



# **Transgendered People and Employment: An Equality Analysis**

prepared for TransAction from the Justice and  
Equality Summit June 1999

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# **TRANSGENDERED PEOPLE AND EMPLOYMENT**

## **TABLE OF CONTENTS**

1. Introduction
2. Human rights for trans people in the workplace
3. The human rights cases so far an employer dictate how I dress?
4. Transitioning on the job
5. Extended health benefits
6. Benefits: sick leave, short term and long term disability
7. Your right to privacy at work
8. Can I work in a women's services organization where only women work if I am MtF? If I am FtM?
9. Lessons to learn

## Introduction

This booklet is written for transgendered people: anyone who identifies as other than simply “male” or “female”. Transgendered people include:

- ▶▶ transsexual people – those among us who have a strong and persistent conviction that there is a mismatch between their true gender, and the gender their genitals suggest, and who may seek sex reassignment surgery
- ▶▶ intersexed people – those among us who are born with gender markers which are ambiguous
- ▶▶ cross dressers – those among us who, though we identify as members of one gender, may dress as, and pass as, members of the ‘other’ gender some or all of the time
- ▶▶ drag kings or drag queens (from the Shakespearean stage direction, ‘dressed like a girl’ in an era when only men were on the stage): people who dress occasionally as members of the ‘other’ gender, usually for display
- ▶▶ trans people – those among us who identify as neither gender, or as both genders

We have all been taught, wrongly, that there are two and only two human genders. The question to ask, always, is how an individual identifies: only that person can say what their gender identity is. No one can determine it for them.

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Transgendered people experience a great deal of discrimination in the workplace.

They may not be hired because of how they look; told they are not entitled to dress in a particular way; forbidden to cross dress or transition on the job, be refused the use of the appropriate washroom while they are transitioning or cross

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The rate of unemployment among transsexuals is very high.  
Christine Burnham,

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dressed, be harassed by coworkers or the boss, or fired. This section explains the laws governing the workplace generally, and then describes the remedies which are (or should be) available to a worker.

The way the law works is different in the federal sphere than in the provincial sphere, and it is different if you are in a union or not in a union.

The federal sphere includes employers like the federal government, airlines, radio and tv stations, railways and interprovincial bus and truck lines, etc.

Because the laws in the federal sphere are very much like the laws in the provincial sphere, and because most people have jobs governed by provincial not federal laws, we will focus on the provincial laws, specifically the laws of British Columbia.

We will start by looking at the situation for people who are not in unions, for two reasons. First, there are more people at work in non union than in union situations.

Second, people in unions are entitled to all of the benefits and protections that people not in unions are entitled to, plus the advantages of being in a union, which include job security, a grievance procedure, and additional fringe benefits.

## **Human rights for trans people in the workplace**

Transgendered people have two ways to be protected from discrimination in employment. The first is through human rights legislation. The second is by challenging and law governing employment if the law itself discriminates against transgendered people.

The mechanics of a human rights complaint and a charter challenge are explained in the context of prisons, in the chapter “Transgendered People in Canadian Prisons”. For a detailed analysis of human rights legislation and the Charter of Rights, read that chapter.

Briefly, the Human Rights Code of British Columbia protects all workers -- unionized or non unionized -- from discrimination in the work place. It doesn't matter whether your employer is the provincial government or a mom and pop grocery store or a forestry operation — the law is the same. If you file a complaint about discrimination against you as a transgendered person, and you win at the tribunal, the tribunal can award you all of the money you lost if you weren't hired, or were fired, because you are transgendered. And it can order that you get your job back, along with other remedies including damages (money) for injury to your dignity and self-respect, an order that the employer stop discriminating against transgendered people, and an order that the employer hold educational seminars.

## **The Human Rights Cases so Far<sup>1</sup>**

There are four Canadian cases decided so far which are helpful to transgendered people at work. The first of those three decisions is C.D.P. (M.L.) c. Maison des jeunes<sup>2</sup>. An MtF preoperative transsexual was dismissed when she came out to her employer as a transsexual and told her employer of her intention to transition. The Tribunal concluded (at para. 111) that "... le sexe non seulement s'entend de l'état d'une personne mais encore comprend le processus même d'unification, de transformation que constitue le transsexualisme" ("... sex does not include just the state of a person but also the very process of the unification and transformation that make up transsexualism"). As a result, held the tribunal, transsexuals are protected against discrimination on the basis of sex.

