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FACTS: Protecting gender identity & gender expression in Canada

Purpose

In 2011, two Canadian bills were introduced to the federal Parliament to consider providing legal protections for gender identity and gender expression across Canada. This sheet is intended to provide facts to help those in support of inclusive legislation for gender identity and gender expression in Canada. (Note: This fact sheet does not constitute legal advice.)

Current bills before Parliament

Two private-members' bills regarding including the terms 'gender identity' and 'gender expression' are currently before the Canadian Parliament for consideration. These are Bill C-276 (MP Hedy Fry, Vancouver Centre) and Bill C-279 (MP Randall Garrison, Esquimalt–Juan de Fuca). Both bills are seeking amendments to the *Criminal Code* and the *Canadian Human Rights Act* to include gender identity and gender expression. For reasons related to Parliamentary procedures, Bill C-279 will be read first and the other similar bill may not be read at all.

References:

Openparliament. *Bill C-276*. Retrieved from <http://openparliament.ca/bills/41-1/C-276/>

Openparliament. *Bill C-279*. Retrieved from <http://openparliament.ca/bills/41-1/C-279/>

Prior bills before Parliament

Legislative attempts to include the terms 'gender identity' and 'gender expression' in the *Canadian Human Rights Act* failed when Bill C-392 (2005) and Bill C-326 (2007) died when an election was called. Bill C-389 (2011) which would have included these terms in both the *Criminal Code of Canada* and the *Canadian Human Rights Act* failed when the bill passed through Parliament but died in Senate due to a federal election call.

References:

Openparliament. *Bill C-392 (Historical)*. Retrieved from <http://openparliament.ca/bills/38-1/C-392/>

Openparliament. *Bill C-326 (Historical)*. Retrieved from <http://openparliament.ca/bills/39-2/C-326/>

Openparliament. *Bill C-389 (Historical)*. Retrieved from <http://openparliament.ca/bills/40-3/C-389/>

Recommending inclusion

In 2000, a report entitled *Promoting Equality: A New Vision* written by the federal Canadian

Human Rights Act Review Panel (also known as the "La Forest Report") stated unambiguously that it "recommend[s] that gender identity be added to the list of prohibited grounds of discrimination in the [Canadian Human Rights] Act" (Annex C, Summary of Recommendations #123). The report notes that "We agree with the view that transgendered individuals are protected from discrimination on the ground of sex or the combined grounds of sex and disability. However, to leave the law as it stands would fail to acknowledge the situation of transgendered individuals and allow the issues to remain invisible. While these issues are clearly related to sex, this ground may not cover all those encountered in the transgendered experience, especially in the decision to undergo a sex change and its implementation ..." (Chapter 17 (d)). The report's recommendation to explicitly include 'gender identity' as a protected group in the *Canadian Human Rights Act* has not been implemented.

References:

La Forest, G., Black, W.W., Dupuis, R., & Jain, H.C. (2000). *Promoting Equality: A New Vision* [report by the Canadian Human Rights Act Review Panel]. Ontario, Canada: Attorney General of Canada. Retrieved from <http://publications.gc.ca/collections/Collection/J2-168-2000E.pdf>

Gender identity & gender expression in Canadian law

At this time, gender identity and gender expression are not explicitly protected in Canadian federal law. Explicit protection for gender identity is included in the law of the Northwest Territories (*Human Rights Act*, 2010, Part 2, Section 5(1)). No other provincial or territorial legislation currently provides explicit protection for gender identity or gender expression.

References:

Statutes of the Northwest Territories. (2010). *Human Rights Act*. Retrieved from <http://www.justice.gov.nt.ca/PDF/ACTS/Human%20Rights.pdf>

Gender identity & gender expression in municipal policies

Some Canadian cities such as Toronto and Vancouver have decided to include gender identity or gender expression in their policies. The city of Vancouver provides examples of harassment as including "unwelcome, offensive

behaviour related to gender identity, gender expression, or perceptions of sexual orientation or gender" (*Harassment-Free Workplace Policy*).

References:

Toronto. (2008, June 23). *Human Resources Policies: Human Rights and Anti-Harassment*. Retrieved from <http://www.toronto.ca/intra/hr/policies.nsf/0/019a1b99227c73cd8525674d0047520a?OpenDocument>

Vancouver. (2011, March 1). *Harassment-Free Workplace Policy*. Retrieved from http://vancouver.ca/policy_pdf/AE00205.pdf

Other sexual & gender minority policies

Some organisations have chosen to make explicit policy protections for sexual and gender minorities. For example, the Alberta Teachers' Association refers to both sexual orientation and gender identity in its *Code of Professional Conduct and Declaration of Rights and Responsibilities for Teachers*. Some school boards have also made explicit inclusion policies for sexual and gender minorities.

References:

Alberta Teachers' Association. (2004). *Code of Professional Conduct*. Retrieved from <http://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Teachers-as-Professionals/IM-4E%20Code%20of%20Professional%20Conduct.pdf>

Alberta Teachers' Association. (2004). *Declaration of Rights and Responsibilities for Teachers*. Retrieved from <http://www.teachers.ab.ca/SiteCollectionDocuments/ATA/Publications/Teachers-as-Professionals/IM-5E%20Declaration%20of%20Rights.pdf>

Edmonton Public School Board. (2011, November 29). *IFA.BP: Sexual Orientation and Gender Identity*. Retrieved from <http://www.epsb.ca/policy/ifa.bp.shtml>

Greater Victoria School District. (2004, February). Retrieved from http://www.sd61.bc.ca/edsrsvs/Discrimination_Committee/Recommendations_and_Action_Plan.pdf

Toronto District School Board. (no date). Retrieved from http://www.tdsb.on.ca/_site/Viewitem.aspx?siteid=15&menuid=7098&pageid=6194

Vancouver School Board. (2004, February 16). Retrieved from <http://www.vsb.bc.ca/district-policy/acb-lesbian-gay-bisexual-transgender-transsexual-two-spirit-questioning>

Other sexual & gender minority discussion

Discussions on sexual and gender minority inclusion are happening in many places.. The United Nations *Yogyakarta Principles* "acknowledges human rights violations based on sexual orientation and gender identity [and] establishes the relevant legal framework [to deal with such violations] ..."

References:

United Nations. (2006). *Yogyakarta Principles*. Retrieved from http://www.yogyakartaprinciples.org/principles_en.htm