



LIBRARY of PARLIAMENT  
BIBLIOTHÈQUE du PARLEMENT

## LEGISLATIVE SUMMARY



# **Bill C-16: An Act to amend the Canadian Human Rights Act and the Criminal Code**

**Publication No. 42-1-C16-E  
21 October 2016**

**Julian Walker**

Legal and Social Affairs Division  
Parliamentary Information and Research Service

Library of Parliament **Legislative Summaries** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

© Library of Parliament, Ottawa, Canada, 2016

*Legislative Summary of Bill C-16*  
(Legislative Summary)

Publication No. 42-1-C16-E

Ce document est également publié en français.

# CONTENTS

1	BACKGROUND.....	1
1.1	Context.....	1
1.1.1	Gender Identity and Expression.....	1
1.1.2	Human Rights Law.....	2
1.1.3	Historical Developments.....	3
1.1.4	Provincial and Territorial Approaches to Gender Identity and Gender Expression.....	4
1.1.5	Previous Bills.....	4
2	DESCRIPTION AND ANALYSIS.....	5
2.1	Amendments to the <i>Canadian Human Rights Act</i> .....	5
2.2	Amendments to the <i>Criminal Code</i> .....	5
2.2.1	Hate Propaganda.....	6
2.2.2	Sentencing Principles.....	7



# LEGISLATIVE SUMMARY OF BILL C-16: AN ACT TO AMEND THE CANADIAN HUMAN RIGHTS ACT AND THE CRIMINAL CODE

---

## 1 BACKGROUND

Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code, was introduced in the House of Commons on 17 May 2016 by the Minister of Justice, the Honourable Jody Wilson-Raybould.<sup>1</sup> The bill is intended to protect individuals from discrimination within the sphere of federal jurisdiction and from being the targets of hate propaganda, as a consequence of their gender identity or their gender expression.<sup>2</sup> The bill adds “gender identity or expression” to the list of prohibited grounds of discrimination in the *Canadian Human Rights Act*<sup>3</sup> and the list of characteristics of identifiable groups protected from hate propaganda in the *Criminal Code*.<sup>4</sup> It also adds that evidence that an offence was motivated by bias, prejudice or hate based on a person’s gender identity or expression constitutes an aggravating circumstance for a court to consider when imposing a criminal sentence.

### 1.1 CONTEXT

#### 1.1.1 GENDER IDENTITY AND EXPRESSION

“Gender identity” and “gender expression” are terms that are already used in several human rights laws across Canada (see section 1.1.6 of this Legislative Summary for further discussion). The terms refer to a person’s understanding of what their gender is and how they choose to express it.

People may identify with a concept of gender that is aligned with the sex they were assigned at birth, or they may identify with a gender that is different from their sex assigned at birth or simply self-identify with a non-traditional or non-stereotypical concept of gender.<sup>5</sup> The most commonly used term to describe people who self-identify with a non-traditional concept of gender is “transgender,” though some individuals prefer to be described as intersex, cross-gender, gender-diverse, or gender queer, among other terms. The term “transsexual” is often used to describe people who do not identify with the sex they were assigned at birth and seek to have their gender and their sex align through medical intervention, such as by taking hormones or undergoing surgery.

The Canadian Human Rights Commission, among others,<sup>6</sup> has noted how transgender persons typically face high levels of discrimination:

Transgender and gender-diverse individuals across Canada face discrimination, exclusion, and hostility in their daily lives – often impacting their access to everyday services that many Canadians take for granted when they, for example, want to see a family physician, travel, or use a public washroom.<sup>7</sup>

A 2015 study provided the following statistics about “trans (transgender, transsexual or transitioned) people in the province of Ontario”:

- 96% had heard that trans people were not normal;
- 73% had been made fun of for being trans;
- 20% had been physically or sexually assaulted for being trans;
- 13% were fired for being trans, while another 15% had also been fired, but were not sure why; and
- 10% of trans emergency room patients reported having care stopped or denied.<sup>8</sup>

### 1.1.2 HUMAN RIGHTS LAW

Human rights laws in every jurisdiction in Canada prohibit discrimination against people based on certain listed grounds, such as sex, ethnic origin, religion, disability or sexual orientation. For example, the *Canadian Human Rights Act* lists 11 grounds for which discrimination is prohibited. These laws provide complaint mechanisms that individuals or groups may follow when they believe that they have been discriminated against in the provision of services, accommodation and employment. The Supreme Court has held that the laws are “quasi-constitutional” and that other laws must be interpreted in ways that are consistent with them.<sup>9</sup>

