

www.egale.ca
185, rue Carlton Street
Toronto, ON
M5A 2K7
1-888-204-7777



Egale Canada Human Rights Trust (Egale)
185 Carlton Street
Toronto, Ontario
Canada
M5A 2K7

Email: hkennedy@egale.ca

Respecting LGBTQI2S Human Rights in Canada

Egale Canada Human Rights Trust (Egale) Submission
to the United Nations Human Rights Council Universal Periodic Review of October 2017

Date: Oct. 5, 2017

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

Introduction

1. Egale Canada Human Rights Trust (Egale), Canada's only national lesbian, gay, bisexual, trans, queer, intersex, and Two Spirit (LGBTQI2S)ⁱ organization working to improve the lives of LGBTQI2S people in Canada and to enhance the global response to LGBTQI2S issues by informing public policy, inspiring cultural change, and promoting human rights and inclusion through research, education and community engagement, provides the following submission to the Human Rights Council of the United Nations in relation to its October 2017 Universal Periodic Review of Canada's human rights record.
2. With the passing of Bill C-16ⁱⁱ in May of 2017, the current state of LGBTQI2S human rights progressively and incrementally shifted on a legislative level in Canada. Although there has been increased visibility and representations of LGBTQI2S people in the public sphere during these legislative discussions, there are still significant social disparities between LGBTQI2S communities and the wider cisgender and heterosexual population. Due to the uneven legislative landscape between provinces and territories, and a lack of explicit inclusion within national budgets, strategies, policies, and programming, LGBTQI2S human rights are not consistently recognized or addressed within Canada.
3. The information presented below in our submission will provide:
 - a. an overview of LGBTQI2S inclusion and human rights in Canada;
 - b. an analysis of Canada's commitment to LGBTQI2S inclusion, and;
 - c. pragmatic recommendations that, when implemented by Canada, will significantly improve the lives of LGBTQI2S people throughout the country.

Engaging International Human Rights Mechanisms and Ratification Concerns

4. Globally, LGBTQI2S human rights are becoming increasingly prominent due to the advocacy efforts of organizations, activists, and non-governmental organizations (NGOs) such as the International Lesbian and Gay Association (ILGA). Over the past decade, progressive shifts have been observed within

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

LGBTQI2S international human rights, including the 2006 signing of the Declaration of Montreal and the Yogyakarta principles, which recognize both “sexual orientation” and “gender identity” as part of international human rights discourse.

5. In 2015, the UN Development Programme (UNDP) began a multi-year initiative to collect data on the current status of LGBTI people in various nation states in order to address the gaps in information needed to measure global LGBT inclusion.
6. The Canadian government should reflect the UNDP’s initiative by investing in research and statistical data collection of LGBTQI2S communities across the country in order to better understand their population needs and to more effectively develop legislation, policies, and programs that work towards ensuring human rights based on gender identity, gender expression, and sexual orientation.
7. Moreover, considering there is no international treaty body or convention that focuses on gender identity, gender expression, and sexual orientation, it is imperative that the Canadian government explicitly acknowledges LGBTQI2S communities in their implementation, monitoring, and evaluation of international human rights instruments and UN conventions which they already recognize.
8. These instruments and conventions include, but are not limited to:
 - a. International Covenant on Civil and Political Rights (1966);
 - b. International Covenant on Economic, Social and Cultural Rights (1966);
 - c. International Convention on the Elimination of All Forms of Racial Discrimination (1965);
 - d. Convention on the Elimination of All Forms of Discrimination against Women (1979);
 - e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);
 - f. Convention on the Rights of the Child (1989);

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l’éducation et à la mobilisation communautaire.

- g. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
 - h. International Convention on the Rights of Persons with Disabilities (2006);
 - i. International Convention for the Protection of All Persons from Enforced Disappearance (2006); and
 - j. Optional Protocol of the Convention against Torture (2002).
9. The Canadian government should recognize that the state's commitment to human rights is continuous across conventions, as marginalized groups including LGBTQI2S communities are persistently over-represented in disparities regarding social, economic, political, and cultural inclusion in comparison to the general population.
10. Furthermore, the Yogyakarta Principles recognize sexual orientation as well as gender identity and expression and in turn apply international human rights standards to the often disregarded topic of LGBTQI2S human rights. In order to fully embrace the spirit of the Yogyakarta Principles as it approaches its 10th anniversary and completes a series of new revisions, Canada should officially ratify the revised Principles into national legislation. Despite the lack of their official adoption by Canada, the Yogyakarta Principles continue to be cited in Supreme Court cases and federal decisions regarding LGBTQI2S human rights.

