

## **Submission to the Standing Committee on Law Amendments on Bill 81**

*(An Act to Amend Chapter 66 of the Revised Statutes, 1989, the  
Change of Name Act)*

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### **Background**

On November 7, 2011, Service Nova Scotia Minister John McDonnell introduced Bill 81 of the 61st Assembly of the Nova Scotia Legislature, entitled, *An Act to Amend Chapter 66 of the Revised Statutes, 1989, the Change of Name Act*. According to Justice Minister Ross Landry, this bill is intended to "ensure that criminals cannot hide their past through a legal name change."

The bill will require that people wishing to legally change their name must be fingerprinted, in order to confirm that the person changing their name does or does not have a criminal record. Fingerprinting will add additional time and costs to the process of a name change. The current costs for fingerprinting in Halifax, is \$25. This fee would be required on top of the current fees (\$152.02 for a name change, plus \$22.86 for additional changes, and \$27.62 for publication). In Alberta, where fingerprinting is required, the process of getting fingerprinted and getting a criminal record check takes between eight and twelve weeks to complete.

Approximately 400 people change their name in Nova Scotia each year. These Nova Scotians have a variety of reasons for changing their names, including administrative clarity, preference, or concerns with pronunciation or spelling. For some people, legal name changes may be an important part of maintaining their health and safety.

### **Impact on Trans People**

"Trans" is an umbrella adjective used to describe people who identify with a variety of identities, including transgender, transsexual, genderqueer, trans men, trans women, two-spirited, intersex and questioning people. Generally, these identities describe people whose gender identity may not align with their assigned sex, and gender identities that do not fit with the dominant gender binary. Trans people, like non-trans people, are diverse, both in appearance and experience. Some, but not all, trans people go through some kinds of medical transitioning.

Many trans people change their legal names to better align their names with their gender identity. These legal name changes can be essential to ensuring that

trans people are not forced to come out as trans every time they show identification, whether when going into a bar, when filling out job applications, or when trying to access government services such as health care services. Currently, gender identity is not protected against discrimination by legislation; leaving trans people open to discrimination and hate crimes, without legal protection. By changing their name, a trans person is often able to better protect themselves from transphobic discrimination or violence. It is not only disconcerting, but unjust that transphobia is a daily reality for trans people in our communities, but this is the current reality.

The World Professional Association for Transgender Health (WPATH) identifies that for trans people, legal name changes may be an important part of alleviating stress and anxiety related to transphobic stigma. It is also one of the less expensive recommended options, especially for those trans people unable to access services related to medical transitioning, such as sex reassignment surgery or hormone therapy.

### **Impact on People Fleeing Abuse**

Intimate partner violence, family violence, sexual assault and stalking, continues to be a significant problem in Nova Scotia. A one-day snapshot of men incarcerated in Nova Scotia's provincial correctional facilities in 2009 found that almost one-third of the 402 adult males incarcerated were in custody for domestic violence. Of these, 100 (78 per cent) were considered to be at high risk of lethality. For some people seeking safety from an abuser, a legal name change may provide some safety, anonymity, and/or piece of mind.

While name changes that seek to protect people at risk are currently dealt with in the courts and not through vital statistics, it is important to recognize that many people do not report abuse or violence to the police or use the court system as an option. According the Nova Scotia Department of Justice's 2010 statistical portrait of intimate partner violence, only 26 per cent of Nova Scotia women who had experienced intimate partner violence reported it to police.

There are a number of reasons someone may choose not to report violence to the police including a threat of violence, fears about appearing in court, the length and strain of the legal process, fear of not being believed, etc. According to the Department of Justice, the average time it took from first court appearance to final outcome in spousal violence cases was 207 days.

Just as we do not know how many people are changing their names related to a criminal background, we don't know how many people are changing their names because of violence.

Forcing people to be fingerprinted also required them interacting with the police, and to tell people that they are changing their name. Such an experience is an

additional barrier for those people who may have had negative or adverse experiences with our criminal legal system, as victims.

### **The Case in Other Provinces**

Eight other Canadian provinces and territories have addressed the issue of ensuring that criminal records are attached to name changes. Often discussions are limited to the three provinces that have implemented mandatory fingerprinting as part of the Change of Name process: Alberta, British Columbia and Manitoba. It is important to look at how other the other five of these provinces and territories have addressed this same issue through alternative means. When we examine the alternatives, we should look for a solution that achieves the highest measures for public safety, while placing the least restrictions on the rights, freedoms and security of the person. In addition, we must consider the impacts these measures have on particular groups and provide exemptions when necessary for reasons such as safety.

