2018, Tab 4A of the plaintiffs' Expert Report Compendium.

⁸⁵ This argument could be raised, as the Attorney General did, to prove that article 62 is a minimal impairment of any violation of the plaintiffs' rights.

parent of their application to change their name. If granted, the parent will not be able to object.

[299] A young person may also request that their parent's objection be disregarded. If their reason is compelling, the registrar will evaluate the application on its merits. There are no guidelines as to what will constitute a compelling reason, which reflects the fact-specific nature of every application. For example, a young person might explain their emotional distress at not being able to live according to their true identity, while another might argue that they are almost 18 and are just as capable as an adult to decide to change their name and should not have to reapply in a few months.

[300] Article 66.1 allows a young person who anticipates their parent's objection to file their application to change their name with the court instead of the registrar of civil status. The parent's objection would be subject to cross-examination and to rebuttal.

[301] Article 74 provides that decisions by the registrar of civil status may be reviewed by the court. This includes the registrar's decision to accept a parent's objection to their child's application to change their name and the decision not to grant the application.

[302] At each stage, the decision-maker must evaluate the young person's application in light of article 33, which requires that every decision concerning a minor be taken in light of their interests and rights, not their parent's.

[303] The effect of a parent's objection can only be determined if it is maintained after these options have been exercised in individual cases. In *PHS*, the Supreme Court of Canada described a similar option as a safety valve that prevents a law from being applied in a manner that infringes a person's *Charter* rights.⁸⁶

[304] We cannot presume that a parent will only object for a reason related to their child's gender identity. If an application otherwise meets the criteria for a change of name, a parent's objection will only result in a transgender or non-binary youth being refused authorisation to change their name when:

- they apply to change their name for a reason related to their gender identity;
- their parent objects;
- that objection is related to the parent's views on gender identity;
- the registrar accepts that objection; and
- a court upholds the registrar's refusal to change the applicant's name (art. 74) or refuses it on its own (art. 66.1).

⁸⁶ *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para 113.

[305] Otherwise, the registrar will treat the young person like any other and will determine their application on its merits.

[306] The fundamental question raised by the plaintiffs is who among a young person aged fourteen to seventeen and their parent is best able to decide whether they can change their name to align with their gender identity. The *Civil Code* provides that until a person turns eighteen, their parent(s) will make major decisions for them:

598. A child remains subject to the authority of his father and mother until his majority or emancipation.

599. The father and mother have the rights and duties of custody, supervision and education of their children.

[307] Article 62 recognizes that there may be situations when a young person is better able than their parent to decide whether it is appropriate for them to change their name.

[308] The legislator empowered the registrar or the court to make the final decision when the minor and their parent disagree.

[309] The plaintiffs have not demonstrated that article 62 has or will create discriminatory effects for transgender and non-binary youth between the ages of fourteen and seventeen.⁸⁷ There is no evidence that a young transgender or non-binary person's application was denied following their parent's objection. The registrar is not aware of such a case.⁸⁸

[310] Because article 62, paragraph 1 does not impose a discriminatory distinction between applicants, and because the plaintiffs have not presented evidence that an application by a transgender or non-binary person was rejected because their parent objected on gender identity grounds, the *Charter* analysis of article 62 must end here.

D. Modifications after a parent changes their designation of sex (article 132)

[311] The plaintiffs apply for a declaratory judgment to solve a genuine problem concerning article 132 C.C.Q., which reads:

132. A new act of civil status is drawn up, on the application of an interested person, where a judgment changing an essential particular in an act of civil status, such as the name or filiation of a person, has been notified to the registrar of civil status or where the decision to authorize a change of name or of designation of

⁸⁷ This argument could also be raised, as the Attorney General did, to show that the legislation is proportional to any violation of the plaintiffs' rights.

⁸⁸ A young person's right to apply on their own, subject to their parent's right to object, was introduced in 2016 by the *Act to strengthen the fight against transphobia and improve the situation of transgender minors in particular*, SQ 2016, c. 19.

sex has become final. The same applies where an Aboriginal customary adoption certificate has been notified to the registrar of civil status.

[312] The registrar of civil status took the position that it could not change the identification of a parent on a child's act of civil status following the parent's change of name or designation of sex.

