

***White Paper on the Status of Trans and
Gender Diverse People***

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Introduction

Working together with trans and gender diverse people as well as a multiparty group of Members of Parliament, we have made some considerable progress in moving trans rights forward. Trans and gender diverse Canadians now enjoy formal human rights protections under the law with the passage of Bill C-16 in 2017. Following this monumental legal change, the Government of Canada needs to continue to make the necessary policy changes to make Canada a safer and more inclusive place for trans and gender diverse people. We have come a long way, but we have much more work to do.

Canada has an opportunity to be a world leader at a time when hate movements around the globe are trying to eliminate trans and gender diverse people from existence.

The goal of this white paper is to provide real solutions to real problems faced by trans and gender diverse people. These solutions require continuous critical reflection on transphobia to ensure that progress on trans and gender diverse rights continues and that equality of rights means equality in fact.

Trans and gender diverse people are no less diverse than 2SLGBTQI+ people are in general. Therefore, policymakers must take an intersectional approach that is sensitive to differences in the circumstances of trans and gender diverse individuals and communities and differences in forms of hate and exclusions directed against trans and gender diverse people. Colonialism, racism, transphobia, misogyny, poverty, ableism, and ageism are all factors that continue to shape who and how people are marginalized within 2SLGBTQI+ communities.

This white paper is divided into ten sections including; support and empower trans and gender diverse organizations, access to gender-affirming healthcare, hate and violence, identity documents, refugees, employment equity, sports, blood and organ donations, prisoners rights, and sex work and HIV decriminalization.

Support and Empower Trans and Gender Diverse Organizations

Everyone deserves to have a voice at the table and organizations often provide platforms to ensure diverse voices are heard by the public and governments. We need trans and gender diverse organizations; they provide valuable perspectives when policymakers create legislation that affects trans and gender diverse lives.

There is great diversity within 2SLGBTQI+ communities and just as much diversity within trans and gender diverse communities. There are many intersecting identities, and while some 2SLGBTQI+ people have gained recognition and privilege, others remain marginalized. Despite being on the forefront of the 2SLGBTQI+ rights movement, Two-Spirit, Indigenous, and racialized trans and gender diverse people are often the most marginalized and receive the lowest levels of access to the support and services they need to thrive.

With capacity funding for trans and gender diverse organizations, we can increase the amount of programming and organizations serving the needs of diverse communities, including Two-Spirit and Indigenous trans and gender diverse people, racialized people, trans women and girls, people with disabilities, people living in rural and remote areas, seniors, youth and parents, sex workers, immigrants and refugees, and many more diverse groups of trans and gender diverse people.

RECOMMENDATION 1

That the Government of Canada commit to sufficient and stable capacity building funding to support the creation of new trans and gender diverse organizations and support trans and gender diverse organizations that currently exist. Funding should be sensitive to intersectional differences among trans and gender diverse people.

Access to Gender-Affirming Healthcare

Since Tommy Douglas brought Medicare first to Saskatchewan and then the rest of Canada, public healthcare has been a core Canadian value. Canadians accept that everyone should have access to quality healthcare, no matter who they are or where they live. The federal government has a responsibility to use all powers available to end medical discrimination against trans and gender diverse people. Trans and gender diverse people shouldn't need to fight to get appropriate care. Gender-affirming care is healthcare.

Comprehensive gender-affirming care saves lives and money. When trans and gender diverse people don't get the health care they need, we end up paying more than we would have otherwise from bad health outcomes and other social problems.

Trans women shouldn't need to go to court to get health care. They should be able to simply go to the doctor like any other Canadian. Transphobic and misogynistic policies that wrongly label gender-affirming procedures for trans women as 'cosmetic' are inconsistent with the World Professional Association for Transgender Health's position that all gender-affirming care is medically necessary. A feminist approach to health policy should include eliminating this medical discrimination against trans women and we need leadership from the federal government in this area.

Access to hormones and puberty blockers can be an issue of life and death. It can take months to fill a first hormone prescription, and for some in rural and remote areas the wait times can be much longer. As a result, many trans and gender diverse people are forced to find other ways to access hormones while waiting for a prescription. We need to remove barriers to make it easier for trans and gender diverse people to get the medicine they need when they need it. Working with provinces and territories we can find ways to cut wait times and expand the number of hormone providers.

