

# Toby Goes to Catholic School: Gender Expression Human Rights, and Ontario Catholic School Board Policy

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## **Abstract**

In this article, we share findings from an analysis of Ontario Catholic school board policy documents ( $N = 179$ ) containing Canada's newest human rights grounds: gender expression and gender identity. Our major finding may be unsurprising—that Ontario Catholic boards are generally not responding to Toby's Act (passed in 2012) at the level of policy, as few boards have added these grounds in a way that enacts the spirit of that legislation.

While this finding is likely unsurprising, our study also yielded findings that unsettle any facile binary of “Catholic boards/bad” and “public secular boards/good” in relation to gender diversity. We also leverage our findings to suggest a striking possibility for a vigorous and doctrinally-compatible embrace of gender expression protections in Catholic schools, if not gender identity protections. We argue that fear of gender expression protections may stem from an erroneous conflation of “gender expression” with “gender identity” when these are in fact separate grounds—a conflation that is also endemic within secular Ontario school board policy; this doubles as a conflation of gender expression with “transgender,” as the latter is unfailingly linked with gender identity human rights. We make a series of recommendations for policy, and a case for Catholic schools embracing their legal duty to provide a learning environment free from gender expression discrimination without doctrinal conflict and arguably with ample doctrinal support, so that students of all gender expressions can flourish regardless of whether they are or will come to know they are transgender.

*Keywords:* gender expression, gender identity, transgender, Ontario, school boards, policy, Toby’s Act, human rights

## Résumé

Dans cet article, nous partageons les résultats d’une analyse des documents de politiques des conseils scolaires catholiques de l’Ontario ( $n = 179$ ) comprenant les plus récents fondements ayant trait aux droits de la personne du Canada : l’expression de genre et l’identité de genre. Notre principale conclusion n’est sûrement pas surprenante : les conseils scolaires catholiques de l’Ontario ne répondent généralement pas à la Loi Toby (adoptée en 2012) sur le plan de leurs politiques, puisque peu de conseils ont décidé d’ajouter ces fondements de façon à permettre que l’esprit de cette loi soit respecté. Bien que cette constatation ne soit pas vraiment surprenante, notre étude a également obtenu des résultats qui remettent en question la notion du binarisme rudimentaire « conseils catholiques, mauvais » et « conseils publics laïcs, bons » en ce qui a trait à la diversité des genres. Nos résultats permettent également d’entrevoir la possibilité prometteuse d’une adoption enthousiaste et doctrinalement compatible à la protection de l’expression de genre dans les écoles catholiques, voire à la protection de l’identité de genre. Nous

soutenons que la réticence entourant la protection de l'expression du genre a peut-être pour fondement la confusion des termes « expression de genre » et « identité de genre », alors qu'il s'agit en fait de fondements distincts. Cette convergence est également endémique dans les politiques des conseils scolaires laïcs de l'Ontario, ce qui entraîne en même temps la convergence des termes « expression de genre » et « transgenre », ce dernier étant indéfectiblement lié aux droits de la personne portant sur l'identité de genre. Nous avons rédigé une série de recommandations en matière de politiques, et nous plaidons pour que les écoles catholiques s'acquittent de leur obligation légale de fournir un environnement d'apprentissage exempt de discrimination fondée sur l'expression de genre, sans conflit doctrinal et avec un large soutien doctrinal, afin que les élèves de toutes les expressions de genre puissent s'épanouir, que cette personne soit transgenre ou non.

*Mots-clés* : expression de genre, identité de genre, transgenre, Ontario, conseils scolaires, politiques, Loi Toby, droits de la personne

## Introduction

Ontario Catholic schools have a fraught history in relation to human rights laws regarding gender and sexuality (Callaghan, 2018; Iskander & Shabtay, 2018; Martino, 2014). In 2019, Ontario's Progressive Conservative Minister of Education, Stephen Lecce, articulated an "expectation...that every child, irrespective of their differences, will see themselves reflected in school, and more importantly, the *Human Rights Code*" (Xing, 2019a, para. 3). However, this expectation has not always borne out in practice. As an example, the Toronto Catholic District School Board (TCDSB)—Ontario's largest public Catholic school board—only added the terms "gender expression" and "gender identity" to the board's student Code of Conduct policy after significant division amongst various board stakeholders (Thompson, 2019). A TCDSB subcommittee titled Catholic Education and Living Our Catholic Values voted four-to-one against the terms' inclusion. In the end, the language added to the TCDSB Code of Conduct specifies that school actors must "respect and treat others fairly" regardless of "gender identity, gender expression, marital status (or) family status" and as "interpreted through the lens of the Catholic faith" (Thompson, 2019, para. 6). This fraught decision came seven years after the enactment of Toby's Act, and only with significant public pressure and approval by the Archdiocese of Toronto (Thompson, 2019; Xing, 2019a, 2019b).

In that seven-year span, many of Ontario's public (secular) school boards began creating dedicated gender diversity policies, and adding the grounds of gender expression and gender identity to other policies (Airton et al., 2019). The late addition of gender expression and gender identity to TCDSB policy reflects a perceived conflict between the Code and Catholic doctrine (Callaghan, 2018). Overall, while provincial and territorial human rights frameworks provide protection against discrimination on the grounds of sexual orientation, gender identity, and gender expression, Canadian Catholic school authority responses have been found wanting in this area (Callaghan, 2018; Iskander & Shabtay, 2018; Martino, 2014).

Explicit human rights protections on the basis of "gender identity" and "gender expression" are the result of over two decades of legal advocacy. Beginning in 2002, federal, provincial, and territorial governments amended their human rights laws to include two new protected grounds: gender identity and, in most cases, gender expression, which is a distinct ground from gender identity (Kirkup, 2018). Born out of significant efforts

from Ontario's transgender-spectrum communities, these grounds were added to the Ontario Human Rights Code via Toby's Act (2012). Following the Toby's Act passage, the Ontario Human Rights Commission (OHRC) *provisionally* defined gender identity as "each person's internal and individual experience of gender," and gender expression as "how a person publicly presents their gender" (Toby's Act, 2012, p. 7). However, gender identity and gender expression protections remain *legally* undefined; the OHRC (2014) maintains that "the understanding of these and other related terms, and the implications for the *Code* and OHRC policies, is evolving from tribunal and court decisions, social science research as well as self-identity and common everyday use" (p. 13).

