

Combating structural discrimination against 2SLGBTQI people in Canada

Egale Canada's stakeholder submission to the United Nations Human Rights Council

Universal Periodic Review for Canada (2023)

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Egale is Canada's national 2SLGBTQI organization. Established in 1986, Egale works to improve the lives of 2SLGBTQI people in Canada and to enhance the global response to 2SLGBTQI issues. Egale achieves this by informing public policy, inspiring cultural change, and promoting human rights and inclusion through research, education, awareness, and legal advocacy. Our vision is a Canada, and ultimately a world, without homophobia, biphobia, transphobia and all other forms of oppression so that

every person can achieve their full potential, free from hatred and bias.



Introduction

In Canada's last examination under the Universal Periodic Review (UPR) mechanism in 2018, the government accepted three recommendations that have particular relevance to 2SLGBTQI communities:

"Strengthen measures to combat structural discrimination against...lesbian, gay, bisexual, transgender, queer and intersex persons." (Argentina)

"Continue strengthening efforts in promoting the rights of lesbian, gay, bisexual, transgender and intersex persons." (South Africa)

"Take action to ensure equal access to abortion and comprehensive sexuality education across provinces and territories." (Norway)

While we appreciate that the Government of Canada has made important legislative and policy gains in the years since its last review, all three of these supported recommendations remain "aspirational", and progress for certain segments of the 2SLGBTQI community has been virtually non-existent, for instance on medical abuse of intersex children. The COVID-19 pandemic exposed and exacerbated areas where progress has been weak, especially around poverty reduction and combatting hate crimes. Civil society is demanding bold systemic change to "build back better" and ensure that Canada is living up to its international obligations.

Engaging International Human Rights Mechanisms

1. Considering there is no international treaty body or convention that focuses on sexual orientation, gender identity, gender expression and sex characteristics, it is imperative that the Canadian government explicitly acknowledge 2SLGBTQI communities in their implementation, monitoring, and evaluation of international human rights instruments and UN conventions which they already recognize.

These instruments and conventions include, but are not limited to:

- a. International Covenant on Civil and Political Rights (1966);
- b. International Covenant on Economic, Social and Cultural Rights (1966);
- c. International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- d. Convention on the Elimination of All Forms of Discrimination against Women (1979);



- e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);
- f. Convention on the Rights of the Child (1989);
- g. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- h. International Convention on the Rights of Persons with Disabilities (2006);
- i. International Convention for the Protection of All Persons from Enforced Disappearance (2006); and
- j. Optional Protocol of the Convention against Torture (2002).

Recommendations:

- Officially recognize and utilize the Yogyakarta Principles and Yogyakarta Principles (+10) as guidance in implementing international legal obligations.
- Increase participation in calls for input from the special procedures, especially the mandate on protection against violence and discrimination based on sexual orientation and gender identity.

Access to Justice

2. Egale welcomes the enactment of Bill C-66, *The Expungement of Historically Unjust Convictions Act* (2018), as it represents an attempt by the Government of Canada to remedy its historic oppression and criminalization of 2SLGBTQI people. However, it is deficient in scope, as the legislation was rushed through the House of Commons without any meaningful discussion or consultation with 2SLGBTQI advocates to advise on gaps. As a result, some 2SLGBTQI people are still labelled as criminals for having engaged in consensual sexual behaviour or for engaging in social activities in 2SLGBTQI spaces, as their convictions do not qualify as offences eligible for expungement (p. 17 Equal Protection and Equal Benefit Report, Egale, 2023).
3. A new Statistics Canada hate crimes report notes that in 2021 there was a 64-per-cent rise in crimes against members of the LGBTQ community. Almost half of the hate crimes cases were “violent,” including assault, harassment, and uttering threats. We are waiting for the release of a new National Action Plan for combatting Hate and we hope that it addresses the differential impact of these hate crimes on our communities.

4. Canadian Institutes of Health Research shows that 77% of sex workers identify as women, and 38% identify as bisexual or bi-curious. They also found that trans sex workers are among the most marginalized and vulnerable due to widespread stigmatization and prejudice. Current sex work laws in Canada make it impossible for sex workers to make a living without discrimination.

