

Trans Rights and Equality: An Instant Primer

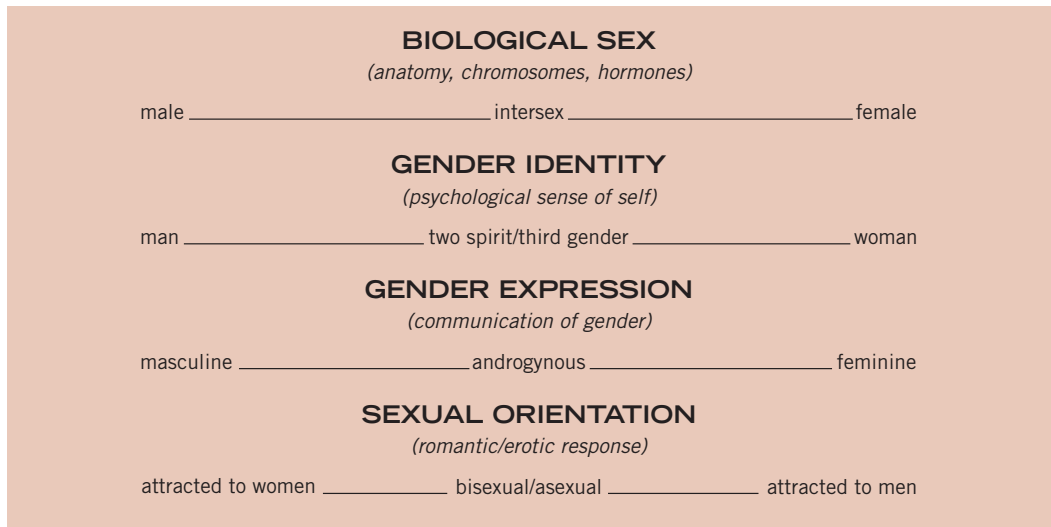


There are, arguably, few groups in our society today who are as disadvantaged and disenfranchised as transgenderists and transsexuals. Fear and hatred of transgenderists and transsexuals combined with hostility toward their very existence are fundamental human rights issues.

– Ontario Human Rights Commission,
Policy on Harassment and Discrimination
because of Gender Identity

Trans 101

In order to engage in discussion and understanding of trans issues, it is important to first understand the basic concepts necessary to the discussion. For this reason, it is crucial to understand the concepts of: biological sex, gender identity, gender expression and sexual orientation. The diagram below illustrates, in very simple form, what these concepts are, that each one is distinct and different (albeit related in some manners) and how they each exist on a continuum.



Keeping in mind those basic concepts, it is important to note that the following definitions and terminology are necessarily oversimplified. It is also important to recognize that use of this language and terminology is in some degree flux and is also contested ground amongst trans people. The following definitions are intended to reflect the current Canadian “best practice” to date.

Transgender: an umbrella term used to refer to any person whose gender identity or gender expression does not match societal gender norms. This term has commonly been used to refer to the following groups, for example: transsexuals, transgenderists, crossdressers, transvestites, genderqueers, androgynes, drag queens, drag kings. Some of these constituencies may object to the use of this umbrella term as a form of oppression as a denial of diversity and understanding of the various trans identities.

Transsexual: an adjective used to describe men or women whose gender identity is strongly opposite to the sex they were assigned at birth. The intense and agonizing discomfort associated with this lack of congruence between sex and gender is referred to as “gender dysphoria.” These persons adopt the social gender role that is consistent with their innate gender identity and they may choose to undergo surgeries and/or hormone therapy in order to transform their body in order to bring it into alignment with their gender identity. That process of role change and bodily reconciliation is referred to as “gender transition.” Transsexual persons may refer to themselves as either female to male (FTM) or male to female (MTF.) A transsexual person who does not wish to have surgeries may be referred to as a “non-operative” or “non-op” transsexual, but is sometimes referred to as a “transgenderist.”

Intersex: a term that refers to persons whose physical sex is not easily identified or categorized by their external genitalia as either male or female at birth, or whose chromosomes do not match their external genitalia. This term replaces the older term “hermaphrodite” which is now considered offensive. Intersex persons are now referred to in some quarters as persons with “disorders of sexual development”, however, this terminology is still considered contentious in many quarters.

Genderqueer: a term that refers to a range of identities and gender presentations held by people, particularly youth, who reject binary notions of “male vs. female” or “man vs. woman” and instead identify as having a fluid gender or no gender at all.