Moving beyond OHRC definitions, our study turns to the inherently gendered spaces of Ontario's K–12 schools, where the meaning of gender expression, in particular, is being shaped in ways that affect public understandings of this ground and its implications (Kirkup et al., 2020). In Ontario, gender identity and gender expression protections have produced a series of responses across the education sector such as changes in the province's Health and Physical Education curriculum (see Martino et al., 2018). Presently, however, it remains legally unclear how and for whom Ontario organizations should interpret gender expression in order to provide an environment free from discrimination on this ground. What kind of actions, utterances, or conduct constitutes gender expression discrimination, and who can access related protections? Despite this absence of legal clarity, secular and Catholic public schools in Ontario have had a legal duty to provide an environment free from gender expression *and* gender identity discrimination since 2012. The speculative nature of both grounds has resulted in a varied response to the Code from Ontario's *secular* public school boards (see Airton et al., 2019; Kirkup et al., 2020), but this response is conceivably more variable if the scope is expanded to include the province's publicly-funded *Catholic* school boards (see Laucius, 2016; Pickel & Wark, 2020).

In this article, we share findings from an analysis of publicly-available Catholic school board policy documents ( $N = 179$ ) containing gender expression and/or gender identity and authored by Ontario's publicly-funded Catholic school boards ( $N = 37$ ): the first exhaustive account of the state of gender expression and gender identity grounds' inclusion therein. On the surface, our major finding is unsurprising to the point of redundancy: Ontario Catholic boards are generally *not* responding to Toby's Act at the level of policy, as few boards have added these grounds in a way that enacts the spirit of the legislation. While this finding is likely unsurprising, our study also yielded findings that un-

settle any facile binary of “Catholic boards/bad” and “public secular boards/good” in relation to gender diversity. We also leverage our findings to suggest a striking possibility for a vigorous and doctrinally-compatible embrace of *gender expression* protections in Catholic schools, if not *gender identity* protections. We argue that fear of gender expression protections may stem from an erroneous conflation of “gender expression” with “gender identity” when these are in fact separate grounds—a conflation that is also endemic within *secular* Ontario school board policy (see Airton et al., 2019); this doubles as a conflation of gender expression with “transgender,” as the latter is unfailingly linked with gender identity human rights. Transgender lives are frequently believed to fall afoul of the dominant Catholic doctrine regarding the immutability of sex (see Herriot & Callaghan, 2018). We suggest, then, that Catholic schools can actually embrace their legal duty to provide a learning environment free from *gender expression* discrimination without doctrinal conflict and arguably with ample doctrinal support, so that students of all gender expressions can flourish regardless of whether they are or will come to know they are transgender.

### **Literature Review: Gender and Sexual Diversity in Canadian Catholic Schools**

This article contributes to the body of education scholarship that explores how publicly-funded Catholic K–12 schools are addressing the existence of gender and sexual minority people within them (e.g., Callaghan, 2014, 2016; Martino, 2014). Our review identified two recurring themes in this literature: (1) resistance to gender and sexual minority (GSM) students and groups (e.g., the naming of Gay-Straight/Gender Student Alliances or GSAs as such, opposition to same-sex student relationships, etc.); and (2) institutional negation of Canadian human rights law in school policy and practice, alongside a concomitant elevation of Catholic Church authority (Callaghan, 2012, 2014; Iskander & Shabtay, 2018). As a whole, the scholarship recognizes that although the Ontario Human Rights Code provides protection against discrimination on the grounds of gender identity, gender expression, and sexual orientation, Canadian Catholic school boards demonstrate largely noncompliant administrative regulations and school procedures pertinent to GSM student needs (Callaghan, 2014). That said, much of the literature on GSM people in publicly-funded Catholic schools emphasizes sexual diversity (e.g., diversity on the order of sexual orientation; see Case & Meier, 2014; Peter et al., 2018). In Ontario, there have been

notable incidents of discrimination by publicly-funded Catholic schools in relation to sexual diversity, including: (1) when Marc Hall's principal denied him permission to attend his Ontario Catholic high school prom with his boyfriend in 2002 (Callaghan, 2007), and (2) when students attempted to form a GSA in an Ontario Catholic school in 2011 and were disallowed from doing so (Iskander & Shabtay, 2018). Scholarship on these critical incidents has highlighted a line drawn between "religious tradition" and the experiences of GSM school subjects. In both the Marc Hall case and the events leading to the passage of Ontario's Accepting Schools Act (see Herriot, 2014; Iskander & Shabtay, 2018), Catholic school representatives asserted the primacy of religious authority over and against individual human rights established in provincial and federal legislation (see Martino, 2014).

Callaghan (2007) calls attention to the often-fraught relationship between the Catholic church and queer Catholic youth in her analysis of the 2002 Marc Hall case. She highlights tensions between freedom of denomination (section 93 of the Constitution Act, 1867—as claimed by the Durham Catholic District School Board) and Hall's individual human rights (section 15 of the Canadian Charter of Rights and Freedoms). The Durham Catholic District School Board (DCDSB) held that it was permitted to deny Hall's request, as it had a "constitutional right to administer its schools in a manner consistent with Church teachings" (Callaghan, 2007, p. 2). DCDSB claimed to be exercising religious freedom (see *Smitherman v. Powers and the Durham Catholic District School Board*, 2002); however, the board was arguably contravening "Hall's article 13 right to freedom of expression, his article 14 right to freedom of thought and conscience, and his article 15 right of freedom of association" (Covell, 2007, p. 250). Callaghan (2011) describes the Marc Hall case as a matter of *institutional rights* versus *individual rights*; while Hall claimed an *individual* right, in the context of the Catholic Secondary School in Oshawa, Ontario, the principal's rejection of Hall's request to attend prom was supported by an appeal to *institutional rights*. Hall sought a court order to prevent school administration from disallowing his prom attendance with his boyfriend. Hall was successful in his request, with Justice Robert MacKinnon (*Smitherman v. Powers and the Durham Catholic District School Board*, 2002) ordering that Hall be allowed to attend with his boyfriend, and further, barring the school from cancelling the event in order to prevent this from happening. In the decision, Justice MacKinnon stated:

The question is this: Does allowing this gay student to attend this Catholic high school prom with a same sex boyfriend prejudicially affect rights with respect to denominational schools under section 93(1) of the Constitution Act, 1867?

