



GENDER IDENTITY AND REGISTRATION FOR INDIAN STATUS

LEGAL AFFAIRS
AND JUSTICE





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Gender Identity and Registration for Indian Status

How does gender identity impact registration for Indian status?

A person's right to Indian registration is decided by that person's genealogy or ancestry. As such, there is a requirement by law to record a person's gender at birth in the Indian Register. At this moment, registration only refers to a person's gender as it is written on official proof of birth documents. It does not consider gender identity, especially when a person's gender identity is different from that person's gender as written on official documents. The person's sex written on the application forms for registration as a Status Indian or for the Secure Certificate of Indian Status (SCIS) must match the sex written on an applicant's proof of birth document.

If an applicant wants to be registered under a different sex, which is based on their gender identity, they are required to make changes to their proof of birth document before registration. Currently, a person's gender listed on the Secure Certificate of Indian Status is based on the information recorded in the Indian Register. If a status Indian wants to change the sex on their Secure Certificate of Indian Status, that person must apply for an amendment. That person must also provide the required supporting documents.

What is Gender Identity?

Culturally defined roles, behaviors, activities and attributes associated with males and females are known as gender. Gender identity is each person's inner and personal experience of gender. On the other hand, gender expression is the public presentation of that identity through a person's behavior and appearance. A person's gender identity or expression may be the same as, or different from, the biological and physical traits that identify a person's sex assigned to them when they were born.

What is Gender Diverse or Transgender?

A cisgender person is a person who identifies with the gender assigned at the moment of that person's birth. For example, a cisgender woman is born female and she identifies with the female gender.

A gender diverse person may identify with the gender that is associated with the "opposite" sex. That person may have a combination of genders, or no gender identity at all.

Transgender is a broad term that refers to people whose gender identity differs from their sex assigned at birth. A transgender person may or may not have sought gender affirmation surgery. A transgender person may have diverse gender identities and expressions that may differ from societal expectations. There are many terms on the gender spectrum such as non-binary gender, gender-queer, gender variant, gender non-conforming, gender neutral, agender, etc.

Gender Diverse and Transgender in Law

Under Bill C-16, legislative amendments to the *Canadian Human Rights Act* and the *Criminal Code* now recognize gender diverse people. *An Act to amend the Canadian Human Rights Act and the Criminal Code* came into force on June 19, 2017. It added gender identity or gender expression to the prohibited grounds of discrimination under the *Canadian Human Rights Act* and the *Criminal Code* definition of identifiable groups.

As it is currently written, the *Indian Act* does not have provisions that specifically address gender diverse or transgender people. Under Bill S-3, amendments came into force on December 22, 2017 to get rid of sex-based unfairness in Indian registration under the *Indian Act*. These amendments are gender neutral and apply equally, regardless of a person's gender identity or expression. They are in line with the recent amendments to the *Canadian Human Rights Act* and the *Criminal Code*.

What are the Future Developments Related to Gender and Indian Registration?

The Collaborative Process gives an opportunity to have discussions and collect information around gender identity in Indian registration.

Interdepartmental discussions are also taking place to discuss questions related to gender.