

CANADIAN LABOUR CONGRESS

# WORKERS IN TRANSITION

A Practical Guide for Union Representatives and Trans Union Members



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2015



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# Preface to the 2019 Edition

A decade ago, the Canadian Labour Congress issued the 2009 version of this guidebook. It was based on content produced by Unifor and served as a template for accommodating transgender workers when they underwent a gender transition in the workplace. It was groundbreaking at the time, but a lot has changed since then. This revision does a few important things to update the guide.

## **Surgical Care**

The first change we made to the guide is to take the focus off gender-affirming surgical procedures. When the guidebook was published, we understood surgical transition as the core of a gender transition. Since 2009, we have come to recognize that there are significant barriers and waitlists standing between trans people and their care, and that surgical or medical transitions are not appropriate for everyone. This new language de-emphasizes surgical procedures and refocuses the autonomy of each trans person to decide for themselves what makes up the appropriate transition plan for them.

Some trans people point out that there is nothing wrong with our bodies and that nothing needs changing except for the outmoded views society holds about us. Others want care they cannot get. Still some others time their social transition and the coming out process at work along with their surgical care, and they need gender-affirming workplace support in exactly the ways we understood it when this booklet was written.

As a result, we do not talk much about what used to be called sex-reassignment surgery (SRS). Instead we talk about gender-affirming care and transition-related surgeries.

## **Sex and Gender**

The second big change in the guidebook has to do with how we talk about transgender people. In 2009, we used to focus on the sex of trans people, and that critical moment when we understood that it was changing or about to change. Sex is described with terms like male and female. Sex and gender are different things, and for trans people, their sex and gender may not align all or some of the time. Gender is described with words like man, woman, masculine, feminine and non-binary.

Today it is much more appropriate and supportive to talk about gender rather than sex when talking about trans people.

## **Binary Gender**

The third big change has to do with binary language. In 2009, it was much more common to understand the world in terms of a choice between two sexes, or a choice between two genders. This choice of two options is called a binary. As trans people increasingly become spokespeople for their own communities, the world is coming to recognize that gender is actually a spectrum, upon which every person has their place. Some people will cluster towards one end or the other, and some of us live in the space in between and can be happy there. Older versions of the book did not recognize that spectrum, and we are working hard to do better.

## **Centering the Worker**

Increasingly society is coming to understand that there is no one way to live as a trans person. As a result, there is no one-size-fits-all template for this, or for any kind of support plan. That is why this guide can only be template for things to remember when building a gender-affirming support plan for a trans member in your workplace. Always remember to centre the experience of the member you are working with.

## **Beyond Accommodation**

Another big change to this version of the guidebook is about how Canada's unions support trans people. It is true that trans people are explicitly recognized in provincial and federal human rights legislation, and that the legal requirement for accommodating trans people is rooted in human rights law. But including trans people in our workplaces and our unions is not something we do because we are required to do it by law.

Equity and solidarity are central pillars of the trade union movement. That is why this guidebook urges us as activists to move beyond an accommodation framework (while holding on to the important protections it provides), and to rethink how we can make sure our solidarity includes everyone.



# Introduction

See the section of “Safer Space Strategies” to find out more about what your union can do right now. This guidebook also acknowledges that our obligation to trans people is overarching, whether or not we believe that anyone in our workplace is trans. Trans people are everywhere, including in Canada’s unions. We have met them and we are proud to be building a better world with them.

Thanks for the work you are doing by reading this guide, and supporting the members who need it.



Unions have a legal and moral obligation to be inclusive to trans workers, and to support them in our workplaces and in our union activities.

This guide is designed for trade union leaders, union staff representatives, local executive and committee members, and shop stewards so that we can better protect the rights of our trans members and ensure they have the support they need.

A trans person is someone whose gender does not line up with the sex they were assigned at birth, all or some of the time.

Trade union principles are fundamental to the movement for trans safety, health and inclusion. As trade unionists, we believe in everyone’s right to dignity on the job. We believe in everyone’s right to a safe and healthy workplace. We believe in workplaces free from harassment and discrimination. We believe in negotiating wages and benefits for all of our members. We believe our employers should not dictate, or have access to information about our private lives. We believe that an injury to one is an injury to all. And we know how to represent workers.

Trans workers are workers, trade unionists and part of our movement.

We know it is wrong for employers to fire people based on irrelevant personal characteristics. We know it is wrong when one of our members is afraid to come to work for fear of co-worker harassment and violence. We know it is wrong when employers deny one of our members access to benefits while providing it to others. We know it is wrong when any member faces ridicule on the job. We know it is wrong when employers leak private information about us. We know it is wrong when one of our members is afraid to turn to the union for help, for fear of being rejected. We know it is wrong when the majority stands silently by and watches a member suffer.

Unions have a legal and moral responsibility to defend all members. And, we have a strong track record and the skills and tools needed to defend the rights of all workers.

# Important Terms

**Binary:** A choice of two things. Our culture understands sex (male/female) and gender (man/woman) as binary. A binary understanding of sex and gender erases the experience of many non-binary, trans and gender fluid people.

**Cisgender (or 'cis'):** A term for someone who is not trans or who feels that their gender 'corresponds' to the sex they were assigned at birth.

**Cross dressing:** When we only recognized two genders (men and women), we described people wearing clothes of the other gender as cross dressing (or with the more offensive term 'transvestite'). Because gender is not binary, this term is less useful now. In the early parts of the twentieth century, many of the people described as transvestites would be described as trans today.

Trans people wearing clothes that affirm with their gender are not cross dressing.

**Deadnaming:** Accidentally or intentionally using the name a trans person was given at birth rather than the name they have chosen for themselves. This is a common feature of transphobic harassment. In British Columbia, deadnaming has been recognized as a human rights violation.

**Gender-affirming medical care:** Refers to medical procedures by which an individual's body is altered to better conform with their gender. There are many barriers (including qualifying requirements, cost, and distance to surgical centres). Not all trans people can access the surgery they need, and not all trans people want surgery.

There are a number of gender-affirming surgical procedures or medical treatments available (so it is inaccurate to describe what a person may undergo as "the surgery").

It is also impolite to ask a trans person about their surgical status or goals. Just like any other medical information, this is private.

**Gender dysphoria:** A diagnosis in the Diagnostic and Statistical Manual<sup>1</sup>, which describes a profound discomfort and sadness many trans people feel about their bodies and the gender identity that aligns with their assigned sex. Not all trans people experience dysphoria. For those who do, discrimination and harassment can exacerbate it.

**Gender expression:** Everything that we do to communicate our gender to others. For example, the type of clothing we wear, our hairstyles, mannerisms, the way we speak, the roles we take in interactions, and more.

Gender expression is a continuum, with feminine at one end and masculine at the other. In between are gender expressions that are androgynous (neither masculine nor feminine) and those that combine elements of the two.

Gender expression can vary for an individual from day to day or in different situations, but most people can identify a range on the scale where they feel the most comfortable. Some people inhabit a wider range of gender expressions than others.

Sometimes we communicate our gender expression purposefully, sometimes it is accidental. Our gender expression could be forced on us as children, or by dress codes at school or at work. Not every trans person has the ability to fully express their gender. This is particularly dangerous for trans-feminine people. Gender expression is explicitly recognized in human rights legislation.

**Gender identity:** How people think of themselves and identify in terms of their gender (man, woman, boy, girl). Gender identity is a psychological quality. Unlike gender expression, it cannot be observed or measured, only reported by the individual. Gender identity is explicitly recognized in human rights legislation.