I find the answer to this question is “no” because, among other reasons, the evidence demonstrates a diversity of opinion within the Catholic community on pastoral care regarding homosexuality such that, it is not clear what conduct is necessary to ensure that rights with respect to denominational schools are not prejudicially affected. (*Hall [Litigation guardian of] v. Powers*, 2002, paras. 44–45)

The second high-profile incident of discrimination in publicly-funded Catholic schools addressed the prohibition of a GSA at a Catholic secondary school in Mississauga, Ontario (see Houston, 2011). The case arose after both the principal and superintendent denied then-16-year-old Lee Iskander’s request to form a GSA that supported LGBTQ2S+ students because Catholic bishops at the time did not permit the formation of these groups (Iskander & Shabtay, 2018). The Dufferin-Peel Catholic District School Board’s (DPCDSB) rejection of the request led to appeals to the provincial government, and subsequently to the passage of the Accepting Schools Act (Bill 13, 2012): the “legislation requiring that all publicly-funded Ontario schools, whether public or Catholic, support students who [wish] to establish, name, and run GSAs or similar organizations” (Iskander & Shabtay, 2018; see also Cochrane, 2014). Drawing on Iskander’s own experience as a student activist involved in the quest to establish a GSA (which led to the passage of Bill 13 enshrining this right in all provincial public schools), the authors demonstrate “how LGBTQ [i.e., lesbian, gay, bisexual, transgender and/or queer] youth mobilized to effect change in [Ontario] education policy” (Iskander & Shabtay, 2018, p. 340). Iskander and Shabtay emphasize that, “in practice policies do more than prescribe actions” (p. 349), and they identify two functions of Bill 13: a reassertion of secular legislative power over Catholic canonical law, and a representation of the power of student activism in protecting the rights of gender and sexual minority youth in schools. The authors further emphasize the importance of GSAs or similar spaces in which youth have the autonomy and freedom to enact change in their own lives and the lifeworld of the school.



In the literature on these incidents, scholars occasionally address gender diversity and the experiences of transgender students (see Case & Meier, 2014; Peter et al., 2018), but tend to focus on Catholic school responses to sexual diversity and the experiences of gay, lesbian, bisexual, or queer students. Callaghan (2014) asserts that “Catholic doctrine about non-heterosexuality functions as a Foucauldian Panopticon that enables Catholic education leaders to observe and correct the behaviour of non-heterosexual teachers and students that they deem to have deviated from the values of the Vatican” (p. 29; see also Martino, 2014). The existing literature’s focus on *sexual* diversity in publicly-funded Catholic schools may be a product of this heterosexual surveillance in Catholic religious contexts (Callaghan, 2016). While the banning of GSAs in an Ontario Catholic school could potentially be interpreted as a conflict between Catholic doctrine and the rights of *all* gender and sexual minority students, we see the decision to ban GSAs as a response to a “perceived...threat that challenges the pathologization of *homosexuality* [emphasis added] and casting it as a disordered or deviant inclination” (Martino, 2014, p. 209). The absence of gender diversity (both people and issues) from the published scholarship on GSM peoples’ experiences in Catholic schools does not negate the presence of these students in Catholic schools, but it does lead us to question how disputes over *sexuality* may have set the template for public struggles over *gender* identity and, in particular, *gender* expression protections in Catholic education.

Overall, the literature argues—but does not necessarily empirically demonstrate—that publicly-funded Catholic schools across Canada are failing to provide a safe and inclusive learning environment for all students (Callaghan, 2018); the literature does demonstrate that many Catholic school districts employ doctrinal language in policies that reflect the tenets of the Vatican. Catholic school districts frequently appeal to a higher law (of the Vatican or God) to ignore or dismiss the mandates of a “lower law” (e.g., the Ontario Human Rights Code, provincial policies, etc.). Notwithstanding these challenges, a common thread in the literature is the agent of change, whether student, faculty, or staff, versus resistant administration and Catholic doctrinal authority. Despite dissent to GSAs, gender and sexual minority (again, GSM) youth-centred programming, and queer/trans-positive policy provisions in some publicly-funded Catholic schools, Ontario has seen significant student mobilization in the shaping of queer positive legislation, namely the Accepting Schools Act (Herriot, 2014; Iskander & Shabtay, 2018; Martino et al., 2018; Niblett & Oraa, 2014). However, Catholic school cultures may be more restrictive for GSM educators than GSM students (see Callaghan, 2018).

Our study contributes to this burgeoning body of literature by providing a system-wide scope as opposed to a critical incident scope, and—following our preceding discussion of sexual diversity emphasis—a gender expression focus on this area of public education. First, we observe that gender and sexual diversity integration in Canadian Catholic schools has primarily been studied via discourse analysis of critical incidents, such as the *Hall vs. Durham Catholic District School Board* case (Covell, 2007; Callaghan, 2007, 2018) and the Dufferin-Peel Catholic District School Board’s GSA incident (Iskander & Shabtay, 2018). Our study constitutes a systematic appraisal of gender diversity, in particular, in publicly funded Catholic school board policy using sampling methods (to be discussed in the next section) that aim for exhaustive representation. Our second contribution is yielding system-wide findings on a topic related to gender diversity in Canadian Catholic schools, whereas much of the current scholarship on gender and sexual diversity in this context, while flying under the common T-inclusive “LGBTQ2S+” acronym, is largely attentive to LGBQ (i.e., sexual minority) experiences. We suggest the frequent absence of transgender-spectrum peoples’ realities from this literature on the school experiences of largely sexually-diverse students (and sometimes teachers or administrators) as a product of the complex, and often fraught, education polycscape in Ontario (Martino et al., 2018). Further, a sexuality focus has meant that gender diversity is conflated with sexual diversity and, as a result, gender diversity may require deeper engagement. The literature on gender and/or sexual diversity in Ontario publicly-funded Catholic schools is beginning to substantively explore the addition of gender-related provisions in school board policies after the passage of Toby’s Act, which has been a topic of media scrutiny due to a refusal by some boards to comply with human rights law. Our research addresses this gap by centring gender diversity, and inviting new considerations for Ontario Catholic school board policy and practice that may be strategically disconnected from sexual diversity. Following the call of transgender studies scholars (e.g., Spade, 2015) to consider transgender separately from LGBQ histories and politics, we wonder what attention to gender diversity—uncoupled from sexual orientation—might yield for the well-being of all students in Ontario’s publicly-funded Catholic schools.

