

Appeal win upholds right to lifesaving gender-affirming care for nonbinary individuals in Ontario

National (May 30, 2024) - The years-long struggle of a nonbinary individual to access medically necessary surgery to affirm her gender identity will hopefully make it easier for other nonbinary Ontarians to access gender affirming care.

K.S.'s assigned sex at birth was male. She now identifies as nonbinary, female-dominant and uses female pronouns. OHIP denied her request for a vaginoplasty without a penectomy, a procedure that would create a vagina without removing the penis, saying only a vaginoplasty with penectomy was eligible for funding.

K.S. appealed to Ontario's Health Services Appeal and Review Board (HSARB), which overturned OHIP's decision. HSARB found that a vaginoplasty and a penectomy are separately listed services under the *Health Insurance Act*, and therefore one is eligible for funding without being combined with the other.

OHIP appealed. That's when Egale — Canada's leading organization promoting the rights and interest of 2SLGBTQI people — enlisted the help of BLG to intervene.

"BLG has a long history of supporting Egale and the rights of 2SLGBTQI people," says [Daniel Girlando](#), a partner in BLG's Health Law Group. "It was a simple decision for the firm to act pro bono for Egale in their efforts to educate the court on the importance of these procedures for those who choose them, on the history of discrimination and barriers to accessing gender-affirming care, and the existence of global standards for transgender care."

Ontario's Divisional Court denied OHIP's appeal in a decision released on April 10, 2024, which was also, fittingly, Day of Pink, a day to take a stand against bullying, homophobia and transphobia.

The court agreed with HSARB's interpretation. It accepted Egale's submission that HSARB was right to reference the World Professional Association for Transgender Health's [Standards of Care](#), which encourage an individualized approach to gender-affirming care for nonbinary people and specifically present vaginoplasty without penectomy as a valid option.

The court also accepted Egale's argument that, if there is any ambiguity in the regulations, an interpretation that is consistent with Charter values should be preferred over an interpretation that discriminates against and excludes nonbinary people.

"It's time to stop fighting trans and nonbinary people who are seeking a medically necessary, lifesaving surgery that will allow them to express their gender the way they choose," says Girlando.

OHIP is seeking leave to appeal.



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