**Intersex:** People born with either ambiguous internal or external sexual anatomy; an arrangement of chromosomes which are not the XX or XY we expect of women or men; or some types of sex hormone insensitivity. One percent of the population is intersex.

<sup>1</sup> Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), American Psychiatric Association.



Intersex infants should not be subjected to unnecessary genital surgery to make them conform to a world view that recognizes only male or females. It is offensive to call an intersex person a hermaphrodite.

**Non-binary:** An identifying term for someone who does not identify as a binary gender (man or woman) but may identify somewhere in between. Not all trans people are non-binary. Many (though not all) non-binary people do not use 'he' or 'she' pronouns and may instead use 'they' or 'ze', or something else. They may opt for the prefix 'Mx.' instead of Ms. or Mr.

**Outing:** Revealing somebody's sexual orientation or trans status. When employers do this without a member's permission, this can be a violation of privacy law. Outing can expose queer and trans people to violence.

**Romantic attraction:** Refers to an individual's pattern of romantic attraction based on a person's gender. This is distinct from sexual orientation, which refers specifically to a sexual attraction. There are many types of romantic attractions, just like sexual orientations.

For many people, their romantic attractions and their sexual orientation may be in alignment, so the gender(s) of the people they fall in love with are also the gender(s) they are sexually attracted to. For others, however, their romantic and sexual orientations may not match.

## Sex:

- **Assigned sex:** Describes the classification of babies at birth, which is done by an attending physician or midwife. In most jurisdictions there are only two available sex options (male or female). The assigned sex is a person's initial legal sex.
- **Biological sex:** Describes external genitalia, internal reproductive structures, chromosomes, hormone levels and sensitivity, and secondary sex characteristics (for example, breasts, facial and body hair).

We used to understand sex as a binary choice of male and female. However, the existence and rising activism and visibility of intersex people complicates this understanding. Sex is more a spectrum than a choice of two options. Biological sex can be different than assigned sex.

- **Legal sex:** How a person's sex is displayed on their identity documents and health records. All Canadian provinces and territories, except Nunavut, allow trans people to change their legal sex to reflect their gender identity. Some jurisdictions allow people to choose a third option other than M or F (usually X), and some jurisdictions have made displaying a sex marker on documents optional.

**Sexual orientation:** Indicates who we are erotically attracted to and want to be intimate with. We tend to think of most people as being either solely attracted to men, or solely attracted to women (whether they are gay or straight). However, studies show that most people are in fact not at one extreme of this continuum or the other, but occupy some position in between (bisexual, queer).

Some people wrongly assume that you can tell someone's sexual orientation by their gender expression (i.e., women who act and dress in androgynous ways must be lesbians, or men who are comfortable with what is considered feminine must be gay, etc.), but you cannot. Sexual orientation and gender identity are separate.

While "sexual orientation" refers to whether a person is sexually attracted to men, women or both, gender identity concerns a person's internal sense of being a man, a woman, or another gender. A trans person may be gay, lesbian, bisexual, pansexual, asexual, heterosexual, or any number of other sexual orientation identifiers; there is no direct connection between gender identity and sexual orientation.

**Stealth:** A transgender person who keeps their trans identity private. Stealth trans people usually express binary gender identities, and often identify as women or men, not as trans women or trans men. Many trans people must go stealth for their own safety.

**Trans or transgender:** An umbrella term to describe a wide range of identities and experiences. Trans means any person whose felt gender is different from the sex they were assigned at birth, all or some of the time. Some trans people are able to express their gender in public, while for others it may be too dangerous.

Trans can include intersex people, two-spirit people, and gender non-conforming people. We call children who are experimenting with gender and gender expression gender creative, gender independent or gender diverse.

**Transition:** Describes a whole series of surgical, medical and social changes people can undergo to affirm their gender identity. It can include medical components like chest or genital surgery, cross-hormone treatment, or hormone blockers, and social elements like pronouns and chosen names.

**Transphobia:** The unrealistic or irrational fear and hatred of trans people. Like all prejudices, it is based on negative stereotypes and misconceptions that are then used to justify and support hatred, discrimination, harassment and violence. Transphobia is a pattern of negative behaviour towards trans people which can begin with misgendering and deadnaming, and can lead to aggression, violence and murder.

**Two-Spirit (2-Spirit or 2S):** A term used within some Indigenous communities, encompassing sexual, gender, cultural, and/or spiritual identity. This umbrella term was created in the English language to reflect complex Indigenous understandings of gender and sexuality, and the long history of sexual and gender diversity in Indigenous cultures. This term may refer to cross, multiple, and/or non-binary gender roles; non-heterosexual identities; and a range of cultural identities, roles, and practices embodied by two-spirit peoples.

Colonization and the residential school system imposed a binary gender framework on many nations who had a range of acceptable gender identities.

### **Evolving language**

The language to describe trans people changes very quickly. Some outdated (and likely offensive) terms you may have heard associated with trans communities include hermaphrodite, MTF or FTM transsexual, pre-operative, post-operative, and non-operative trans people; sex change operation; gender reassignment surgery; and gender-bender.



# Who are our Trans Members?

Trans people come from all walks of life and are represented in every race, class, culture and sexual orientation. Unionized trans members work in manufacturing plants, in hotels, in retail, in government, in nursing homes—in short, in every sector of the economy.

Discrimination in employment is a serious issue facing trans people. Trans people in the public eye are particularly vulnerable to harassment and transphobia. Outing any trans person can expose them to transphobic violence and danger.

Some of our trans members transition surgically, medically or socially at the same workplace. Some of our members come to our workplaces mid-way through a transition process, and some trans members require changes in the workplace to make it accessible to them quite apart from any medical process.

Some of our trans members ‘pass’ in their everyday lives. They have a binary gender and they are “stealth” about their trans status. They look like women or men, and it is not immediately apparent that they are trans.

Some of our members transition in all parts of their lives (at home, with friends and family, etc.) except at work—as devastatingly uncomfortable as that is—out of fear of rejection, ridicule, harassment, violence and termination.

Other trans members are out as trans when they start at their jobs.

Still others quit their jobs (well-paying, unionized jobs with benefits) out of an all-too-real fear that management and co-workers would make the workplace too hostile to endure for them to be out or transition in the workplace. Still some others quit their jobs because they need gender-affirming surgical care and do not have sufficient leave and benefit provisions at work.

All of them are entitled to respect and protection.

This guide has been developed so that union activists can support trans people in the workplace and so unions can make it safer for them to come out or transition at work if they want to, and to protect the rights of trans people wherever they are in their lives. Throughout this guide, we walk you through the steps of creating a transition or support plan for trans members.

Nobody should have to choose between their livelihood and respect.





# Workplace Rights for Trans People

Like all people in Canada, trans people are protected by the *Canadian Charter of Rights and Freedoms* (specifically on the basis of sex in section 15); and by the *Canadian Criminal Code* against assault and harassment. As of 2017, this was made more explicit by the addition of gender identity and gender expression as protected grounds in the *Canadian Human Rights Act*. The *Canadian Criminal Code* also sets out specific prohibitions on hate crimes against trans people.

Human rights legislation in all Canadian jurisdictions is clear that trans and non-binary people are entitled to protection against discrimination on the basis of sex, gender expression and gender identity in employment.

Labour laws in all Canadian jurisdictions also give employers and unions the duty to accommodate trans workers up to the point of undue hardship.

Provincial legislation also creates privacy rights for trans people to protect their personal and health information (including the fact they are trans). This prevents employers and union officials from outing trans people against their will.

