THE LEGAL STATUS
OF TRANSSEXUAL AND
TRANSGENDER PERSONS

Edited by
Jens M. Scherpe
Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Fax: +44 1223 370 169
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

_Distribution for the UK and Ireland:
NBN International
Airport Business Centre, 10 Thornbury Road
Plymouth, PL6 7PP
United Kingdom
Tel: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

_Distribution for Europe and all other countries:
Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50 | Fax: +32 3 658 71 21
Email: mail@intersentia.be

_Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free) | Fax: +1 503 280 8832
Email: info@isbs.com

The Legal Status of Transsexual and Transgender Persons
© The editor and contributors severally 2015

The editor and contributors have asserted their right under the Copyright, Designs and Patents Act 1988, to be identified as the authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Artwork on cover: M.C. Escher’s ‘Eight Heads’ © 2015 The M.C. Escher Company B.V. – Baarn – Holland. All rights reserved. www.mcescher.com

Depot no.: D/2015/7849/72
NUR code: 822

In memory of
Owen Jessep
PREFACE

This book is the result of a research project conducted under the auspices of the Centre for Medical Ethics and Law (CMEL) of the University of Hong Kong, which involved a major international conference on 6 and 7 September 2013 at the University of Hong Kong. It was conceived and planned during my CSAH/CSHSS Early Career Fellowship at the Centre for Research in the Arts, Social Sciences and Humanities (CRASSH), and I am very grateful to the Centre for providing me with the opportunities to work on and discuss my ideas at a very early stage with colleagues from a great number of disciplines. I am equally grateful to my referees for my application for this fellowship, Prof. John Bell (Faculty of Law, University of Cambridge) and Dr Jude Browne (The Jessica and Peter Frankopan Director of the University of Cambridge Centre for Gender Studies), not only for their references but also their continuing support. The project also built on a previous event, the Symposium ‘Challenging Gender, Gender Challenges’, held as the St John’s College Martin Lectures at the University of Hong Kong on 11 December 2010 and very generously supported by St John’s College/University of Hong Kong and particularly the Master of the College, Rev. Dr Eric Chong.

The support the project has received in Hong Kong was overwhelming, and I would like to thank (in no particular order) Prof. Scott Veitch, Prof. Philip Beh, Prof. Johannes Chan, Prof. Marco Wan (all of the University of Hong Kong), Dr Chih-hsing Ho (now at the Academia Sinica, Taiwan), Dr Anthony Ng (Wyng Foundation), Michael Vidler (Vidler & Co), Rev. Dr Eric Chong (Master of St. John’s College/University of Hong Kong), the students of the 2013 ‘Comparative Family Law’ class at the University of Hong Kong, Earl Deng (barrister-at-law, Chambers of Denis Chang QC SC), Marco Chan, Au Yun Ling, and particularly Polly Yiu who at the time was the administrator of the Centre for Medical Ethics and Law (CMEL) and who managed the conference with all its difficulties with almost superhuman efficiency.

I would also like to thank the chairpersons of the conference panels Dr Albert Yuen, Michael Vidler, Dr Keith Hotten, Dr York Chow (in his capacity as the chairperson of the Equal Opportunities Commission), Tim Amos QC, The Honourable Anna Wu and Dr Margaret Ng for their excellent work in ensuring that the speakers stuck to their allocated time and for leading the extremely interesting discussions with the audience.

Massive thanks are also owed to all contributors for their patience – finalising this project, for a number of reasons, took much longer than expected – not least because the laws in this area are in a state of flux and I endeavoured to have the
book be as up-to-date as possible. That is why reports on Denmark, Argentina and Taiwan were added at a later stage.

The Isaac Newton Trust and Philomathia Social Sciences Research Programme awarded grants which were essential in paying for the required editorial assistance. The editing was undertaken by Peter Dunne, who I first met when he was an LLM student at the University of Cambridge and who currently is writing his PhD at Trinity College Dublin on ‘The Legal Recognition of Gender Identity: A Human Rights Model’. There could not have been a person on this planet more suited to providing the editorial assistance for this project, and I am extremely grateful for Peter’s hard work. However, Peter soon provided much more for this project, and in our discussions of the chapters and the editing his vast expertise in the field was absolutely invaluable. Therefore it was only a logical step for me to ask him to become the co-author of the final chapter. I was delighted that he accepted, and the co-authorship proved to be enormously fruitful and I truly enjoyed our many – very detailed – discussions about the issues.

The publisher, Intersentia, of course is the world’s leading publishing house for comparative family law, and I was delighted when Hans Kluwer (despite initial scepticism!) agreed to publish the book and would like to thank him for being willing to take the risk. At Intersentia’s Cambridge office the book project was managed perfectly by Ann­Christin Maak­Scherpe and Rebecca Pound, and I am particularly grateful for their tolerance and understanding when the project was delayed several times.

On a personal level this project was a difficult one in many ways. One of them was that I was subjected to verbal abuse by a significant number of people merely because I was undertaking this project. The abuse ranged from simple insults to more serious ones but also included threats to me personally. On the other hand I have also received many very personal and very supportive letters and emails (for which I am very grateful and would like to thank the writers again). But these reactions just confirmed that the discussions contained in this book are of great importance, and certainly not only for the persons concerned but for societies as a whole, and that made me even more determined to get this book published.¹ I sincerely hope that the present book will make a positive contribution to the discussions on this issue around the globe, and hopefully a contribution to improve the lives of those directly concerned.