The C.D.P. decision came down after the hearing, but before a decision had been rendered in the B.C. case of *Sheridan v Sanctuary Investments Ltd.* In that case, the Tawni Sheridan, a pre operative transsexual, had begun dressing as a woman and taking hormones. Her physician gave her a letter explaining that she was a transsexual.

Sheridan patronized the respondent's bar, which catered to a queer clientele. She used the women's washroom — sometimes without incident, sometimes being warned

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1 You can find the B.C. cases (*Sheridan* and *Mamela*) at the webpage of the B.C. Human Rights Tribunal, which can be found at <http://www.bchrt.gov.bc.ca/>.

2 (T.D.P.Q. Montreal, No. 500-53-000078-970), dated July 2 1998.

by the bouncer not to do so or she would be barred. One evening when she arrived at the bar she was required to produce picture identification (though she was known to the staff), and, when the picture i.d. did not match her gender presentation, was refused entry on that basis. Showing her physician's letter made no difference. A short time later when Ms Sheridan returned to the bar, she was thrown out again because she used the women's washroom.

The manager of the respondent testified that his actions were based on complaints he had received from some lesbians.

Having concluded that Ms Sheridan was protected from discrimination on the grounds of sex, the tribunal also said:

The Respondent's policy with respect to use of washrooms was a neutral policy which clearly had an adverse effect on transsexuals in transition. Therefore, the Respondent had a duty to accommodate transsexuals in general, and the Complainant in particular, to the point of undue hardship.

Notwithstanding the tribunal's excellent decision with respect to the right of a preoperative transsexual to use the washroom of her target gender, the tribunal held that the gay bar was not discriminating in denying entry on the basis that Ms Sheridan's picture identification did not match her gender presentation. The tribunal concluded that the respondent had a reasonable justification for refusing service to the complainant, on the basis of evidence that liquor licencing laws permitted the respondent to require picture identification; and that the area that the bar was in was a dangerous area.

The third case of the trilogy is *Mamela v Vancouver Lesbian Connection*, decided in September 1999. The complainant was a preoperative transsexual lesbian, who joined the VLC and worked in the library. VLC's membership policy was to welcome people who identified as lesbian, queer, bisexual or transgendered. After Mamela was quoted in a queer newspaper to the effect that she identified as a lesbian, not as a 'woman', since 'woman' was a word which, derivatively speaking, came from 'wife/man', her membership in VLC was suspended. Members of the collective made derogatory remarks about Ms Mamela's 'mannishness' and 'aggressiveness'.

By the time that Mamela's complaint reached the tribunal, the Vancouver Lesbian

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**What bothers me most is the people who say that trans women are socialized as men and can't and don't understand what people who were socialized as women go through. In fact we know that women are socialized in really different ways depending on their cultural background, class, generation, etc etc. And to say that someone who grew up identifying as a girl while being treated as a boy by everyone around them is socialized 'as' a man as if there is only a singular male socialization ...well, it's not. They weren't socialized as boys who thought they were boys.**

Persimmon Blackbridge lesbian feminist novelist, theorist, performance artist, sculptor.

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Connection was defunct as an organization, and no one appeared on their behalf. The tribunal addressed the issue of whether Mamela had been denied employment (no), and concluded that VLC had discriminated against Mamela on the basis of her gender identity in purporting to suspend her membership in VLC. The tribunal held that discrimination on the basis of gender identity is discrimination on the basis of 'sex'. On its facts the Mamela case did not have to address the question of whether a women's organization was entitled to refuse membership to a transgendered woman, since their policies permitted transsexual women to join, and Mamela's complaint was not about the denial of membership but about its suspension. Nevertheless it is important because the case was pursued solely on the ground of 'sex', with no reference to the ground of 'disability' which had been cited as an alternative ground in Sheridan.

The last case is one in which a trans woman had worked as a dispatcher for a taxi company for many years. At some point a shop steward 'read' her, for whatever reason, and went to management to demand that the woman be fired for 'being a man using the women's washroom'. Management complied, and fired her.