The *Canadian Human Rights Act* prohibits discrimination by federally regulated employers or service providers, including federal departments, agencies and Crown corporations, First Nations governments and private, federally regulated companies, such as banks, trucking companies, broadcasters and telecommunications companies.<sup>10</sup> However, because matters involving property, civil rights and local matters have been placed within the jurisdiction of the provinces in Canada’s constitution, most human rights complaints pertaining to the provision of services, accommodation, employment or the management of public spaces and facilities are made under provincial human rights laws.<sup>11</sup>

While discrimination is generally prohibited by the *Canadian Human Rights Act*, section 15 does provide for certain exceptions. For instance, section 15(1)(a) states that if an employer can show that an occupational requirement is “*bona fide*” (i.e., necessary to the job), the requirement is not a discriminatory practice. Section 15(1)(g) adds that there may be a “*bona fide* justification” for any denial or differentiation made in the provision of goods, services, facilities or accommodation. In addition, section 15(2) states that to establish such a *bona fide* requirement or justification, it must be shown that the “needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.”<sup>12</sup> In other words, to avoid a discriminatory practice, persons or groups that have a duty to do so must take reasonable steps to accommodate others, but they may be able to establish that there are valid reasons why the particular accommodation being sought is too onerous or difficult to provide.

### 1.1.3 HISTORICAL DEVELOPMENTS

When the *Canadian Human Rights Act* was passed in 1977, there was no ground included in the list of the prohibited grounds of discrimination that would protect the rights of gays, lesbians or any other sexual minority. Nor did the equality rights provisions in section 15 of the 1982 *Canadian Charter of Rights and Freedoms* list any sexual minority rights as enumerated grounds for protection. However, in 1992, the Ontario Court of Appeal in *Haig v. Canada*<sup>13</sup> held that sexual orientation constitutes an analogous ground of discrimination under section 15(1) of the Charter and should be considered as an addition to the explicitly listed grounds. The federal government did not appeal the decision, and the Canadian Human Rights Commission began accepting complaints of discrimination based on sexual orientation in 1992. In 1995, the Supreme Court of Canada also confirmed that sexual orientation was an analogous ground in *Egan v. Canada*.<sup>14</sup> It was added to the list of prohibited grounds in the *Canadian Human Rights Act* in 1996.

The recognition of the rights of gays and lesbians has evolved in some measure through the recognition of the right to be free from discrimination based on sexual orientation.<sup>15</sup> Sexual orientation does not necessarily protect those whose gender does not align with their sex assigned at birth, or who do not consider themselves to fit in with conventional conceptions of gender. Bill C-16 seeks in part to add the grounds of gender identity and gender expression to broaden the recognition of the rights of other members of sexual minority groups.

Discrimination against transgender or transsexual individuals has been identified by human rights tribunals and courts on the grounds of sex or disability, though the use of the latter has been controversial. Cases have involved the right of a person to access the gender-specific bathroom of his or her chosen gender,<sup>16</sup> the right of a person to volunteer for an organization that provided services to women who were victims of male violence,<sup>17</sup> the right to be free from discrimination in housing,<sup>18</sup> and the right to claim refugee status in Canada,<sup>19</sup> among others.<sup>20</sup>

In 1999, a panel established by then Minister of Justice Anne McLellan and chaired by former Supreme Court Justice Gérard La Forest conducted a comprehensive review of the *Canadian Human Rights Act*. The panel's report, *Promoting Equality: A New Vision*, included 165 recommendations, including "that gender identity be added to the list of prohibited grounds of discrimination in the Act." The report noted that while, in practice, "transgendered individuals are protected from discrimination on the ground of sex or the combined grounds of sex and disability,"

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. To say transsexualism is a disability seems to make it a medical matter rather than a matter of life experienced in the opposite gender.<sup>21</sup>

The review panel indicated that the concept of gender identity should be developed “case by case,” and that, while there may not be “a great many cases” filed on this ground, “gender identity” should nonetheless be expressly added to the Act, since the cases that do arise can cause “substantial harm to those affected, and legal protection is warranted.”<sup>22</sup>

#### 1.1.4 PROVINCIAL AND TERRITORIAL APPROACHES TO GENDER IDENTITY AND GENDER EXPRESSION

Most Canadian provinces and territories now list “gender identity,” and some have also included “gender expression,” among the prohibited grounds of discrimination under their human rights laws. The exceptions are New Brunswick, Nunavut and Yukon. The human rights laws in the Northwest Territories,<sup>23</sup> Saskatchewan<sup>24</sup> and Manitoba<sup>25</sup> prohibit discrimination based on “gender identity,” while the human rights laws in British Columbia,<sup>26</sup> Alberta,<sup>27</sup> Ontario,<sup>28</sup> Quebec,<sup>29</sup> Prince Edward Island,<sup>30</sup> Nova Scotia,<sup>31</sup> and Newfoundland and Labrador<sup>32</sup> prohibit discrimination based on both “gender identity” and “gender expression.”