Gender Identity Disorder: a medical term and psychiatric diagnosis that has come to replace the medical term “transsexualism” in the North American context. GID is a mental disorder specified in the Diagnostic and Statistical Manual, Fourth Version (DSM-IV), the standard diagnostic manual for the psychiatric profession. A diagnosis of (severe) GID is required in order for a transsexual or transgender person to obtain access to hormone therapy and reconciling surgeries.

Trans Rights and Equality in Canada

The State of the Law in Canada

At present, there is a relative shortage of case law and legislative protection for trans people in Canada. It is seen as ideal that legislation and other protective instruments make express reference to “gender identity” or “gender identity and gender expression.” However, at present, only the N.W.T. has introduced such explicit protections into the NWT *Human Rights Act*. At present, there are private members bills

in play in the federal and Ontario legislatures, brought by NDP members Bill Siksay and Cheri DiNovo, respectively, which seek to amend the *Canadian Human Rights Act* and the Ontario *Human Rights Code* in order to add these express protections. Despite the lack of explicit protection however, case law has been generated over time in the federal, BC, Québec and Ontario jurisdictions as a result of human rights complaints by transsexual persons. That case law has arisen most frequently from cases of employment-related discrimination. The cases have held consistently that transsexual men and women (and arguably all trans people) are protected from discrimination on the ground of sex, and in appropriate circumstances, on the ground of disability. Gender identity is seen as a sub-set of the ground of sex. Gender Identity Disorder, when diagnosed, is seen as triggering protection on the ground of disability. There has not yet been any decision issued that has declared gender identity to be an “analogous ground of discrimination” for purposes of inclusion in the enumerated grounds set out in section 15 of Canada’s *Charter of Rights and Freedoms*, but it is common ground amongst all legal analysts that trans people are protected against discrimination under the *Charter*.

Key Equality and Rights Issues for Trans People

The key issues for trans people in their quest for both formal and substantive equality at law and in society on a daily basis are:

- **clear legislative protections** from discrimination and harassment and from hate crimes and hate speech (the Criminal Code prohibits hate crimes and speech on the ground of sexual orientation, but not that of gender identity or gender expression)
- **employment security** (trans people are routinely terminated from employment after coming out or beginning transition, or they are harassed until they leave their jobs, even in unionized environments by co-workers and management sometimes by the union itself.)
- **access to appropriate and funded healthcare** (public and private – there is a crisis of access to properly trained and competent health professionals, a crisis of access to publicly funded transition-related healthcare, and a crisis of lack of coverage and resistance to coverage for these issues under private health insurance plans.)
- **identity document issues** (there is a genital status requirement in most Canadian jurisdictions regarding identifying documents, which may not be changed to specify the sex that accords with a person’s identity and presentation unless “transsexual surgery” has been performed. Given the costs of such surgeries, the preferences of some people not to have surgery or their medical ineligibility for surgery and the overall marginalization of trans people in employment that could enable them to fund their own surgeries, this genital bias can pose an enormous health, safety, security and dignity issues for trans people.)

- **washroom and other space issues** (the very manhood and womanhood of transsexual people is denied and denigrated by many persons or groups who seek to protect gendered spaces from “encroachment” by trans people. Washroom access issues can also be particularly acute for transsexuals in transition, for people of ambiguous gender and for genderqueers.)
- **de-psychopathologization** of transsexual and other trans persons – until 1973 “homosexuality” was considered a mental disorder, but it was de-listed from the version of the DSM in existence at that time. Trans people now also wish to be de-listed from the DSM-IV and to have their status either completely demedicalized, or in the case of transsexuals, to have their condition of high-intensity gender dysphoria treated as a medical issue, but not a mental disorder. The desire of transsexual persons to maintain a medicalized but de-psychopathologized status is rooted in their desire to maintain access to medical coverage under either public or private health insurance regimes. A “medical hook” must remain in place, but this need not be the offensive and denigrating notion of mental disorder.

What can unions and the labour movement do to help trans people in their struggle?

The answer is: a great deal! Examples include:

- negotiate clear protections from discrimination and harassment into collective agreements
- negotiate appropriate medical benefits and leave coverage to assist transitioning trans workers
- help trans workers when they need it; be proactive, take them seriously, fight their cases, attend their protests, stop harassment in the workplace
- make trans people **visible** in union communications, messaging, campaigns, public and union education, bargaining. Denounce transphobia and transphobes; praise trans-positive employers and institutions. Make trans equality an **issue**.
- lobbying and political action towards legislative and regulatory changes to protect and advance the interests and dignity of trans people.
- help trans communities and their activists in their community organizing efforts, through donating money (any amount helps), resources, space, training, press releases, etc.