

RESOLUTION 4

Human Rights Protection for Transgender and Transsexual Canadians

BE IT RESOLVED, That the Canadian Nurses Association advocate for full human rights protection for transgender and transsexual Canadians by supporting legislation such as Bill C-389 that would update the Canadian Human Rights Act (CHRA) to include gender identity and gender expression as prohibited grounds of discrimination and amend the Criminal Code of Canada to include gender identity and gender expression in the hate crime and sentencing provisions.

Background

As “trans people represent one of the most marginalized groups in our society,”¹ advocating for their full human rights protection through legislation is an ethical imperative consistent with registered nurses individually and collectively seeking to promote justice.²

Bill C-389, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression),³ is a private member’s bill that was first debated on May 10, 2010.⁴ By updating the *Canadian Human Rights Act* to include gender identity and gender expression as prohibited grounds for discrimination and amending the *Criminal Code of Canada* to include gender identity and gender expression in the hate crime and sentencing provisions, Bill C-389 is an essential step in providing full human rights protection for “a highly marginalized community which is often economically and socially vulnerable.”⁵

Strengthening human rights protection enables people to be who they are. As was explained during the House of Commons debate:

Gender identity is a person’s innate feeling of being male, female, both genders, neither or in between. It is not a reference to people’s biological sex or their sexual orientation. Identity is something to be respected and honoured and gender identity is no different. Gender expression is the expression of that inner identity. It is the freedom to be, plain and simple, one’s self.⁶

Discrimination against people who are transgender,^{7 8} including those who identify as transsexual,⁹ erodes health through increased risk of violence, poverty, and social exclusion, diminishes access to health care, and threatens quality work environments.¹⁰

Although many transgender people “live in a constant state of fear for their lives and physical security should they openly acknowledge who they are,”¹¹ it is difficult to know the scope of this violence due to the invisibility and even erasure¹² of trans individuals and communities. Gender identity and gender expression are currently not included as categories within Statistics Canada reports on hate crimes.^{13 14} Violence against transgender people is often particularly vicious, but is dramatically unreported due to unsatisfactory historical experiences with police including law enforcement officials as perpetrators of violence.¹⁵ A study of 95 per cent of the transgender women held in California men’s prisons found that 59 per cent of the transgender women stated they had been sexually assaulted by another inmate and 14 per cent of the transgender women

had been sexually assaulted by staff.¹⁶ Although gender identity and sexual orientation are not the same, “perpetrators seldom differentiate between sexual orientation and gender identity in the bias-motivation for their attacks.”¹⁷ About one in ten police-reported incidents of hate crime in Canada in 2006 and 2007 were motivated by sexual orientation.¹⁸ Hate crimes motivated by sexual orientation were primarily violent (56 per cent) and so more likely than other types of hate crime incidents to result in physical injury to the victim.¹⁹ Egale Canada’s Phase One of the National Climate School Survey found that 95 per cent of the trans students felt unsafe at school compared with one-fifth of the students who are not trans and nine out of ten trans students are verbally harassed due to gender expression.²⁰

Preliminary results of the National Transgender Discrimination Survey by the National Centre for Transgender Equality in the United States found that their respondents experienced unemployment at twice the rate of the general population; 15 per cent lived on \$10,000 per year or less—again, twice the rate of the general population; and 19 per cent of the sample have been or are homeless.²¹ A staggering 97 per cent of the respondents reported experiencing harassment or mistreatment at work.²² Because of gender identity/gender expression, 44 per cent did not get a job they applied for; 23 per cent were denied a promotion, and 26 per cent lost their job—particularly hard hit for job losses were those who are Black (32 per cent) or Multiracial (37 per cent).²³ These multiple barriers to health and well-being experienced by trans people are consistent with findings from the Ontario Public Health Association’s Trans Health Project,²⁴ the Ontario Human Rights Commission’s consultation on human rights and rental housing,²⁵ and the Trans PULSE project, a community-based research project in Ontario.²⁶

The Trans PULSE Project “aims to broadly understand how social exclusion impacts the health of trans people.”²⁷ In their analysis of the significant barriers to receiving health care that trans people experience, the authors identify the processes of erasure in information production and dissemination and in institutional protocols, practices, and policies that are underpinned by a system of “cisnormality” that further marginalize trans people.²⁸ Cisnormativity is vital for nurses to understand as:

Cisnormativity describes the expectation that all people are cissexual, that those assigned male at birth always grow up to be men and those assigned female at birth always grow up to be women...Cisnormative assumptions are so prevalent that they are difficult at first to even recognize. Cisnormativity shapes social activity such as child rearing, the policies and practices of individuals and institutions, and the organization of the broader social world through the ways in which people are counted and health care is organized. Cisnormativity disallows the possibility of trans existence or trans visibility.²⁹

Client-centered care is based on the values of respect and human dignity.³⁰ As part of the commitment of registered nurses to improving health outcomes and the health care system for transgender clients and staff by recognizing and addressing cisnormativity, Canada’s nurses urge our elected leaders to make trans people visible by fully protecting their human rights.

Submitted by the Registered Nurses’ Association of Ontario

¹ Bauer, G., Hammond, R., Travers, R., Kaay, M., Hohenadel, K., & Boyce, M. (2009). "I Don't Think This Is Theoretical; This Is Our Lives": How Erasure Impacts Health Care for Transgender People. *Journal of the Association of Nurses in AIDS Care*. 20 (5), 349.

² "Nurses uphold principles of justice by safeguarding human rights, equity and fairness and by promoting the public good." Canadian Nurses Association (2008). *Code of Ethics for Registered Nurses*. Ottawa: Author, 17.

http://www.cna-nurses.ca/CNA/documents/pdf/publications/Code_of_Ethics_2008_e.pdf

³ Bill C-389, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression)*. (2009). 1st Reading, May 15, 2009, 40th Parliament, Second Session.

http://www2.parl.gc.ca/content/hoc/Bills/402/Private/C-389/C-389_1/C-389_1.PDF

⁴ Canada. Parliament. House of Commons Debates (2010). 40th Parliament, 3rd Session, Vol. 145. Number 043, May 10, 2010. <http://www2.parl.gc.ca/content/hoc/House/403/Debates/043/HAN043-E.PDF>

⁵ Sutherland, K. & Townsend, M. (2010). Letter to Bill Siksay. Victoria: Canadian Professional Association for Transgender Health. May 7, 2010.

<http://www.cpath.ca/wp-content/uploads/2010/05/Human-Rights-letter-Bill-C389.pdf>

⁶ Canada. Parliament. House of Commons Debates (2010). 40th Parliament, 3rd Session, Vol. 145. Number 043, May 10, 2010, 2552.

⁷ "Transgender or trans: a transgender or trans person is someone whose gender identity or expression differs from conventional expectations of masculinity or femininity. It is often used as an umbrella term to include crossdressers, transsexuals, Two-Spirit, intersex, and transgender people." Registered Nurses' Association of Ontario (2007).

Position Statement: Respecting Sexual Orientation and Gender Identity. Toronto: Author, 11.

http://www.rnao.org/Storage/30/2486_Respecting_Sexual_Orientation_and_Gender_Identity.pdf

⁸ "Transgender: people whose life experience includes existing in more than one gender. This may include people who identify as transsexual, and people who describe themselves as being on a gender spectrum or as living outside the gender categories of 'man' or 'woman.'" Ontario Human Rights Commission (2008). *Gender Identity: Your Rights and Responsibilities*. Toronto: Author. http://www.ohrc.on.ca/en/issues/gender_identity

⁹ "Transsexual: people who were identified at birth as one sex, but who identify themselves differently. They may seek or undergo one or more medical treatments to align their bodies with their internally felt identity, such as hormone therapy, sex-reassignment surgery or other procedures." Ontario Human Rights Commission (2008). *Gender Identity: Your Rights and Responsibilities*. Toronto: Author.

http://www.ohrc.on.ca/en/issues/gender_identity

¹⁰ Registered Nurses' Association of Ontario (2007). *Position Statement: Respecting Sexual Orientation and Gender Identity*. Toronto: Author.

¹¹ Ontario Human Rights Commission (1999). *Toward a Commission Policy on Gender Identity: Discussion Paper*. Toronto: Ontario Human Rights Commission, 22.

¹² Describing how active and passive erasure combine to produce systemic barriers to health care, "passive erasure included a lack of knowledge of trans issues and the assumption that this information was neither important nor relevant. Active erasure could involve a range of responses from visible discomfort to refusal of services to violent responses that aimed to intimidate or harm." Bauer, G., Hammond, R., Travers, R., Kaay, M., Hohenadel, K., & Boyce, M. (2009). "I Don't Think This Is Theoretical; This Is Our Lives": How Erasure Impacts Health Care for Transgender People. *Journal of the Association of Nurses in AIDS Care*. 20 (5), 352.