## Theoretical Framework

This study's theoretical framework is informed by post-structuralist analyses (e.g., Martino & Cumming-Potvin, 2014; Renold, 2005; Skelton et al., 2009; Thorne, 1993) of how gender categories are produced in various educational sites, and socio-legal analyses (e.g., Cossman, 2007; Khan, 2014; Valverde, 2006) that view law as a key domain in which gender is constructed. Rather than seeing lawyers, legislators, and judges as being the only actors tasked with making and interpreting law through one-time legal events, socio-legal theory accounts for how legality is always in process and made in sites outside courts and tribunals—such as K–12 schools—and through practices such as adapting the law for inclusion in sector-specific policy and professional development.

The ongoing interpretation of “gender identity” and “gender expression” as protected grounds of discrimination is similarly taking place outside of courts and tribunals. While related, gender identity and gender expression are separate grounds of discrimination that may engage different human rights concerns. Indeed, the terms emerge out of different historical moments, have different definitions, and may therefore be legally distinct. Gender identity was a term coined by two psychiatrists who first presented their research as part of the International Psycho-Analytic Congress in 1963. In a paper published the following year, they explained: “Gender identity is the sense of knowing to which sex one belongs, that is, the awareness ‘I am male’ or ‘I am female’” (Kirkup, 2018, pp. 86–87). The term was typically used to refer to a seemingly narrow class of people who identify as transgender. Gender expression is a comparatively newer concept, one that ascended in concert with performative theories of gender in the 1990s, most notably those of Judith Butler. The term gender expression seeks to describe the myriad, plural ways that all people convey their gender to the outside world. As a result, gender expression may have far more expansive implications than its counterpart, gender identity.

In view of this history and the significant definitional differences between the two grounds, the passage of Toby's Act in 2012, which amended the Ontario Human Rights Code to include both gender identity and gender expression, constituted a watershed moment. Its passage required a variety of provincially-regulated entities, including schools, to create environments free from gender identity- *and* gender expression-related discrimination. While its passage provided legal protections for transgender students, its scope is potentially far more vast (Kirkup, 2018; Kirkup et al., 2020). The present study is there-

fore grounded in an expansive theorization of gender expression as well as socio-legal theory's emphasis on the construction of the law in practice. This theoretical framework enables us to explore how gender expression and its counterpart, gender identity, are being shaped by their uptake in Catholic school board policy, as well as what this uptake is—perhaps erroneously—producing: a conflation of both grounds with “transgender.”

### **Study Context and Methodology**

In Ontario there are 38 public separate school boards organized on the basis of religious affiliation, including one English Protestant, 29 English Catholic, and eight French Catholic school boards. All public separate school boards are entrenched under section 93 of the Constitution Act, 1867 and section 29 of the Canadian Charter of Rights and Freedoms. Using qualitative textual research methods, we compiled and analyzed an exhaustive data set of publicly available documents authored at the Catholic school board (i.e., not individual school) level, and containing the terms gender expression and/or gender identity. Data collection proceeded systematically with Google lexical searches (e.g., board name paired with “gender expression,” “gender identity,” etc.), and searches using internal website tools (e.g., search bars and menus). Only board policy documents that included the terms gender identity and/or gender expression, and provided explicit direction to actors within a board's K–12 schools, were included. Our data set begins with the passage of Toby's Act in 2012 and ends in late March of 2020, although we maintain that this is more or less a current sample at the time of submission given the infrequency of policy review in this context, which is typically quadrennial. Our search methods yielded 179 eligible policy documents from Ontario's 29 English-language<sup>1</sup> public Catholic school boards. Analysis of these 179 policy documents was guided by the same central research question as the broader study that began with Ontario's secular boards (Airton et al., 2019): How is the new human rights ground of “gender expression” being defined and constructed by Ontario Catholic school boards? To this we added a comparative question that is answered in this article: What similarities and differences exist in how Ontario's public secular and public Catholic school boards are defining and constructing this ground?

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1 A rationale for excluding the French and English Protestant school boards is offered in Airton et al. (2019).

Data analysis began with importing aspects of the coding scheme from the adjacent secular board strand (Airton et al., 2019) into a new MaxQDA file. This deductive coding scheme documented occurrences of: gender identity and gender expression in the data set, terms related to gender identity and sex,<sup>2</sup> definitions of gender identity and gender expression, and policy domains such as discipline, human rights, and safe schools. Subsequently, an open coding (Saldaña, 2015) of eligible documents from the Ottawa Catholic District School Board (OCDSB) and the Toronto Catholic District School Board (TCDSB) added additional codes to the coding scheme brought over from the secular strand. These boards were selected for their location in central, populous regions of Ontario, and mirrored the initial development of the secular strand coding scheme from an open coding of the Ottawa-Carleton District School Board and Toronto District School Board gender diversity policy documents; these are the “secular sister boards” to OCDSB and TCDSB that serve the same urban centres. Lastly, doctrinal codes were inductively generated and applied to segments in which gender expression and/or gender identity occurred in passages that made specific references to Catholic life, values, and doctrine (e.g., Christian or Gospel values, Catholic governance, pastoral care, etc.). In total, 100 codes were applied 3,796 times to 179 policy documents.

The decision to import parts of the secular coding scheme for application to the Catholic data set was made for two reasons. First, the secular coding scheme was developed based on the research question guiding the secular strand, and this research question (see above) likewise guides the aims of the Catholic strand. Second, secular and Catholic schools in Ontario are legally required under Ontario’s Human Rights Code to act from the knowledge that every student may experience gender expression discrimination; however, until now, no research has sought to gauge the alignment between these two systems systematically in terms of gender expression and gender identity protections’ inclusion in policy.

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2 The tracked gender identity terms were: man, woman, girl, boy, non-binary, Two-Spirit, transgender, cisgender, and gender-fluid, and the tracked sex-related terms were sex, biological sex, female, male, transsexual, and intersex.