After she filed a human rights complaint against both the company and the union, the company settled --but the union did not. The tribunal found that the union had discriminated against her. The case is called Wallace v OTEU.

## 10. **Constitutional Equality and Transgendered People**

Trans people employed in the private sector, whether governed provincially (like department stores, insurance companies, the forest and mining industry, etc), or federal (like radios, banks, interprovincial trucking firms), are protected by human rights legislation.

Trans people employed by the federal or provincial government may also be protected by the equality rights guarantee which is part of the Canadian Constitution.

The Charter of Rights and Freedoms protects people from inequality in the laws themselves. It says:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without

discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability...

The magic words for trans people (and in the past for other disadvantaged groups like gays and lesbians) are "and, in particular". The courts have interpreted those words to mean that even though a particular kind of discrimination is not listed, it may still be protected because those words mean the list is not closed. So if a group in Canada can demonstrate that it has historically suffered from disadvantage and discrimination, then it can assert its right to protection under section 15.

In fact, this is how gays and lesbians have been successful in the last ten years in achieving legal equality in most areas. The courts recognized that gays and lesbians have historically suffered discrimination, and said that they, too, should be protected by the equality rights section which is designed to ensure that all Canadians are equal.

You can see that there is a template here that can be used to argue for the right of transgendered people to be treated equally under all Canadian laws. Cases making

those arguments are in fact currently making their way through the courts.

Because trans people who work for the federal government or the provincial government directly are employed under laws of the province, they may have an extra weapon to fight against discrimination in the workplace. Charter cases are expensive and very very time consuming, so they are not a practical choice for most people, but there is a funding program which provides funds to pay for test case challenges to federal legislation, and there are also some groups in British Columbia who are funded to do test case litigation.

## Getting Hired

If you have already transitioned (and whether or not you have had surgery) you can record your gender, if it is asked on the application form, as your new gender. You are not lying. And you can use your chosen name of your new gender: you are always entitled to use an 'alias' provided that you are not intending to defraud someone; and it is not necessary for you to have changed the name or gender on your birth certificate for this to be true.

If you are a trans person who does not identify by gender, you can leave the "male/female" box on the application form blank— but expect some questions. You may have to come out as trans in your interview.

It is possible that the interviewer will read you as trans when you go for an interview. If the interviewer says something like, "Are you really a man?" or "Why do you have that beard?" or makes any other anti-trans comment,

you have the basis for a human rights complaint if you are not hired. Immediately after the interview write down everything the interviewer said, including the comments about trans and the rest of the interview, and everything you said in reply.

Christine Burnham, at the Vancouver Gender Clinic, has done a great deal of work with employers of trans people, helping to educate the employer and coworkers to a trans co worker. It is a very good idea to consult her or someone like her before heading off for your first job interview in your new gender. She can help you plan how you will deal with the trans-related questions.

**“I am sure that this is not what the legislature meant when they enacted human rights protection!”  
expostulated a lawyer for the employer, responding to a complaint by a trans worker that her employer was threatening to fire her if she transitioned on the job.**

Case files of the author.

## Can my employer tell me how to dress?

This is a tricky question, with no clear answer so far. When I called the B.C. Human Rights Commission and asked them that question, their answer was that an employer has a right to set “dress codes”. So your employer can insist that you wear a uniform (though they have to pay for it). And they can insist that you dress up. But the question of whether a person is appropriately dressed also has a gender component. For example, if a cross dressing man comes to work in a dress, and the dress is the standard of wear that her female colleagues have, can the employer discipline her for not wearing pants?

There are no human rights cases either way on that question. As a practical matter, it is a good idea to sort out this question before you turn up cross dressed. But we would argue that a person cannot be forced to wear gender-appropriate clothing, because such a rule discriminates against transgendered people.

Biological women can get away with dressing ‘like men’, in pant suits, even pant suits tailored man-fashion. Men have a much harder time getting away with wearing a dress. This is because of the history of the second wave of the women’s movement in the 20<sup>th</sup> century, when, gradually, women were accepted into jobs which had formerly been the exclusive preserve of men. Fashion followed fortune, and the seventies saw pant suits and unisex clothing. It is still acceptable, though not necessarily ultra fashionable, for women to dress in pants. But for men to move “down” the social ladder by assuming the dress of women is a much stronger taboo.

