

Amendment of Gender Recorded on Birth Certificates

We have recently made an application to the Family Court for a declaration that the applicant is of a particular gender. Few applications of this type have been made to the Family Court, and recent amendments to the law in January 2009 mean a person who is a New Zealand citizen or entitled to be in New Zealand indefinitely can now also apply.

Obtaining the declaration would mean that the applicant's birth certificate could be changed to record a different gender from the gender recorded at birth. The application is made under the Births, Deaths and Marriages Act 1995, and asks the Court to make a declaration that an applicant's birth certificate should contain the information that the applicant is of the nominated sex. The nominated sex is explained as being the sex the applicant wishes the birth certificate to now reflect.

The declaration can only be made if the birth certificate records that the applicant is a person of the sex opposite to the nominated sex.

The definitive decision in this area of law is the 2006 case of *Re Michael*. In that case the applicant was born with a female body but from early childhood, he identified himself as a male. The judgment discusses transsexualism and gender dysphoria:

"Transsexualism has been described as the enduring, pervasive, compelling desire to be a person of the opposite sex. Unlike the majority of people who have a gender identity that matches the sex they were born with, transsexuals experience a conflict between their physical sex and their gender identity as a man or a woman. While having the physical characteristics of one gender, psychologically they identify with members of the opposite gender."

The applicant in *Re Michael* had reports from medical specialists confirming a diagnosis of gender dysphoria. He had also undertaken hormonal treatment and some surgery, although not complete gender reassignment surgery. Evidence was also given by family members of the applicant.

The decision discussed the extent to which the applicant had assumed the gender identity of a male and noted that there are typically four steps in this regard. These are "psychiatric assessment, hormonal treatment, a period of living as a member of the opposite sex subject to professional supervision and therapy (the "real life" experience) and finally, in suitable cases, gender reassignment surgery. Surgical intervention takes many forms and, for a variety of reasons, is undertaken by different people to different extents."

Re Michael makes it clear that each application is considered on a case by case basis having regard to the evidence presented, as individual circumstances will vary. The evidence provided in any application of this nature does need to show that the steps taken have a measure of permanence and illustrate the applicant's intention to maintain that particular gender. The evidence of medical experts as to the extent of surgery that is required in particular cases will be particularly important.

Contact Allison Adams, Partner on 303 9917 for further information.