

# **Research Proposal: Trans Identity Within the Canadian Legal System**

Lindsey Skelton

Department of Gender Studies

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Dr. Thea Cacchioni

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## INTRODUCTION

The fundamental unintelligibility associated with transness is part of what makes the trans experience unique. However, protecting the ambiguity of trans identities while navigating state institutions that require explicit language and categorization becomes a challenge. This research will explore the implications of state activities, namely legal proceedings, on the definition and understanding of trans identities and bodies. In this, I look to investigate trans people's own conceptualizations of gender or self and consider how these may be or have been disrupted by the Canadian legal system. This topic seeks to understand the potential of legality to infiltrate transness and force containers of identity on Canadian citizens.

My research will attempt to answer questions about the meaning of transness, the explicit and implicit transphobia within Canadian legal activities, and the futures trans people envision for themselves. These subsidiary questions will be addressed through an investigation of my main research question: how does the Canadian legal system inform the ways trans people are seen and understood? The process of answering this question through various methods of research will lead into broader commentary on gender in the neoliberal state. My specific area of research has undergone much editing as I have attempted to narrow it down or lead it toward specific directions. I have settled on this version as it allows for fluidity within the research in analysis and reporting. Discussing transness needs to acknowledge the contradiction and flux within its definitions and understandings. Much of my research itself explores this, and my question needs to leave room for this to occur. This question of research is intentionally simple and open to many interpretations for this reason.

This research expands on the field's growing understanding of transness and furthers attempts to encourage the expression of trans as unintelligible. It also seeks to address practical

concerns about this ambiguity in legal settings not yet explored in depth by this discipline. I locate this as an important intersection due to the ongoing movements of trans rights petitions in Canadian courts. In order for trans people to advocate for their rights in Canada – socially, medically, politically, and further – they are required to enter into legal arenas that may threaten their conceptualization of gender (McBride, 2023). In simple terms, for trans people to gain rights related to their transness, they often have to submit themselves to legal proceedings which require a distinct definition of their gender category. In doing so, they may sacrifice or dilute the fluidity and inconceivability that is fundamental to some trans identities. These issues lay at the crux of sex, race, and neoliberalism as they interact in legal institutions (Spade, 2011). I am engaged and inspired by this topic as a person identifying under the trans umbrella and through the work of other trans legal advocates in the field. I come from a background of political science as well as gender studies and this topic is an opportunity to converge those areas of interest in a productive and insightful way.

## METHODS AND METHODOLOGY

In recognition of the multi-faceted nature of this topic, I approach my research using intentional and intersectional methodologies. This project describes a specific experience and looks to deepen society's understanding of said experience. To achieve this, I intend to consider both primary and secondary sources of data. This information is intended to be qualitative, however, the information provided may lend itself to quantitative analysis as well. The primary sources of data will be collected through interviews with self-identified trans individuals who have experience in the Canadian legal system. These conversations will be semi-structured with eight to ten prepared open-ended questions with time allowance for unplanned elaboration and follow-up. I will aim to find three to five candidates to conduct 60-minute interviews with during

the initial stages of research. Participants will be recruited through snowball sampling. I intend to reach out through publicly available email addresses and ask those who are contacted to pass my information along to anyone who may be interested. I will provide more detailed information for those who are interested in participating. Interviews will take place either in-person or over Zoom. I will consider the stories and expertise of each participant taking into account the non-verbal cues as part of my analysis. Participants will be provided the interview questions in advance to prepare for the interview. They will be free to refuse any questions during the interview or request they be taken off the agenda beforehand. I will design the questions in such a way that look to empower instead of dwell on negative experiences. In order to conduct these interviews, I will obtain ethics approval from the University of Victoria Human Research Ethics Board for which I have application currently in progress.