Ontario’s *Education Act*<sup>33</sup> also includes references to both “gender identity” and “gender expression” in the contexts of addressing bullying in schools and promoting positive and supportive school environments. Manitoba’s *Public School Act* calls on school boards to accommodate pupils who wish to establish activities and organizations that promote “the awareness and understanding of, and respect for, people of all sexual orientations and gender identities.”<sup>34</sup>

While most provinces have amended their human rights laws to provide explicit protection, as noted above, gender identity or gender expression had previously been implicitly included in some jurisdictions under other explicitly enumerated grounds, such as sex, as a matter of policy or as a result of court decisions.<sup>35</sup> New Brunswick and Yukon’s human rights commissions have published guidelines on human rights that indicate that gender identity discrimination is a form of sex discrimination.<sup>36</sup>

#### 1.1.5 PREVIOUS BILLS

Various private members’ bills have been introduced in Parliament since 2005 to add both “gender identity” and “gender expression” to the list of prohibited grounds in the *Canadian Human Rights Act*, and some of them sought to amend the *Criminal Code* as well. All of these bills died on the *Order Paper*,<sup>37</sup> with the exception of Bill C-204 which, as explained below, is a reintroduction in the 42<sup>nd</sup> Parliament of Bill C-279 from the 41<sup>st</sup> Parliament.

Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity) was introduced in the House of Commons on 21 September 2011 by Randall Garrison, Member of Parliament for Esquimalt–Juan de Fuca, British Columbia.<sup>38</sup> The bill was later amended by adding a definition clause for “gender identity” and by removing the term “gender expression.”<sup>39</sup> The bill was adopted by the House of Commons on 20 March 2013 by a vote of 149 to 137.<sup>40</sup>



This bill ultimately died on the *Order Paper* before being put to a vote in the Senate upon the prorogation of the 1<sup>st</sup> Session and then the dissolution of the 2<sup>nd</sup> Session of the 41<sup>st</sup> Parliament.<sup>41</sup>

On 9 December 2015, during the 1<sup>st</sup> Session of the 42<sup>nd</sup> Parliament, Randall Garrison reintroduced the original text of Bill C-279 as Bill C-204, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression).<sup>42</sup> This version of the bill does not include a definition clause, and it includes both “gender identity” and “gender expression.” At the time of writing, the bill had received first reading in the House of Commons. This bill is identical to Bill C-16, except that it lists the two terms separately, dividing them with a comma, whereas Bill C-16 places the word “or” between the two terms, thereby linking the terms more closely together.

## 2 DESCRIPTION AND ANALYSIS

### 2.1 AMENDMENTS TO THE *CANADIAN HUMAN RIGHTS ACT*

Bill C-16 adds references to “gender identity or expression” to two sections of the *Canadian Human Rights Act*.

The first amendment is to the purpose of the Act, found in section 2, which currently reads:

The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

Clause 1 of Bill C-16 adds “gender identity or expression” to the list of grounds upon which discriminatory practices may be based.

Section 3(1) of the *Canadian Human Rights Act* enumerates the prohibited grounds of discrimination for the purposes of the Act (which are the same as those included in section 2 of the Act). Clause 2 of the Bill adds “gender identity or expression” to this section as an additional prohibited ground, after sexual orientation.

### 2.2 AMENDMENTS TO THE *CRIMINAL CODE*

The bill also adds references to “gender identity or expression” to two sections of the *Criminal Code*, one dealing with hate propaganda and the other with sentencing provisions for crimes motivated by hate.

As explained below, the amendments add “gender identity or expression” to the identifiable characteristics of a group that are protected from hate propaganda (see section 318(4) of the *Criminal Code*). The term “hatred” has been considered in several Supreme Court of Canada decisions, including *R. v. Keegstra*:

Hatred is predicated on destruction, and hatred against identifiable groups therefore thrives on insensitivity, bigotry and destruction of both the target group and of the values of our society. Hatred in this sense is a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation.<sup>43</sup>

### 2.2.1 HATE PROPAGANDA

Criminal offences related to hate promotion are set out in sections 318 to 320.1 of the *Criminal Code*. Section 318 makes it an offence for anyone to advocate or promote genocide, which is defined as acts committed with an intent to destroy in whole or in part an identifiable group by either killing its members or inflicting on them such conditions as to deliberately bring about their physical destruction. Those found guilty may be punished by up to five years’ imprisonment.