Pointing out the ways that dress is gender-related sets the foundation for the argument that an employer cannot force a person to dress according to what “suits” their gender<sup>3</sup>.

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A gender expert was surprised when I suggested that employers do not have the right to specify which gender’s clothes a person wears. “But surely”, he said, “a person could not wear women’s clothes one day and men’s clothes the next? A person could abuse that freedom and make it really rough for the employer!” In the employment context, the human rights of an employee take precedence over the commercial interests of the employer. So for example, an employer cannot force a black person or a gay person to work at the back of the store, and cannot refuse to hire a woman because their clients prefer to work with men.



## Transitioning on the Job

An employer cannot fire you for transitioning on the job. But it is a good idea to prepare your employer before you show up for work dressed in your target gender. Once again, Christine Burnham or Gail Owen in Victoria can help you think through your strategy for coming out to your employer as trans, and beginning your transition at work. It is their experience that employers who have the situation carefully explained to them are often very supportive and very interested in having a workshop to help their employees adjust to the situation.

In your conversation with your employer, you will want to explain what transgenderism is, whether you are a transsexual or a cross dresser or an androgyne, for example, and what changes you are going to want to make in the workplace (dressing in the other gender, using a different washroom, being called by a different name.)

You may want to show your employer the booklet “Homophobia and Transphobia in the Workplace: A Draft Policy” which is at the end of this chapter, as a guide to the issues that you and the employer may want to address in the work place.

You may also want to have the names of some employers whose employees have successfully transitioned on the job (and the world did not fall apart) so that the employer can speak to another employer and ask the questions s/he might not want to ask you.

Whether your employer has a workshop or not, it may be a good idea to ask your employer to circulate a memo explaining that you are transitioning and that you will be using the women’s/men’s washroom and going by a new name.

Some employers say they do not want anyone to transition on the job because they are afraid that their customers won’t like it. In cases where commission sales people have transitioned, the transition has had no impact on their sales ability. And in human rights law, the fact that clients may not or do not like some aspect of a person (that they are black, or disabled, or a woman, or gay, or transgendered) is not a good enough reason for the employer to discriminate against the employee.

The one situation where you may encounter a “legitimate” problem with transitioning at work is where the employer can hire only people of one gender for the job. For example, in federal prisons for women, the law requires that “pat down” and “strip searches” on women be done by women. If you are in one of those jobs, and you are FtM, you may need to move to another job where body searches are not part of your job description<sup>4</sup>. Such jobs are not common; they relate primarily to situations where people may be naked (change rooms in community centres, that sort of thing).

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In an Alberta case, women were hired in a male institution under an affirmative action plan. One of the men filed a human rights complaint because the women staff — though not required to do searches of the inmates — sometimes might catch glimpses of them while they were naked, or using the toilet, in their cells. The tribunal held that the effect on the inmates’ privacy was not great enough to outweigh the women’s right to work.

Hospitals on the other hand do not require that people doing care for bedridden patients be of the same gender as the patient.

## Health Benefits

As you probably know, in British Columbia our universal medical services plan pays for sex reassignment surgery if the surgery is recommended by the Vancouver Gender Clinic and authorized by the Ministry of Health.<sup>5</sup>

All work-related benefits should be available to you. For a pre-operative transsexual, that includes extended health benefits to pay for your transportation for SRS, if transportation benefits are paid for other surgeries not available in B.C. If procedures like electrolysis are available for anyone, they must be made available to you.

What if your employer has an insurance policy that specifically excludes coverage for transsexuals? This has been known to happen.<sup>6</sup>

**Three school teachers in the Lower Mainland have transitioned from male to female in their schools, and continued to teach the same classes, without incident.**

Under the law, it is the employer's responsibility to provide benefits without discrimination. The employer cannot get off the hook by saying "but the contract does not cover it". If the insurance contract covers other people for transportation, for example, but not transsexuals who are going for sex reassignment surgery, that is discrimination. And it is the employer's responsibility to deal with it. The employer has two choices in that situation — they can persuade the insurance company to cover the transportation, or they can pay for it themselves.