[313] The registrar refused Samuel Singer's and Jenna Jacobs' attempts to change their children's acts of birth after they changed their own names and designations of sex.

[314] Samuel Singer and Sarah Blumel kept their child out of daycare because they did not want to show the child's birth certificate during the registration process. It lists Mtre Singer as "mother" but he presents as a man, which could give rise to questions and to the disclosure of his gender identity. The parents did not want to take the chance that their child would be treated poorly by daycare workers, other parents, or children because of Mtre Singer's gender identity.

[315] Jenna Jacobs and Elizabeth Heller described the anxiety Ms. Jacobs feels when she anticipates having to present her eldest child's birth certificate that lists her as a father. Ms. Heller will take on that responsibility alone to protect Ms. Jacobs and their child from this stress.

[316] The registrar of civil status reversed its position on the first day of trial. Going forward, when a parent changes their name or designation of sex, a corresponding change will be made to their children's acts of birth.

[317] The plaintiffs are encouraged by this new application of article 132 but are concerned that the registrar could revert to its old practice unless the law is clear.

[318] There are two ways to interpret article 132 as authorizing the registrar of civil status to change a child's acts of civil status following their parent's change of name or designation of sex. First, the article applies following changes to filiation. If the child's mother or father has changed their name or sex, it affects the child's filiation and should be noted on their acts of civil status.

[319] Second, article 132 is drafted in broad terms: an "interested person" can apply for "a new act of civil status" following the decision authorizing a change in "name or designation of sex". The owner of the act of civil status and the person who changed their name or their sex need not be the same person. A child will be interested in the change of name or designation of sex of their parent because that information identifies the person towards whom they have important rights and obligations.

[320] A declaration will issue that article 132 C.C.Q. must be interpreted and applied to authorize the register of civil status to draw up of new acts of civil status for a person whose parent has changed their name or designation of sex.

E. Certificates of civil status (article 146)

[321] Article 146, paragraph 1 states that a certificate of civil status sets forth the places and dates of birth, marriage, civil union, and death. The holder of civil status is identified by their name and their sex.

[322] Article 146, paragraph 1, is discriminatory in the same way as articles 111, 115, 116, and 71, paragraph 1. Using sex to identify a person creates a distinction between people whose identity conforms to their sex at birth and those for whom it creates confusion, which leads to unjustifiable violations of their rights to dignity and to equality.

[323] When the legislator amends article 71 to allow people to be identified according to gender, article 146, paragraph 1 will have to be amended for consistency.

F. Judgement, attestation and declaration of death (articles 93, 124, and 126)

[324] The plaintiffs request that articles 93, 124 and 126 be modified in line with the conclusions of this judgment. Those articles require that a person's sex be indicated on their act of death:

93. A declaratory judgment of death states the name and sex of the person presumed dead and, if known, the place and date of his or her birth and, if applicable, marriage or civil union, the name of the spouse, the names of his or her father and mother as well as his or her last domicile, and the date, time and place of death.

124. An attestation states the name and sex of the deceased and the place, date and time of death.

126. A declaration of death states the name and sex, place and date of birth and, if applicable, of marriage or civil union of the deceased, the name of the spouse, the names of the father and mother and the last domicile of the deceased and the place, date and time of death as well as the time, place and mode of disposal of the body.

[325] The registrar of civil status prepares an act of death that contains the information communicated in the judgement, attestation and declaration of death.

[326] The plaintiffs allege that a person's right to dignity, honour, and to their reputation continues after they have died but that an act of death that discloses one's sex at birth will breach those rights for transgender or non-binary people. They did not present any evidence to back up their allegations, other than general affirmations that society is not open to transgender and non-binary people.

[327] Without ruling on this issue in the absence of a factual record, it stands to reason that any amendments introduced by the legislator to improve article 71 could be reflected at articles 93, 124, and 126, as well. In particular, when a person changes their

designation of sex or wishes to include a designation of gender on their act of birth, those designations could appear on the declaration of death, as well, even if the court, the physician, or the family member who prepares a judgment, attestation, or declaration of death is unaware that the person's gender identity and sex at birth do not correspond.