Costs can also be a major barrier to hormone access. Many trans and gender diverse people who struggle with poverty are forced to cut back or completely stop taking their hormones. While most public drug coverage plans are under provincial and territorial jurisdiction, some people are the responsibility of the federal government, namely Indigenous peoples. After the pain and trauma of colonization, Two-Spirit and Indigenous trans and gender diverse are entitled to comprehensive coverage for hormones and other gender-affirming care. We need to ensure that we address gaps in coverage for gender-affirming hormones in the First Nations and Inuit Health Benefit. The Government can lead by example by implementing comprehensive coverage for Two-Spirit Indigenous people, refugees and asylum seekers, and people in federal prisons while we work with provinces and territories to make comprehensive coverage a reality across the country.

For trans men, there are even more barriers to accessing hormones with or without a prescription. In Canada, testosterone is a controlled substance. The government created these regulations to address the problem of doping in sports, but it negatively affects trans men and others who need testosterone for medical reasons. Canada needs a new policy approach to testosterone that considers the needs of trans men.

Universal healthcare should ensure everyone has complete control over their reproductive capacities. Unfortunately for trans and gender diverse people who medically transition and

others who get medical treatments that affect their fertility, the ability to start a family often comes down to the ability to pay out-of-pocket for fertility treatments. Comprehensive gender-affirming care must include reproductive care.

Additionally, some trans and gender diverse people who are neither men or women require the same gender-affirming procedures as trans men and women. These individuals should be given the same coverage as trans men and women.

Everyone in Canada should have complete control over their bodies. Intersex babies have this right violated when doctors non-consensually surgically alter their genitals for cosmetic reasons. These surgeries have many adverse lifelong effects, such as chronic pain, loss of sensation, and sometimes total sterilization. For intersex trans and gender diverse people, the effects of these nonconsensual surgeries may also include dysphoric genitals. Intersex people often describe the trauma of having their bodies changed without their knowledge and their identities kept secret. There is nothing shameful about being intersex. We should celebrate humankind in all our diversity, not erase diversity and hide it away.

As international standards for gender-affirming care continue to evolve, it can be challenging for health authorities to stay up to date. Health Canada can facilitate information sharing with provincial and territorial health authorities about best practices and solutions for Canada-specific problems with trans and gender diverse people's access to quality health care when they need it and where they need it. We can also find ways to increase innovation in surgery methods and other gender-affirming care.

Mental health care is health care, and trans and gender diverse people deserve equitable access to mental health supports and services. Trans and gender diverse people are at a higher risk of suicide and other mental health problems due to discrimination in health care, hate and violence, and social isolation. We can save lives and significantly improve quality of life by ensuring support networks exist in every part of the country including, rural and remote areas and in both official languages. Additionally, it's time we began systematically collecting suicide data on trans and gender diverse people and providing capacity funding to crisis lines like the trans lifeline to ensure trans and gender diverse Canadians have access to competent support when they need it most.

Medical discrimination against trans and gender diverse people intersect with other types of systemic discrimination against Two-Spirit, Indigenous, Black, and racialized people. We need

to address colonialism and systemic racism in health care and consultations with Two-Spirit and Indigenous community groups and Indigenous health experts is vital to avoid further deepening the inequalities and prejudices existing in our health system. Dialogue with racialized communities that are likely to experience systemic discrimination must be a guiding principle of the recommendations that follow.

RECOMMENDATION 2

That the Government of Canada work with provinces and territories to make comprehensive gender-affirming care a reality across Canada.

RECOMMENDATION 3

That the Government of Canada provide comprehensive gender-affirming care for everyone directly under federal jurisdiction for healthcare.

RECOMMENDATION 4

That the Government of Canada provide stable capacity funding for lifesaving mental health supports like the trans lifeline and community support networks that are focused on giving trans and gender diverse people appropriate mental health supports tailored to the needs of trans and gender diverse people.

RECOMMENDATION 5

That Health Canada facilitate information sharing between provincial and territorial health authorities around best practices for gender-affirming care and other healthcare issues that specifically affect trans and gender diverse Canadians.

RECOMMENDATION 6

That the Government of Canada provide targeted funding for research and innovation in gender-affirming surgeries and other areas of gender-affirming care that would benefit from more scientific knowledge. This funding should be conditional on information sharing around techniques and practices developed and their outcomes.

RECOMMENDATION 7

That the Government of Canada review testosterone's status as a controlled substance and develop a policy approach to testosterone that considers the needs of trans men.

RECOMMENDATION 8

That the Government of Canada amend section 268(3) of the *Criminal Code of Canada* to restrict cosmetic surgeries on intersex children until they are old enough to consent.

