

# What the Wilfrid Laurier professors got wrong about Bill C-16 and gender identity discrimination

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A federal bill passed last June that prohibits discrimination based on gender identity or expression had been hotly contested by critics who called it a drastic restriction on free speech rights.

Now, just five months after it became law, Bill C-16 has its first big controversy — and it shows how the legislation is being misinterpreted in practice.

Lindsay Shepherd, a 22-year-old teaching assistant in communication studies at Wilfrid Laurier University, was disciplined this month by faculty for showing first-year students clips from a debate on pronouns and gender. The debate, aired on Ontario's public broadcaster TVO, involved University of Toronto professor Jordan Peterson, who's become internationally known for railing against gender-neutral pronouns as radical left-wing indoctrination.

Shepherd was called into a meeting with her supervising professor, Nathan Rambukkana, as well as another professor and an official from the university's diversity and equity office. In a recording, Rambukkana is heard telling a tearful Shepherd that she created a "toxic climate" for students by showing parts of Peterson's argument, and compared it to "neutrally playing a speech by Hitler."

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But Rambukkana goes further, telling Shepherd she's also in violation of the legal regime created by C-16.

"These arguments are counter to the Canadian Human Rights Code ever since, and I know that you talked about C-16, ever since this passed, it is discriminatory to be targeting someone due to their gender identity and gender expression," he says.

The recording caused an outcry not only from Peterson's side, who see this as confirmation of their free speech concerns, but also from academics and legal experts who smacked their heads when they heard how C-16 was being wrongly invoked to censure Shepherd.

Here, for the record, is what Bill C-16 does and doesn't do when it comes to debates on transgender issues.

Jordan Peterson speaks to a group at the Carleton Place Arena on Thursday, June 15, 2017. *Darren Brown / Postmedia*

### **It only criminalizes extreme speech**

C-16 added gender identity and expressions as a category for what counts under Canada's hate-crime laws, which include calling for genocide or wilfully inciting hatred toward an identifiable group. The categories of colour, race, religion, national or ethnic origin, age, sex, sexual orientation and mental or physical disability were already on the list of identifiable groups.

The threshold for a conviction under these laws is high, and charges can only be laid with the approval of a province's attorney general.

The bill also added the targeting of gender identity and expression as an aggravating factor in sentencing. This means that if you're convicted of an offence such as assault, the sentence can be made harsher if there's evidence you were motivated by hatred or prejudice on this basis.

### **It changes the federal human rights code, but this doesn't apply to university classrooms**

C-16 added gender identity and expression as grounds for discrimination under the Canadian Human Rights Act, but this applies to people employed by or receiving services from federally-regulated industries, such as banks or the public service. In other words, not a university.

"The faculty member who first says that it is now contrary to Bill C-16 fails to understand the reach of the federal human rights act," said University of Toronto law professor Brenda Cossman, who has extensively studied the legislation.

Universities instead fall under provincial codes — but the Ontario Human Rights Code has included gender identity and expression for five years now, long before Peterson gained fame for his arguments.

**Could presenting Peterson’s argument violate the Ontario Human Rights Code?**

Nobody knows for sure, but it would be a stretch.

A workplace, housing or service provider covered by the provincial code could be forced to pay a fine or change their practices if found to be discriminating on the matter of gender identity or expression. But it’s unclear how the Human Rights Tribunal of Ontario would rule on a case involving pronoun use.

The Ontario Human Rights Commission, which is separate from the tribunal and focuses on education, has a policy guideline saying that “refusing to refer to a person by their self-identified name and proper personal pronoun” could constitute gender-based harassment.

But the commission also says cases involving pronouns and free speech require a balancing act.

“The Supreme Court has also found that some limits on free speech are justifiable to protect people from harassment and discrimination in social areas like employment and services,” says [a document posted online](#). “On the other hand, decision-makers have said that freedom of expression is much less likely to be limited in the context of a public debate on social, political or religious issues in a university or a newspaper.”

Cossman strongly doubts that showing some clips as part of an academic debate would lead to a discrimination finding.

“It is hard to imagine that a court would make such a finding,” she said. “The point of showing the video was to discuss the content of the ideas, and a court would have to balance the rights to non-discrimination with the values of academic freedom and freedom of expression.”

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