Workers' compensation legislation in Canadian provinces may protect trans people against bullying, and usually allow trans people to file a claim for compensation if they are injured physically or psychologically in the course of their employment.

Our collective agreements also protect trans people under the provision guaranteeing all workers a harassment free workplace. Many collective agreements can and should be improved to explicitly protect trans people, and to expand options and access to leave and benefits (see Appendix 2 on page 27 for model language).

These rights all together generally mean that trans people can use the names, pronouns, uniforms and gendered spaces that align with their gender identity. They have a right not to be harassed, attacked or outed at work.

They cannot be assigned jobs that keep them out of the public view because they are trans, and they cannot be required to wait for recognition until they have had surgery or undergone a legal process.

Trans women must be allowed to use women's washrooms and change room facilities, and trans men must be permitted to use men's spaces if they want to. Special provision must be made for non-binary people who may require gender neutral facilities in order to fully participate in Canadian workplaces.

However, each trans person's situation will vary, and so in addition to collective agreement language, it may be necessary to develop an individualized transition plan in partnership with the worker, that outlines how the employer and union will support the worker's plans to transition or to be recognized in the workplace.

## Timing and Process of Transition

Transition is a long process. By the time a worker is ready to discuss their transition plan with their employer and union, they have likely spent years thinking it through, waiting and preparing.

They may even have been expressing their gender for quite some time, outside of the workplace. For many trans people, the workplace is the last place where they exhibit their true gender.

The most critical time to support a worker in transition is at the very beginning stages of their transition in the workplace, when the worker takes their first steps in expressing their gender, changing their name and letting people know about their plans.

As soon as a worker indicates a desire to transition at work, they need workplace support. It is at this point that records need to be changed, people need to begin using the worker's new name (should they decide to change it), and referring to them by the correct (new) pronoun.

They require safe access to change room/ washroom facilities and they need the solidarity of those around them to help protect their dignity and security.

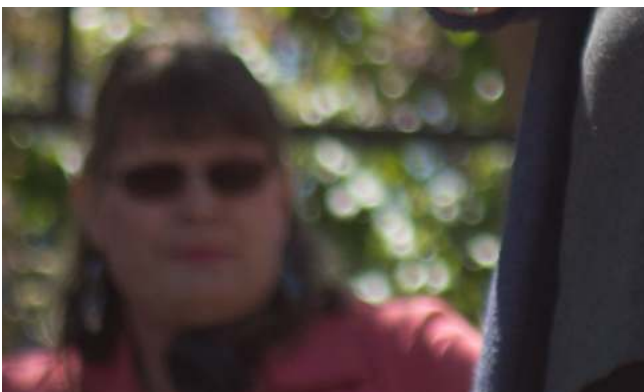
Not only is this the support that trans workers need, it is the employer's and union's legal obligation to provide it.

Some workers, particularly non-binary, gender fluid, two-spirit or agender people, might use gender neutral pronouns and bathroom spaces, and they will need the union's support from the moment they are hired to make sure their onboarding and introduction to other workers goes smoothly.

One of the common mistakes made by management and unions is assuming that the transition does not happen until surgical procedures are complete, and/or until a worker has completed a legal name change. This is a bit like not accommodating a pregnant woman until the baby is born.

Employers and unions cannot delay action until legal name changes, surgery, hormone therapy, etc., take place. The idea of 'waiting' until a trans person has undergone surgery or surgeries does not reflect the reality of the transition process, nor does it acknowledge the fact that surgery is not the goal of every transition.

Transitioning in the workplace may be simultaneously both liberating and terrifying.





# Trans People and the Law

The law is clear. It is illegal to discriminate against trans people (see the section of Workplace Rights for Trans People for more information).

## A - Explicit Recognition

Trans people have always been protected by the *Canadian Charter of Rights and Freedoms*, and federal and provincial human rights legislation on the basis of sex.<sup>2</sup> All Canadian jurisdictions have recognized gender identity as a protected ground against discrimination.

## B - Employer Obligations

Employers:

- Are not permitted to discriminate on the basis of gender identity or expression in hiring, training or promoting trans workers;
- Cannot fire trans employees because they transition or come out (i.e., let people know that they are trans);
- Must give trans workers access to appropriate washrooms, uniforms, dress code, etc., during and after transition;
- Uphold privacy, confidentiality and dignity of the worker;
- Need to cooperate and if required, change records for pension coverage, medical and health plans, EI, CPP, etc., to reflect trans workers' gender identity;
- Cannot deny access to private health care benefits to trans workers that are available to other members with other medical needs (i.e., if wigs are covered for cancer patients, then they should be covered for trans people who require them);
- Must consult and collaborate with union representatives; and
- Have the primary, legal responsibility to accommodate a worker up to the point of undue hardship.

## C - Union Obligations

Unions:

- Have a duty to represent all union members fairly;
- Work with the worker and the employer where an accommodation is required;
- Defend workers whose rights are threatened or ignored;
- Operate in a manner that is free from discrimination and harassment;
- Have a responsibility to enforce the employer's obligation to prevent harassment in the workplace and to defend workers who are subject to harassment;
- Respect privacy and confidentiality of members; and
- Provide (and ensure the employer provides) education about equality issues, anti-harassment and the duty to accommodate.

## D - Worker Obligations:

- To communicate with the union and the employer;
- To supply job-relevant medical information; and
- To be cooperative and assist in identifying and implementing an appropriate accommodation, if required.

## Gender-Affirming Health Care

Transitioning is a surgical, medical and social process that helps trans people's bodies, public identifiers and expressions more closely align with their genders.

In Canada, we used to believe that surgery was what made you trans. We also believed that there were only masculine or feminine gender expressions, and we hardly spoke about gender non-conforming, genderqueer or non-binary people and their transitions at all. But now there are new ways of being in the world for trans people.

There is no one way to live as a trans person. Not everyone transitions surgically, medically or socially. As a result, there is no one-size-fits-all template for this, or any kind of support plan.

<sup>2</sup> These constitutional protections are real and exist in law. But like any right, there have been unsuccessful cases brought before the courts. Seek legal advice to determine how these rights apply to you.

That is why this guide can only be template for things to remember when building a gender-affirming support plan with a trans member in your workplace. Always remember to centre the experience of the member you are working with.

As a group, trans people face multiple barriers to accessing appropriate and safe health care, and many health care providers do not know how to care for trans people.

Access to gender-affirming medical care is often restricted by some sort of health care gatekeeper.

Some jurisdictions require several assessors and therapists to see trans people in the months or years before surgical or medical transition services are made available. Often a psychiatric diagnosis is required in order to access gender-affirming care, even though there is nothing necessarily psychologically “wrong” with trans people.

Some of the procedures some trans people need (like electrolysis or counselling) are not covered under provincial medicare programs.

It is also common to require that trans people undergo cross-hormone treatment for months or years before they can access gender-affirming surgeries. This exposes many trans people to outing and transphobia, and hormone treatment is not something all trans people want. It is increasingly considered best practice to allow trans people to access the medical care they need without unnecessary wait periods or barriers.

When trans people are able to access surgical care, there are often long waitlists and procedures may take place in multiple stages, and they may require surgical revision with their own waitlists.

For trans people who choose to have surgery, they tend to go into surgery healthier than most people who have surgery for illness or disease, and so their recovery time is usually faster and they would likely have fewer restrictions on return to work.

Gender-affirming surgical procedures are not optional elective procedures.