Hate and Violence

Urgent action to combat the rising tide of anti-trans hate and violence at home and abroad. Globally, the overwhelming majority of trans murders are transfemicides, killing trans women because they are trans and women. Not all trans women are at an equal risk of transfemicide. Colonialism and racism make Two-Spirit, Indigenous, and racialized trans women especially at risk of transfemicide. Additionally, laws and ideas that make sex work more dangerous make trans women sex workers extremely vulnerable to transfemicide. Addressing all the factors contributing to transfemicide through education campaigns and other policy measures will help us all move closer to gender equality.

All trans and gender diverse people are at an elevated risk of sexual violence, intimate partner violence, and other forms of gender based violence (GBV). Without adequate support, survivors are at an increased risk of self harm and suicide. For these reasons, services for GBV survivors must be trans inclusive and trans competent. The federal government has a role to play by creating guidelines for domestic violence shelters and other organizations that serve GBV

survivors. Support from the community also helps survivors heal from trauma. The federal government should fund community support networks for trans and gender diverse survivors of GBV. All these programs should be sensitive to unique needs based on colonialism, racism, misogyny, poverty, ableism, ageism and other forms of hate.

Finally, we cannot fully address a problem if we don't fully understand its scope. We need better data collection on hate crimes and other types of violence that trans and gender diverse people experience.

RECOMMENDATION 9

That the Government of Canada take a clear stand against the rising tide of anti-trans hate and violence wherever and whenever egregious acts of hate and violence occur.

RECOMMENDATION 10

That the Government of Canada hosts a series of roundtables on combating anti-trans hate and violence with stakeholders that are sensitive to intersectional differences among trans and gender diverse people.

RECOMMENDATION 11

That the Government of Canada take action to prevent transfemicides through education campaigns to address harmful ideas that contribute to deadly cis male violence against trans women. These campaigns should be sensitive to colonialism and racism.

RECOMMENDATION 12

That the Government of Canada create guidelines for best practices for supporting trans and gender diverse people in GBV organizations. Additionally, the government should create capacity funding for peer support networks for trans and gender diverse survivors of GBV.

RECOMMENDATION 13

That the Government of Canada collect better data on anti-trans hate and violence in order to understand the full scope of the issue.

Identity Documents

When cisgender men and boys or women and girls assert that they are men and boys or women and girls, we don't ask for more evidence. However, when trans men and boys, women and girls, or gender diverse people do the same thing, we ask them to jump through hoops to prove that they are the gender they say they are. Self-attestation should be the standard for gender marker changes on identity documents throughout Canada.

While most identity document policies fall under the jurisdiction of the provinces and territories, we can lead by example by making self-attestation the standard for all federal identity documents. Identity documents that reflect a person's gender are important in affirming identity and also preventing many forms of hate and discrimination. Research shows that socioeconomic status of trans and gender diverse people is associated with having identity documents that reflect their identity.

There are a number of other identity document related issues that are directly the responsibility of the federal government.

For example, the right to vote is a core part of any democracy. For trans and gender diverse Canadians, this right is challenged when voters lists aren't updated with new legal names. These errors can create many barriers to voting and we need to ensure processes for updating information are as simple as possible and respect the privacy of trans and gender diverse voters. Elections Canada also has a duty to clearly communicate how to correct these errors to prevent people from needlessly abstaining from voting.

Additionally, a 2022 study commissioned by the Department of Justice found inconsistencies between Immigration, Refugees and Citizenship Canada (IRCC) policies and identity document change policies. These inconsistencies make it extremely difficult or impossible for trans and gender diverse refugees to change their identity documents. The IRCC should update their policies to ensure they are not in conflict with identity document change policies.

RECOMMENDATION 14

That the Government of Canada lead by example by making self-attestation the standard for gender marker changes on all federal identity documents.

RECOMMENDATION 15

That Elections Canada ensure the process to correct errors on voters lists are as simple as possible and respects the privacy of trans and gender diverse voters. These processes should be clearly communicated to the electorate.

RECOMMENDATION 16

That Immigration, Refugees and Citizenship Canada review their policies to ensure they do not conflict with identity document change policies to allow trans and gender diverse refugees to change their name and gender marker after arriving in Canada.

Refugees

Whether it's a Latin American trans woman escaping a region where violence is so high that her life expectancy is only 35 years or Ugandan trans and gender diverse people looking for a place free from deadly and repressive laws, Canada should be a safe place for trans and gender diverse people from around the world to call home. We need to ensure all our refugee policies are as trans inclusive as possible. Many trans gender diverse individuals face barriers to travel to reach safety.

Canada needs to provide a clear path to safety for trans and gender diverse refugees. Often it is unsafe or impossible for refugees fleeing transphobia to file refugee claims in refugee camps or at Canadian Embassies and Consulates due to the employment of local staff. We can fix this problem by allowing Canadian 2SLGBTQI+ organizations to aid in local refugees by providing information and assistance with applications so everyone can escape the rising global tide of anti-trans hate and violence.