Secondary sources will be considered in the form of literature analysis in order to elaborate further on the context and background of trans identities in Canadian law. These will be collected primarily through University of Victoria databases and libraries with the use of external information centres as needed. I will critically review previously obtained information from other researchers on various topics of trans identity, experience, and legality. This will allow for richer context on my topic and a more expansive understanding of trans experience than could be provided through interviews alone. I will consider the origins and understandings of trans identities, the history of transness in law, legal precedent for the containment of trans identities, and further context as needed through these sources. While data collection will centre on qualitative summaries of trans experiences, the repeated usage of certain words, the number of shared or differing experiences, and the amount of participants willing to partake may be counted and used as quantitative data for this study.

Due to the potentially sensitive nature of this data, I have a collection and destruction plan in place. Audio recordings, transcripts and any notes collected in interviews will be stored on my password protected laptop. Consent forms and contact information will also be password protected and stored in a separate location from the data. Participants will be referred to using a mutually agreed upon pseudonym in all verbal and written discussion regarding the interview data. Due to the use of snowball sampling in which participants are referred by others, references of participants may know that they have been involved in the study. Participants are likely aware that these people will know about their involvement. This limit to confidentiality will be indicated on the consent form to ensure that participants are aware. Audio and video recordings will be kept until I have completed the transcript and it has been checked by the participant. Field notes and transcripts will be kept until completion of the final paper. Upon completion, submission, and evaluation of this project, all data will be destroyed either digitally or physically.

I will consider the language, themes, and perspectives from this data in order to form an analysis. I will transcribe the interviews and gather supporting literature; I will then conduct a content analysis of my findings. Content analysis refers to interrogating and summarizing research materials through the application of specific categories and themes (Tunison, 2023). This method of analysis will be useful as it can apply to both qualitative and quantitative findings (White & Marsh, 2006). As such, I can use it to categorize, codify, and present themes from interviews through key words, dialogue, and non-verbal cues. I can also count words, phrases, and occurrences through these same processes to draw conclusions from the numbers involved in my research. I will consider these findings along intersecting analyses of queer theory, feminist

theory, and the burgeoning philosophies of trans theory. These theoretical frameworks will work together to make sense of my analysis and locate its potential within social reform.

I choose these methods of research due to the multiplicity they provide in relaying experience and information. The interviews conducted will provide first-hand accounts of the perspective of trans people who are affected by this research on the ground. The information gathered through literature analysis will contextualize the complex lived realities of these interviews with useful definitions and background, making the information accessible to all readers, even those who hold no previous knowledge of the topic. These methods lend themselves to my broader approach to research, a transfeminist methodology. This hybrid approach incorporates tenets from established feminist research methodologies and expands on them to address trans-specific considerations (Johnson, 2015).

I take on feminist methodological approaches to support my centring of gender as the foundation of inquiry and entry to the research process (Hesse-Biber, 2014). This involves emphasizing the issues presented in research as gendered phenomena and examining them along intersections of race, class, Indigeneity, sexuality, and ethnicity. Beyond this, feminist researchers practice an inherent reflexivity in their work, that is, “a process by which they recognize, examine, and understand how their social background, location, and assumptions can influence the research.” (Hesse-Biber, 2014, pp. 3). This aspect is extremely important given my positionality within the trans community. Feminist methodology accounts for unique insider-outsider dynamics within research that are often present in this type of intimate research. The guidelines of this practice will help navigate potentially exploitive moments, especially in interviews. Feminist methodology also commits to supporting social justice and social reform through its studies (Hesse-Biber, 2014). My research will incorporate suggestions on legal

reform and education on trans subjectivities built from the insight of trans participants and authors. As such, the concepts, procedures, and goals of a feminist research methodology will be encapsulated within my work.