Trans people unable to access the care they need experience high rates of depression and anxiety, and are a very high risk of suicide.

Gender-affirming surgery and cross-hormone treatment are highly successful medical treatments—and can be lifesaving.

### **Gender-Affirming Surgical Care**

We used to call surgical procedures for trans people “sex change operations,” or “sex reassignment surgery.” These are now outdated terms. Now we describe the whole suite of medical and social services trans people might need as “gender-affirming care.”

This new language takes the emphasis off surgical procedures and refocuses the autonomy of each trans person to decide for themselves what is appropriate for them. It also indicates that a trans person is not “changing” their sex or their gender, but rather affirming what is already their gender identity.

Transition-related surgeries are expensive and difficult to access, and they are not right for every trans person.

Similarly, non-surgical gender-affirming care, like hormone blockers or cross-hormone treatment may be inaccessible or inappropriate for some folks.

Transition-related surgeries could include genital reconstruction, removal of sex organs, chest reconstruction or breast augmentation, facial feminization and tracheal shave.

### **Gender-Affirming Medical Care**

Other medical care trans people might want are cross-hormone treatment in order to develop secondary sex characteristics, electrolysis, laser hair removal and waxing. Trans people may also wear special clothing to flatten external genitals or chests, and they may wear breast forms or penile prosthesis. Very few of these items are funded by provincial or territorial medicare plans. Until our political action efforts are able to address this problem, we should look to negotiate these necessary items in our collective agreement benefits.

# Building a Transition or Support Plan

Trans members transitioning in the workplace might want a transition plan.

Trans workers who require accommodation, because their pronouns, gender identity or gender expression require the employer and the union to do something, might need a support plan.

At a minimum, a transition or support plan should lay out objectives, timing and process for informing co-workers, changes to identification and documentation, washroom/change room facilities, anti-harassment planning and medical leaves (where required).

Developing a transition or support plan is not about bargaining 'special rights' for trans people. Trans people certainly are not asking for anything 'special'—simply a safe place to work, a safe washroom/change room, the right to be called by their name, the right to accommodation, and the right to be referred to by their chosen gender—the same rights most people take for granted. However, in the case of trans members, special measures need to be taken to ensure that their basic rights are protected.

## A - Agreeing to a Process

The key to an inclusive transition process involves employers and union reps working with trans workers to determine their needs and agreeing together on a process for the transition. Everyone goes through their transition differently. Therefore, the transition plan needs to be flexible. Some will go through very quickly and others more slowly. Others still will only come out of the closet once the transition is over. The transition plan for medical and surgical procedures may have to be amended as the process develops. At the same time, some trans workers may start work in need of a plan to properly recognize them as valuable members of our unions and workplaces.

Issues for trans members and their support plan should include:

- Appropriate names and pronouns on nametags, schedules, financial documents, office doors, etc.
- Whether training or briefing of co-workers, clients, and/or patients will be necessary, and at what point and by whom this will be done.

- Whether or not the worker wants to inform their supervisors, co-workers, clients, patients and/or customers about their transition, and if so, do they want to do so themselves, or have this done by the union and/or management.
- Whether a trans worker is adequately covered by existing policies on issues like confidentiality, harassment and insurance, and if not, how these will be amended.
- How to address any harassment, hostile reactions or unwanted interest.

A worker undergoing a transition on the job (transition plan) also requires:

- The expected point or phase of change of name, personal details and social gender (this, rather than biological changes, will likely be what prompts the initiation of the transition plan).
- What amendments need to be made to records and systems (and the timing for this).
- The expected timescale, if there is one, of the medical and surgical procedures.
- What time off will be required for medical treatment, if any.
- Whether the employee wants to stay in their current job or be transferred.

## B - Statement of Objectives

A transition or support plan should begin by clearly laying out the goals of all parties (the worker, the employer, the union). Some suggestions follow.

- That the employee will remain at their current job in their current location;
- That the union, co-workers and the employer will ensure that they enjoy all the same rights with respect to privacy, safety, code of conduct, etc., in the workplace;
- That the employer and the union will deal with any harassment quickly and decisively;
- That at the worker's request, the employee will be accommodated in another comparable position in the workplace if re-integration into the current work site fails;
- That the employer and the union will ensure that the worker is accommodated with respect to medical leave, proper and appropriate facilities, documentation/identification changes, and benefit coverage; and

- That together the employer, the union and the employee will work to resolve any issues that arise through transition.

### C - Privacy and Confidentiality

Trans workers have the right to privacy. There must be no unnecessary disclosure of medical or other personal information. Referring to a person's trans status to others, without their explicit permission, is outing them and is a breach of their privacy. This protection extends to deadnames and images of a trans person that could expose their trans status.

This is particularly important because trans people are often asked invasive personal questions about their bodies, their identities and their relationships for no legitimate reason. It is also important because outing trans people can expose them to violence and cost them their lives.

Sample transition or support plan language:

***“Thus far knowledge of this situation has been limited to (insert names). Advising others must be done with sensitivity and respect of the employee’s privacy and only on a need-to-know basis for the purposes of achieving our objectives.”***

“Need to know” refers to those directly involved in the administration of a process, for example, a medical officer or the person who authorizes payments into the pension plan. It does not refer to co-workers, clients or line managers, and breaches of confidentiality should be treated very seriously, as would any other gossip about a personal medical or social situation. “Outing” is understood to be a form of harassment that puts the worker’s physical and emotional safety at risk.

Transition plans should be discussed and communicated only in order to manage expectations and to minimize inappropriate responses.

### D - Key Contacts

A transition or support plan should lay out who the key union and management contacts for the worker will be. These individuals will take a proactive role in ensuring a smooth implementation of the plan, and troubleshoot any potential workplace conflict or harassment.

Sample transition plan language:

***“Going forward, the key management contact for the employee is (insert name of manager/supervisor/HR person). The key union contact is (insert name of steward/advocate/committee person/chairperson/etc.).”***

### E - Who Needs to Know?

A transition or support plan will include when, how and if a worker plans to communicate their gender or pronouns to their co-workers/supervisors/clients/customers.

There is no general need or obligation to inform everyone in the workplace that a worker is trans, or is undergoing gender-affirming surgical care, unless the worker themselves requests that others be informed. There are many legal reasons not to disclose personal and medical information. It is not possible to put someone back in the closet if you accidentally out them.

This information is necessary only where the relationship with someone who knew the person prior to their change of status is to continue, or to ensure a person’s name and pronouns will be respected. Some workers prefer to tell their co-workers themselves (sometimes through a letter); some prefer to have management or the union let people know.

### F - How Much Information Should be Provided?

Just like any other worker’s personal medical situation, nobody in the workplace is entitled to any information about a trans worker’s medical issues, or any details about their transition unless voluntarily provided by the worker themselves. Asking personal questions is not only inappropriate, but can be considered a form of harassment.

Resources from the CLC, your union, or local trans or LGBTQ2SI organizations should be provided to management and union reps—whether or not there are known trans workers in the workplace. Workshops or other forms of training on trans or LGBTQ2SI are another way to promote general awareness about trans issues or transitioning.

It will be useful to have these booklets or other resources on hand. Trans workers should be given the option to recommend distributing the booklets to workers in the immediate area, or perhaps even a wider distribution.

That way people get basic general information and the individual worker is not made to feel responsible for educating everyone.

Distributing the resources during a worker's transition or the onboarding of a trans worker should only be done with advance notice and agreement from the worker themselves.