## Findings and Inferences

In this section, we provide findings and broad inferences on how gender expression and/or gender identity are emerging within public Catholic school board policy. Our findings are presented in the following order: (1) gender diversity is missing within Catholic school board policy even if the terms “gender identity” and “gender expression” are being added; (2) tinkering with “laundry lists” of Code grounds is the most common approach to post-Toby policy change across the entire Ontario publicly-funded education system (expanding our 2019 claim from secular boards alone); (3) gender diversity tends to be conflated with sexual diversity; (4) gender expression (and gender identity) are missing from “proactive” policy genres; and (5) an absence of policy documents directly about gender diversity in all but one Catholic board at the time of initial submission. While some comparative findings (i.e., between secular and Catholic board data sets) are likely unsurprising, other findings manifest our intention to read beyond a facile binary of “Catholic boards/bad” and “public secular boards/good” in relation to gender diversity. For example, we find that the Catholic-secular binary is not as clear-cut as might be assumed from the outset. As a whole, secular boards do not emerge as “the hero,” nor do Catholic boards, as a whole, emerge as “the villain” where gender diversity in policy is concerned.

### Gender Diversity Is Missing within the Catholic Data Set

There is a clear initial point of contrast between the two data sets. In the previous section, we noted that 100 codes were applied 3,796 times to 179 policy documents in the Catholic board data set. By contrast, a total of 162 codes were applied 8,204 times to 206 collected policy documents in the secular board data set (Airton et al., 2019). Given the similar number of public secular ( $N = 34$ ) and public Catholic ( $N = 29$ ) English school boards in Ontario, the less than 50% code application relative to the secular boards, as well as the 56 secular strand codes that go unapplied in the Catholic data set, is a considerable gap. These descriptive statistical findings suggest great disparity between the collective account of gender diversity given to policy users (i.e., teachers and staff) within Ontario Catholic versus Ontario secular schools, with Catholic boards found wanting.

In addition, we found a striking absence of gender diversity terminology and concepts in the Catholic documents (see Table 1). The secular board documents contain

1,243 references to gender diversity terms (e.g., non-binary, Two-Spirit, transgender, gender fluidity, gender independence, gender diversity, transphobia; see Table 1). The Catholic documents are comparatively silent in this regard, with only 212 gender diversity term occurrences. The term “sex” occurs 165 times, accounting for over half of all “gender term” occurrences in the Catholic documents. The remaining gender term occurrences are as follows: woman ( $N = 5$ ), man ( $N = 5$ ), female ( $N = 3$ ), and male ( $N = 3$ ) occur 16 times, while terms like transgender ( $N = 14$ ), [sic] transgendered ( $N = 9$ ), transsexual ( $N = 2$ ), transphobia ( $N = 3$ ), Two-Spirit ( $N = 1$ ), non-binary ( $N = 2$ ), and gender variant ( $N = 1$ ) having 32 total occurrences. Of the 25 gender diversity terms included in our coding scheme, 11 terms<sup>3</sup> do not appear at all within the Catholic data set. Lastly, our coding scheme included a series of inductive *conceptual* codes, including the following examples (with explanatory text taken from our codebook):

The code *sex or gender spectrum or continuum* is applied to segments where sex or gender are described as a spectrum or a range (i.e., explicitly described in ways that are not binary).

The code *gender roles, norms, and stereotypes* is applied to segments where the document explicitly employs these terms, or is describing binary-associated social roles, behaviours, and stereotypes.

The code *changing gender roles, identities, and language over time* is applied to segments that describe how gender roles, language, identities, and understandings are historically contingent.

The complexity of an inductive or emerging coding scheme may indicate a phenomenon’s representation within a data set. As such, the absence of all conceptual codes in the Catholic data set indicates that the complex landscape of gender diversity is not fleshed out in Catholic education policy, even as these documents guide school staff in relation to students inhabiting the same geographical locations as their peers in secular school boards. There is no reason to doubt that “gender roles, norms, and stereotypes” are pre-

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3 The 11 gender diversity terms not used in the Catholic documents are: transition, crossdress, cisgender, boy, girl, gender fluid, intersex, transgender/transsexual, trans-positive, sexual identity, and gender independent.

sent in and pertinent to how gender plays out in everyday Catholic school life, and yet, their systemic absence in policy documents guiding staff therein is one of our findings.

**Table 1**

*Occurrence Comparison Between Data Sets: Use of Gender Diversity Terminology*

Term	Ontario public secular district school boards	Ontario public Catholic district school boards
Transition	121	0
Crossdress	24	0
Cisgender	21	0
Woman	13	5
Man	8	5
Boy	2	0
Girl	2	0
Non-binary	10	2
Two-Spirit	53	1
Genderfluid	19	0
Biological sex	37	3
Sex	315	165
Female	22	3
Male	20	3
Intersex	77	0
Transgender	194	14
Transgendered	20	9
Transgendered/transsexual	76	0
Transsexual	0	2
Trans-positive	10	0
Transphobia	63	3
Sexual identity	4	0
Gender variant	38	1
Gender independent	15	0
Gender diversity	79	1

While it may be tempting to infer from the lack of gender diversity language in the Catholic data set that these schools are characterized by an outright dismissal or non-acceptance of gender diversity in practice, this would be an over-reach and an error. Re-



call that our data set only includes *publicly available* policy documents. This means that it is *not* an exhaustive representation of policy, let alone practice, at the level of individual Catholic schools, which are subject to far less public scrutiny than entire boards tasked with making highly-publicized changes to documents that govern dozens of schools and thousands of school actors. As such, we look forward to further research on the private circulation of more fulsome materials guiding teacher and administrator practice in relation to the inevitable gender diversity in Catholic schools (as in all schools). As such, we encourage less scrutiny from researchers and other critics on *board-level* gender diversity inclusion in “the Catholic school system,” and greater attention to supported gender diversity microcultures within individual public Catholic schools.

### **Tinkering with the Laundry List: A Whole-of-Ontario Approach to Toby’s Act**

In this section, we identify a site of consistency between the secular and Catholic data sets: that adding gender expression and/or gender identity to “laundry lists” of Code grounds is the most common way in which boards are responding to Toby’s Act. Adding terms but not changing policy in more substantive ways to respond the challenge posed by these new protections is sub-optimal. In our secular data set, gender expression ( $N = 416$ ) or gender identity ( $N = 1,018$ ) commonly appear in laundry lists of Code grounds, but with ubiquitous errors (only a fifth of secular board laundry lists accurately reflect the Code—see Airton et al., 2019). In fact, our analysis of the Catholic data set found few differences between Catholic and secular laundry lists, and their errors. The following examples—first secular, then Catholic—exemplify gender expression omission in both data sets:

Respect and treat others fairly, regardless of their race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, *gender, gender identity* [emphasis added], sexual orientation, age or disability. (Simcoe County District School Board, 2018, *Administrative Procedures Memorandum A7630: Code of Conduct*, p. 3)

Whether the infraction for which the pupil might be disciplined was related to any harassment of the pupil because of race, colour, ethnic origin, place of origin, religion, creed, disability, *gender or gender identity* [emphasis

added], sexual orientation or harassment for any other reason related to an immutable characteristic. (Bruce-Grey Catholic District School Board, 2018, *Administrative Procedures AP6-43: Keeping our Kids Safe at School*, p. 6)

In each example, gender expression is removed and replaced with what we have elsewhere (Airton et al., 2019) called the “ghostly ground” of gender, which has never existed in the Code.

