

April 11, 2014

Emilio Álvarez Icaza
Executive Secretary
Inter-American Commission on Human Rights
1889 F Street N.W.
Washington, D.C. 20006

RE: 150th Ordinary Session – Situation of human rights of LGBTI persons in Canada, March 27th, 2014

Dear Mr. Icaza,

Thank you for convening a hearing on the situation for LGBTQ2S persons in Canada. Egale appreciated the opportunity to present our findings to the Commission, and we look forward to an ongoing dialogue with the Commission, as well as the Canadian government, on how best to improve the lived experience for LGBTQ2S persons within Canada. As mentioned during our visit, the purpose of our presentation was to draw the Commission's attention to the large degree of societal, political, and institutional homophobia and transphobia that exists in Canada, despite the introduction in marriage equality in 2005.

Given the time constraints during our formal presentation to the IACHR, and in light of some of the comments made by the representatives from the Canadian state during the hearing, Egale wishes to elaborate on two of the themes raised in our presentation; namely trans inclusion and hate crimes.

Trans Inclusion

As stated in our presentation, Egale strongly supports the passage of Bill C-279 (Randall Garrison – Esquimalt-Juan de Fuca), *An Act to Amend the Canadian Human Rights Code (Gender Identity)*. Currently, gender variant persons in Canada are not explicitly protected by federal human rights legislation, as they are not recognized as an identifiable group. C-279 seeks to remedy this gap by including gender identity within the *Canadian Human Rights Act* and the *Canadian Criminal Code* as a prohibited ground of discrimination, and as a motivating factor for hate crimes.

We believe the passage of this bill is urgently needed to help protect transgender persons from heightened levels of transphobic violence and discrimination. Indeed, we know from a variety of sources that transgender persons in Canada experience extreme vulnerability to human rights abuses. In a recent nationwide survey, 74% of transgender youth reported experiencing verbal harassment in school, and 37% reported experiencing physical violence.¹ In addition, transgender individuals in Ontario face unemployment over three times the national rate. As a result of pervasive discrimination and bullying, the trans community also faces higher rates of mental health issues. For example, rates of depression are far higher than the national average, and 77% of transgender individuals in Ontario have considered suicide. Given the vulnerability faced by trans persons within Canada, we believe Bill C-279 will help

¹ 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.

prevent discrimination and ensure that those who do commit hate crimes against this community are properly held to account.

We are troubled, however, by the government's clearly stated refusal during our presentation to support the passage of the bill through the Canadian Senate (which is required before the bill can become law). Principally, the government is of the belief that gender-variant persons are sufficiently protected from discrimination under the ground of sex within the *Canadian Human Rights Act*, as well as the *Charter of Rights and Freedoms*. In addition, the government has suggested that the bill is purely symbolic and will have few, if any, tangible impacts. Egale disagrees with these conclusions, and believes the existing mechanisms for providing transgender persons with human rights protections are neither effective nor sufficient. Our position is based on the following reasons:

1. The government has stated that gender-variant and transgender persons are sufficiently protected under the phrase "or any other similar factor" in the hate crime sentencing provisions of the *Criminal Code*. However, after significant research, Egale has been unable to find a single case where this clause has been applied to a crime against a transgender person. Moreover, there are examples of cases where transgender persons have been attacked and court cases document the fact that they were attacked because they are transgender, and yet, hate crimes provisions have not been applied.

In our own interactions with police services across Canada, we are frequently asked if transgender persons are included as an identifiable group within hate crimes provisions. Unfortunately, we are not able to provide a definitive answer to this, as there is no precedent to look at, and there is no statement by any court that transgender persons are covered under hate crimes sentencing provisions. Consequently, and contrary to the claim of the state, we do not believe transgender and gender-variant persons are sufficiently protected from hate crimes under existing legal and legislative frameworks.

2. Regarding hate crimes, Egale wishes the Commission to be aware that Canadian police only report hate crimes to *Statistics Canada* in accordance with the enumerated grounds of crime sentencing provisions of the *Criminal Code* (section 718(2)(a)(i)). Until gender identity is explicitly added to this list, we will not have accurate, nation-wide data on the rates of hate crime targeting transgender and gender variant persons. Without appropriate data, and in particular the disaggregated data on which age groups are most targeted, and the locations in the country where hate crimes against transgender persons are most prevalent, it is extraordinarily challenging for Egale, and other civil society organizations, to respond accordingly. The passage of Bill C-279 will allow police services across Canada to report data on hate crimes directed against transgender persons to *Statistics Canada*, which will significantly improve overall awareness of the forms and levels of hate crimes faced by transgender persons within the country.
3. The passage of explicit protections on the grounds of gender identity and/or expression in several provinces has had numerous positive effects, which we believe could be replicated throughout the country if national legislation was passed. For example, in Ontario, following the passage of Bill C-33, the Ontario Human Rights Commission revised its Policy on Discrimination and Harassment to include an expanded discussion on gender identity and gender expression. In addition, the Ontario ministry of Education launched a comprehensive training programme to

train teachers and educators on how to create safer and more inclusive environments for trans students.

Hate Crimes

We appreciate that the government recognizes that violence against LGBTQ2S persons is a serious and growing problem. However, we wish to alert the Commission that many of the programmes designed to combat hate crimes raised during the government's presentation, such as Gai Éoute, are undertaken by provincial governments, which operate independently of the national government.

In addition, the government highlighted that several Canadian police services have specialized hate-crimes units, and offer trainings on outreach to the LGBTQ2S community. While we applaud the existing programming, we wish to remind the Commission that these trainings are not available in many parts of the country, largely owing to limited state funding of the program. For example, Report Homophobic Violence Period (RHVP), which is one of the main training programmes designed to raise awareness within police services on hate crimes directed towards LGBTQ2S persons, is currently limited to only 30 Canadian cities. Efforts to develop versions of RHVP for rural parts of the country, as well as Canada's First Nations communities, where we know a need exists, remain contingent on funding.

Finally, we would like to remind the Commission that the government did not respond to our view that a national hate crimes strategy is needed that explicitly recognizes and addresses the needs of LGBTQ2S youth. While the government has shown willingness to develop strategies on Cyber-bullying convictions, we believe a more expansive national strategy is necessary. Our research has demonstrated that the high levels of hate crimes, often directed towards LGBTQ2S youth, have many negative consequences – including higher levels of school absenteeism or drop out rates, homelessness, as well as putting LGBTQ2S youth at higher risk of suicidal ideation. To this end, Egale stands ready to work with the Federal government to help devise a national hate crimes prevention strategy inclusive of LGBTQ2S persons.

Once again, Egale wishes to thank the IACHR for convening a hearing on the lived experience of LGBTQ2S persons in Canada since the introduction of marriage equality. We would be happy to provide any additional information that would be helpful to the IACHR, or to answer any follow up questions.

We look forward to continuing to working with the IACHR in the future.

Yours sincerely,

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