

A Legal Guide for Transgendered, Transsexual, Intersexed and Genderqueer Activists

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Introduction

As many of us have experienced, the law is rarely applied fairly and without bias. This society is an oppressive one where people are targeted simply for how they look, walk, talk or love. The legal system blatantly discriminates on these grounds all the time. This is a guide designed to help you understand what your rights are and how you can best protect yourself to minimize your risk.

Please note that this guide is somewhat grim. The authors uphold that the kanadian legal system is detestable in general, and particularly in its dealings with "high risk" groups. We do not agree with the way that transgendered, transsexual, intersexed and genderqueer people are treated under the law. However, we do believe that the more information you have about this system, the safer you are. Also, this is a supplementary guide to be used with the general handouts provided by the legal collective.

Your Rights

The Ontario Human Rights Commission's official policy is that it is a violation of a person's human rights to discriminate against them on the basis of sex. It is the policy of the Human Rights Commission that sex is defined by how an individual identifies.

However, law is established through court precedents. This policy is only several months old and so there are very few precedents. Ultimately it is the courts that will decide how and where ts/tg/intersexed/genderqueer people's rights exist. Therefore, until lots of people's rights have been violated and the cases go to court, there will not be a clear picture as to what exactly our rights are.

Also, according to one human rights officer, the policy is theoretically based on how a person identifies. However, how far someone is in the transition "process" will determine how likely they are to have their rights safeguarded. This means that the amount of surgery you have had, whether or not you are on hormones, and how well you pass as male or female will influence the extent to which your rights are upheld.

Because the policy protects on the basis of "sex" it is unclear to what extent people who are genderqueer who do not also identify as male or female will be protected.

Planning for Action

The more prepared you are for the action, the safer you will be.

Affinity

We recommend that you attend the action with a small group of people who you trust to have your back and who have the same goals in mind (ie. an affinity group).

You should only do what you feel that you want when it comes to discussing your situation with your affinity group. However, if you do not feel that you can openly talk about your situation with your affinity group, you might want to consider a role that is in very low risk of arrest.

Here are some questions that an affinity group can go through (and ideally set out clear answers together) to establish how your needs can be taken into account at the action. (note that the best affinity groups will

go through similar lists for every single person in the group regardless of whether or not they are "high risk")

- a. What is your gender identity and what medical steps (if any) have you taken to help your body match your gender identity.
- b. Does everyone in the group have a working understanding of what your situation is and what your needs are? If not, will this be arrived at and how will this happen?
- b. How will others (particularly police, lawyers and judges) perceive your gender?
- b. What is your level of arrest
- b. How can the action be designed to best accommodate your needs?
- b. In the heat of the moment, when your group needs to make a decision, how will those decisions factor your needs in?
- b. Are parts of your body particularly vulnerable (ie. recent surgery, implants etc.) and if so, do you want help from others protecting your body? How can others in your group do this if desired?
- b. It is absolutely reasonable for "high risk" individuals to have other people go down for them. This is one way that we can use solidarity in an action to ensure that the people needing it the most are protected. With that in mind, do you want people to risk arrest to protect you? If yes, which members of your affinity group are going to do this?
- b. Does your affinity group understand that your consent is essential if someone is going to go down for you?
- b. If you do go down, do you want someone who is a trained to try to get arrested with you to ensure that you are not mistreated? (This would be a person with legal observer training who is not fully acting in that capacity) If yes, who is going to fill this role?
- b. How is your gender identity and/or gender presentation going to be taken into account in dealings with the police?

General

- Electrolysis, and laser hair removal will leave your skin extra sensitive and open up your pores. This will make you especially vulnerable to tear gas and pepperspray. Wait at least 48 hours after electrolysis before going to an action and if you have sensitive skin wait longer.
- Wear lots of layers, especially on parts of your body which are vulnerable (eg. implants)
- Make sure that your affinity group, legal point person and others who may be involved in supporting you know your legal name.
- Refer to the do's and don'ts of the general guide for further information.

The Kops

On the street many police officers are likely to target transsexual/transgendered/ intersexed/genderqueer people who do not totally pass as male or female and are taken as trans or queer for two reasons. The first is because of transphobia/homophobia/genderism. The second is because kops remember (and quite possibly seek out) 'difference' if there is a group of thirty people all doing the same illegal thing, the people who

'stand out' are going to be the ones who get picked up at the time or after the fact. If you are visibly trans or queer or just look different than most of the people around you, you are more likely to be arrested.

Visibility also makes you a greater target for violence. We highly recommend that you wear extra padding on parts of your body which may be extra sensitive to blows from the police (ie. protect implants, recent surgeries etc.).

