



Sexual Orientation and Gender Identity in Residential Care Facilities

- a draft policy -
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This booklet contains general legal information. It is not legal advice. The information is accurate as of May 4, 2000. But the law changes frequently. You should consult a lawyer for information about your particular situation.

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1. Purpose of this policy

This policy will

- ▶ distinguish between homophobia and transphobia on the one hand, and sexual orientation and gender identity on the other
- ▶ distinguish between facts and myths about lesbians and gay men, bisexual and transgendered people
- ▶ set out the law relating to sexual orientation, gender identity and discrimination
- ▶ set out a policy of non-discrimination on the basis of sexual orientation or gender identity
 - as it relates to staff
 - as it relates to clients
 - as it relates to clients' families
 - as it relates to volunteers
 - as it relates to employees of contracted service providers

2. Homophobia, Transphobia, Sexual Orientation and Gender Identity

2.1 'Sexual orientation' is a term which describes one's intimate relationships. If one relates sexually, emotionally and psychologically with people of the 'opposite' gender, one is heterosexual; with people of the 'same' gender as oneself, gay or lesbian; and with people of both genders, 'bisexual'.

2.2 'Gender identity' is the term which refers to the gender with which one identifies. Contrary to the general assumption that there are only two genders, and that one *just is* either male or female, gender is on a continuum, and there are many different gender indicators (genital appearance, psychological, social, hormonal, chromosomal, etc). For most of us, our gender identity is congruent with other indicators of our gender. But for some of us that is not so: though we may have been raised as a boy we feel inside we are female, or vice versa. Or we may have ambiguous or contradictory gender indicators. Those of us who experience our gender identity differently than we have been raised are *transgendered*. Transgendered people include transsexuals (who may have hormonal therapy or surgery or both to bring their bodies into line with their own gender identity), cross dresser for herself or himself whether and with whom to disclose their sexual orientation and/or gender identity. Because in the absence of dressers, who live some or all of the time as a person of the gender 'opposite' to the one they were raised; drag queens or queens; or intersexed people whose gender indicators are ambiguous or mixed.

2.3 'Homophobia' is a term for the hatred and fear of lesbians, gay men and bisexual people which some heterosexuals feel. Homophobia may manifest as

- ▶ a belief that gay men, lesbians and bisexuals are sinners
- ▶ a belief that they are child molesters
- ▶ a belief lesbians, gay men and bisexual people can affect the sexual orientation of others, especially children
- ▶ a belief in the myth that all gay men, lesbians or bisexual people are promiscuous
- ▶ a belief that homosexuality causes AIDS or other negative and false stereotypes.

2.4 'Transphobia' is the term for the hatred and fear of transgendered people that some non-trans men and women (including some lesbian, bisexual and gay women and men) feel toward transgendered people. It may manifest, for example, as

- ▶ a belief that transgendered people are sexually deviant
- ▶ a belief that a transgendered person is not a 'real man' or a 'real woman' if s/he is transgendered
- ▶ a belief that male to female transgendered women have had 'privilege' associated with growing up male
- ▶ a belief that female to male transgendered men are psychologically unstable

3. Myths and Facts Distinguished

The vast majority of children (both boys and girls) who are molested are molested by heterosexual men who were born as men.

Being around lesbians and/or gay men and/or transgendered people does not increase the chances that a child will be lesbian or gay or transgendered.

Children raised by same sex parents have statistically the same chance of turning out heterosexual as do children raised by straight parents; conversely children raised by straight parents have the same chance of turning out lesbian, gay, or bisexual as children of same sex parents.

Current theories of transgenderism suggest that

- ▶ Refusing to let someone use a gendered facility (eg a washroom) of her or his choice because she or he is believed to be "not a real woman" or "not a real man"
- ▶ Disclosing the sexual orientation or gender identity of a staff, client, parent, volunteer or contracted services employee without the permission of that individual. If someone asks you about the gender identity or sexual orientation of someone else, explain that it is the individual's business, and if the person wants to know she must ask the individual concerned.
- ▶ Taking into account the sexual orientation or gender identity of a worker or volunteer in matching them with a client.
- ▶ Expecting an employee, volunteer, client, family member, or staff of a contracted service not to disclose her or his sexual orientation or gender identity. Protection from discrimination on the basis of gender identity and sexual orientation means that each person has the right to make her sexual orientation and gender identity known, without reprisals.
- ▶ Agreeing with a client, staff, social worker, volunteer, etc. that an individual was wrong to people's gender identity is formed before birth.

