

Annex 3: Bill C-16

A Brief History

Previously known as Bill C-279, the Gender Identity Bill was created with the aim to provide human rights protections for transgender and gender diverse people in Canada.

Bill C-279 was last introduced in the House of Commons in 2011, with the aim to amend the *Canadian Human Rights Act* and the *Criminal Code* to include “gender identity” as a protected ground from discrimination. The Bill ultimately died before being put to a vote in the Senate; however, in 2015 the original text of Bill C-279 was reintroduced as Bill C-204, and now includes “gender identity” and “gender expression”.

Bill C-16, the latest version of the Gender Identity Bill, mirrors the intent of Bill C-204. The bills differ in their language: Bill C-204 separates gender identity and gender expression with a comma, while Bill C-16 uses “or” between the two grounds.

In 2014, the Ontario Human Rights Commission (OHRC) released its *Policy on preventing discrimination because of gender identity and gender expressionⁱ*, a document which set out key terms relating to human rights protections for gender identity and gender expression. At the time of the OHRC’s Policy, there was no “gender identity” or “gender expression” included in human rights legislation at the federal level in Canada. The OHRC’s Policy has been cited a number of times as a resource to help understand the changes to Bill C-16 introduced in the Canadian Human Rights Act.

What Bill C-16 Does

(a) Amending the Canadian Human Rights Act

Bill C-16 amends the *Canadian Human Rights Act* to include “gender identity or expression” as grounds protected from discrimination, just like it protects grounds such as race, religion, age, and sexual orientation.

Egale works to improve the lives of LGBTQI2S people in Canada and to enhance the global response to LGBTQI2S issues. Egale will achieve this by informing public policy, inspiring cultural change, and promoting human rights and inclusion through research, education and community engagement.

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Protected grounds are categories of social identity or experience that have historically been the basis for disproportionate levels of disadvantage and discrimination. In the *Canadian Human Rights Act*, 13 categories are now considered prohibited grounds of discrimination. These include:

- Race
- National or ethnic origin
- Colour
- Religion
- Age
- Sex
- Sexual orientation
- **Gender identity or expression**
- Marital status
- Family status
- Genetic characteristics
- Disability
- Conviction for an offence for which a pardon has been granted or in respect of which suspension has been ordered

By protecting these grounds, the *Act* aims for all individuals to have equal opportunities and accommodations in Canadian society, without being hindered by practices that discriminate based on these aspects of their identity and lived experiences.

(b) Amending the *Criminal Code of Canada*

Bill C-16 also amends the *Criminal Code of Canada* to include “gender identity or expression” as a category that distinguishes an identifiable group in Canadian society.

In the *Criminal Code*, an identifiable group is “any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability” (CCC 318(4)). These groups are protected against hate propaganda and hate-based offences, which includes promoting genocide, inciting and promoting hatred, and offenses motivated by bias, prejudice or hate.

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Provincial and Territorial Protections

Despite Bill C-16, some provinces and territories do not explicitly name gender expression as a protected ground in their human rights legislation, namely Manitoba, Saskatchewan, and the Northwest Territories.

- In 2002, the Northwest Territories added gender identity as a ground protected from discrimination in their Human Rights Act. However, the Territories still do not explicitly protect gender expression.
- In 2012, Manitoba added gender identity as a ground protected from discrimination in their Human Rights Act. However, the province still does not explicitly protect gender expression.
- In 2014, Saskatchewan added gender identity as a ground protected from discrimination in their Human Rights Act. However, the province still does not explicitly protect gender expression.

This legislative inconsistency leaves serious gaps for discrimination on these grounds in the healthcare, education, and justice systems, because these systems are governed by provincial and territorial human rights law.

ⁱ Ontario Human Rights Commission (2014). Policy on preventing discrimination because of gender identity and gender expression. Retrieved from <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>