Recommendations:

- Provide legal remedy for the expungement of ALL unjust criminal convictions targeting 2SLGBTI people.
- Provide funding for programs that specifically address violence experienced by vulnerable members of the 2SLGBTQI community, especially racialized, disabled, trans, and gender-diverse communities.
- Repeal sex work laws that still criminalize and harm sex workers.

Employment Equity

5. There are significant gaps in systemic and formal support for 2SLGBTQI federal public service employees. There are limited EDI strategies for 2SLGBTQI people and many of the existing supports relied upon their staff's personal time and resources being volunteered. (p. 17 Equal Protection and Equal Benefit Report, Egale, 2023) The federal employment equity legislation is currently under review, and it is anticipated that it will make recommendations about inclusion for 2SLGBTI people.

Recommendations:

- Adopt all recommendations from Employment Equity review panel pertaining to better inclusion for 2SLGBTI people.
- Continue to implement the 23 recommendations from the Emerging from the Purge report (2021).

Medical Abuse of Intersex Minors

6. The United Nations Convention Against Torture prohibits non-consensual cosmetic surgeries on intersex children, and Section 7 of the Charter protects the security of the person. We welcome the fact that Canada's new 2SLGBTQI+ Action Plan (released in 2022) highlighted the launch of a public consultation on the criminalization of purely cosmetic surgeries on intersex children's genitalia until they are mature enough to provide consent. The was supposed to start in the fall of 2022, but at the time of this report, no consultation has begun, and these surgeries persist



in Canada.

Recommendations:

- Amend subsection 268(3) of the criminal code to include intersex genital mutilation as aggravated assault.
- Add intersex status to the protected classes of the Canadian Human Rights Act and the Criminal Code.
- Provide the Public Health Agency of Canada and Health Canada with access to provincial records have been anonymized to allow for secondary research into prenatal screening and termination of intersex fetuses, and surgical management of intersex children.

Immigration

7. Under the 1951 Refugee Convention, most 2SLGBTQI refugees fall under the “members of a particular social group” category. The number of 2SLGBTQI refugees and asylum seekers has risen in recent years and civil society and the government have worked together with some success to address systemic barriers. That said, there remains significant work toward strengthening Canada's commitment to fair and equitable processes for refugees.

Recommendations:

- Make long term investments and consistent funding to support refugees and all stages of the settlement process.
- Expand the federal health program to include medical care directly relevant to 2SLGBTQI people such as hormone therapy and gender affirming surgery.
- Conduct a comprehensive review of the adjudicator training process, decisions regarding SOGIESC eligibility, and complaints lodged against the IRB.

Health

8. Under the Canada Health Act, patients have a right to be treated with dignity and respect and to receive health services without discrimination. Despite this right, statistics demonstrate deficits in the cultural competency of health care providers to work with 2SLGBTQI populations. 21% of trans and 10% of LGB patients experience

harsh or abusive language while receiving care.¹ Over 60% of healthcare providers have never received training for cultural competency regarding trans populations and over 50% of healthcare providers report having never received training for cultural competency relating to LGB populations.²

9. Related to gender-affirming care, many provinces do not have comprehensive coverage under provincial health plans for gender-affirming care and many face barriers to actually accessing such services. The ability to access a variety of gender-affirming care processes and procedures is essential to the health and well-being of many Two Spirit, trans, nonbinary, and gender non-conforming (2STNBGN+) people in Canada. One-third of trans, Two Spirit, and non-binary people considered suicide in the past year and 1 in 20 attempted it.³
10. After years of advocacy by the 2SLGBTQI community and organizations in Canada regarding conversion therapy practices, we welcome the passage of Bill C-4 in 2021. After several revisions, the Bill is much stronger than originally proposed and make it illegal to remove a person under the age of 18 from Canada for the purposes of conversion therapy, one of the only jurisdictions in the world to do this. Bill C-4 uses a narrow definition of conversion therapy that does not protect against the full breadth of conversion practices. The most significant gap is in addressing trans conversion practices that take the form of preventing trans people from transitioning. Because the legislation is still so new, having entered into force at the beginning of 2022, it is still unclear what cases will be prosecuted and how.