CONCLUSIONS

[328] The plaintiffs proved that a register of civil status that does not recognize the gender identity of transgender and non-binary people, or that limits their ability to correct the designation of sex on their acts of civil status to reflect their true identity, deprives them of the dignity and the equality that they are owed. Their inability to prove their true identity keeps them in a state of acute vulnerability that too often leads to suicide.

[329] The plaintiffs challenged articles of the *Civil Code of Québec* that are of general application and others that allow a person to change their designation of sex or their name to conform to their gender identity. The former will stand, while the latter must be amended to include non-binary people and to ensure that changes to a person's designation of sex are reflected consistently on the register of civil status.

[330] The obligation to designate the sex of a newborn is justified. They do not have a gender identity, so there can be no distinction based on that ground. Articles 111, 115, and 116 must be amended, however, to allow non-binary people to identify themselves as a parent instead of a mother or father on their children's acts of birth.

[331] When a person realises that their designation of sex does not correspond to their gender identity, they can correct it. The legislator must amend article 71 to allow non-binary people to designate their gender identity on their acts of birth so that they will be properly identified.

[332] The citizenship requirement at articles 71 and 59 is struck because it prevents transgender and non-binary people who are domiciled in Quebec from having their gender identity reflected on the identity documents they need to engage in the life of their adopted society. Otherwise, they are trapped in a legal ambiguity that the legislator did away with thirty years ago.

[333] Section 23.2 of the *Regulation respecting change of name and of other particulars of civil status* must be amended because it requires that young people consult a health professional before applying to correct their designation of sex but that requirement has been eliminated for adults. In addition, the declaration of appropriateness does not serve a rational purpose.

[334] A parent's right to object to their child's application to change their name is upheld. A person between fourteen and seventeen years old who anticipates or who is confronted with their parent's objection to their gender identity has many ways of getting around it. The plaintiffs did not prove that the registrar of civil status rejected a young person's application to change their name because a parent objected to their gender identity.

[335] Article 132 must be interpreted and applied so that the child of a person who changes their own designation of sex or name can obtain a new act of civil status that reflects those changes.

[336] Finally, the legislator is invited to review articles 146, 93, 124, and 126 to ensure that they are consistent with this judgment and that they uphold the dignity and equality of transgender and non-binary people.

FOR THESE REASONS, THE COURT:

[337] **GRANTS** the plaintiffs' application in part;

[338] **DECLARES** that articles 111, 115, and 116 of the *Civil Code of Québec*, because they oblige non-binary parents to be identified as a mother or father instead of a parent, violate the dignity and equality rights of non-binary parents, and are invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;

[339] **DECLARES** that article 71, paragraph 1 of the *Civil Code of Québec*, because it does not allow non-binary people to change the designation of sex on their act of birth to correspond to their gender identity, violates the dignity and equality rights of non-binary people, and is invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;

[340] **DECLARES** that the citizenship requirement at articles 59 and 71 of the *Civil Code of Québec* violates the dignity and equality rights of non-citizens domiciled in Quebec and **STRIKES** the words "who is a Canadian citizen and" ("*a la citoyenneté canadienne et*") from article 59 and the words "and is a Canadian citizen" ("*et ayant la citoyenneté canadienne*") from article 71, paragraph 3;

[341] **DECLARES** that section 23.2 of the *Regulation respecting change of name and of other particulars of civil status*, CQLR c. CCQ, r. 4., violates the dignity and equality rights of transgender and non-binary people aged fourteen to seventeen and is invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;

[342] **DECLARES** that article 132 of the *Civil Code of Québec* must be interpreted and applied to authorize the registrar of civil status to draw up of new acts of civil status for a person whose parent has changed their name or their designation of sex;

[343] **DECLARES** that article 146 of the *Civil Code of Québec*, because it requires a designation of sex on certificates of civil status, violates the dignity and equality rights of non-binary people and is invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;

[344] **TAKES FORMAL NOTICE** of the registrar of civil status's undertaking to issue, upon application, certificates of civil status that do not include a designation of sex;

[345] **WITHOUT** legal costs, given the divided success.



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Hearing dates: January 16, 17, 18, 23, 24, 25, 29, 30, 31 and
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