Some people choose to pass as their assigned gender to help protect themselves from the kops. If you are comfortable with this and capable of passing as your assigned gender, it is one acceptable option. If you choose not to do this or cannot do this, you have several other options available to you if you are arrested. If you do go down, taking a trained, vocal member of your affinity group can help you assert your rights. Also, if you know you will 'discovered' in a strip search (which is fairly standard), or if you are visibly transsexual or transgendered, you can tell the officer when you are arrested, in transit, or being booked. This will mean that their first reaction is not out of shock and they may be more likely to treat you better.

If you choose to tell the kops, it is your decision as to what you say and how much you try to educate them. While it is your call, we recommend that you try to make the process as short as possible and that attempts at educating the kops may be emotionally straining or put you at greater risk. An example of a good thing to say would be "I am transsexual/transgendered/a hermaphrodite. My rights are protected under the Human Rights Code of Ontario on the basis of sex and it is illegal to discriminate against me on those grounds." Hermaphrodite is used here because many kops won't know what intersexual means. If you use the word 'intersexed,' do so with the understanding that you may be required to provide some explanation (ie. education) to the kop. The circumstances are similar for using the word genderqueer, however in the education process, you will probably call into question everything the kop believes about gender which will likely hinder your situation; we recommend using transgendered instead.

Stating your knowledge of your rights may reduce the amount of abuse you receive. However, you should be aware that some police are more angered by people who try to assert themselves.

If you choose to discuss your gender identity with the police, you are giving up your right to remain silent. Just because you do this does not mean that you have to answer any more of their questions. This also does not mean that you cannot reassert your right to remain silent at any point.

Some trans people who have been arrested advise that you should say anything but that you are transgendered or transsexual. Based on their experience, they believe that there is such fear and hatred of trans people amongst kops that it is much wiser to say that you are a hermaphrodite. Also, some people advise that if your chest is bound, to say that it is a back injury. While we cannot advise you to lie, we recommend you do and say what you feel will keep you the safest.

Many of the things listed above that you can say may feel like you are selling out or you are betraying your gender identity and everything you have fought for. In all of your decisions in interacting with the kops, please consider your safety but do not say or do anything that you can't live with.

Detention and Jail

If you are arrested with other activists and are being mistreated, you can tell them and ask that they use jail solidarity tactics to protect you. While many activists receive anti-oppression training and legal training, both of which should raise trans, intersexed, and genderqueer issues, you may experience transphobia from one or several cell mates. If this is the case, call upon the others to intervene and try to resolve the problem. If they are unable to do so, the group can perform jail solidarity without them.

In some mass action situations, the arrestees are not gender segregated. However, there is a possibility that you will be gender divided. If this happens, unless you can fully pass as the gender you identify with your

clothes off, you will be put in with people with the gender you were raised as or assigned. If they cannot determine your gender, they may place you in protective custody.

If you are not released after your first appearance (that day or the next) because you cannot get bail (ie. you are homeless, don't have a surety, have outstanding charges etc.) you will go to jail and await a bail hearing or review. In jail you will be gender segregated based on your 'birth' gender or what they perceive your 'birth gender' to be. You may be placed in protective custody if they believe your appearance could be a threat to your safety. However, they usually do not place people in p.c. until they have been assaulted or threatened.

If you are on hormones, it will be difficult for you to receive them, a note from your doctor on your person and a prescription will help. You should ensure that the legal center or an emergency contact person also has these. (see section on disability and physical health for more information and sample doctor's letter).

If you are sentenced to a jail term, the chances of you receiving hormones, clothing corresponding to your gender identity, make-up, etc. is very slim. Using the Human Rights Code of Ontario, you could fight to be placed in general population of the gender you identify with (if there is one) however, the jail could argue that it would be a threat to your safety. If you won, you would most likely be put in p.c. for the respective gender.

If you are in federal prison (i.e. a sentence of 2 years or more), in theory, you may have access to hormones and surgery. If you were transferred to a province where the provincial health plan covers sex reassignment, it would be illegal for the prison system to discriminate against you because you are an inmate. You could battle in the courts to have the right to these procedures recognized. However, this has, to our knowledge, only been won once and it took 15 years. The first 5 years was spent fighting to get access to womyn's clothing for her.

Conclusion

While the more you know, the more prepared you are, and the better your affinity group is, will help protect you, there is always some risk involved in attending any action. If you go, there is never any role that is non-arrest able. Please keep this in mind and take only risks you are comfortable with. Be strong and Fight To Win.

Glossary

Intersexed: A person who has both male and female physical characteristics.

Genderqueer: Someone who does not subscribe to current definitions of male or female. Often, genderqueers do not identify as male or female, however this does not have to be the case.

Transgendered: A person who identifies as being of a gender that they were not assigned at birth. This most commonly includes Male to Females and Female to Males but also includes Male to ?s and Female to ?s and many people who also identify as genderqueer.

Transsexual: A person who identifies as being of the sex that they were not assigned at birth. For example, Male to Female or Female to Male.