Ontario does not require fingerprinting for name changes, but provides an alternate procedure for linking criminal records with name changes. When an application for a change of name is submitted in Ontario, a "name-based" search is automatically done against the Canadian Police Information Centre (CPIC) records for anyone 12 years of age and older. If the search using the name, date of birth and gender of the applicant produces a possible match, you are required to obtain a police record check and submit this with the application. Fingerprints are not required for these criminal record checks. On the rare occasion that the identity of the applicant is in question, they are required to contact the RCMP to complete a fingerprinting and criminal record check to positively determine the identity/record of the individual. This additional process involves the second type of search that can be performed at the CPIC, a "fingerprint-based" search. In Alberta, British Columbia and Manitoba, a criminal record check for name changes is only required for applicants 18 years of age or older and automatically involves a "fingerprint-based" search.

Name change application forms in Ontario also have additional questions regarding the reason for the change of name, a section to disclose particulars about any criminal offenses, and a section for pertinent financial information such as outstanding fines, liens or security interests against your property or debts. If information about criminal offenses is disclosed, a criminal record check is required. New Brunswick, the Northwest Territories and Nunavut all have similar disclosure processes for criminal offenses and subsequent requirements for a police record check. In addition, Ontario has a procedure for notifying the police of the appropriate area and clerks of the courts if criminal offenses (or pending actions) are disclosed. New Brunswick, the Northwest Territories and Nunavut have similar procedures in place. Although for a change of name in Prince Edward Island a criminal record check is not required, the Change of Name Act indicates that the RCMP is notified of changes of names.

If a change of name is determined to be intended to prevent significant harm to the person whose name the application relates and a criminal record check has been reviewed, the application is sealed, no notice is published in *The Ontario Gazette* and no notice of the application or the change of name is given to the Ministry of Community Safety and Correctional Services or any person. [Section 8(2) of the Ontario Change of Name Act] In other words, if it is a matter of safety, the change of name is not linked in the CPIC records, as it is the Ministry of Community Safety and Correctional Services that performs the check against CPIC records in order to link the change of name. In recognition that publishing a name change may have harmful impacts for Transgender individuals, they can seek exemption from publication of a legal name change in the Ontario Gazette by including a request with the change of name application stating that they are transgender and wish to have the change of name notice excluded from publication, however all other requirements remain the same.

### **Conclusion and Recommendations:**

As seen in other provinces, alternative methods exist for changing ones' name and connecting this to a past criminal record and outstanding legal issues, where fingerprinting is not a mandatory requirement. A "name-based" search is first used to determine the possibility of someone having a criminal record. If a record is found, a criminal record check from the local police department is required. In rare cases, fingerprinting is used to verify the identity of the identity/record. This process limits the restrictions put on the rights and freedoms of a person, while maintaining the necessary measures for public safety cited as the reasons for Bill 81.

In Nova Scotia, the process for criminal record checks is similar to Ontario, where the record check is made up of a "name-based" searches in the national repository of criminal convictions (refers to the CPIC) and an additional search of locally held convictions (locally held convictions or pending actions are often not included in the CPIC, making this actually a more rigorous record check). Fingerprints are not generally required for these criminal record checks.

There are different alternatives to connecting criminal records that do not require someone be fingerprinted. The government could automatically do "name-based" searches for anyone changing their name in the CPIC records. If there is a possible match, request fingerprints to verify the identity/record of the individual.

The government could require a criminal record check with the local authorities to be submitted with a Change of Name application when the applicant is 18 years or older. In rare cases, fingerprints would be requested to verify the identity/record of the individual. Nova Scotia Driver's License or Nova Scotia ID Card and either a health card, birth certificate, passport or social insurance number are accepted identification when applying for a criminal record check at a

local authority. This option, does however, add cost and time to the application process, which is an additional barrier as outlined above.

Applicants should in any case have the option of full disclosure and an upfront criminal record check to speed up the process, if they do have a criminal record. In both cases, if a record were confirmed to exist, the RCMP would be notified of the change of name.

Additional considerations should be made regarding the specific cases of trans people and cases where providing information about a change of name could cause significant harm.

In any case where trans people are exempt from requirements, self-identification should be adequate to access these exemptions. Trans people are diverse in their identities and in their access to and interest in medical transitioning. Requiring medical documentation, for example, could actually exclude many trans people who are not medically transitioning, for a variety of reasons.

For cases where the name change is related to harm, there should be ways that this does not have to be confirmed by the courts. An alternate option may be a referral or statement from a social worker, counselor, or other advocacy worker on the issue at hand. In this case, privacy and safety should be prioritized in the regulations.

These options would balance the issue of ensuring that criminal records are connected to name changes with the issues outlined in this brief.