### **G - Timing**

For trans people transitioning at the same job, some trans people are able to take a short leave at some significant point, either when a legal name change is completed, after a surgical or medical procedure, or at some other time the worker wants. This allows the worker to return with a new name and gender role (for example, following a vacation). Basic information may be provided to co-workers a few days before the worker returns so that co-workers have some time to adjust (but not too much, to avoid speculation and harassment).

If the worker is returning to work in a new location, there is likely no need to inform any co-workers or managers that the worker has transitioned; sharing personal information is up to the worker. Some trans workers may require a support plan from the first day of work to ensure that everyone in the workplace respects their name, pronouns and use of gendered spaces. The key contacts should stay in touch with the worker to ensure that no problems are encountered. The burden should not be on the worker to ensure their co-workers understand gender identity and expression, and treat them respectfully.

### **H - Changes to Identification and Documentation**

At the worker's request, all workplace records must be updated to reflect the worker's name and gender. This includes (but is not limited to):

- Seniority lists
- Nametags
- Email and phone directories
- Identification cards or badges
- Security lists
- Trade certificates
- Insurance records
- Pension records
- Licenses, etc.

Where these documents are in the sole control of the employer, they should be changed immediately. The

employer cannot demand that other pieces of identification (e.g., government ID) be changed first, unless there is a direct link between personnel and government records (e.g., trades certificates, pensions, licenses and insurance). However, all records must be amended as soon as the legal name change has taken place.

Once all records have been changed, the trans person's previous name and gender should no longer appear in any personnel records. There is likely no rationale for maintaining a record of the transition or the person's prior identification.

Sample transition plan language:

***"The employer and the union will update all employee records and directories to reflect the employee's name and gender, and will ensure that all workplace related documents (e.g., pension and insurance) are also amended. No records of previous name or gender will be maintained."***

### **I - Overall Workplace Changes**

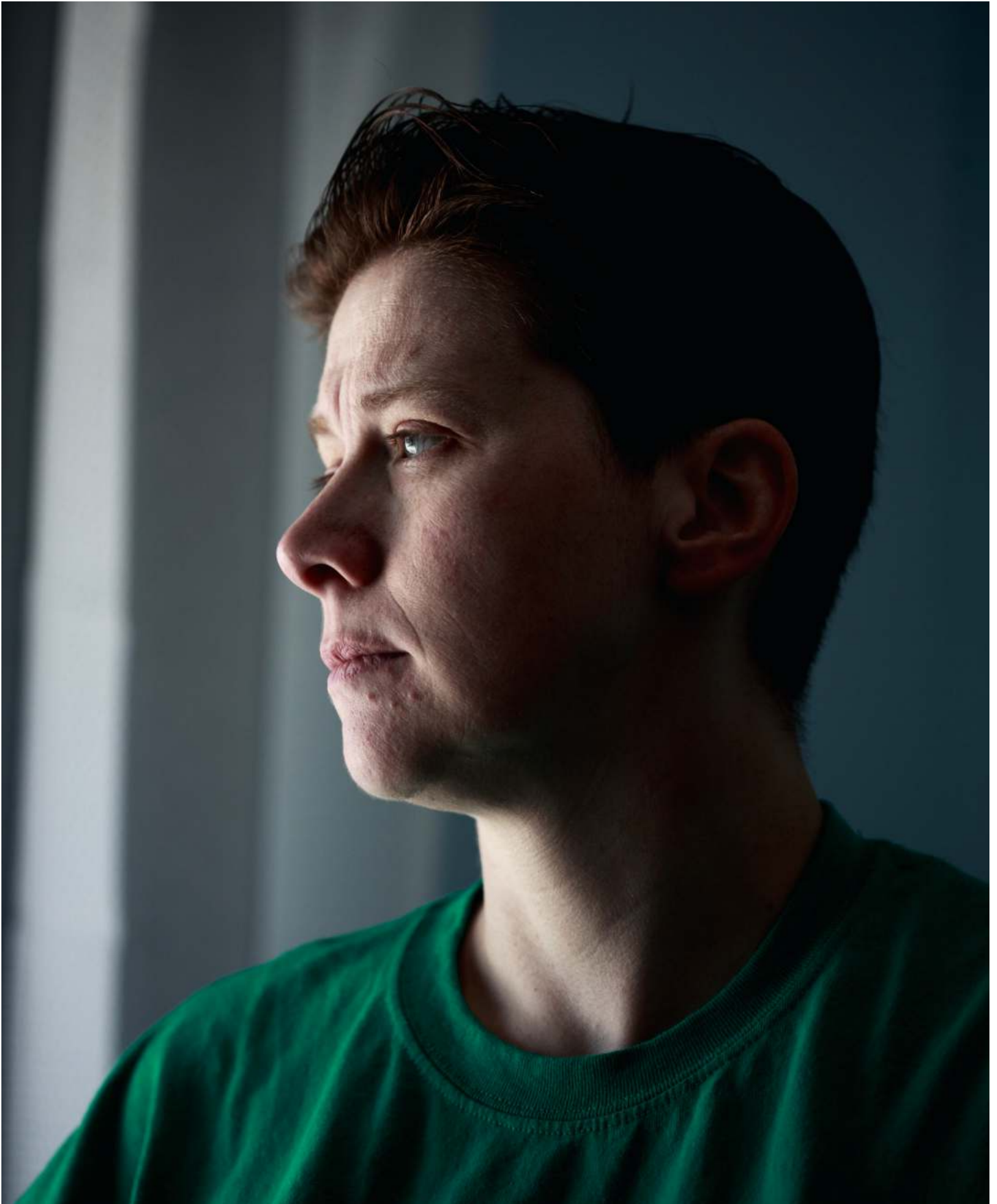
The duty to accommodate puts a proactive responsibility on employers to design their workplaces with the broadest possible workforce in mind. To that end, employers should create single-use and/or gender inclusive washroom and change room facilities. Uniforms and uniform policies should be flexible enough to accommodate a worker's choice, where 'gendered' uniforms exist.

### **J - Washrooms, Change Rooms and other Gendered Spaces**

Like everyone else, trans workers need to use washroom and change room facilities with safety and dignity.

It is the employer's responsibility to provide safe washroom facilities to all workers, regardless of their surgical status, legal sex or gender. Many workplaces have gender inclusive washrooms, which are safer and more inclusive of non-binary people, caregivers and some trans people. However, if gender inclusive washrooms are available, trans workers should not be expected to use them just because they are trans—they have the right to access the gendered washroom that corresponds to their gender, if they choose, whether or not they have sought or completed surgeries.





As trans activist Courtney Sharp says:

***“Employers who want to find solutions have found solutions. Those who do not want to find solutions tend to use the issue as an excuse to terminate the employee. Sure, (people) worry about the bathroom question, but we told them, ‘listen, everyone has to go to the bathroom... but if you’re worried about what’s between someone’s legs—you’re the one who is being inappropriate.’ In the end, trans workers must have access to safe and dignified bathroom facilities.”***

The employer and the worker should agree on the timing of when the worker begins using the washroom of their gender, so that the employer is prepared to support the worker in transition, and to deal with any concerns from other workers. The burden of addressing other workers’ concerns should not be passed on to the worker.

The worker may prefer to have access to a single-stall bathroom (with a lock), to ensure their safety and dignity are maintained.

The employer must accommodate this request. However, it is up to the worker if they want to use the same gendered multi-stall bathroom as other members of their gender.

Trans workers cannot be required to use a single-stall bathroom, and in any event the bathroom must be near their work station and available without undue hassle. If these facilities are further from the worker’s work area, break times may have to be adjusted.