While a useful and well-established starting point, there are blind spots to feminist research methodology that prevent it from being adequately translated to trans studies. Therefore, I look to Austin Johnson's (2015) elaboration on feminist methodologies as outlined in his piece *Beyond Inclusion: Thinking Toward a Transfeminist Methodology*. In his writing, Johnson looks to work against ciscentricity in research, platforming trans experiences through a new methodological approach. Transfeminist methodology takes with it the reflexivity and standpoint theory foundational to feminist approaches and applies them to trans participants as well as women, racialized groups, Indigenous peoples, queer folks, and people with disabilities. It adds to the field of research by introducing the concept of ciscentricity. Ciscentricity refers to "the reconstruction of the social from a cisgender perspective." (pp. 25). Without reference to trans understandings of gender and sex, researchers present a generalized view of society that positions cisgender experiences as the norm. Transfeminist research looks to disrupt these imagined worldviews and liberate transness from marginalization and subordination. A trans approach to research is essential to this project as it allows a dissolution of gender containers historically created through research. In my investigation of Canadian legal systems, it is extremely important that my work does not recreate the gendered harms that limit trans perspectives. Furthermore, inherent in this methodology is the centring of trans voices and experiences, which I intend to achieve through the extensive interview process. I will remain mindful of the language used in analysis and conversation and the power dynamics contained within this research that hold the potential to perpetuate ciscentricity. I will look to the guidelines

that Johnson outlines in this article to proceed with responsibility to trans people and communities.

This transfeminist method of research is underlined by an understanding of transness as “relational, oppositional, and/or liberatory” (Jourian, 2017, pp. 420). This is mirrored in the overall approach to the research, opening space to remain fluid and mobile in research and reporting practices. It imposes practices of data interpretation that reflect the principles, or anti-principles, of transness itself. This allows for a conversational style of research that goes beyond a mere acknowledgement of transness and towards a celebration of trans worldviews in both social and academic circles. It is this aspect of the methodology that is contributing to new schools of thought within research. Few academic protocols are in place for this approach, my research will look to expand the precedence for trans-inspired projects. It will use the space provided by this lack of literature to form deeply relational conclusions not allowed by other established methodologies.

My selected methods of data collection, specifically the interview element, are necessary to achieve the requirements outlined by my chosen methodology. As stated, while literature analysis will be used to provide background and context, my primary source of information will be from interviews. Implicit in the above definitions is the necessity to platform and validate the perspective and expertise of trans people (Johnson, 2015). Concerning perspective, interviews are a reliably effective method to bring people’s experiences forward and visibilize them in a way that aids broader activist goals (DeVault & Gross, 2006). To honour trans expertise, a foundational focus of my interviews will be a discussion on future building. I will ask participants what changes they would implement Canadian legal system. I will also ask how they would alter the institution altogether aiming toward a more just trans future. These questions are



integral to the methodology as they turn to solutions coming from the communities affected by the research.

On a practical bases, interviews allow for a relational and conversation-based atmosphere that a trans methodology relies on (Jourian, 2017). I can engage with trans people in my community and share stories together over shared food and drink in a way that honours the approach. Conversations conducted face-to-face provide the greatest opportunity to take advantage of the fluidity of trans research. While remaining professional and ethical in my discussions using already established academic guidelines, we can take time to blur the lines of research through back-and-forth conversations that promote authentic responses and meaningful connection to the material. This will also function to relieve the pressure of interviewer-interviewee power dynamics between myself and the participants. Further, in service of this, I will disclose my own identity and experience to promote a more equitable dynamic. This is made possible only through the interview method of data collection.

Interviews are necessary to answer my research question itself as it cannot be addressed without consultation between trans people. Transness cannot be defined and understood as one thing from secondary resources. Gender is an experience that fluctuates for each person across different times and spaces (Airton, 2018). In order to enter this research, a variety of detailed, first-hand conceptualizations of gender are necessary. Including these varying experiences is important to the topic as it opens and allows for multiple categories and containers to exist rather than locating single definitions and forcing the findings to align. The level of personability from conversational accounts will also promote a deeper personal interest from readers and encourage them to address their own gender experiences, which is another key goal of this research. Additionally, the plan of data destruction is further in line with this methodology as it ensures the

safety of trans participants. I want to encourage trans people to continue spreading their perspectives in these settings and to do so I must ensure a safe and enjoyable environment.