Sometimes it is not immediately obvious whether your benefit plan is discriminatory. To make sure, you need to get a copy of the actual insurance policy (as opposed to the benefits booklet they give you when you are hired). The personnel department should be able to give you a copy.

If you find yourself in a situation where your employer has benefits that discriminate against you, you might want to get some help before you talk to your employer. You don't want to have the employer respond to your complaint by firing you! Even though it is illegal to fire someone because they have a human rights complaint, employers sometimes do. There are several things you can do:

- speak to an advocate at the Gender Clinic. They have experience dealing with employers
- call the B.C. Human Rights Commission and talk to an intake worker to make sure that you have a case of discrimination

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<sup>5</sup> There is another booklet in this series called "Trans people and health care" which spells out what benefits are available through the medicare plan, and a booklet called "Trans people and poverty" which outlines what welfare benefits are available to trans people, including with respect to SRS.

<sup>6</sup> It is particularly common in the United States.

- file a complaint with the Human Rights Commission before you talk to your employer. That way you have the protection of the Human Rights Code at the beginning of the situation: and it is illegal to fire someone who has made a human rights complaint
- take someone with you when you talk to your employer about the situation. That could be a coworker or a friend or an advocate.
- write down everything that you say and everything that the employer says. You may need this later

If you have to go all the way through the human rights process, it will take a long time. If you are able to pay for the transportation and your complaint is successful, a tribunal will order that the money you paid out be repaid to you.

### **Benefits: Sick Leave, Short and Long Term Disability**

Check to see if your employer provides sick leave, and if so, what you have to do to qualify. Sometimes you earn sick leave every month. Sometimes you get some days of sick leave (days paid at your regular rate of pay), then if you are off for more than a certain amount of time you get “short term disability benefits” (days paid at a percentage of your salary), and if you are off for several weeks you get “long term disability” (days paid at a lower percentage of your daily rate)

If your employer provides sick leave, short term disability, or long term disability, you are entitled to that benefit for things related to your transgenderism.

But note that your employer does not have to provide sick leave, legally.<sup>7</sup> So you may find that you cannot get any paid days of leave if you are going to have SRS. It is only if sick leave is provided to other people for other things, that you can claim the benefit of it for things related to your transgenderism.

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The Employment Standards Act sets the minimum standards for workers in B.C. who are not in trade unions. That law does not require an employer to pay sick leave.

However an employer cannot fire you because you have a disability. If you have a diagnosis in the DSM, (the abbreviation for the Diagnostic and Statistical Manual, which is the "bible" of psychiatrists), you have a 'disability'. "High intensity dysphoria" is the diagnosis which is given to transsexuals in the Diagnostic and Statistical Manual.

What this means is that you cannot be fired for taking a leave to have sex reassignment surgery, though whether and how much you will be paid while you are gone depends on what benefits the employer provides for situations of disability.

As a practical matter, if you are planning to have SRS and want to keep your job, it is a good idea to talk to your employer well in advance, perhaps with the assistance of a trans activist who can help you to explain the situation and your rights.

**A Victoria hotel hired a transsexual woman to work as a chamber maid, then fired her after the first day of work. "We didn't fire her because she is a transsexual!" the employer said. "We fired her because she said she was going to need surgery and would be taking time off work..."**

**When the woman's lawyer pointed out that their explanation for how they were not discriminating against their transsexual woman on the basis of gender identity amounted to an *admission* that they were discriminating against her on the basis of her disability--also contrary to the Human Rights Code--the employer settled the complaint, writing a letter of apology and paying several thousand dollars to the employee.**

(From the client files of the author)

## **Your Right to Privacy at Work**

Can your employer, or your co-worker, 'out' you as a trans woman or man without your consent? And if that happens to you, what should you do?

B.C.'s Freedom of Information and Protection of Privacy Act says that one's sexual orientation is private. It does not say that one's gender identity is private. So if you have started a job in your target gender, and are passing, there is probably no way to stop someone from saying/asking if you are trans.

On the other hand, if you are being harassed because you are trans, that is a violation of a human rights code so you can file a complaint against that.