Application of UNDRIP and Initiative to Support the Process of Reconciliation with Indigenous People

11. Cumulatively, the impact of colonization and inter-generational trauma continues to be experienced by many Indigenous people in Canada. These social, political, and economic impacts are the result of state-sanctioned colonial practices such as, but not limited to: Residential Schools, blood quantum practices in determining Indian Status, the 60's scoop, Missing and Murdered Indigenous Women, unlivable on-reserve conditions in Indigenous communities, forced migration and urbanization of Indigenous populations, high prevalence of child apprehension in Indigenous communities, and cultural ban and assimilation policies.

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

12. These colonial practices and policies, alongside the social imposition of a binary understanding of gender, have a particularly harmful impact on Indigenous women and Two Spirit people, who encounter discrimination, stigmatization, and traumatic experiences of violence at disproportionately higher rates.
13. As a result of experiencing social rejection and various forms of harassment, young Two Spirit people experience higher rates of suicidality, depression, and substance use and addictionⁱⁱⁱ. Internal stigma is another issue that Two Spirit people often experience within the broader Indigenous community, which is a significant factor of feeling forced to flee and migrate to urban centres where there is greater acceptance of LGBTQI2S populations^{iv}.
14. In 2006, the General Assembly adopted the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) to recognize the urgent need for nation states to reconcile their practices, systems, laws, and institutions to promote the rights, self-determination, and inclusion of Indigenous populations within policies and program development. UNDRIP recognizes that processes of colonization continue to influence and have everlasting impacts on our understanding and experiences of systems of power, oppression, and domination between groups, nations, and peoples.
15. In 2016, Canada officially adopted UNDRIP and announced the government's intentions to implement UNDRIP by harmonizing Canadian laws with the standards found in the declaration. As Canada engages in this long overdue process, it is important to include and emphasize Two Spirit, gender diverse, and LGBTQI Indigenous populations in Indigenous programs, policies, and law making processes. This should also involve the inclusion of Two Spirit, gender diverse, and LGBTQI Indigenous populations within the scope of the inquiry into Missing and Murdered Indigenous Women as well as Canada's national Poverty Reduction, Affordable Housing, and Indigenous Youth Suicidality Strategies.
16. In conjunction, these Strategies should be supported by the increase of cultural revitalization initiatives and supports for cultural programming for LGBTQI2S

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

Indigenous populations both in urban, rural, and on-reserve settings. Due to the legislative responsibilities distinguished in the *Indian Act*, Indigenous healthcare, education, and infrastructure are within the federal government's jurisdiction of fiduciary purview.

17. There are significant gaps in per capita investments between the general population and Indigenous on-reserve communities. For instance, gender affirming healthcare coverage within the Non-Insured Health Benefits (NIHB) is limited. These gaps and limitations within healthcare policy directly affect the lives and well-being of Two Spirit, gender diverse, and LGBTQI Indigenous people in Canada.

Gender-based Violence

18. Canada's 2017 federal budget included a gender-based violence (GBV) strategy consisting of a national initiative to address, prevent, and respond to GBV. This strategy, while admirable in its focus on GBV, still frames GBV within a cisnormative and heteronormative context.
19. As a result, the strategy is limited in scope and impact due to the lack of awareness, attention, and investments towards vulnerable populations within LGBTQI2S communities. For example, while the strategy acknowledges that LGBTQI2S populations require specific focus when discussing GBV, there has been no explicit mention of designated funding or program development and consultations aimed specifically at LGBTQI2S populations.
20. The experiences of GBV within LGBTQI2S communities in Canada range from life-taking acts of violence to violations of human rights to erasure from spaces, policies, and programming. Research studies show that LGBTQI2S communities, specifically lesbian and bisexual women and people living with HIV, experience higher rates of sexual violence and domestic/intimate partner violence (D/IPV) than the broader heterosexual and cisgender population (see Annex 4).