My findings will be presented in standard research paper format approximately twenty-five to thirty-five double spaced pages in length. This will be submitted to the Gender Studies: Critical Research Practices course at the University of Victoria for evaluation as it pertains to my bachelor's degree. I plan to also share this paper with participants of the study should they choose to engage with it. Additionally, I will use my experience in this research as a launching point for further investigation either as a graduate thesis or a direction for a legal advocacy career. This research is the result of my genuine passion for this topic, and it acts as a guide to explore what I want to do for work beyond university. As such, I will not use the explicit findings in this research for other projects but my engagement with it will provide helpful insight for my future.

## LITERATURE REVIEW

This research looks to put two existing schools of research into conversation with one another. The first is a field of study that looks to radically expand understandings of transness in academic, social, and political realms. Research in this area, including work from scholars like David Valentine (2007), Susan Stryker (2008), Benny LeMaster and Meagan Stephenson (2021), aims to trouble hegemonic understandings of transness. This literature will work to support the foundation of my argument that transness is something that cannot fit in a container in any arena, especially a legal one. Trans scholars look to imagine trans subjects and history in a way that honours “the radically different understandings of self and the contexts that underpinned the practices and lives of historical subjects.” (Valentine, 2007, pp. 30). In doing so, they disrupt the powers that center normative gender subjects and reconstruct gender as something vast and

mobile (LeMaster & Stephenson, 2021). The second field of study considers legal categorization in Canada as it interacts with gender. Research conducted by scholars Tey Meadow (2010), Evan Vipond and Pierre Cloutier de Repentigny (2023), and Miqqi Alicia Gilbert (2009) consider the organization of gender within the legal system of Canada and similar countries. With varying levels of attention to trans-specific concerns, the purpose of this research is to emphasize that law procedures are conducted with gender as a primary organizing factor. Sarah Turnbull (2016) takes the scholarship of these legal authors and applies it specifically to the case of parole in Canada, tracking the history, development, and consequences of gender categorization in law. This literature will support my claims that legal proceedings in Canada are informed and organized according to gender.

My research will lie at the intersection of these schools of thought alongside a small number of other authors. Dean Spade (2011) considers trans law and politics as they interact in neoliberal states within a chapter of his book “Normal Life” which will be a helpful example for the structure of my research. Isabel Jaramillo and Laura Carlson (2021) also released a book, “Trans Rights and Wrongs” that looks at legal reform in twenty-three different countries and how they implicate gender and transness. Though these pieces begin the important work of exposing gender normativity in law, they remain lacking in areas that my research intends to fill. Firstly, neither of these examples tackle specifically Canadian law. Narrowing the geographical scope will focus my critique and suggested solutions; this will reduce generalization, make findings more accurate, and increase pressure on Canadian lawmakers. Additionally, these articles do not put a clear emphasis on the beauty of an unintelligible transness, which my research will look to highlight. Using the insight from both fields of study will make my findings

more inclusive and revolutionary, working towards the radical activist intention included in my research goals.

## LIMITATIONS

There are not many anticipated limitations to my research. However, I do acknowledge the restrictions on research that my positionality poses. My social, economic, political, and geographic locations produce realities that are influenced by structures of power that exist to centre my own privileged experience and therefore make me ignorant toward marginalized experiences (Lai, 1996). It is because of this that I include methodologies that require recognition of this fact in every step of research. To mitigate the gaps in my understanding as a white, middle class, settler researcher I will practice reflexivity and account for these biases (Hesse-Beber, 2014). This limitation is further complicated by my own identity as a trans person. I will take care to disclose my identity as a trans person, but also as a person of multiple forms of intersecting privileges, throughout my project to avoid a generalized view of a trans subject as constructed from my advantaged perspective. These limitations to my research cannot be avoided but I will take the above steps to navigate them.

## CONCLUSION

This proposal has outlined and defended my planned approach for researching the topic of trans identities in the Canadian legal system. It has detailed the importance of the topic, the research methods I will use, the data I plan to reference, the methodology that I will employ, the literature associated with my topic, and any limitations that I may face. Through these avenues of research, I will ethically and comprehensively address how the Canadian legal system informs the ways trans people are seen and understood. My research will be an informative addition to the field of trans studies, and I look forward to conducting it.

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