Overall, we find that in both secular *and* Catholic board policy documents, gender expression’s inclusion in “‘laundry lists’ [is a site] of considerable interpretive license” (Airton et al., 2019, p. 1,169) in that it is frequently excluded. For this reason, we confidently refer readers to our prior article (Airton et al., 2019) on the secular boards, and expand our prior inference across the entirety of the public school policy landscape in Ontario: “that tinkering with ‘laundry lists’ is the most pervasive way that [all] Ontario public...school boards have attended to the changes necessitated by Toby’s Act in 2012” (p. 1169).

## **Gender Diversity Tends to be Conflated with Sexual Diversity**

Toby’s Act has led to the addition of gender identity and gender expression to human rights policies across public-serving sectors in Ontario, but the province’s publicly-funded Catholic school boards are not participating at a comparable level. In the Catholic data set, the ground of gender expression appears 206 times, and the ground of gender identity appears 312 times. Comparatively (see Table 2), in the secular board data set, gender expression occurrences were more than double ( $N = 416$ ), and gender identity ( $N = 1,018$ ) occurred more than three times as frequently despite each school system having a similar number of sampled policy documents (Airton et al., 2019).

As above, and echoing our secular board findings, gender identity and gender expression in the Catholic documents most often appear in “laundry lists” of Code grounds which, we have argued, is a minimal response to Toby’s Act that risks leaving intact procedures that may harm transgender students, such as the duty to report harassment to parents in all cases even if that might out a student and place them at risk in the home (Airton et al., 2019). In instances where our two grounds appear outside of laundry lists, however—which we infer to be a more deliberative and intentional update to policy than

mere “laundry-listing”—we see a frequent pairing of sexuality/sexual orientation with gender identity where gender expression is omitted. This frequently takes shape as in the following examples:

Reducing risk factors in a school is related to creative safe and inclusive spaces that encourage help-seeking and connectedness with a student’s peers and community. Schools are encouraged to review bullying campaigns, mental health anti-stigma campaigns, and issues related to *gender identity and sexuality* [emphasis added] as appropriate. (Catholic District School Board of Eastern Ontario, 2015, *A Collaborative Response for Children and Families in Crisis*, p. 19)

Ensure support for students who want to establish and lead activities and organizations that promote a safe, inclusive and accepting school climate, and/or the acceptance and respect for others, (e.g., activities that support gender equity, anti-racism, awareness, understanding, and respect for people with disabilities, *all sexual orientations, and gender identities* [emphasis added], including organizations with the name ‘Gay Straight Alliance’ or another name). (Brant Haldimand Norfolk Catholic District School Board, 2016, *Student Behaviour, Discipline and Safety*, n.p.)

We argue that the common placement of gender identity alongside sexuality, sexual orientation or “same-sex attraction”<sup>4</sup> reflects a compounding of these very different grounds and phenomena as “one issue” to be addressed by Catholic school actors. As Callaghan (2007) explains, the Catechism of the Catholic Church (CCB), which claims “homosexual acts are intrinsically disordered” (1997, para. 2,357) has been used to regulate gender and sexuality students and teachers in Canadian Catholic schools, including to the point of teacher dismissal (Callaghan, 2018). With the passage of Toby’s Act in 2012, the Ontario government signalled that gender identity and gender expression constitute standalone grounds of discrimination, separate from the ground of sexual orientation, which

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4 Many boards reference or endorse the Ontario Catholic School Trustee’s Association’s (2012) *Respecting Differences Resource*, which was a Catholic response to Bill 13 (see Bialystok, 2014) containing guidance to Catholic schools on supporting “individuals who are *dealing with* [emphasis added] same-sex attraction or *issues* [emphasis added] of gender-identity” (Bialystok, 2014, p. 1).

was added to the Human Rights Code in 1986 (Kirkup et al., 2020). From a human rights law perspective, the conceptual slippage between gender identity, gender expression, and sexual orientation should be avoided.

**Table 2**

*Occurrence Comparison Between Data Sets: Gender Identity and Gender Expression*

Term	Secular School Boards	Catholic School Boards
Gender Expression	416	206
Gender Identity	1,018	312

### **Gender Expression and Gender Identity are Missing from “Proactive” Policy Genres**

Our analysis of the Catholic data set yielded another equivalence of secular and Catholic school board policy in Ontario: gender expression and gender identity are largely found in *reactive* genres of school board policy. We define “reactive” policy as “[focused] on describing individualized episodes of undesirable behaviour as well as spelling out in clear and practical terms what must be done when these take place, and by whom” (Airtton et al., 2019, p. 1,171); “reactive” policy governs areas such as discipline, harassment, code of conduct or equity, and human rights (which tends to focus on responding to incidents wherein a student’s human rights have not been protected). Our prior finding regarding the secular school boards is now sayable of the entire province: that Ontario boards are typically *not* addressing gender diversity in “proactive” policy genres such as strategic planning or curriculum development. We argue that boards curtail their responsibility to proactively mitigate gender expression and gender identity discrimination by typically locating the new grounds in documents that target interpersonal behaviour as opposed to systemic barriers such as school records, washroom and changing room access, or athletics. A board’s legal responsibility to provide an environment free from gender expression and gender identity discrimination is not only enacted by how a board responds to harassment among students; a board and its actors may be at legal risk if they are not responding to systemic and more subtle discrimination on these grounds, including and perhaps especially when enacted by the school itself.