Once trans and gender diverse refugee applications are processed, they should have access to a robust social safety net like anyone else in Canada. Unfortunately, this is not the case. Trans

and gender diverse refugees lack any coverage for gender-affirming procedures (the only group of people in Canada to be denied coverage for all gender-affirming procedures). These policies are outdated and should be updated to reflect the World Professional Association for Transgender Health's position that all gender-affirming care is healthcare.

RECOMMENDATION 17

That Immigration, Refugees and Citizenship Canada create a clear path to safety for trans and gender diverse claimants by allowing Canadian 2SLGBTQI+ organizations to assist and provide information and assistance with applications in refugee camps and at Canadian Embassies and Consulates within foreign countries.

RECOMMENDATION 18

That Immigration, Refugees and Citizenship Canada consider allowing in-country applications for refugee status in countries where trans and gender diverse people are at high risk.

RECOMMENDATION 19

That Immigration, Refugees and Citizenship Canada end the discriminatory policy of denying coverage for all gender-affirming procedures and lead by example by implementing comprehensive gender-affirming care coverage for trans and gender diverse refugees and asylum seekers.

Employment Equity

New Democrats are committed to challenging all forms of workplace discrimination. Despite having the skills and training, many studies show that trans and gender diverse people are chronically unemployed and underemployed.

Prejudice and inequality hold far too many trans and gender diverse people back from reaching their full potential. It's time the federal government updated the *Employment Equity Act* to include sexual and gender minorities as designated groups by adding sexual orientation, gender identity, and gender expression to the act.

RECOMMENDATION 20

That the Government of Canada amend the *Employment Equity Act* to include sexual orientation, gender identity, and gender expression.

Sports

Human rights protections are only meaningful when the government is willing to take a stand in defence of said rights. The Government of Canada needs to take a clear stand in defence of the rights of trans and gender diverse people generally and trans women and girls particularly to participate in sports. Policies that ban trans women and girls from sports lack credible scientific evidence.

Exclusion from sports is a cruel violation of human rights. Government data shows that sports have many positive impacts on Canadians, including better physical and mental health, a stronger sense of belonging in community, and higher life satisfaction.

To be clear, the real threat to women's sports is not trans women, it's a systemic lack of funding for women's sports. Transphobic and misogynistic policies that aim to define womanhood in narrow and restrictive ways hurt all women. Trans sports bans are anti-feminist.

RECOMMENDATION 21

That Sport Canada take meaningful action to ensure the sports organizations they support do not adopt trans exclusionary policies by providing for incentives for organizations that respect trans and gender diverse rights and promote access to participation for all Canadians.

Blood and Organ Donation Policies

While Canadian Blood Services and Hema Quebec has recently made some progress with the removal of the automatic deferral period for men who have sex with men (including gay and bisexual trans men) and trans women there is still more work to do. Using a science based screening approach that looks at the behaviours of all potential donors in the same framework rather than how they identify is the best way to ensure that Canada has both a safe and sufficient supply of blood, plasma, and organs.

Discriminatory donation policies stigmatize members of the 2SLGBTQI+ community, as well as other marginalized people. It should be noted that policies that group trans women with men who have sex with men reinforce tropes that jeopardize the safety and lives of trans women. It will take serious commitment to correct for more than 30 years of prejudice and discrimination.

There are still barriers for non-binary people who want to donate as the systems used by both blood collection services in Canada requires donors to identify as either male or female. By only recognizing and providing these two options the identities of non-binary people or people who identify as another gender are dismissed and invalidated.

RECOMMENDATION 22

That Health Canada ensure that all policies surrounding the donation of blood and organs use screening policies that are rooted in science which are behaviour based rather than based on discriminatory policies that automatically disqualify someone based on identity.

Prisoners Rights

Canada has made some improvements in how we handle trans and gender diverse people in prisons in recent years, but we have much more work to do. During sentencing, trans and gender diverse people now have the option to be sent to a prison that aligns with their gender. However, there are serious issues for people who require a transfer after sentencing. Information obtained by Queen's Prison Law Clinic shows that since 2017, 83% of trans women who requested to be transferred to a prison designated for women have been denied their request. This is enabled by an arbitrary application of a poorly defined health and safety provision in Correctional Services of Canada's (CSC) guidance for trans and gender diverse inmates. These decisions put the lives of these trans women at risk. We need a new policy approach that centres the health and safety of trans and gender diverse prisoners.