Some heterosexuals are monogamous and some are promiscuous; some gay, lesbian and bisexual people are monogamous and some promiscuous; some trans people of either sexual orientation are monogamous; some are promiscuous.

A virus causes AIDS; homosexuality does not. At the moment AIDS transmission is higher among heterosexuals than among homosexuals in most parts of the world.

4. The law affecting lesbian, bisexual, gay, and transgendered staff, clients, and families of clients

It is illegal to discriminate against a worker or against someone to whom one is providing a service on the basis of that person's sexual orientation or gender identity.

'Sexual orientation' and 'sex' are specifically listed as grounds protected by B.C. and federal human rights legislation. A B.C. Supreme court decision, *Rape Relief v B.C. (Human Rights Commission)*, holds that transgendered people are protected from discrimination by the ground of 'sex' in human rights law.

Human rights legislation covers job advertisements, standards for hiring, the right to equal pay for work of equal value, and the right to equality in working conditions.

So in relation to workers, this means that an employer cannot refuse to hire, promote, or grant the same working conditions to an employee because that employee is heterosexual, bisexual, gay, lesbian or transgendered.

It is also discriminatory to refuse to hire, promote, or grant the same working conditions to an employee because that employee is HIV+.

And a Quebec case has established that an employer cannot fire an employee for changing from one gender to another (transitioning) on the job.

In relation to clients, this means that an agency cannot refuse to accept, or impose different conditions of bisexual, transgendered, lesbian or gay. Similarly the agency cannot refuse a client who is HIV+, or treat him or her differently than other clients.

In relation to families to clients, this means that an agency cannot refuse to accept, or impose different conditions of service on, a client because he or she is trans, heterosexual, bisexual, lesbian or gay. Nor can an agency refuse to involve a family member who is HIV+, or treat them differently on that basis.

5. Agency policy about the sexual orientation and gender identity of staff

This agency supports the rights of all of its employees, clients, volunteers, and family members to be treated respectfully and without discrimination based on sexual orientation or gender identity.

5.1 Policy for Staff

5.1.1 All wages, benefits and working conditions will be provided without discrimination based on sexual orientation or gender identity. In particular

- ▶ any insurance benefits or any other family-related benefits will be provided on the same basis to all employees' partners, no matter what their sexual orientation or gender identity is, and no matter whether they are the biological or non biological parent of a child for whom they have full or part time responsibility
- ▶ medical coverage for sex reassignment surgery and related procedures will be provided on the same basis as medical coverage for other medically indicated surgery
- ▶ hours of work and on call work will be assigned in a non-discriminatory way
- ▶ parental leave will be available to an employee on the birth of a child to herself or to her or his partner; or on the adoption of a child by the employee or the employee's partner of a child not related to them
- ▶ preferred and non-preferred work will be assigned on a non-discriminatory basis
- ▶ marriage leave is available to same sex partners having a commitment ceremony
- ▶ gendered facilities such as washrooms will be available to everyone based on their gender identity

5.1.2 The sole criterion which the agency uses to determine whether an individual should be hired or promoted is her or his ability to do the job. The sexual orientation or gender identity of a worker will not be taken into account in making that determination.

Though the agency may consult with parents or social workers as part of its hiring process and may be committed to involving family and case workers as much as possible in the care of the client, no parent or family member is entitled to impose a discriminatory condition upon the hiring or promotion of a staff person since that would be against the law and the agency's commitment to equality in the workplace.

6. The agency will not demote or terminate anyone because of her or his sexual orientation or gender identity.

6.1 The agency recognizes that one of the forms that homophobia and transphobia can take is allegations by staff, clients, volunteers or contracted service employees that a lesbian, gay, bisexual or transgendered person has made

an inappropriate sexual overture; and that such allegations must be investigated with a consciousness of the fact that because of the homophobia and transphobia in society at large, innocent exchanges can be honestly misinterpreted and result in unfounded allegations of inappropriate behaviour.

7. Clients

This agency does not discriminate against anyone who applies for or receives services from this agency on the ground that s/he is gay, lesbian, bi or trans.

Whether a client or prospective client is gay, lesbian, bisexual or transgendered.