Or if the employer outed you to the other employees maliciously, knowing that you would be harassed, the employer is guilty of discriminating under human rights legislation.

The fact of the matter is that human rights legislation is not very effective at protecting people from harassment in the workplace — whatever the reason for the harassment.

**So the question will be whether the union violated her human rights (a) in 'outing' her and (b) in refusing to deal with her termination.**

The reason for that is that human rights complaints take a very long time to investigate (several months or years, currently), during which time the complainant/employee is still in the workplace. The employer may not understand trans issues (or issues of racism, sexism, or homophobia for that matter) and see the situation as one which is not very serious. Even if the employer sees the situation as serious, they may not know how to deal with it.

Some workplaces have harassment policies, and harassment officers. If your workplace has those in place, you are lucky because it means that employers have given some thought to how to have a workplace free from harassment and discrimination. Go to the harassment officer. But remember that because transgendered issues are not well known or well understood, the harassment officer may themselves be transphobic. Take an advocate with you. Or take this paper with you.

The harassment officer may say 'but I have had a complaint from women workers that there is a man using their washroom and it is a violation of their privacy'. An employer can not refuse to let trans women use the women's washroom, or trans men use the men's washroom. That has already been decided by the Sheridan case.

If you are in physical danger at work from the harassment you are receiving, you will want to be clear about what measures you want the employer to take to protect you. For example you may want them to provide you with a cell phone if you are an outside worker, so you can call for help if you need to.

As a matter of principle the employer is not supposed to transfer the person who is being harassed, but the person who is doing the harassing.

Make sure that you write down exactly what happens, on the date it happens, as soon

as possible after it happens. Use the exact words that the person said, and exactly what you said back. Start doing this the first time you have a problem, so you will have some evidence to back you up. If other people saw what went down, write down their names so you can contact them later as a witness.

These are some of the tips to deal with harassment in the workplace. Perhaps the single most important thing to survive in a harassing workplace is to line up some good personal support for yourself outside the workplace, because working in a harassing environment takes a severe toll.

## **Can I work in a women's services organization where only women work if I am MtF?**

A small number of feminists are actively committed to the idea that trans women ought not to be permitted to use or work in women-only services. There is a human rights case pending against a women's crisis centre who refused to permit a post operative transsexual woman to take its training course, even though she already had a great deal of experience in another women's crisis centre, because she was not a "real woman". Because the case has not been decided yet the law is unclear. However it would be a very serious break with current case law to say that trans women cannot work in women's facilities. (If that were true it would follow they could also be denied service in women's facilities).

Anti-trans women argue as follows:

- ▶ Women's crisis services were set up to serve women who had been traumatized and abused by men
- ▶ Trans women (MtF) are not "real women"
- ▶ MtF trans women have been raised with male privilege and so cannot properly appreciate from their own experience what it means to be a woman abused at the hands of men
- ▶ There are already services specifically for some kinds of women (eg aboriginal women's shelters) so trans women should get their own services
- ▶ Many women-only services have an exemption under the human rights code to limit their services and their staff to women; trans women do not qualify<sup>8</sup>.

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As this booklet is written, a case is being argued before the B.C. Human Rights Tribunal and the B.C. Supreme Court about this very question. It is called *Nixon v Rape Relief*

## **If you work in the federal sphere and you are not in a union**

You have more rights as a non-unionized employee in the federal sector than as a non-union employee in B.C. The most important right you have is to be reinstated if you have been wrongfully fired. In that case, you file a complaint under the Canada Labour Code. Their phone number is in the blue pages of the telephone

## **Lessons from human rights cases**

What can we gather from human rights cases in the context of employment?

Though the human rights cases which have been decided so far are about transsexuals who are enrolled in the gender clinic (and who are therefore required to participate in a "real life test" in which they cross live full time for two years before having their surgery, it is impossible to tell the difference among people who are cross living full time. They may either be someone who identifies as a cross dresser, or someone who identifies as a nonoperative transsexual, or someone who identifies as a preoperative transsexual. They will all have unaltered genitalia; they will probably all be taking hormones. The only difference is that they may or may not be enrolled in a gender clinic and heading for sex reassignment surgery. It would be irrational to say that trans people who are enrolled in a gender clinic are protected by human rights laws and trans people who are not enrolled in such a clinic are not. For one thing, it would mean only people in centres with gender clinics would be protected!

