

Jordan B. Peterson

SENATE APPEARANCE: May 17, 2017

Bill C-16

THE IMPORTANCE OF LEVEL OF ANALYSIS:

According to the Federal Department of Justice website, the provisions of Bill C-16 will be interpreted within the context of policies already in place both governing and defining the actions of the Ontario Human Rights Commission (although this link was de-activated, as Jared Brown has confirmed – and is archived). The punishments for failure to comply can be severe – monetary and non-monetary. The OHRT can pursue an order for contempt, for failure to follow its orders. Imprisonment can be ordered for contempt.

1. Compelled speech: requirement to use an ill-defined set of pronouns not in common parlance and consciously created as an expression of a particular post-modern/neo-Marxist ideology.

From OHRC policies: Gender-based harassment can involve: Refusing to refer to a person by their self-identified name and proper personal pronoun.

2. Definition of identity as purely subjective, with multiple independent dimensions.

International human rights principles are clear that every person has the right to define their own gender identity. A person's self-defined gender identity is one of the most basic aspects of self-determination, dignity and freedom. For legal and social purposes, a person whose gender identity is different from their birth-assigned sex should be treated according to their lived gender identity.

From the OHRC:

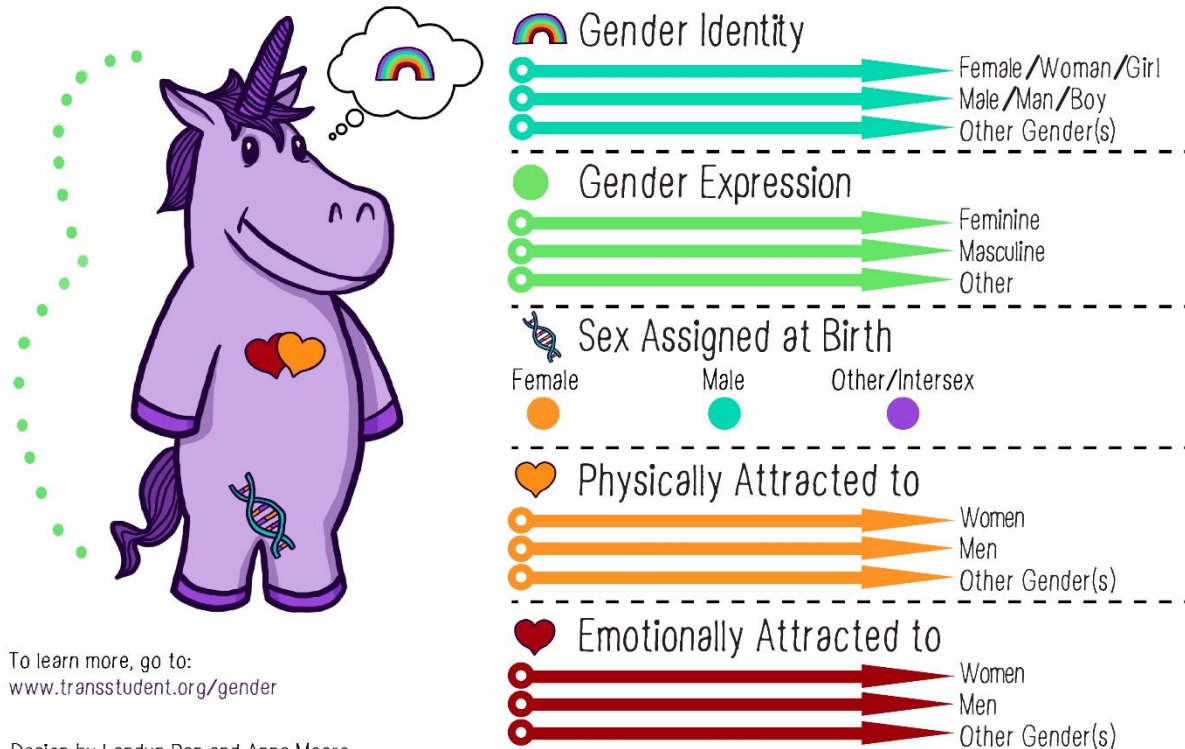
- **Sex** is the anatomical classification of people as male, female or intersex, usually assigned at birth.
- **Gender identity** is each person's internal and individual experience of gender. It is a person's sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.
- **"Lived" gender identity** is the gender a person feels internally ("gender identity" along the gender spectrum) and expresses publicly ("gender expression") in their daily life including at work, while shopping or accessing other services, in their housing environment or in the broader community.
- **Gender expression** is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.
- **Sexual Orientation:** from the Policy on Discrimination and Harassment: Sexual orientation is "an immutable personal characteristic that forms part of an individual's core identity."

Criticisms of "cisnormativity": "Cisnormative assumptions are so prevalent that they are difficult at first to even recognize. The notion that there are two and only two genders is one of the most basic ideas in our binary Western way of thinking. Transgender people challenge our very understanding of the world. And we make them pay the cost of our confusion by their suffering.

3. Instantiation of a social constructionist viewpoint into Canadian law and society.

The Gender Unicorn

Graphic by:
TSER
Trans Student Educational Resources



4. Vicarious Liability: from “Policy on Discrimination and harassment because of gender identity”

Organizations have a legal duty and ultimate responsibility to maintain an environment free from discrimination and harassment because of gender identity and expression. They must take steps to prevent and respond to violations of the Code or they may be held “liable” and face monetary penalties or other orders from a tribunal or court. It is unacceptable to choose to remain unaware, ignore or fail to address potential or actual human rights violations, whether or not a complaint is made. Under section 46.3 of the Code, a corporation, trade union or occupational association, unincorporated association or employers’ organization will be held responsible for discrimination, including acts or omissions, committed by employees or agents in the course of their employment. This is known as “vicarious liability.” The corporation, union, etc. is vicariously liable for the acts of its employees or agents. Responsible parties violate the Code where they directly or indirectly, intentionally or unintentionally infringe the Code, or where they otherwise authorize, condone or adopt behaviour that is contrary to the Code.

Systemic Discrimination: Discrimination is not always just between individuals. It can be more complex and systemic, embedded in patterns of behaviour, policies and practices that are part of the administrative structure or informal culture of an organization, institution or sector. Organizations and institutions have a positive obligation to make sure they are not engaging in systemic discrimination. They should prevent barriers by designing policies and practices inclusively up front. They should also review their systems and organizational culture regularly and remove barriers where they exist.

5. Alterations to standard jurisprudential practice:

From the new OHRC documents: Discrimination is not always direct and is often hard to detect. The claimant must show on a balance of probabilities (more likely than not) that adverse or negative treatment happened. The analysis should be flexible and look at all relevant factors in the situation including circumstantial evidence as well as the full impact on the affected person or group. While there may be evidence of “intent,” this is not needed to prove discrimination.

Once prima facie discrimination is established, the burden then shifts to the organization or person responsible to either provide a credible non-discriminatory explanation, or justify the conduct or practice using one of the defences available under the Code.

The OHRC has the right to suspend normal jurisprudential practice and to issue any policies it sees fit to issue in the pursuit of its mandate.