## One Gender Diversity Policy Document among all 29 Catholic Boards

In our adjacent secular board study (Airton et al., 2019), we were able to categorize policy documents into two distinctive sets: (1) gender diversity documents<sup>5</sup> ( $N = 26$ ) that instruct staff on welcoming gender diversity and/or supporting transgender-spectrum students;<sup>6</sup> and (2) generic documents ( $N = 180$ ) which engage gender expression and/or gender identity “in a boilerplate fashion:...in a ‘laundry list’ of grounds protected by the Human Rights Code” (p. 1,169), as described in a previous section of this article. While we identified gender diversity documents in half ( $N = 18$ ) of the province’s English secular boards, we identified only one such publicly-available document across all 29 English Catholic boards: Bruce-Gray Catholic District School Board’s (BGCDSB; 2015) *Pastoral Care for Transgender Students*. Although studying policy is not studying practice, from this we infer a pervasive lack of gender diversity knowledge on the part of most K–12 educators (e.g., Payne & Smith, 2012, 2014; Meyer & Leonardi, 2018), that Ontario Catholic school boards are not providing guidance to staff on how to support transgender and/or gender non-conforming students. The BGCDSB (2015) document is brief, and provides limited direction to actors within the board’s schools. It states:

The Bruce-Grey Catholic District school board believes that every person should be treated with equal dignity and respect, without regard to *gender identity* and *gender expression*. This includes *transgender* and any other person whose *gender identity* or *expression* is different, or is seen to be different from their *birth sex*.

The Collaborative Accommodation plan should involve the student, the parents or guardians, the principal, student’s teacher and other school, board or parish resources as identified by the student and/or family. Only necessary information should be exchanged and shared as necessary and with consent.

*Transgender people* [emphasis added] should be recognized and treated as the *gender they live in* [emphasis added], regardless of whether they have

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5 We used the phrase “gender-based documents” in Airton et al. (2019).

6 Welcoming gender diversity and supporting transgender students are not neatly synonymous, although they are widely conflated in our data set.

undergone surgery and regardless of identifying documents. *Names and/or sex designation* [emphasis added] may be changed on [sic] identify documents or other records. Legal documents can only be changed with appropriate documentation. (*Pastoral Care for Transgender Students*, BGCDSB, 2015, p. 1)

In the above excerpts, we see accurate descriptions of transgender people’s validity regardless of whether they have sought out medical transition (which is not co-extensive with “surgery” as is wrongly suggested in the excerpt), and a correct assertion that gender expression discrimination is a concern of all students. In fact, the document states that a cisgender (“any other”) person’s gender expression—when it departs from sex-associated expectations—does not change one’s right to be treated with equal dignity and respect, likewise if one is presumed to be transgender but is not (“seen to be different from their birth sex...”). In addition, the gender expression definition developed by the Ontario Human Rights Commission (2014) includes preferred name, and BGCDSB (2015) is correct that a student’s identity documents and school record should be changed regardless of whether a legal name change has been sought out; however, the document produces this as an optional step (“may”) and not a duty of the school under the Code to prevent gender identity or gender expression discrimination. Despite these encouraging features, however, we note that the “and/or” in the second excerpt allows that a parent can require the participation of other individuals (“board or parish”) in developing a Collaborative Accommodation without the student’s consent. This is concerning, as the interests and needs of transgender young people and their typically cisgender parents or guardians can diverge, for various reasons (see Neary, 2019; Riggs & Bartholomaeus, 2018). Lastly, the use of the phrase “pastoral guidelines” in its title mirrors the Ontario Conference of Catholic Bishops’ (2004) *Pastoral Guidelines to Assist Students of Same-Sex Orientation* and suggests that the primary duty of an Ontario publicly-funded Catholic school in relation to gender diversity is not legal—fulfilling its Code responsibilities against discrimination—but pastoral. As Martino (2014) writes, *Pastoral Guidelines to Assist Students of Same-Sex Orientation* “is the template and directive used by the Catholic school system for informing its approach to education about and dealing with sexual minority youth. It states that ‘the Church clearly teaches that homosexual acts are immoral’” (p. 217); the location of school responsibility in the realm of the “pastoral,” in Ontario’s only Catholic school board gender diversity policy, is concerning.

For these reasons, while we are encouraged by BGCDSB's (2015) development of a gender diversity policy, and recognize that the board is a singular outlier among all Ontario public Catholic school boards in this regard, this document tenuously categorized as a "gender diversity document" of the kind found in the secular data set. The gender diversity documents in the secular board data set provide an array of guidelines for supporting and welcoming gender diversity in K–12 schools. Of the 8,204 codes applied to the 206 collected secular board policy documents, 4,451 codes emerged from the gender diversity policy documents—accounting for 54% of the codes applied to the totality of the secular data set. From this we infer that, for secular boards, gender diversity policies are key vehicles for responding to Toby's Act and educating school staff about their responsibilities in this area. By contrast, only 20 codes were applied to Bruce-Grey Catholic District School Board's (BGCDSB) gender diversity policy—accounting for 0.005% of the codes applied in the Catholic data set. BGCDSB also differs from the secular gender diversity documents in length, style, and content. As an oft-cited but representative example of the 18 gender diversity policies in the secular board data set, Toronto District School Board (TDSB; 2013) provides a 29-page resource guide titled *TDSB Guidelines for the Accommodation of Transgender and Gender Non-Conforming Students and Staff*; within its pages, school actors are given clear directives on student privacy (including consent and disclosure), washroom access, official records, names and pronouns, dress codes, curriculum considerations, and a (brief) note pertaining to transgender and/or gender non-conforming students' participation in sports and athletics.

While secular board gender diversity policies draw school staff attention to individual student needs (e.g., in situations where staff must be *reactive* to incidents of harassment), they predominantly advise staff on being *proactive* via curricular integration, language use, access to all-gender facilities, and other everyday aspects of school life that require shifts in order to meet Code responsibilities after the passage of Toby's Act. Despite the BGCDSB gender diversity policy's existence and accessibility, its "pastoral guidelines" framework positions gender diversity as a reactive and therefore individualized concern of school staff, situating it outside of the "genre" of gender diversity policy that we have identified in Ontario school boards.

Recalling our prior recommendation that researchers focus on the less-politicized realm of individual Catholic schools in order to better understand how gender diversity is playing out and supported therein, we further recommend that future research explore

where Catholic board staff receive guidance on supporting transgender and/or gender non-conforming students in their care. A “where” question is different from a “whether” question. A “whether” question contains the possibility that these students are simply unsupported by staff in half of the province’s English schools. A “where” question presumes that there are teachers self-educating in order to welcome gender diversity in Ontario Catholic schools, and wonders how they are doing so and with what effect. For example, are secular board gender diversity policies also accessed by Catholic school staff? Our attention to board-level documents precludes us—and, we argue, other researchers who have not conducted studies across individual Catholic schools—from replying in the negative about what happens in the course of everyday school life.