¹³ Statistics Canada (2008). *Hate Crime in Canada 2006*. Ottawa: Canadian Centre for Justice Statistics.

¹⁴ Walsh, P. & Dauvergne, M. (2009). Police-Reported Hate Crime in Canada, 2007. *Juristat*. 29 (2). Ottawa: Statistics Canada.

¹⁵ National Coalition of Anti-Violence Programs (2009). *Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States*. New York: Author, 16.

http://www.ncavp.org/common/document_files/Reports/2008%20HV%20Report%20smaller%20file.pdf

¹⁶ National Coalition of Anti-Violence Programs (2009). *Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States*. New York: Author, 42.

¹⁷ National Coalition of Anti-Violence Programs (2009). *Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States*. New York: Author, 6.

¹⁸ Walsh, P. & Dauvergne, M. (2009). Police-Reported Hate Crime in Canada, 2007. *Juristat*. 29 (2). Ottawa: Statistics Canada, 5.

¹⁹ Statistics Canada (2008). *Hate Crime in Canada 2006*. Ottawa: Canadian Centre for Justice Statistics, 13.

²⁰ Kennedy, H., Wilson, M., Corneil, T. & Townsend, M. (2010). Letter to Bill Siksay. Toronto/Victoria: Egale Canada and Canadian Professional Association for Transgender Health. April 30, 2010.

<http://www.cpath.ca/wp-content/uploads/2010/05/Bill-Siksay-2010.pdf>

²¹ National Center for Transgender Equality and the National Gay and Lesbian Task Force (2009). *National Transgender Discrimination Survey*. Washington: Authors, 1.

http://transequality.org/Resources/NCTE_prelim_survey_econ.pdf

²² National Center for Transgender Equality and the National Gay and Lesbian Task Force (2009). *National Transgender Discrimination Survey*. Washington: Authors, 2.

²³ National Center for Transgender Equality and the National Gay and Lesbian Task Force (2009). *National Transgender Discrimination Survey*. Washington: Authors, 1.

²⁴ Gapka, S. & Raj, R. (2003). Trans Health Project: A position paper and resolution adopted by the Ontario Public Health Association. Toronto: Ontario Public Health Association.

http://www.opha.on.ca/our_voice/ppres/papers/2003-06_pp.pdf

²⁵ Ontario Human Rights Commission (2008). *Right at Home: Report on the consultation on human rights and rental housing in Ontario*. Toronto: Author, 13.

http://www.ohrc.on.ca/en/resources/discussion_consultation/housingconsultationreport/pdf

²⁶ Bauer, G., Hammond, R., Hohenadel, K., Kaay, M., Scanlon, K. & Travers, R. (2009). Social Determinants of Trans Health in Ontario, Canada: The Trans PULSE Project Phase II. <http://www.transpulse.ca/documents/WPATH-%20SDOH-%20GBauer%202009%20v2.pdf>

²⁷ Bauer, G., Hammond, R., Travers, R., Kaay, M., Hohenadel, K., & Boyce, M. (2009). "I Don't Think This Is Theoretical; This Is Our Lives": How Erasure Impacts Health Care for Transgender People. *Journal of the Association of Nurses in AIDS Care*. 20 (5), 350.

²⁸ Bauer, G., Hammond, R., Travers, R., Kaay, M., Hohenadel, K., & Boyce, M. (2009). "I Don't Think This Is Theoretical; This Is Our Lives": How Erasure Impacts Health Care for Transgender People. *Journal of the Association of Nurses in AIDS Care*. 20 (5), 356-359.

²⁹ Bauer, G., Hammond, R., Travers, R., Kaay, M., Hohenadel, K., & Boyce, M. (2009). "I Don't Think This Is Theoretical; This Is Our Lives": How Erasure Impacts Health Care for Transgender People. *Journal of the Association of Nurses in AIDS Care*. 20 (5), 356.

³⁰ Registered Nurses' Association of Ontario (2006). *Client Centred Care*. Toronto: Author, 19.

http://www.rnao.org/Storage/15/932_BPG_CCCare_Rev06.pdf