Section 319(1) makes it a criminal offence to incite hatred against any identifiable group where this is likely to result in a breach of the peace. Section 319(2) makes it an offence to communicate, except in private conversation, statements that wilfully promote hatred against an identifiable group, whether by telephone, broadcasting or other audible or visible means.

Prosecutions of sections 318 and 319(2) require the consent of the provincial Attorney General.

Section 319(3) includes various defences that are available for those charged under section 319(2):

- that the communicated statements are true;
- that an opinion or argument was expressed in good faith and either concerned a religious subject or was based on a belief in a religious text;
- that the statements were relevant to a subject of public interest and were on reasonable grounds believed to be true; and
- that the statements were meant to point out matters that produce feelings of hatred toward an identifiable group and were made in good faith for the purpose of removing those matters.

Sections 320 and 320.1 of the *Criminal Code* allow for judges to issue orders for the confiscation of any form of hate propaganda that if communicated would lead to an offence under section 319. The consent of the provincial Attorney General is again needed for these provisions to be used.

The offences in these sections require that an identifiable group be targeted. Section 318(4) defines an “identifiable group” for all these provisions as being any section of the public distinguished by race, religion, national or ethnic origin, age, sex, sexual orientation, or mental or physical disability. Clause 3 of Bill C-16 adds “gender identity or expression” to this section.

## 2.2.2 SENTENCING PRINCIPLES

Clause 4 of the bill amends section 718.2 of the *Criminal Code*, which sets out certain principles to be taken into account during sentencing for an offence, including that “a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.” Currently, under subparagraph 718.2(a)(i), the following is deemed to be an aggravating circumstance: “evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.” Clause 4 adds “gender identity or expression” to this list.

---

## NOTES

1. [Bill C-16, An Act to amend the Canadian Human Rights Act and the Criminal Code](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. Department of Justice, [Protecting against Discrimination, Hate Propaganda, and Hate Crime on the grounds of Gender Identity and Gender Expression](#).
3. [Canadian Human Rights Act](#), R.S.C., 1985, c. H-6.
4. [Criminal Code](#), R.S.C., 1985, c. C-46.
5. See, for example, Ontario Human Rights Commission, “[3. Gender identity and gender expression](#),” *Policy on preventing discrimination because of gender identity and gender expression*. See also Department of Justice, “[Gender Identity and Gender Expression](#),” Background, 17 May 2016.
6. See, for example, [XY v. Ontario \(Government and Consumer Services\)](#), 2012 HRTO 726 [Human Rights Tribunal of Ontario], para. 165.
7. Canadian Human Rights Commission, “[‘Transgender people have the same right to respect and dignity as everyone else in Canada.’ Canadian Human Rights Commission welcomes new bill](#),” News release, 17 May 2016.
8. Greta R. Bauer and Ayden I. Scheim, [Transgender People in Ontario, Canada: Statistics from the Trans PULSE Project to Inform Human Rights Policy](#), 1 June 2015.
9. [Insurance Corporation of British Columbia v. Heerspink](#), [1982] 2 S.C.R. 145; and [Zurich Insurance Co. v. Ontario \(Human Rights Commission\)](#), [1992] 2 S.C.R. 321.
10. Canadian Human Rights Commission, “[How are human rights protected in Canada?](#)”
11. [Constitution Act, 1867](#), 30 & 31 Victoria, c. 3 (U.K.).
12. See also Laura Barnett, Julia Nicol and Julian Walker, [An Examination of the Duty to Accommodate in the Canadian Human Rights Context](#), Publication no. 2012-01-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 10 January 2012.