From an examination of the human rights cases and how they would apply to new situations, the following principles about trans people and employment emerge.

First, a person is entitled to work in the gender that they identify with. An employer cannot refuse to hire someone because they are trans.

Second, a person is entitled to use the washroom of their chosen gender.

Third, a person who is cross living (whether because they are planning surgery or not) is entitled to transition on the job.

Fourth, an employer has an obligation to prevent the harassment of trans people by other employees.

Fifth, a trans employee has the right to the same health and leave benefits as other employees, including for sex reassignment surgery.

Sixth, a person probably does not have a right to keep her gender identity private in the work place – though certainly if one is being outed and harassed, that is a human rights offence.

Finally, a person employed by the federal or provincial government may have additional protection under the Canadian Charter of Rights and Freedoms.



## **If you are a unionized employee**

If you are in a union, you have all of the protections which are discussed above. In addition, you have the benefits which are contained in the collective agreement at your workplace, and you have the right to be represented by a trade union.

If you are a unionized employee, your conditions of employment (hours of work, pay scale, benefits, etc) are contained in your collective agreement.

All collective agreements must have a provision saying that an employee cannot be fired without "just cause". And all collective agreements must have a grievance procedure — which is a formal way for disputes between the union and the employer get resolved. There are usually three steps in a grievance procedure: the shop steward meets with the supervisor; if that doesn't work, the union meets formally with management; if that doesn't work, the matter is referred to arbitration. An arbitrator is a neutral person who reads the collective agreement, listens to the evidence about the situation, hears from the union and the employer, and makes a decision.

Because unionized employees cannot be fired without a reason related to their job performance, they are much more secure than non unionized workers. And they have ready-made advocates in the union. But there is a catch.

The job of the union is to represent the rights of the workers: all the workers. That means two things. First, an individual employee cannot make an agreement with the employer about the terms and conditions of employment (hours of work, benefits, tradeoffs of one thing for another). That is exclusively the union's job. Second, the union has the right to decide not to proceed with the grievance of any particular worker. The law says that because the union has the responsibility for all the employees, it may be in the overall best interests of the employees to settle a grievance in favour of management so as to get a benefit somewhere else, a union can settle a grievance without the consent of the employee who filed the grievance.

There are two limits on the union's ability to settle, or not pursue, a grievance. The first is that they are obliged to follow the human rights legislation. So they can't discriminate. They can't decide that they will only pursue grievances for men and not women, for example. The second is that they cannot act "arbitrarily, capriciously, or in bad faith" in deciding not to go ahead with a particular grievance. That is called the union's duty of fair representation.

For trans people, union protection can be a double edged sword. As we saw from the example of the taxi dispatcher above, sometimes it is the union itself which is behaving in ignorant or discriminating ways. Then the union can be part of the problem, not part of the solution. That was certainly the case in Wallace v O.T.E.U.

An enlightened union who has a member who is trans and needs support (for example, for transitioning in the workplace) will be proactive in working with the employer to develop trans policies, and holding workshops in the workplace to educate people about trans issues.

Note that if you are in a trade union you are not entitled to talk to your employer directly. So your first approach should be to your shop steward or your business agent. If the union appears to be unwilling to deal with trans issues, talk to an advocate or to the human rights commission right away, so that you can get help making your union live up to its responsibilities. There are many progressive trade unions who have already developed policies with respect to trans issues, and they can serve as a model and a resource for your union.

**A trans woman works in a camp in the resource sector, in a predominantly male workforce. She is in the women's bunkhouse.**

**A male coworker, one day, begins to spread the news that he thinks she is a man. When called on the carpet by his union and asked if he had been saying that, he said he had and that it was his right as freedom of speech to say his opinion.**

**The union rep told him it was contrary to the union constitution to badmouth a coworker — but he didn't stop.**

**What to do?**

**Any action by the trans woman is likely to escalate the situation and bring it to the attention of even more coworkers; but inaction may result in being ostracized, harassed, or threatened.**

Case files of the author

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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