



BRIEF ON BILL C-279

AN ACT TO AMEND the *Canadian Human Rights Act*
and the *Criminal Code* in regard to Gender Identity and
Gender Expression (Transgendered)

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Presented by:

REAL Women of Canada
Box 8813, Station "T"
Ottawa, Ontario K1G 3J1
Tel: (613) 236-4001

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Brief on Bill C-279, An Act to Amend the *Canadian Human Rights Act* and the *Criminal Code* in regard to Gender Identity and Gender Expression (Transgendered)

RE: BILL C-279

An Act to amend the *Canadian Human Rights Act* and the *Criminal Code* in regard to Gender Identity and Gender Expression (Transgendered)

INTRODUCTION:

REAL Women of Canada was federally incorporated in 1983 and is a non-denominational, non-partisan organization of women from all walks of life, occupations, social and economic backgrounds. We believe that the family, consisting of mother, father and children, is the foundation of society.

Our organization is deeply concerned about the private member's bill C-279, which amends the *Canadian Human Rights Act* and the *Criminal Code* to include "gender identity" and "gender expression" as prohibited grounds of discrimination. This bill also amends the hate crimes section of the *Criminal Code* to include "gender identity" and "gender expression" as distinguishing characteristics protected from hate crimes under Section 318 and also as an aggravating circumstance in sentencing.

This bill is troubling for a number of reasons. It is not just a "simple" bill, merely extending human rights protection to another category of individuals: it goes much further. The bill has far reaching ramifications for Canadian society and, according to credible medical authorities, will be harmful to the transgendered individuals themselves.

The problems with this bill include the following:

1. Lack of Definitions

C-279 can reasonably be described as confusing and dangerous since it provides no definition of the meaning of the vague words “gender identity” and “gender expression – words which are not in common usage.

If this Bill is passed into law, the definition of these words would be left to Human Rights Tribunals and Courts to define. In effect, the Tribunals and Courts would be required to legislate on the meaning of these words. This will result in the abolition of the gender norms that are understood and accepted in Canadian society today, without public input or Parliamentary approval. It is not the role of Tribunals and Courts to make such fundamental changes to society.

In short, Parliament should not approve this Bill because it does not know the meaning and implications of such legislation. To proceed with this Bill under these circumstances would be irresponsible.

2. UN Rejection of “General Expression” and “Gender Identity”

NDP MP Randall Garrison (Esquimalt Juan de Fuca), who introduced this Bill, referred, during debate (Hansard April 5, 2012 at p 6970), to the Geneva based UN Human Rights Commissioner’s recommendation that “gender identity” and “gender expression” be protected rights. Mr. Garrison did not mention, however, that this controversial recommendation was

overwhelmingly rejected by the Human Rights Council in March, 2012. Similarly, the non-binding UN Declaration on Sexual Orientation and Gender Identity, referred to by Mr. Garrison, was never voted on by the UN General Assembly. In fact, it was directly contradicted by another UN Declaration which was presented by other UN member states.

3. What is the meaning of Transgender?

Gender Identity Disorder or Gender Dysphoria is a discontent with the sex one has at birth and/or the gender identities associated with that sex. This covers a large area of dissatisfaction. “Gender identity” and “gender expression” is ever expanding according to gay, lesbian, bisexual and transgender activists (“GLBT”) to include anyone who, “crosses the rigid gender lines of our society” or is “breaking the rules”.

4. Political Activism by GLBT

GLBT political activism has spawned an ever increasing number of rights-seeking activists dealing with gender identity and gender expression: transvestite, cross-dresser, two spirited, questioning, queer, drag queen or king, gender bender, cisgender, asexual, pansexual, intersex and those who reject “the binary construct of sexual orientation.” One of several “alphabet soup” designations is GLBTTQQIT-S, but Canadian lobbyists camouflage the expansion by using the term GLBT. Beyond special rights, many demand “recognition and acceptance.” These and further categories would fall under the umbrella of “gender identity” and “gender expression” and this includes paedophilia as paedophilia activists are already agitating for recognition, demanding that their sexual orientation be legally and socially accepted.

5. The Transgender Issue and Medicine

There are genuine physiologically based conditions, referred to as intersex. This refers to persons who, because of a genetic condition or developmental factors, are born with reproductive organs that are indeterminable in terms of male or female.

It is another matter when people whose sex is known at birth as clearly male or female, choose to undergo drastic chemical and surgical procedures to attempt to become the opposite sex because they think they are the opposite sex, contrary to the reality of their chromosomal make-up. In some cases, confused adolescents are put on puberty blocking hormones while they decide on their chosen sex. The medical profession is divided on the issue of so-called “gender re-assignment”, which does not change the DNA of the patient or the internal reproductive system. The latter is evidenced by the recent bizarre situation that has arisen of transgendered, so-called “males”, giving birth and breastfeeding their children. That is, these “males” remain, in fact, female, notwithstanding their personal belief to the contrary, surgery, and the addition of hormone treatments.

