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The Michelle Kosilek Decision

Winning Her Appeal for Her Reassignment Surgery

by Matt Kailey

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Michelle Kosilek, a convicted murderer in a Massachusetts, U.S.A. jail, has caused some controversy in both the transgender and general population. Kosilek by winning her appeal for her reassignment surgery to be paid for by the State, based on the Eighth Amendment (which forbids "cruel and unusual punishment"). This column comes from F.T.M. Matt Kailey's always interesting and often brilliant blog called [Tranifesto](#) and has some relevance to Australian convicts and their rights to publicly-funded treatment for their gender issues.



Michelle Kosilek: Serving life (without parole) for the 1990 murder of her wife Cheryl McCaul.

I recognise the anger and frustration of those who have worked three jobs, sold their possessions and still can't afford to pay for this surgery. They think, "I have been a law-abiding citizen all my life and I can't afford the surgery, but a convicted murderer can get it for free? How fair is that"?

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Probably not all that fair, actually. But in my opinion, the Michelle Kosilek decision is about far more than one person - one murderer, even - getting her transition surgery covered by the State. I think there are some points that we have to look at with regard to this decision, all of which take Kosilek out of the equation entirely.

First of all, we have to examine whether or not Federal or State governments should pay for medical care for their prisoners. If the answer is yes, then the decision could go no other way. If transition is, in fact, medically necessary and if, in fact, a civilised government provides health care to those whom it incarcerates, then the government must provide medically necessary care to all its prisoners. It cannot discriminate on the basis of some false morality, or on the "worthiness" of the individual receiving the care. We either treat our prisoners humanely or we don't, and providing necessary health care is the humane thing to do. It's not a matter of who "deserves" it and who doesn't. It's a matter of whether or not we

are going to provide it to those prisoners who are medically eligible - period.

Next we have to look at legal decisions that work in our favour as trans people. Regardless of the unpopularity of this decision among some in the trans community and some in the general public, the fact is that any legal decision upholding the view that transition surgery is a medical necessity can only benefit us in the long run. The more legal rulings we have under our belt, the closer we get to eliminating this whole "choice" misconception, the closer we get to insurance coverage for transition procedures, and the closer we get to transition being seen as a medical, rather than a psychiatric, solution for a medical, rather than a psychiatric, condition.

And finally, we have to weigh the significance of this decision against the possible setback it represents for us in the minds of the general public. Certainly it can, and probably will, have some negative repercussions with regard to the "hearts and minds" that we hope to change. But hearts and minds are always slow to come around. And they can turn on a dime when something like this happens.

For these reasons, legal intervention must often come first. Then if the hearts and minds don't change, it doesn't matter as much, because the law is working for us. And when the law recognises us as legitimate human beings with legitimate human rights, that often does serve to change hearts and minds over time. At the very least it forces the hands of those hearts that are resistant.

So, while I completely understand the arguments, anger and animosity within our own community regarding this controversial decision, I think we have to put Kosilek as an individual aside and look at the larger picture with regard to what this means to us as trans people and this means for a larger society that either will or will not provide necessary medical services to everyone in its care - no judgement calls and no exceptions.

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