## Discussion

Our findings have underscored particular issues in Ontario Catholic school board responses to gender expression and gender identity protections after the passage of Toby’s Act, and served to expand some of our secular board findings (Airton et al., 2019) to the entire public education system in Ontario. While Catholic boards are doubtless behind the modal secular board, there are also secular boards that are not advising staff to the extent that Bruce-Grey Catholic DSB is doing so, despite our critiques of its *Pastoral Guidelines*; there are also secular boards that have not added these new human rights protections at all, where many Catholic boards have, and most ground occurrences across all boards are bedeviled with errors that often marginalize gender expression altogether. Taken by itself, the disparity *within* our secular board data set of policies containing gender identity and gender expression belies a simple binary (Airton et al., 2019). For example, while we identified Ottawa-Carleton District School Board (OCDSB), and Toronto District School Board (TDSB) as having substantially detailed gender diversity policies, there are many secular boards which have not correctly included these grounds even in laundry lists that one might expect to simply copy and paste from Ontario’s Human Rights Code (see Kirkup et al., 2020). Overall, our findings suggest that the challenge posed by the advent of gender expression and gender identity human rights protections has only begun to impact public school board policy making in this province, across the public and Catholic spectrum. Furthermore, our findings add complexity to a topic most often articulated as a clear binary: that Catholic boards are, without nuance or exception, opposed to gender (and sexual) diversity, whereas secular boards are not.



In line with our third finding—gender diversity tends to be conflated with sexual diversity—and our observation that sexuality has dominated the “gender *and* sexual diversity” literature on Canadian Catholic schools, we infer that sexual orientation logics and conflicts may have framed the treatment of gender identity in the Catholic school board policy. Across our secular and Catholic data sets, we see a conflation of gender expression with gender identity (through the former’s omission), but in the Catholic data set we further see a conflation of gender identity (sans gender expression) with sexual orientation. We argue that this produces gender expression diversity as an issue submerged within struggles over issues of sexual orientation and gender identity/transness, when in fact gender expression discrimination is its own, separate problem at school.

Scholars and Catholic school officials alike have identified an incongruence between Catholic doctrine and the affirmation of diverse sexual orientations and gender identities. However, we argue that gender expression is an aspect of human diversity as well as a ground of human rights protection that need not be thought of as co-extensive with sexual orientation and gender identity. It is entirely possible that cisgender, heterosexual, and observant Catholic students in Ontario publicly funded Catholic schools face gender expression discrimination because they are not expressing who they are as boys or girls in the same way as their peers do, or as is expected by adults in their schools (Kirkup et al., 2020). Research on socially-assigned gender non-conformity (Klemmer et al., 2019; Taylor et al., 2011) has shown that cisgender and heterosexual students who are socially-assigned as gender non-conforming by peers are as vulnerable to gender- and sexuality-motivated harassment as their non-heterosexual and/or transgender peers. Catholic school staff and administrators may be in legal jeopardy if cisgender heterosexual students experience harassment for their clothing or grooming from peers without staff intervention, or are required to wear uniforms (whether whole-school or activity-related) that do not align with their gender expression. We encourage Catholic boards—indeed all school boards—to consider how gender expression protections tend to the needs of *all* school actors.

In addition to our argument about the legal risks of failing to abide by Ontario’s Human Rights Code, we further suggest that Catholic schools can and should embrace their duty to provide a learning environment free from gender expression discrimination without doctrinal conflict, and for the benefit of all students, including those who are or may come to know they are transgender. Indeed, as one of us has argued elsewhere (e.g., Herriot & Callaghan, 2018, 2019), *not* affirming a full spectrum of gender expression in

Catholic schools conflicts with the theological and moral teachings of Catholicism, particularly in regards to emulating the life of Jesus (see Mollenkott, 2007), the spirit of the Nicene Creed (see Howes, 2014), and the spiritual obligation in the Psalms to honour the divinity of how God created each person (Mann, 2014).<sup>7</sup>

It is here that Catholic school boards have a distinct advantage, perhaps due to the pastoral care they provide and despite our earlier objections to that framing. Whereas secular school boards make no claims to nurture or affirm students' spiritual lives, this commitment is at the centre of, and is indeed, the *raison d'être*, of Catholic schools. Rather than seeing a full spectrum of joyful gender expression as something to be *balanced against* Catholic doctrine, there is instead ample space for this divine diversity in God's creation to be honoured *within* Catholic teachings. While excellent examples of how this might be taken up at the classroom level with curriculum and lesson plans are emerging (e.g., Colwell & Wright-Malley, 2020), our research suggests that there remains generative, imaginative space for Catholic school policy and practice to be grounded in a gender expression-affirming theology. It is our hope that, should the current study be replicated in years to come, Ontario Catholic school board policies will be found to reflect the spiritual joy of gender expression, and be filled with language that reflects its sacredness.

## Conclusion

We conclude by reiterating the article's main provocation: that gender expression protections, conceivably applicable to every single student in Ontario K–12 schools who experiences harassment for how they express femininity or masculinity (or both, or neither), are not, in fact, contrary to Catholic doctrine. The erasure of gender expression within Ontario publicly-funded Catholic school board policy documents may stem from an erroneous conflation of “gender expression” with “transgender”—where the latter is thought to fall afoul of Catholic doctrine regarding homosexuality and the immutability of sex—and with sexual diversity, given the frequent coupling of sexual orientation with gender identity. We recommend that students, family members, and staff in Catholic school boards bring gender expression to life as a standalone human rights ground, rather than conflating it with gender identity, such that it can apply to every student. As scholars who

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7 For a more fulsome description of these arguments, see Herriot and Callaghan (2018, 2019).

work toward transgender peoples' rights, we recognize that this is a counterintuitive call; however, it is in line with scholarship that suggests a de-emphasis on particular students' identities in conversations about how to provide school climates where all students (and teachers) can be and remain well, and not experience harm due to who they are or how they are perceived by others. By separately attending to gender expression as a site of harm and ground of protection in Ontario schools, we argue that Catholic teachers and administrators can openly and freely pursue their duty to provide a learning environment free from gender expression discrimination.

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