

Gender Identity & Expression



Gender identity

is the gender a person identifies as, which may not always correspond with their physical sex. Usually refers to operative and non-operative transsexuals.

Gender Expression

refers to the way a person expresses their gender through dress, mannerisms, presentation and role.

Usually refers to transgender people who are not specifically transsexual, and can also touch on issues faced by cisgender (non-trans) Canadians who experience discrimination because of mode of dress, mannerisms and other aspects of presentation that run afoul of the perceived "rules" of gender.



Without anti-discrimination protections, transgender and transsexual Canadians face economic marginalization, lack of access to services, and even violence simply for being trans.



Q: Aren't transsexuals already protected?

A: While it is true that there is implicit inclusion for transsexuals alternately under the category of "sex" or "gender" (depending on the wording of the specific Province in question), clear and unambiguous protection is important to be codified in law to avoid an unexpected overrule that would create a new contrary precedent.

Recently, US Supreme Court Justice Antonin Scalia explained "originalism" to an audience at UC Hastings College of the Law in San Francisco.¹ "Originalism" is a judicial belief that what matters is the original intent of the people who drafted the law, and not the current usage and practice of it. He illustrated this by stating how he believed that references to "any person" in the US Constitution did not include women or gay men. Originalism is not a concept that is unique to American law, and as the example shows, even high-placed authorities can give it credence. As such, having an existing precedent does not always ensure that a judge will follow it, if they subscribe to a belief that runs counter to it.

Q: Would this conflict with the rights of other groups?

A: The role of the judicial system in human rights issues is ideally to interpret law in a way that is most equitable for the stakeholders involved, while also protecting those at a disadvantage. In Canada, the law needs to accommodate up to the limit of "undue hardship,"² a caveat that prevents any one protected class from trumping another unreasonably. It then becomes the court's duty to determine when undue hardship occurs, and balance the rights of those involved, in the context of the situation.

Limiting or excluding protections by writing exemptions into legislation is not a solution either, as it creates an unfair imbalance automatically, regardless of whatever the particulars might be of a given situation. The virtue of having a court decide as opposed to creating an absolute in law is that situations can be examined in context.

And ultimately, the legislation that Bill C-389 proposes to amend does not stipulate what peoples' attitudes or beliefs toward protected groups should be -- it only calls for fair treatment in the eye of law.



The Truth About Washrooms



Q: Would this enable predators to access washrooms in order to prey on women or children?

A: The reality is that transsexuals have used restrooms in accordance with their gender identities since transition was developed in the 1950s and 60s, with no such pattern of troubles ever taking place. It's possible that predators exist in any community, but there is nothing particular to transsexual or transgender people that predisposes them to predatory behaviour any more than in any other group.

Additionally, the bill says nothing about washrooms -- trans predator rhetoric echoes the same kinds of claims once used to create panic about gay men and lesbians or other historical "bogeymen" used to spread fear of racial and cultural groups.

However, this is one of the platforms of opposition now being raised in response to the bill, so it becomes necessary to dispel the fear.

Trans protections have existed in over 125 jurisdictions in North America,³ some as far back as 1975, and during that time, there has been no pattern of criminal behaviour in restrooms by specifically trans people (of any stripe) compared to any other segment of the population. And certainly, transsexuals (and some traveling crossdressers as well) have used restrooms in travels for as long as we've existed - and using them with a desire for privacy, like anyone else (with the way washrooms are designed in North America, public nudity is not an issue).