Employers and the union need to make it clear to all employees that trans workers have the right to use the facilities that correspond with their gender identity, and that they expect everyone’s cooperation. Non-binary workers can choose which bathroom to use.

The comfort or prejudice of other workers is not protected under human rights law. This means other workers cannot refuse to use a gendered space because there is a trans person using it, nor are they allowed to harass trans workers in these spaces. That would be discriminatory.

As with washroom facilities, the employer is required to ensure the trans worker has access to the change room facility that corresponds with their gender.

## **K - Uniforms and Dress Codes**

A trans worker must be permitted to dress consistently with their gender identity, and is simply required to comply with the same standards of dress/appearance as any other worker.

For workers transitioning in the workplace, the transition plan should include something about when and how the worker will begin dressing according to their gender identity, preferably with notice given to the employer and union to ensure that the worker is protected from any negativity that could arise.

If there are uniforms worn in the workplace, and if uniforms are gendered (i.e., there is a men’s uniform and a women’s uniform), then the worker must be provided with the choice of which uniform to wear. Non-binary workers can choose which dress code to follow. If/when they opt for a new uniform, they must be supplied with uniforms that fit appropriately, or are tailored to fit appropriately.

Practical details, such as who pays for uniforms, should be dealt with according to the usual policy on similar issues (e.g., during pregnancy).

As a general rule, we need uniform policies that give all of us real choices that we all feel comfortable with (gender neutral and appropriate in fit).

## **L - Benefits and Additional Medical Expense Coverage**

Trans workers face many of the same health care needs as the workforce at large, and their needs should be treated in exactly the same way as any other medical requirement.

Gender-affirming health care needs are not cosmetic or elective (see the section on gender-affirming health care for specific information about the range of available procedures).

Trans and transitioning workers may require medical coverage for surgical cost and associated short-term leave or homecare, counselling, the cost of prescription medication for cross-hormone treatment and/or hormone blocking, as well as hair removal and articles of clothing and prosthesis required to live their lives.

Coverage for gender-affirming care under public health insurance can fluctuate depending on where you live in Canada, and in some provinces has been de-listed, then re-listed, or access has been expanded. The labour movement is calling for public coverage of gender-affirming care, and failing that, it should be bargained with employers.

Many benefit plans already provide some of the coverage listed above (for example, hormone therapy, wigs, breast prosthesis, etc., may already be covered for cancer survivors). There can be no discrimination in access to these benefits.

We need to negotiate gender-affirming care benefit coverage with employers, and at the same time continue to call for its inclusion in provincial health plans.

Bargaining Demand:

***“The employer will direct its insurance provider to include coverage (under group benefit plans) for gender-affirming surgeries for members and their families. The employer will direct its insurance provider to include coverage (under group benefit plans) for gender-affirming drugs including cross-hormone treatment, hormone blocking medication and Lupron for members and their families. In addition, they will include coverage for any transition-related expenses, not already covered under the benefit plan (for example: wigs, electrolysis, breast and penile prosthesis, gaffer underwear, chest binders and swimwear, silicone/saline implants, special bras for prosthesis, voice classes, counselling, medical-related travel expenses, etc.).”***

### **M - Anti-harassment Plan**

All workers are entitled to expect that their dignity and safety remain intact at work. Employers are legally responsible for providing a harassment-free workplace and protecting workers from harassment from supervisors, co-workers, clients and the public.

Harassment policies and procedures need to be amended to include gender identity and gender expression as prohibited grounds of harassment, in order to directly acknowledge the risks faced by the trans community. Negotiated anti-harassment training (for management and workers) must include the issue of harassment based on gender identity and gender expression.

Harassment and other forms of transphobic discrimination are of great concern to trans workers. Hostile reactions from management and co-workers threaten a worker’s emotional, psychological and physical safety. Too often, trans people face taunting, isolation, inappropriate/intrusive comments and questions, verbal and sometimes even physical abuse. Supervisors or co-workers may refuse to refer to trans people by the name and by the pronoun of their choice. All of this is harassment and is illegal under federal and provincial human rights legislation.

The stress of being trans or of transitioning is compounded exponentially by workplace harassment and bullying.

Let’s be clear—trans people may face real danger and their perception of this danger is likely profound and may even be debilitating.

It is absolutely critical that the union and management take this seriously and be proactive in supporting the worker in transition.

This requires checking in at regular intervals with the worker, and making it clear to all workers and supervisors that neither the union nor the employer will tolerate any harassment. There is no doubt that if microaggressions like remarks, innuendos, jokes and rumours are left unchecked, they will escalate into an intolerable and volatile situation. Like other forms of harassment, transphobia poisons our workplaces and does not help us grow as union members.

### **N - Co-workers, Clients and Customers**

The employer and the union need to send a strong message to management, workers, clients and the public that they will not tolerate harassment and discrimination, and that they value the contributions of all workers, including trans workers.

Workers who raise concerns about working with a trans co-worker or supervisor should be provided with information about the workplace non-discrimination and anti-harassment policies, and applicable human rights protection.

They should be informed that they are required to work cooperatively with all employees, regardless of gender identity (or race, or sex, or religion, or disability, etc.), and if they fail to do so, the harassment policy will take effect. Discomfort is not a legitimate rationale for harassment.

Employers will sometimes try to move transitioning workers away from their usual job working with the public. Transitioning workers have a right to remain in their regular job. Decisions in human rights cases make it clear that customer preference cannot be used to support discriminatory practices.

### **O - On the Job**

All parties must work together to ensure that the worker can remain at the worksite in their present job. However, if the re-integration of the worker back into their work unit is too difficult from the worker's point of view, then the employer, the union and the worker need to negotiate an alternative arrangement. This would include, but not be limited to, positions elsewhere within the company, with preference to remaining in the same job classification.

The employer and the union would need to continuously monitor the work environment through contact with the worker to ensure that the alternative plan is successful. Where an alternative involves seniority, the union should approach this as we would any accommodation issue.

### **P - Making the Workplace Gender Neutral**

In order to be welcoming to all workers including trans people and non-binary folks, it is best to avoid gendering the workplace. We inherited binary gender segregated spaces from the generations before us. We have an obligation to expand our view so that everyone feels welcome.

In addition to creating and expanding gender neutral spaces in our union offices, and encouraging our employers to do likewise, we can change how we talk about union activities. Consider addressing the overrepresentation of men on union executives in a way that does not create spaces reserved only for women. If one of our co-workers is expecting the birth of a child, invite people of all genders to the baby shower. Do not assume only people who identify as women could be birth parents, and change our collective agreements to reflect this fact. Make sure there are period products in every bathroom, not just those labeled for women. Recognize participants at our events, customers at the front desk or speakers at the union meeting without using gendered language.

### **Q - Other Safer Space Strategies**

We are used to assuming the sex and gender of people we meet based on their appearance or the spelling of their names. This can lead us to accidentally misgender people that we meet, usually when we use a pronoun for them (he/she), or when we greet them (sir/madam; sister/brother). In order to be truly inclusive, we need to stop doing this.

Make it a practice not to assume anyone's sex, gender, sexual orientation, gender identity or pronoun. Use gender neutral language whenever you can. For example, when addressing a group of people, you can use terms like "folks," "friends," or "colleagues." When you first meet someone and learn their name, take a moment to discreetly ask their pronouns so that you do not misgender them. If you do not have the opportunity to ask, don't guess—use gender neutral words like person, and gender neutral pronouns like 'they/them/their' until you can ask and be sure. Do not just ask what pronouns to use for people you think might be trans—ask everyone. This will make you more respectful of trans people, and it will get everyone in the habit of having the important conversation about why it is important to ask.





