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Hon. Larry Campbell
Hon. Nancy Greene Raine
Hon. Mobina Jaffer
Hon. Yonah Martin
Hon. Richard Neufeld

The Senate of Canada
Ottawa, Ontario
Canada
K1A 0A4

November 5, 2014

Dear British Columbia Senators:

RE: Bill C-279: An Act to amend the Criminal Code and the Canada Human Rights Act (Gender Identity)

We write to urge you to pass Bill C-279 (the Gender Identity Bill) as drafted and without delay. As you know, this is the fourth time such legislation has been introduced in Parliament, and each time it has been set back by prorogation or an election. Bill C-279 has been approved by the House of Commons and is now awaiting approval by the Senate. When it passes, transgender Canadians will finally be protected from hate crimes under the *Criminal Code* and assured their right to equality under the *Canadian Human Rights Act*. We call on you to pass this important piece of legislation to ensure that the *Canadian Human Rights Act* and *Criminal Code* offer protection to trans* people in Canada.¹

Canada's trans* community faces extreme levels of violence, stigma and discrimination. In a recent nationwide survey, 74% of transgender youth reported experiencing verbal harassment in school, and 37% reported experiencing physical violence.² As a result of discrimination, bullying, and harassment, the trans* community also faces high rates of mental health issues.

¹ Trans* is an umbrella term that refers to all of the identities within the gender identity spectrum. For more information see <itspronouncedmetrosexual.com/2012/05/what-does-the-asterisk-in-trans-stand-for/>.

² Taylor, et al (2011), *Every class in every school. The first national climate survey on homophobia, biophobia, and transphobia in Canadian schools*. Final Report. Toronto, ON: Egale Canada Human Rights Trust.

Rates of depression are as high as two-thirds; 77% of transgender individuals in Ontario report having considered suicide, and 43% have attempted suicide at least once.

There is far to go in ensuring that the human rights of transgender people are protected. Passing Bill C-279 into law without further delay would be a good start.

In the face of targeted violence, it is crucial that *Criminal Code* hate crime protections be extended to trans* individuals. And in the face of deeply entrenched discrimination in employment, housing and education, it is vital that gender identity be added to the prohibited grounds of discrimination under the *Canadian Human Rights Act*. The federal government already trails Manitoba, Newfoundland and Labrador, the Northwest Territories, Nova Scotia and Ontario, which have all amended their human rights legislation to prohibit discrimination on the basis of gender identity.

Bill C-279 will help to prevent discrimination and ensure that those who commit hate crimes against trans* people are held to account. By amending the *Canadian Human Rights Act* and *Criminal Code* to include gender identity, Bill C-279 represents an important step towards ensuring access to the justice and equality for trans* people. Addition of the ground sends an important message to trans* people in Canada: that they are equal under the law and will be protected from hate on the basis of their gender identity. Moreover, it sends a message to all Canadians that trans* people are protected by Canada's human rights laws. The Bill also addresses Canada's obligations under the *Charter of Rights and Freedoms* to ensure that legislation complies with the *Charter's* guarantees of equality and non-discrimination, protected by section 15.

Passage of Bill C-279 is also critical for Canada to meet its international human rights obligations to respect, protect and fulfill the equality rights of trans* people in Canada. The 2007 *Yogyakarta Principles*, developed by a group of international human rights experts, detail how international human rights law applies to gender identity and sexual orientation in a range of areas.³ Principles 1 to 3 set out the principles of the universality of human rights and their application to all persons without discrimination, as well as the right of all people to recognition before the law. Principles 28 and 29 affirm the importance of holding rights violators accountable, and ensuring appropriate redress for those who face rights violations. The UN High Commissioner for Human Rights has expressed concern about "impunity for crimes of violence against LGBT persons" and "the responsibility of the State to extend effective protection." The High Commissioner notes that "excluding LGBT individuals from these protections clearly violates international human rights law as well as the common standards of humanity that define us all."⁴

³ *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (2007), online: <www.yogyakartaprinciples.org/principles_en.htm>.

⁴ See *Human rights, sexual orientation and gender identity* HRC Res. 17/19, UN HRCOR, 17th Sess., UN Doc. A/HRC/RES/17/19 (2011); *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity: Report of the United Nations High Commissioner for Human Rights*, UN

We share the view expressed by Senator Ruth that the absence of “sex” from the list of groups protected from hate speech in the *Human Rights Act* and *Criminal Code* must be remedied; however, in our submission, amending Bill C-279 is not the correct approach to addressing the gap in protection from hate speech for women. Amending the Gender Identity Bill to include “sex” as a protected ground at this late stage would in all likelihood mean that the Bill will once again fail to become law before an election is called. This outcome offers no benefit to either trans* people or women, and must be avoided.

Bill C-13 proposes to add “national origin,” “age,” and “mental or physical disability,” as well as “sex” to the list of identifiable groups protected from hate speech by the Criminal Code. As detailed in our submissions to the House of Commons Standing Committee on Justice and Human Rights regarding Bill C-13, West Coast LEAF supports this amendment (although we object to other portions of Bill C-13 that unduly infringe privacy rights).⁵ However, Bill C-13 does not address hate speech and hate crimes against the trans* community. It is essential that the Senate pass Bill C-279 as drafted, and consider the addition of the ground of “sex” in due course when debating Bill C-13.

Certain Members of Parliament, Senators, and members of this Committee have expressed the view that Bill C-279 would encourage deviant men to dress up as women in order to access public women’s washrooms. There is no evidence of that in any jurisdictions that have adopted similar legislation. Rather, the evidence shows that law reform promotes equality and improves safety for everyone. Moreover, an objection to trans* people using the washroom appropriate to their gender identity is based on the assumption that trans people are likely to act inappropriately in the washroom – a quintessentially transphobic argument.

To delay Bill C-279 any further is to send a message to trans* people that the humiliation and hatred they face in relation to a fundamental aspect of their identity is somehow acceptable in Canadian society. Given the extreme levels of violence, discrimination, and harassment faced by trans* people in Canada, legal protections are urgently required.

We hope you will take immediate action to ensure the timely passage of Bill C-279, and urge your colleagues in the Senate to do the same.

Yours truly,



Laura Track
Legal Director

HRCOR, 19th Sess., UN Doc. A/HRC/19/41, (2011) online:
<www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx> at 5.

⁵ See <<http://www.westcoastleaf.org/userfiles/file/Submission%20to%20House%20Committee%202014.pdf>>.