While systemic data collection on the issue is limited, we know that trans and gender diverse people are at extremely high risks of sexual violence and other forms of violence inside prisons (especially trans women and other gender diverse people detained against their request in prisons designated for men). Public Safety Canada is conducting the first Canadian study on sexual violence in prisons. Data from this study will hopefully inform policies to protect at risk prisoners such as trans and gender-diverse people going forward.

Inside prisons, all trans and gender diverse people are reduced to their anatomy in internal databases. This policy puts trans and gender diverse prisoners who have not surgically changed their bodies at risk of violence and harassment from guards and other prisoners.

Coverage for gender-affirming procedures throughout Canada is severely limited. While the Government of Canada works with provinces and territories to correct these issues, we can lead by example by making comprehensive gender-affirming care coverage a reality for everyone under federal jurisdiction, including trans and gender diverse people in federal prisons.

Finally, almost all of the programs for formerly incarcerated people are gendered. The government has a responsibility to ensure formerly incarcerated trans and gender diverse people have access to adequate support to help with reintegration into society.

RECOMMENDATION 23

That Correctional Services of Canada eliminate the poorly defined health and safety provision guidelines that allow prison administration to ignore the health and safety needs of trans and gender diverse prisoners.

RECOMMENDATION 24

That Correctional Services of Canada change policies to ensure trans and gender diverse people are listed as their gender rather than their anatomy in internal databases.

RECOMMENDATION 25

That the Government of Canada provide comprehensive gender-affirming care coverage for trans and gender diverse federal prisoners.

RECOMMENDATION 26

That the Government of Canada provides adequate access to supports for reintegration that meet the needs of trans and gender diverse people after serving sentences.

Sex Work and HIV Decriminalization

Those most marginalized in our communities are the most impacted by the criminalization of sex work. For example, Indigenous and racialized people, trans and gender diverse people, those with precarious immigration statuses, and those with the least economic stability are hurt the most by the criminalization of sex work. These groups face the highest rates of violence, are the least likely to be able to seek help from the healthcare system or the justice system when a crime is perpetrated against them, and have increased difficulty finding secure housing or work because of the discrimination that they face.

A further measure that would aid in the protection and safety of trans and gender diverse people would be the decriminalization of sex work through the repeal of the *Protections of Communities and Exploited Persons Act*. The criminalization of sex work creates more harmful situations for those involved in the sale or trade of sexual services as it forces these practices to happen unregulated and further from the public eye. Furthermore, the legislation that criminalizes sex work does nothing to stop sex work from happening as the demand for services continues.

The decriminalization of sex work is the only means of reducing this harm as it would allow for those involved in the sale or trade of sexual services to have agency, support one another, gain rights and protections like those granted to any other workers and allow for justice to be served if a crime is perpetrated against them.

Much like the impacts that arise from the criminalization of sex work, the criminalization of HIV non-disclosure has the most significant negative effects on the most marginalized people in our communities. Those who are Indigenous, racialized, members of the 2SLGBTQI+ community and those stigmatized by substance use and involvement in sex work face the worst impacts of these laws as these are who are targeted by these laws.

The legal system often fails to adequately protect trans and gender diverse people. HIV non-disclosure criminalization is applied in many perverse ways that jeopardize the safety of trans women (many of whom are sex workers) when they seek help from the police.

These laws further stigmatize people who are living with HIV, which doesn't prevent the spread of HIV but rather keeps people from learning their status, accessing medical care to suppress viral loads, and disclosing their status out of fear of persecution or blackmail.

Both globally and in Canada, we will not reach our goal of eliminating the spread of HIV/AIDS until we take meaningful actions that destigmatize HIV/AIDS, ensure that those living with HIV/AIDS can live with dignity, and eliminate HIV/AIDS with public health measures.

RECOMMENDATION 27

That the Government of Canada fully decriminalize sex work and repeal *Protection of Communities and Exploited Persons Act* and the provisions of the Immigration regulations that prohibit sex work.

RECOMMENDATION 28

That the Government of Canada take action to address issues of violence, exploitation, and trafficking experienced by sex workers and those who sell or trade sex by using provisions already existing in the Canadian Criminal Code.

RECOMMENDATION 29

That the Government of Canada remove HIV non-disclosure from the Criminal Code of Canada.

Conclusion

This white paper provides 29 comprehensive policy recommendations to help make equality for trans and gender diverse people a reality. These recommendations affect a variety of departments including Health Canada, Immigration, Refugees and Citizenship Canada, Correctional Services of Canada, and Sport Canada. Implementation of these recommendations needs to include ongoing partnership with trans and gender diverse people. This work needs to begin without delay.

LIST OF RECOMMENDATIONS:

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