



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

March 4, 2011

Via email: rights-droits@sen.parl.gc.ca

The Honourable Nancy Ruth
Chair
Senate Committee on Human Rights
The Senate of Canada
Ottawa, ON K1A 0A4

Dear Senator Ruth:

Re: Better Protection for Transgender People – Bill C-389

I write on behalf the Sexual Orientation and Gender Identity Conference (SOGIC) of the Canadian Bar Association (CBA), to encourage the Senate to pass Bill C-389.

The CBA is a national association representing approximately 37,000 jurists, including lawyers, notaries, law teachers and students, across Canada. Our primary objectives are to uphold the Rule of Law, improve the administration of justice, and promote equality in the law. SOGIC was established in 1997 to address the needs and concerns of lesbian, gay, bisexual, transgendered and two-spirited members within the Association and to provide a forum for the exchange of information, ideas and action on legal issues relating to sexual orientation and gender identity.

Victimization of, and discrimination against, transgender individuals is a serious problem. Bill C-389 would ensure better protection of transgender individuals in Canada by enacting specific legal protections.

In August 2010, the CBA's governing Council unanimously passed the enclosed resolution enjoining the federal, provincial and territorial governments to amend human rights laws and the *Criminal Code* to protect transgender individuals from hate crimes and discrimination. This protection would be afforded by the proposals in Bill C-389.

Opposition to Bill C-389 trivializes critical and grave issues and fails to appreciate the existence and life conditions of transgender people. Opposition appears to rest on a misapprehension of existing human rights law and criminal provisions. Contending that the Bill would allow male sexual predators to invade women's washrooms and change rooms

ignores the fact that nothing in the proposed legislation would detract from existing criminal prohibitions against voyeurism and sexual assault. .

Transgender Canadians are a minority who suffer discrimination, such as job losses, alienation from their communities, ridicule, harassment and inadequate health care. They also disproportionately fall victim to hate crimes, including homicide. The extent of victimization of transgender individuals by hate crimes across Canada is not known. Ottawa is the only jurisdiction where it is systematically tabulated. However, emerging data indicate that human rights violations and acts of violence ranging from verbal abuse to murder are perpetrated daily against transgender and transsexual people.

Prevalent mischaracterizations of the proposed legislation present compelling evidence for why it should be passed. While existing precedent clearly establishes that transgender people are implicitly protected from discrimination on the existing ground of sex, it is difficult to use a right “read in” to the law as a basis for public education.

Because gender identity is currently “read in” to existing human rights legislation, transgender people already implicitly have the same human rights as other Canadians. The Bill doesn’t add rights. It adds public acknowledgement and education, and therefore better protection for existing rights. Passing Bill C-389 would provide notice to the public that ALL forms of transphobic discrimination are wrong, whether against transgender, transsexual, two-spirit, genderqueer, or gender-non-conforming people however they may identify. The legislative changes set out by Bill C-389 could help *prevent* violence and discrimination against transgender people. All that a right “read-in” by court precedent can do is address hate crimes and discriminatory conduct once they have already happened.

Human Rights legislation serves an educational function. Human rights law and the *Criminal Code* should be vehicles to promote understanding and education about the particular rights and needs of transgender Canadians, as well as a means to deter unlawful conduct.

In sum, the CBA believes there is a need for better legal protection for transgender Canadians. Bill C-389 would provide that protection. We would welcome an opportunity to present our views to the Senate Committee at greater length.

Thank you in advance for your commitment to equality and for taking the protection of transgender people seriously.

Yours truly,

(original signed by Rebecca Bromwich for Kristine Barr and Mark Berlin)

Kristine Barr and Mark Berlin
Co- Chairs
Sexual Orientation and Gender Identity Conference

Att.

Equality for All Regardless of Gender Identity and Gender Expression

WHEREAS transgender Canadians are a minority who suffer discrimination, such as job losses, alienation from their communities, ridicule, harassment, inadequate health care, and also disproportionately fall victim to hate crimes, including homicide;

WHEREAS transgender Canadians stand apart as a group for whom no protection is enumerated under human rights legislation, and no hate crimes against them on the basis of their sexual expression or identity are recognized under the *Criminal Code*;

WHEREAS transgender Canadians are members of our Bar, our profession, our families and are our neighbours and friends;

WHEREAS, to commemorate the annual International Trans Day of Remembrance on November 20, amendments to human rights legislation were proposed in May 2010 through Private Members Bills in the House of Commons and the Ontario Legislature;

L'égalité pour toute personne, quelles que soient l'identité et l'expression sexuelles

ATTENDU QUE les personnes transgenres canadiennes font partie d'une minorité qui est victime de discrimination, de perte d'emplois, d'aliénation de la collectivité, de dérision, de harcèlement et de soins de santé inadéquats, et elles sont aussi victimes de crimes haineux, dont l'homicide, de façon disproportionnée;

ATTENDU QUE les personnes transgenres canadiennes se distinguent en tant que groupe qui ne jouit pas de protection en vertu des lois sur les droits de la personne et dont on ne reconnaît pas les crimes commis contre elles au motif de leur expression et de leur identité sexuelles à titre de crimes haineux aux termes du *Code criminel*;

ATTENDU QUE les personnes transgenres canadiennes sont membres de notre Barreau, de notre profession, de nos familles et sont aussi nos voisins et amis;

ATTENDU QUE pour souligner la Journée internationale annuelle du souvenir transgenre, qui se fête le 20 novembre, des modifications ont été proposées aux lois en matière de droits de la personne, en mai 2010, par le biais de projets de loi émanant de

BE IT RESOLVED THAT the Canadian Bar Association urge the federal, provincial and territorial governments to review their legislation and policies, especially human rights legislation and hate crimes under the *Criminal Code*, and make amendments necessary to protect individuals from discrimination on the basis of gender identity and gender expression.

Certified true copy of a resolution carried by the Council of the Canadian Bar Association at the Annual Meeting held in Niagara, Ontario August 14-15, 2010

députés, déposés à la Chambre des communes et à l'Assemblée législative de l'Ontario;

QU'IL SOIT RÉSOLU QUE l'Association du Barreau canadien exhorte les gouvernements fédéral, provinciaux et territoriaux à examiner leurs lois et politiques, notamment la législation en matière de droits de la personne et les dispositions portant sur les crimes haineux sous le régime du *Code criminel*, pour y apporter les modifications qui s'imposent afin de protéger les personnes contre la discrimination fondée sur l'expression et l'identité sexuelles.

Copie certifiée d'une résolution adoptée, par le Conseil de l'Association du Barreau canadien, lors de son Assemblée annuelle, à Niagara (Ontario) les 14 et 15 août 2010.

**John D.V. Hoyles
Chief Executive Officer/Chef de la direction**