6. Experience with Transsexual Surgery

Studies on transsexualism have several major shortcomings: The nature of sex reassignment precludes double-blind-randomized-controlled studies of the results. Secondly, transsexualism is rare and many follow-ups are hampered by the small number of subjects, (see endnotes, 1 4 7 8 9 10 11 12 13 14) and many sex reassigned persons decline to participate in follow-up

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studies or, relocate after surgery, resulting in high drop-out rates and consequent selection bias (see endnotes 2 5 6 7 10 14 15 16). Further, several follow-up studies are hampered by limited follow-up periods (see endnotes 3 5 7 8 12 30). Taken together, these limitations preclude solid and valid conclusions on the efficacy of their treatment.

Notwithstanding these difficulties, some research has, in fact, been carried out on transsexuals by those having direct experience in the field. For example:

- Johns Hopkins Hospital in Baltimore, Maryland, was the leading authority on transsexual surgery. This hospital has now ceased to provide this service because it found that individuals were no happier or well adjusted after the surgery than they had previously been. The hospital concluded that facilitating sex changes was contributing to the mental illness of the patients by providing surgery and hormone treatments for their obsession with belonging to another gender, which had no medical basis. (See Appendix A – An excerpt from statement of Dr. Paul McHugh, Director of the Department of Psychiatry and Behavioral Sciences, at the Johns Hopkins School of Medicine and Psychiatrist-in-Chief at Johns Hopkins Hospital, 1975-2001).

- In 2004, the University of Birmingham (UK) Aggressive Research Intelligence (“ARIF”) reviewed more than 100 international medical studies of post-operative transsexuals and found no robust scientific evidence that gender reassignment surgery is clinically effective. The link is as follows:

<http://www.birmingham.ac.uk/Documents/college-mds/haps/projects/ARIF/completed-requests.pdf>

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(Please ensure that once you click on the link and the alphabetical index of the University of Birmingham appears, that you go to the letter “g” and scroll down to the document entitled “Gender Reassignment Surgery”)

In its review, ARIF found that most of the medical research on gender reassignment was poorly designed, which skewed the results to suggest that sex change operations are beneficial. It also found that the results of many gender reassignment studies were invalid because researchers lost track of more than half of the participants.

- In 2011, a study was conducted in Sweden which was unique, in that it included the results of a national wide study over more than 30 years with minimal loss to follow-up. This study can be accessed at the following link:

<http://www.plosone.org/article/info:doi/10.1371/journal.pone.0016885>

This Swedish study found substantially higher rates of overall mortality, death from cardiovascular disease and suicide, suicide attempts, and psychiatric hospitalizations in sex-reassigned transsexual individuals, compared to a healthy control population. Even though surgery and hormonal therapy alleviate gender dysphoria, they are, apparently, not sufficient to remedy the higher rates of morbidity and mortality found among transsexual persons.

- On March 31, 2010, the American College of Pediatricians distributed a letter to school officials, citing various research studies, which affirmed...”Even children with Gender Identity Disorder [“GID”] – (when a child desires to be the opposite sex) will typically lose this desire by puberty if the behavior is not reinforced when parents or others allow or encourage a child to

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behave and be treated as the opposite sex, the confusion is reinforced and the child is conditioned for a life of unnecessary pain and suffering.” American College of Pediatricians letter, March 31, 2010, (<http://factsaboutyouth.com/posts/letter-to-school-officials/>).

Troubling Effects if Bill C-279 is Passed into Law

a) Male access to Women’s Public Washrooms

Since the term “gender identity” and “gender expression” are undefined, they apply to anyone who “thinks” he or she is another sex, whether or not he/she has had hormonal treatments or surgery. This allows such individuals to use the washrooms of the opposite sex with impunity. This places females and children at a strong disadvantage and possible risk. Since child predators will be able to use cross-dressing as a pretense to gain access to children in public washrooms.

This conclusion is based on two cases in British Columbia, as outlined in Appendix B.

b) Taxpayers Required to Cover Expensive Surgery and Hormone Treatments

If transsexualism, transgenderism, etc. are protected rights in federal jurisdictions, such as the federal public service and federally regulated industries such as banks and airlines, these industries will be required to pay the medical premiums on behalf of employees to cover expensive surgery and hormone treatments and to accept these employees after such hormone treatments. Assimilating them back into the workplace will inevitably create difficulties.

c) Canadian Penitentiaries

This issue will also create problems in federal penitentiaries. If Bill C-279 is passed into law, prison officials, at taxpayers expense, will be required to provide treatment for those inmates claiming they were born the wrong gender. This will lead to difficulties for the transgendered themselves, creating exposure to risks for him/her. This has already occurred in Massachusetts in 2012, when a prisoner, given a life sentence for the murder of his wife in 1990, was approved by the court to undergo sex reassignment surgery. The individual now resides in an all-male prison and will face security risks daily as a target of sexual assaults by other inmates. Alternatively, if the inmate is transferred to an all female prison, he/she will also be a target for assaults and harrassment by other inmates.