# Trans Issues Beyond the Workplace

It is illegal to discriminate against trans people in Canada, and yet trans people experience daily acts of discrimination in the community. Derogatory comments, refusal of medical care, denial of services, verbal and physical harassment and violent assault are all examples of the kinds of direct and indirect discrimination encountered by trans people.

Trans people are regularly denied access to housing and services and/or are subject to ridicule by service providers and other clients. When they are able to access these services, they are often put in a position of having to explain their needs to their health care providers.

Medical issues include: Denial of medical treatment even for non-transgender related illnesses; ridicule and mistreatment (like invasive, medically irrelevant questions) by providers; lack of access to ongoing, routine medical care; and no coverage for medical procedures required for transitioning.

Trans people face legal issues where their legal status as a man, woman or non-binary person is at issue, in security clearance, immigration and so on. Often trans people have a mismatch in their identity documents, do not look like their picture, or do not have relevant work references using their current name and gender.

Unions play a very important role in helping to shape public opinion, in lobbying governments and working with social justice groups. We are in the leadership of the women's movement, the movements to defend health care and social services, the fight for equality for lesbian and gay citizens, among others. Our movement can use the skills and knowledge we have developed in these campaigns to help further the struggle of trans people for equality and dignity.

## International Transgender Day of Visibility

Transgender Day of Visibility is an annual event occurring on March 31, dedicated to celebrating trans people and raising awareness of discrimination faced by trans people worldwide, as well as a celebration of their contributions to society.

The day was founded by US-based transgender activist Rachel Crandall of Michigan in 2009.

## International Day Against Homophobia, Transphobia and Biphobia (IDAHoT)

International Day Against Homophobia was created in 2003 in Quebec to commemorate the declassification of 'homosexuality' as a mental disorder by the World Health Organization in 1990. Transphobia was included in 2009 "to give a specific dimension, and fight against the invisibility of the trans issue." In 2015, biphobia was added to acknowledge the specific issues faced by bisexual people. Today we recognize the International Day Against Homophobia, Transphobia and Biphobia to draw the attention to the violence and discrimination experienced by lesbian, gay, bisexuals, trans, intersex people and all other people with diverse sexual orientations, gender identities or expressions, and sex characteristics.

## Transgender Day of Remembrance (TDOR)

On November 20<sup>th</sup> every year, trans communities and allies solemnly observe Transgender Day of Remembrance. At events in communities across the country, we remember the hundreds of people who are killed every year because of their gender identity or expression. Most of the victims are trans feminine people of colour who do sex work. Transphobic violence, in combination with other social conditions—like poverty, racism, sexism and ableism—has led to most of the deaths suffered by trans people.

Your local union or lodge can and should hold or attend events on these important trans days.





# Union Action on Trans Issues

Unions have a responsibility to defend all members on the job. The collective agreement is one critical tool. Enforcing the collective agreement and defending trans workers makes the tool effective. Your union can:

- Recognize our obligation to represent trans workers in the workplace.<sup>3</sup>
- Add the words “gender identity” and “gender expression” to our non-discrimination and anti-harassment language.
- Negotiate benefit coverage for the medical treatments required for life as a trans person and for gender-affirming transition. Trans people are not only being denied public health care for transition-related expenses, but they are sometimes denied access to private health care benefits that are available to other members.
- Ensure that all information collected on employees is held in confidence. This is especially important for trans workers who do not want to be out at work.
- Negotiate anti-harassment training that includes harassment based on gender identity as well as homophobia. And, we need to make it clear to employers that the union will challenge any attempts to discriminate against trans workers.
- Negotiate transition plans and support plans that include transition leave, benefit coverage, and plans for transitioning on the job.<sup>4</sup>
- Enforce the employer’s duty to accommodate.
- Let trans members know that their contribution to their union is important and we want their voices heard.
- Include trans issues with other human rights issues the union supports.
- Include trans workers in union committees, including (but not limited to) the human rights committee.
- Publicize the union’s support of the rights of trans workers among the membership.
- Provide human rights training—including on issues facing trans workers—for executive members, stewards and other union representatives.
- Provide appropriate gender neutral washroom facilities at union events.
- Encourage delegates to union training and union events to use the pronoun field on name tags and tent cards to avoid misgendering each other.
- Include trans workers’ issues in steward training, collective bargaining, human rights courses, etc., at the local level and throughout the union.
- Provide educational sessions for members and union reps.
- Report on the political battles for trans equality rights in the union newsletter.
- Publish the union’s anti-discriminatory positions and news about the actions the union takes to fight discrimination.
- Ensure any donations by your union are not supporting organizations that exclude or discriminate against trans people.
- Arrange for affinity spaces at union events for trans and non-binary members, so they can organize and support each other.

## You can:

- Educate yourself and listen. Trans people can tell you what kind of support is most useful.
- Do not rely on trans people to educate you. If you do, pay them a living wage for their work and emotional labour.
- Respect the privacy of trans people and protect their personal information.
- Talk with your bargaining committee about how we can better represent our trans members.
- Learn more. Check out the resources listed in this document or connect with an organization serving trans people in your community.
- Support a trans member in your workplace.
- Stop the harassment. Do not be a bystander when offensive jokes, innuendos or harassment take place.
- Make it a regular practice to ask pronouns, and use gender neutral language to describe work and union activities whenever you can.

**Try putting your discomfort on hold for a while, and see if it does not dissipate over time. We are all just people and we are all different in different ways.**

<sup>3</sup> The British Columbia Human Rights Tribunal found that a union discriminated against a transsexual member by failing to properly represent her. The Tribunal ordered the union to pay her \$5,000 for injury to dignity, plus lost wages.

<sup>4</sup> At York University, the CUPE local representing teaching assistants and part-time faculty recently negotiated ground-breaking language on Transsexual Transition Leave.



# Guidelines for Representatives

Your support is critical. You can maintain this worker's privacy, protect their dignity, ensure their safety and demand the same of others. Your actions will have an impact on the outcome of the transition.

You may feel you do not know enough about trans issues to be of much help. The trans member who needs your support is probably your best resource. Listen when they talk, and let them educate you if they wish to. You do not need to know a lot about gender identity and expression, but you do need to learn how to best support someone as they start working at your workplace, or come out as trans or transition in the workplace. Rely on basic union principles about dignity, safety and equal treatment, and you will do fine. Resources and suggestions for further reading are in this document.

Begin using the worker's new name and the right pronoun as soon as you are asked to. If you do not know what pronouns to use, discreetly ask. Also ask the critical second question, what pronouns would you like me to use with the employer? Some members might feel safe coming out to you, but not the boss. This is how you indicate your solidarity. The union has a special obligation to avoid discriminating against trans members, and it is the right thing to do.

You need to show leadership in ensuring that the worker is always referred to by their correct name and correct pronoun, and interrupt inappropriate/hurtful language when you hear it.

***'Changing how we refer to an individual once they come out is very important to a respectful workplace. People at my workplace really don't get this. To this day, I am continually correcting people. For those I have corrected over and over again, I have had to resort to pointing out to them that it is harassment for which they can be disciplined.'***

**Experienced Union Rep**

While it may be that friends and co-workers sometimes make mistakes and use the wrong pronoun or the worker's old name, it is critical that the trans person feels—through the language and actions of those surrounding them—that they are being supported in what might be the most courageous and necessary act of their lives.

