

# The Origins of Gender Identity and Gender Expression in Anglo-American Legal Discourse

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# Contemporary Anti-Discrimination Protections – Federal, Provincial, Territorial



## Guiding Questions

1. What are the intellectual origins of the terms “gender identity” and “gender expression”?
2. How did the terms surface in legal discourse?
3. In view of their historical lineage, what are the implications for contemporary human rights law?
  - Trans and/or non-binary claimants?
  - Cisgender claimants?

## Defining “gender identity” (l’identité de genre) and “gender expression” (l’expression de genre)

“**Gender identity** is each person’s internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person’s gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person’s sexual orientation” (Ontario Human Rights Commission, 2014)

“**Gender expression** is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person’s chosen name and pronoun are also common ways of expressing gender” (Ontario Human Rights Commission, 2014)

# The Origins of Gender Identity

**1963:** Dr. Robert J Stoller and Dr. Ralph G. Greenson introduce concept of “gender identity” at the “Symposium on Homosexuality”

**1970s:** Trans people push Anglo-American lawmakers to change sex markers on government-issued identity documents (“transsexual”)

**1975:** City of Minneapolis becomes first Anglo-American jurisdiction to explicitly recognize trans rights (“affectional preference”)

**1980s:** The term “gender identity” emerges in criminal law, family law, and employment law cases. Often introduced by experts.

**1994:** City of San Francisco becomes first Anglo-American jurisdiction to add “gender identity” to human rights instrument

**1998:** BC Human Rights Commission recommends adding “gender identity” to BC Human Rights Code. First Canadian human rights case to use “gender identity.”

# The Origins of Gender Expression

**1990s:** Advent and proliferation of performative theories of gender (e.g. Judith Butler, *Feminism and the Subversion of Identity* in 1990)

**2000:** New York City becomes first Anglo-American jurisdiction to add “gender expression” to human rights instrument.

**2006:** First Canadian case to use the term “gender expression.”

# The Merging of Gender Identity and Gender Expression



# Future Directions: Trans and/or non-binary claimants?





# Future Directions: Cisgender claimants?



# Future Directions: Tensions Between Minoritizing and Universalizing Accounts