CONCLUSION

Transgendered individuals must have the same rights as all other Canadians, but should not be given special rights for what is an apparent mental confusion, which requires compassionate counseling, not surgery and hormone treatments.

Due to the emotional and psychological problems of transgendered individuals, they should be treated rather than encouraged in their troubled understanding of their gender. As well, Bill C-279 will cause grave problems to society. REAL Women of Canada, therefore, urgently requests that this Bill not be passed into law.

APPENDIX A

Excerpt from statement of Dr. Paul McHugh, Director of the Department of Psychiatry and Behavioral Sciences at the Johns Hopkins School of Medicine and Psychiatrist-in-Chief at Johns Hopkins Hospital, 1975-2001:

“It is not obvious how this patient's feeling that he is a woman trapped in a man's body differs from the feeling of a patient with anorexia nervosa that she is obese despite her emaciated, cachectic [a condition of weakness of body or mind] state. We don't do liposuction on anorexics. Why amputate the genitals of these poor men? Surely, the fault is in the mind not the member. ...The zeal for this sex-change surgery-- perhaps, with the exception of frontal lobotomy, the most radical therapy ever encouraged by twentieth century psychiatrists-- did not derive from critical reasoning or thoughtful assessments... We need to know how to prevent such sadness, indeed horror. We have to learn how to manage this condition as a mental disorder when we fail to prevent it... But instead of attempting to learn enough to accomplish these worthy goals, psychiatrists collaborated in a exercise of folly with distressed people during a time when "do your own thing" had something akin to the force of a command. As physicians, psychiatrists, when they give in to this, abandon the role of protecting patients from their symptoms and become little more than technicians working on behalf of a cultural force.”

McHugh Paul R “Psychiatric Misadventures” American Scholar 1992 Vol.61 Issue 4, p497;

<http://www.lhup.edu/~dsimanek/mchugh.htm> III.

APPENDIX B

1. In 1999, *Sheridan v. Sanctuary Investments Ltd. doing business as "B.J.'s Lounge"* 1999 BCHRT, <http://www.bchrt.gov.bc.ca/>, under RESOURCES, Decisions, 1999, [Sheridan v. Sanctuary Investments Ltd. dba "BJ's Lounge"](#) a man, who believed he was of the female gender, but had not received hormone treatment or surgery, and was very much a man under his dress, entered the women's washroom in a Victoria nightclub. He was ordered to leave the women's washroom. He subsequently laid a complaint with the B.C. Human Rights Commission, which upheld his complaint and fined the nightclub \$2,000.00. In short, a male dressed as a woman was allowed by the BC Tribunal to access a women's washroom. If Bill C-279 is passed, this bizarre decision would be confirmed, giving any male dressed as a woman, access to women's washrooms.

2. In *Kimberly Nixon v. Vancouver Rape Relief Society*, 2002 BCHRT 1, a man, who had had sexual reassignment surgery, applied to be a volunteer at a Vancouver Rape Relief and Women's Shelter. This individual, despite wearing women's apparel, was still obviously a male with a prominent Adam's apple, broad shoulders, large hands and feet and was unusually tall. The Rape Relief and Women's Shelter refused him as a volunteer, stating that he had not experienced life as a girl and woman and that his presence would intimidate women who were being counseled because of a rape. The individual subsequently laid a complaint with the B.C. Human Rights Tribunal, which ordered the payment of \$7,500.00 for "hurt feelings". This decision was subsequently set aside by the B.C. Court of Appeal, which unanimously held that Vancouver Rape Relief and Women's Shelter had the right to train only women who have never been anything but female. The Supreme Court of Canada refused to hear an appeal in this

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case. If Bill C-279 is passed, there will be no protection for rape victims from counseling under such circumstances. Moreover, this case makes clear that despite surgery and hormone treatment an individual retains not only his/her life's experiences, but also the physical nature with which he/she was born, including characteristics DNA and reproductive system.

End Notes

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- 4 Bodlund O, Kullgren G (1996) Transsexualism-General outcome and prognosis factors. A five-year follow-up study of 19 transsexuals in the process of changing sex. Arch Sex Behav 25: 303-316
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- 13 Supra 3
- 14 Supra 6
- 15 Supra 10
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- 17 Kaube H, Biemer E (1991) [Results of sex change operations in 30 transsexual patients: psychosocial and sexual adaptation – surgical complications]. Handchir Mikrochir Plast Chir 23: 276 – 278.

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