Jens M. Scherpe
Cambridge, 15 October 2015

¹ I would also like to use this opportunity to mention and recommend a non-academic publication on transgender issues – indeed a children’s book: ‘Introducing Teddy’, written by Jessica Walton and illustrated by Dougal MacPherson (self-published in 2015, and to be published by Bloomsbury in 2016).
CONTENTS

Preface ................................................................. vii
List of Contributors ................................................... xiii

Introduction
    Jens M. Scherpe ................................................... 1

PART I. MEDICAL/PSYCHOLOGICAL VIEWS ...................... 9

Transgenderism and Transsexuality: Medical and Psychological
Viewpoints
    Friedemann Pfäfflin ................................................ 11

PART II. CHRISTIAN VIEWS ....................................... 25

Transgenderism and the Christian Church: An Overview
    Duncan Dormor .................................................... 27

Metamorphosis and (Trans) Migrations: Spiritual Dimensions
of Gender Transition
    Christina Beardsley ............................................... 77

PART III. LEGAL VIEWS ............................................. 101

Questionnaire .......................................................... 103

Europe ................................................................. 107

Belgium and the Netherlands
    Walter Pintens ..................................................... 109

Czech Republic
    Barbara Havelková ................................................ 125

Denmark
    Natalie Videbæk Munkholm ..................................... 147

Intersentia ix
England and Wales
Stephen GILMORE ................................................... 183

Germany
Anatol DUTTA ....................................................... 207

Ireland
Brian SLOAN ........................................................ 223

Italy
Maria Giovanna CUBEDDU WIEDEMANN ......................... 249

Spain
Josep FERRER RIBA and Albert LAMARCA MARQUÉS ............ 261

Sweden
Jameson GARLAND .................................................. 281

Turkey
Yeşim M. ATAMER ................................................ 313

Asia ................................................................. 333

Hong Kong Special Administrative Region
Athena Nga-chee LIU ................................................ 335

Japan
Yuko NISHITANI .................................................. 363

Singapore
Terry Sheung-Hung KAAN ......................................... 391

Taiwan
Chih-hsing HO .................................................. 425

Australia and New Zealand ............................................ 441

Varieties of Decision-Making: Reflections on Deciding Re Kevin
Richard CHISHOLM ................................................ 443

Australia
Rachael WALLBANK ............................................... 457

Intersentia
<table>
<thead>
<tr>
<th>Section</th>
<th>Authors</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Zealand</td>
<td>Elisabeth MCDONALD and Jack BYRNE</td>
<td>527</td>
</tr>
<tr>
<td>North and South America</td>
<td></td>
<td>569</td>
</tr>
<tr>
<td>Argentina</td>
<td>Laura María GIOSA, María Victoria SCHIRO and Peter DUNNE</td>
<td>571</td>
</tr>
<tr>
<td>USA</td>
<td>Jameson GARLAND</td>
<td>585</td>
</tr>
<tr>
<td>PART IV. CONCLUSION</td>
<td></td>
<td>613</td>
</tr>
<tr>
<td>Comparative Analysis and Recommendations</td>
<td>Jens M. SCHERPE and Peter DUNNE</td>
<td>615</td>
</tr>
</tbody>
</table>
LIST OF CONTRIBUTORS

Yeşim M. Atamer
Istanbul Bilgi University, Turkey

Christina Beardsley
Chelsea & Westminster Hospital, London and St Mary’s University, Twickenham, London, England

Jack Byrne
Consultant, TransAction, Auckland, New Zealand

Richard Chisholm
ANU College of Law, Australia; formerly a Judge of the Family Court of Australia

Maria Giovanna Cubeddu Wiedemann
University of Trieste, Italy

Duncan Dormor
University of Cambridge, England

Peter Dunne
Trinity College Dublin, Ireland

Anatol Dutta
University of Regensburg, Germany

Josep Ferrer Riba
Universitat Pompeu Fabra, Barcelona, Spain

Jameson Garland
Uppsala University, Sweden

Stephen Gilmore
King’s College London, England

Laura María Giosa
Universidad Nacional de Centro de la Provincia de Buenos Aires, Argentina

Intersentia
List of Contributors

Barbara Havelková
University of Oxford, England

Chih-hsing Ho
Academia Sinica, Taipei, Taiwan

Terry Sheung-Hung Kaan
University of Hong Kong, Hong Kong

Albert Lamarca Marquès
Universitat Pompeu Fabra, Barcelona, Spain

Athena Liu
University of Hong Kong, Hong Kong

Elisabeth McDonald
Victoria University of Wellington, New Zealand

Natalie Videbæk Munkholm
Aarhus University, Denmark

Yuko Nishitani
Kyoto University, Japan

Friedemann Pfäfflin
Ulm University, Germany

Walter Pintens
University of Louvain, Belgium, and Saarland University, Germany

Jens M. Scherpe
University of Cambridge, England, and University of Hong Kong, Hong Kong

María Victoria Schiro
Universidad Nacional de Centro de la Provincia de Buenos Aires, Argentina

Brian Sloan
University of Cambridge, England

Rachael Wallbank
Accredited Specialist Family Law Practitioner (LSNSW) and Principal of Wallbanks Legal, Australia