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

21. Although the federal government has recently increased funding for programs under the umbrella of GBV, the government's framework still requires a more inclusive and intersectional understanding of gender, as the strategy continues to regard gender as a restrictive binary conflated with the sex categories male and female.
22. As an alternative, the federal government should adopt an Intersectional Feminist approach to all budgetary documents and strategies, including the GBV strategy. An Intersectional Feminist approach would not only broaden the scope of policy development by attending to the ways characteristics of identity interact, but would also conceptualize gender as a continuous spectrum. Such an approach would enable the government to analyze and address GBV in a way that is more meaningfully inclusive of LGBTQI2S communities.
23. Broadening the GBV framework to include LGBTQI2S communities in the existing GBV strategy should occur alongside the allocation of funding towards LGBTQI2S programming. The first component of this programming must include meaningful consultations with LGBTQI2S communities across the country in order to determine their population needs and assess the legal barriers to and gaps in legal support regarding GBV.
24. In tandem with these funding initiatives, the federal government should institute mandatory, in-depth and inclusive training for members of the judiciary and judicial system who receive GBV cases, as the judiciary currently uses heteronormative notions to inform their decisions in cases involving LGBTQI2S people. For instance, HIV criminalization cases continue to disproportionately impact gay, bisexual, and men who have sex with men (MSM). Consequently, training the judiciary will better inform judges how to appropriately rule on HIV criminal cases and limit the use of the current legislation to extreme cases.

Diversity, Inclusion, and Equality

25. As Canada attempts to foster societal values such as diversity, inclusion, and equality, it is fundamental that the government recognizes the ways in which

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

systems of oppression - such as racism, islamophobia, anti-Black and anti-Indigenous racism, homophobia, transphobia, biphobia, classism, ableism, and ageism - function and impact individuals on an individual, interpersonal, community, institutional, and societal level.

26. However, the government's lack of inclusion of and consultation with LGBTQI2S communities on national strategies intended to address the important issues listed above creates a void where homelessness, racism, discrimination, poverty, transphobia, substance use and addictions, insufficient data collection and meaningful representation continue to exist in the lives of LGBTQI2S people without resolve.

27. The following subsections highlight areas where the Canadian government must direct attention through legislative, financial, and programming means to address the disparities experienced by LGBTQI2S communities and individuals, especially LGBTQI2S persons who are racialized, disabled, or face barriers due to their age, gender, citizenship, or socioeconomic status. Many of these areas parallel the various conventions, treaty bodies, and international human rights instruments to which Canada has agreed and which are listed earlier in this submission.

Data Collection for Informing Evidence-based Policies

28. To accurately reflect the current issues experienced by the LGBTQI2S community, it is paramount that the Canadian government's data collection methods are intersectional, multi-layered, and disaggregated to illustrate multiple elements of identity and better understand the ways that systems of oppression overlap and compound in the lived experiences of social exclusion.

29. Such data will help ensure that informed decisions and evidence-based policies can be made to further advance LGBTQI2S human rights. Currently, the primary Canadian sources for data gathering include the Census, Canadian Community Health Survey, and General Social Survey; and there are many layers of socio-demographic information that are missing, which continues to fuel systematic invisibility for marginalized populations, including:

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

- a. LGBTQI2S persons
 - b. Racial and ethnic minorities
 - c. Immigrant, refugees, and migrants
 - d. Women (inclusive of trans and Two-Spirit identified women)
 - e. Men (inclusive of trans and Two-Spirit identified men)
 - f. Children and Youth (gender diverse, LGBTQI2S, and intersex)
 - g. Persons with disability
 - h. Older persons
30. Canada should likewise ensure Statistics Canada develops, designs, and collects robust, intersectional and disaggregated data collection that is consistent with the UNDP's research agenda for LGBTQI people.

International Covenant on Economic, Social and Cultural Rights

Economic

31. Obtaining and maintaining employment is a crucial issue for LGBTQI2S people in Canada. LGBTQI2S communities, and trans and gender diverse individuals in particular, experience unemployment at disproportionate rates compared to heterosexual and cisgender individuals (see Annex 5).
32. Canada should amend the *Employment Equity Act* to include LGBTQI2S communities as designated groups protected from employment discrimination.

Social

33. The government should develop a community-informed mandate for the newly formed LGBTQ2 Secretariat within the Privy Council Office that prioritizes funding for programs and projects targeting marginalized members within LGBTQI2S communities, including those marginalized by race, ability, age, gender identity and expression, socioeconomic status, religion, citizenship and immigration status.