13. [Haig v. Canada](#), (1992) 94 D.L.R. (4th) 1.
14. [Egan v. Canada](#), [1995] 2 S.C.R. 513.
15. See, for example, Mary C. Hurley, [Sexual Orientation and Legal Rights](#), Publication 92-1E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 May 2007; and Mary C. Hurley, [Sexual Orientation and Legal Rights: A Chronological Overview](#), Publication no. 04-13E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 26 September 2005.
16. [Lewis v. Sugar Daddys Nightclub](#), 2016 HRTO 347.
17. [Vancouver Rape Relief Society v. Nixon](#), 2005 BCCA 601 [British Columbia Court of Appeal]. The [application for leave to appeal](#) to the Supreme Court of Canada was dismissed. In [Nixon v. Vancouver Rape Relief Society](#), 2002 BCHRT 1, the British Columbia Human Rights Tribunal considered gender identity in relation to “a post-operative male to female transsexual” who argued that the Vancouver Rape Relief Society had discriminated against her, on the basis of sex, by refusing to let her train and serve as a volunteer. The case ultimately made its way to the British Columbia Court of Appeal, which held that there had been discrimination, but that under the circumstances the Society was exempted under section 41(1) of the British Columbia [Human Rights Code](#), RSBC 1996, c. 210, which allows a not-for-profit organization to grant preferences to a particular group when its purpose is to promote that group’s interests and welfare.
18. [McMahon v. Wilkinson](#), 2015 HRTO 1019.
19. [X \(Re\)](#), 2011 CanLII 67655 (CA IRB) [Immigration and Refugee Board of Canada]; and [X \(Re\)](#), 2013 CanLII 73865 (CA IRB).
20. Russel W. Zinn and Patricia P. Brethour, *The Law of Human Rights in Canada: Practice and Procedure*, Canada Law Book, Aurora, Ontario, July 2010, pp. 10-25 to 10-27.
21. Canadian Human Rights Act Review Panel, [Promoting Equality: A New Vision](#), 2000, p. 108.
22. Ibid.
23. [Human Rights Act](#), S.N.W.T. 2002, c. 18.
24. [The Saskatchewan Human Rights Code](#), SS 1979, c. S-24.1.
25. [The Human Rights Code](#), C.C.S.M., c. H175.
26. [Human Rights Code](#), RSBC 1996, c. 210.
27. [Alberta Human Rights Act](#), RSA 2000, c. A-25.5.
28. [Human Rights Code](#), R.S.O. 1990, c. H.19.
29. [Charter of Human Rights and Freedoms](#), CQLR, c. C-12.
30. [Human Rights Act](#), RSPEI 1988, c. H-12.
31. [Human Rights Act](#), RSNS 1989, c. 214.
32. [Human Rights Act, 2010](#), SNL 2010, c. H-13.1.
33. [Education Act](#), R.S.O. 1990, c. E.2.
34. [The Public Schools Act](#), C.C.S.M., c. P250.
35. See, for example, *Vancouver Rape Relief Society*. More details are provided in endnote 17.
36. New Brunswick Human Rights Commission, *The New Brunswick Human Rights Act Explained* [accessed 15 August 2016]; and Yukon Human Rights Commission and Northwest Territories Human Rights Commission, [Know Your Rights: Human Rights in the NWT and Yukon](#).

37. See LEGISinfo, "[Similar Bills Introduced in Previous Sessions](#)," *Private Member's Bill C-279*, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, for an overview. Previous bills include Bill C-276, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament; Bill C-389, An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and gender expression), 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament; Bill C-326, An Act to amend the Canadian Human Rights Act (gender identity), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament; Bill C-494, An Act to amend the Criminal Code (gender identity and gender expression), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament; and Bill C-392, An Act to amend the Canadian Human Rights Act (gender identity), 1<sup>st</sup> Session, 38<sup>th</sup> Parliament.
38. [Bill C-279, An Act to amend the Canadian Human Rights Act and the Criminal Code \(gender identity\)](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament.
39. Clause 1 of Bill C-279 would have added the following definition as section 2(2) of the *Canadian Human Rights Act*:
- In this section, "gender identity" means, in respect of an individual, the individual's deeply felt internal and individual experience of gender, which may or may not correspond with the sex that the individual was assigned at birth.
40. LEGISinfo, "[Recorded Votes](#)," *Private Member's Bill C-279*, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament.
41. Note that the bill was reinstated after the prorogation of Parliament after the 1<sup>st</sup> Session of the 41<sup>st</sup> Parliament. During the 2<sup>nd</sup> Session, the Standing Senate Committee on Legal and Constitutional Affairs reported the bill back to the Senate with amendments: see [Twenty-Fourth Report](#), 26 February 2015. Among the amendments proposed in this report, the most substantial was to add the following, as subsection (f.1), to the exceptions included in section 15(1) of the *Canadian Human Rights Act*:
- in the circumstances described in section 5 or 6 in respect of any service, facility, accommodation or premises that is restricted to one sex only – such as a correctional facility, crisis counselling facility, shelter for victims of abuse, washroom facility, shower facility or clothing changing room – the practice is undertaken for the purpose of protecting individuals in a vulnerable situation.
- This section would allow for discrimination against persons based on gender identity when the types of facilities listed above have restricted access to one particular sex.
42. [Bill C-204, An Act to amend the Canadian Human Rights Act and the Criminal Code \(gender identity and gender expression\)](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
43. [R. v. Keegstra](#), [1990] 3 S.C.R. 697.