Recommendations:

- Invest in cultural competency initiatives for health care providers.
- Encourage all of Canada's provinces and territories to adopt comprehensive coverage for gender affirming care, following the example of Yukon. This should include all medically necessary services identified by the World Professional Association of Transgender Health including hormone treatments, voice modification therapy, facial reconstruction or contouring, hair removal and grafting, and chest and general surgery.
- Develop a national harm reduction strategy with specifically allocated resources and funding to address the mental health and addiction needs of 2SLGBTQI individuals.

¹ (Rossman, Salamanca & Macapagal, 2017)

² Ibid.

³ (Bauer, Scheim & Churchill, 2021)

- Monitor and report on the number and nature of cases of conversion therapy that are prosecuted under Bill C-4 with a view to identifying gaps in protection.

Poverty

11. Canada's Poverty Reduction Act sets concrete poverty reductions goals. In 2018, Statistics Canada reported that 41% of LGBT Canadians had a total income of less than \$20,000 a year.⁴ During the pandemic, Egale conducted two national surveys that demonstrated that the 2SLGBTQI communities were disproportionately impacted financially by COVID-19, especially members of the community who were also Black, Indigenous or persons of colour.
12. In terms of housing and homelessness, Egale research has shown that 2SLGBTQI people experience homelessness at increased rates because of the discrimination they face in the rental market and when accessing services in the shelter system.⁵ 25% to 45% of homeless youth in Canada are 2SLGBTQI⁶ and 52% of 2SLGBTQI seniors fear being forced back into the closet upon entering long-term care homes.⁷

Recommendations:

- Increase mechanisms of federal income support to working age adults without children that can work towards basic income to enable 2SLGBTQI people to afford basic needs.
- Investigate where vulnerable 2SLGBTQI communities experience gaps in support when switching from federal to provincial benefits as part of Canada's poverty reduction strategy.
- Ensure the COVID-19 economic recovery programs address the economic gap that existed prior to the pandemic and became further exacerbated during the pandemic.
- Allocate funding for targeted housing services for vulnerable populations including 2SLGBTQI youth and seniors.

⁴ <https://www150.statcan.gc.ca/n1/daily-quotidien/210615/dq210615a-eng.htm>

⁵ National LGBTQI2S Action Plan, Egale

⁶ (Egale Canada, 2012)

⁷ (Egale Canada, 2018)

- Continue developing the national housing strategy and target specific resources for 2SLGBTQI communities.
- Ensure that services for those experiencing homelessness or housing insecurity are inclusive and affirming to 2SLGBTQI people.

Education

13. Egale has conducted two national school climate surveys that expose widespread bullying in schools. 64% of students report hearing homophobic comments daily or weekly at the school⁸ and 30% of 2SLGBTQ students report being victims of cyberbullying.⁹ 79% of trans students who had been victims of physical harassment and reported the teacher said the staff response was ineffective.¹⁰
14. In a report that Egale produced as part of a call for inputs from the UN Independent Expert on SOGI, we demonstrated that there are strong examples of comprehensive sexuality education curriculum that supports 2SLGBTQI people and values information on sexual orientation and gender identity. However, it was proven that sexuality education in Canada is subject to politicization and considered optional by many legislators.
15. Regulations surrounding education are a hallmark indication of what a society values and what knowledge they wish to pass on to the next generation. When sexuality and gender education is outdated, made optional, and completely exclusionary to diverse representations of sexual orientation and gender identity, it creates space for discrimination, prejudice, and violence for 2SLGBTQI people. Comprehensive education can only be achieved in Canada if there is consultation with 2SLGBTQI communities, human rights organizations, researchers, policy analysts and educational experts. Listening to the needs of 2SLGBTQI people and creating space for their identities in sexual education is the only way to nullify the claims of rising “gender ideology” protests and reduce harm overall.

Recommendations:

- Develop strategies to address homophobia, biphobia and transphobia in schools and work to change school culture to make 2SLGBTQI students feel included and safe.
- Investigate the rise of “anti-gender” movements in Canada and its impact on the school system.

⁸ School Climate Survey, Egale

⁹ Ibid.

¹⁰ Ibid.



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- Outline the actions that the government has taken to ensure equal access to comprehensive sexuality education across provinces and territories