7.1 The sexual orientation of an applicant for client services is not a relevant consideration when deciding whether or not to accept a new applicant, even if

- another client expresses reservations
- a staff member expresses reservations
- a family member of a current or prospective client expresses reservations

7.2 In determining a client's gender this agency goes by the client's gender identity even if there are other contradictory gender indicators.

7.3 Gay, lesbian, bisexual, heterosexual and transgendered clients receive equal treatment, including the application of these policies.

Staff will be disciplined for homophobia or transphobia. Staff are expected to intervene if clients, volunteers or family members are expressing homophobia or transphobia. If a mild intervention is insufficient, staff will report the incident to management, who may take disciplinary steps.

8. Volunteers

Volunteers are sometimes discriminated against or harassed because of their sexual orientation or gender identity. Or they may themselves discriminate against or harass another volunteer, staff person, client, or employee of a contracted service because of that person's sexual orientation or gender identity.

8.1 A volunteer is entitled to complain to management about discrimination against them or harassment of them on the basis of their sexual orientation or gender identity; and management will deal with the complaint on the same basis as if they were an employee.

8.2. A volunteer who discriminates against or harasses a staff person, client, or employee of contracted services will be dealt with under the agency's harassment/discrimination protocol. In appropriate cases they will be terminated as a volunteer and no favourable reference will be given about them by the agency.

8.3 This clause applies to volunteers who are members of the board of directors of the society.

9. Contracted Services

Like volunteers, employees of contracted services may experience discrimination or harassment because of their sexual orientation or gender identity; or may discriminate against or harass an employee, client, family member or volunteer.

The agency will provide the contractor with a copy of this policy and will require (a) that the contractor inform its employees of the terms of this policy; (b) that the contractor undertake to discipline any employee violating the policy and (c) that the contractor will, if requested to do so by the agency on the grounds that a contracted worker has breached this policy, send a different employee to the site.

In the event of an incident of discrimination by an employee of a contractor the agency will report the incident to the contractor and request such steps from the contractor as may seem advisable

In the event of an incident of discrimination against an employee of a contracted service the agency will deal with the incident as it would if the person were a volunteer relating to staff where these policies apply.

10. What Kinds of Conduct are Discriminatory or Harassing? What to Do about Them?

The following are some examples of situations in which there is harassment or discrimination on the basis of sexual orientation or gender identity:

- Telling an anti-gay joke, including a joke about any lesbian gay or bisexual employee, staff, client, volunteer, family member or contractor's employee. The proper response is to remark that jokes of that kind are not appropriate because they contribute to damaging stereotypes about people. If the behaviour continues, report the behaviour to management.
- Accepting a complaint from a parent of a resident who says that the resident's family disapproves of homosexuality on religious grounds, and therefore they do not want the resident to have a worker who is gay. The proper response is to explain to the parent that the law does not permit the agency to take that into account in assigning staff, and to assure the parent that the staff person in question is well qualified and professional in the work s/he does. Report any such conversation to management.

11. Multifaceted Discrimination

Management is alive to the ways that homophobia and transphobia interact with racism, sexism, ableism, anti-semitism, and other oppressions. And management will assess complaints of sexual harassment made against gay or transgendered employees realizing that one of the ways homophobia and transphobia can operate is that straight and non-trans people may overreact to innocent social overtures, mistaking them for sexual come-ons.

12. Discrimination and Harassment Protocol

[The agency's discrimination and harassment investigation protocol should be inserted here].

13. Privacy and Free Speech

Every staff person, every client, every volunteer, every employee of a contracted service, and every family member has the right to

dressers, who live some or all of the time as a person of the gender 'opposite' to the one they were raised; drag queens or queens; or intersexed people whose gender indicators are ambiguous or mixed.

Gender identity is not the same as sexual orientation. A transgendered person can be heterosexual, lesbian, gay or bisexual.

14. Different Circumstances

If a staff, parent, volunteer, client or management thinks there is a problem because of someone's sexual orientation or gender identity, management should be consulted to develop a plan to deal with the situation in a manner consistent with this policy.

15. Zero Tolerance

This agency has a policy of zero tolerance for incidents of homophobia or transphobia in the workplace.

All incidents of alleged homophobia or transphobia will be investigated in accordance with the Discrimination and Harassment Protocol, which protects both the rights of the complainant and the rights of the alleged offender.

This pamphlet contains legal information. It is *not* legal advice. Laws change quickly, and individual situations vary. To find out how the law affects your situation, contact me. First interviews are always free of charge.

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