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

34. Furthermore, the mandate for the Special Advisor to the Prime Minister on LGBTQ2 Issues must include addressing the needs of intersex persons in Canada.
35. The government should ensure access to inclusive legal support, housing and long-term care for LGBTQI2S youth and older adults.
36. In tandem with improving access, the government should update existing national strategies to meaningfully engage with and include LGBTQI2S people in the following policy areas:
 - a. *Homelessness Partnering Strategy*
 - b. *National Housing Strategy*
 - c. *Poverty Reduction Strategy*

Cultural

37. The government should develop a multi-ministerial implementation strategy for Bill C-16 that is informed by meaningful community consultation processes and is allocated funding to ensure adequate training and education across ministries.
38. The government should also develop, design, and deliver training on LGBTQI2S populations to the Immigration and Refugee Board of Canada (IRB) and meaningfully implement the *Guidelines regarding Sexual Orientation and Gender Identity and Expression* released in May 2017 concerning Refugee and Asylum-Seekers cases.

Healthcare

39. The government should create national strategies that meaningfully engage and include LGBTQI2S communities in the following policy areas:
 - a. Gender Affirming Medical Care
 - b. Harm Reduction

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

40. In order to effectively develop these strategies, the government should conduct meaningful community consultations to develop practice standards for medical professionals that are informed by LGBTQI2S communities and experiences.
41. Ideally these consultations would result in the government developing a community informed National Gender Affirming Care Strategy that incorporates best practices developed in provincial models, such as Ontario and British Columbia.
42. In conjunction with this strategy, the government should expand the Interim Federal Health Plan coverage for gender affirming healthcare to asylum seekers, refugees, and protected persons.

Gender Equity (CEDAW)

43. In all policies, legislation, and programming related to gender equity, the status of women, or gender-based violence, the government should ensure that the working definition of “women” includes trans, Two-Spirit, non-binary, and self-identified women within the scope of these endeavors.
44. Moreover, Canada should support motions internationally to amend the definition of women in conventions and treaty bodies to include trans, non-binary, and self-identified women.

Racial and Ethnic Minorities and Immigrants, Refugees, and Migrants (CERD and CMW)

45. The government should develop National Strategies that meaningfully engage and include LGBTQI2S communities, and especially racialized and Indigenous LGBTQI2S communities, in the following policy areas:
 - a. Anti-Racism and Ending Racial Discrimination
 - b. Migrant workers and their families

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.

Children and Youth (CRC)

46. The government must review section 268(3) of the *Criminal Code*, which permits medically unnecessary and non-consensual surgeries on the bodies of intersex infants and children, whom medical practitioners may perceive to have a “disorder of sex development.” This practice actively harms children based on cisnormative assumptions of what bodies are medically “correct” and violates the right to bodily autonomy (see Annex 6).
47. Consequently, the government should consult with the intersex community to determine how to hold the healthcare system accountable to respecting bodily autonomy and informed consent as a right for children and youth, to allow children to make their own informed decisions around accessing intersex related surgeries or gender affirming healthcare.

Persons with Disabilities (CRPD)

48. The government should meaningfully engage LGBTQI2S persons with disabilities – among other marginalized groups with disabilities – in the development and implementation of national accessibility policies and programming as well as an Emergency Planning Strategy. These policies and programs should be monitored and evaluated by an independent review body such as the Canadian Human Rights Commission.
49. To demonstrate a national commitment to accessibility, the government should develop, design and implement a programming framework to expand Canada's official languages to include both ASL and LSQ

ⁱ The acronym ‘LGBTQI2S’ is used here to reference all people with diverse gender identities and experiences of attraction (sexual orientation), including those who identify as lesbian, gay, bisexual, trans, Two Spirit, intersex, queer or questioning. The terms LGBTQI2S, LGBTI, queer and sexual and gender minorities will be used interchangeably throughout this paper. However, the terms gay, lesbian, bisexual, transgender, intersex or Two Spirit people will be used to refer to specific identities and populations.

ⁱⁱ A brief description of Bill C-16, its legislative context and potential impact for LGBTQI2S communities in Canada can be found in Annex 3.

-
- iii First Nations Centre (2012). Suicide prevention and two-spirited people. Ottawa: National Aboriginal Health Organization.
- iv McCaskill, D. N., FitzMaurice, K., & Cidro, J. (2011). *Toronto Aboriginal research project: Final report*. Retrieved from Toronto Aboriginal Support Services Council website: <http://www.councilfire.ca/Acrobat/tarp-final-report2011.pdf>

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.

Le Fonds Égale Canada pour les droits de la personne est le seul organisme de bienfaisance canadien voué à la promotion des droits des personnes lesbiennes, gaies, bisexuelles et trans grâce à la recherche, à l'éducation et à la mobilisation communautaire.