Misgendering and deadnaming are human rights violations, which can attract special damages if they are done intentionally during legal proceedings.

If you know, or learn, that someone has transitioned in the past, you have no right to disclose this to anyone or to ask the individual worker about it. It is in the past. A worker's trans status, as well as their surgical plans or details about their anatomy are personal information and health information, which is protected under provincial and federal privacy legislation.

If at some point you are struggling with someone's physical/personal appearance or style as they transition, keep it to yourself. Be compassionate—they are likely displaying more courage than most of us ever will in a lifetime.



# Checklist for Gender-Affirming Support Plan Meeting

- Ask the member's name and pronoun. Take note of this and do not use their deadname or old pronouns ever again, unless they explicitly ask you to (for example, if they are not out to the employer or to other members). If this name and pronoun change, use the new ones. Every time.
- Acknowledge how difficult the decision to talk to you must have been.
- Reassure them that you will maintain confidentiality. Do so.
- Let them know you are there to help, and that you need their suggestions on what will be most helpful.
- Talk to them about the timing for this process, and reassure them that they are going to be part of this process all the way through.
- Ask them when/if they want to tell their manager/supervisor/HR person, or if they want you to, or if they want you to be there as support.
- Ask if they anticipate needing time off for treatment, and if they can give an indication of when and for how long it might be. Make sure they know that normal sick leave provisions will apply.
- Offer to go over the benefit plan with them if they need information about coverage.
- If there is a uniform policy or dress code, talk with them about how and when they want to handle it.
- Ask about their needs regarding washrooms and change rooms, and ensure they know they have your support in using the facilities consistent with their gender identity.
- Make a list with them of all the places their name and gender could need to be changed. Remember name tags, office door labels, work schedules, email addresses, payroll systems and documents, benefit and pension plan documents, professional or course certificates which will be displayed, and union membership records.
- Make special provision to maintain their privacy if they need to use a deadname for payroll and taxes. This would happen if they are not doing a legal name change.
- Let them know that you will do everything you can to ensure they can continue doing their current job, if that is their wish, and that they have a right to it.
- Be prepared to discuss alternative work shifts, locations, etc., if the worker wants to move to a new area and start 'fresh' at some point during transition.
- Talk with them about any ideas they might have about a general workplace anti-harassment education plan.
- Follow up on anything you have agreed to do.
- Check in with them regularly, be proactive for signs of trouble from supervisors or co-workers.
- Hold the employer accountable for immediately addressing discrimination and harassment.





# Guidelines for Trans Members

The decision to be out as a trans or non-binary person at work, or to transition on the job takes courage. Your union is there to protect your dignity and safety. Your union reps may not know everything they need to know about transition, but they do know how to represent workers who need support.<sup>5</sup>

- Meet with management and union rep/advocate/committee person who you feel comfortable with to begin the process. If you want, bring a friend.
- Explain that you need a transition plan or a support plan.
- Outline your plans and how you want to see your transition to evolve in the workplace, if you plan on transitioning at work.
- Outline your expectations for a name and pronoun you would like people at the workplace to use.
- Be as clear as you can be about your timelines.
- Outline your concerns.
- Tell them what your needs are.
- Let them know what action you expect from them, and outline what kind of support would be most helpful to you.
- Let them know what they can expect from you in terms of changing gender expression, and your need for a gender-segregated or gender-neutral bathroom and changing spaces, and what your timing is for this.
- Settle on a contact person from management and the union.
- Talk together about options if you encounter difficulties in your current job/location.
- Go over any benefit/leave of absence questions you have.
- You do not need to answer any intimate personal questions. Let people know if they cross the line.
- Reinforce your right to privacy and confidentiality.

## In the workplace:

- Immediately identify any harassment you are experiencing. It is critical that management and the union stop it before it spreads.

- If washroom/change room facilities are inadequate, bring this to the attention of your key contacts. Let them know specifically what the problem is and how you want it remedied.
- Continue to provide valid/current medical certification per the requirements of the Collective Agreement, prior to return to work after sick leave period.
- Try to keep your focus on the job. Work out a strategy with your key contacts for getting some relief if things get difficult.
- Insist on gender neutral pronouns and spaces if you need them.
- Expect respect. Your courage and dignity will be a model for others.



<sup>5</sup> If you experience difficulties with a local union rep, contact another union representative, committee member (e.g., human rights, women's), or central union staff representative to get the support that you need.



# Appendix 1: Selected Legal Cases

## ***Ferris v. Office and Technical Employees Union, Local 15*, [1999] 36 C.H.R.R. D/329 (BC Human Rights Tribunal)**

A human rights complaint was made by Leslie Ferris regarding her treatment as a transsexual at work. In particular, her complaint was about the union's handling of a complaint about her use of the women's washroom. The BC Human Rights Tribunal found the union did not adequately represent Ms. Ferris and ordered the union to pay damages including \$5,000 for injury to Ms. Ferris' dignity.

Ms. Ferris was a trans woman with 20 years' service at her place of employment. A complaint was made by a co-worker about "a man using the women's washroom." The union failed to consult with Ms. Ferris and failed to properly investigate the situation.

At the hearing into her human rights complaint, Ms. Ferris' doctor testified about the impact on a trans woman of being challenged as not truly being a woman. She said that such challenges are distressing. They lead to feelings of humiliation and shame, as well as anger. They are embarrassing.

The Tribunal accepted that trans people are particularly vulnerable to discrimination. They often bear the brunt of our society's misunderstanding and ignorance about gender identity. In the context of the workplace, washroom use issues are often contentious and—in the absence of knowledge, sensitivity and respect for all concerned—can inflict a great deal of emotional harm on the transgender person.

The Tribunal held that the union simply acquiesced in the company's treatment of the anonymous complaint as legitimate, and its implicit characterization of the complainant as a problem who required some accommodation. The union's unexplained inability to properly consult with Ms. Ferris resulted in considerable damage to her health, finances, dignity and self-esteem.

The union's failure to properly deal with the washroom complaint was a breach of the Code and resulted in an order against the union.

## ***M.L. et Commission des droits de la personne et des droits de la jeunesse du Québec contre Maison des jeunes*, [1998] 33 C.H.R.R. D/623 (Quebec Human Rights Tribunal)**

M.L. was hired as an outreach worker by the Maison des jeunes under an initial four-month contract. Following a positive evaluation of her work, she was hired for a longer contract. M.L. was transitioning at the time of these contracts. She had been living for several months as a woman in all aspects of her daily life and had been using a feminine first name, except at work. Near the end of her second contract, she informed her employer about her transition. Shortly after, the employer advised M.L. that her contract was terminated and did not offer M.L. any other position.

The Tribunal declared that the protected ground of "sex" in section 10 of Quebec's *Charter of Human Rights and Freedoms* includes the transition from one sex to another and found that the dismissal and refusal to rehire were based on M.L.'s trans status. It awarded M.L. damages.

## ***Sheridan v. Sanctuary Investments Ltd.* [1999] 33 CHRR D/467 (BC Human Rights Tribunal)**

Ms. Sheridan, a trans woman, filed a complaint with the BC Human Rights Tribunal concerning a nightclub's refusal to allow her to use the women's washroom. The Human Rights Tribunal found this refusal to be discriminatory and ordered the nightclub to allow trans women to use the women's washroom. A doctor called as a witness during the case considered use of an appropriate washroom "significant" and said that being prevented from doing so was a "source of distress" for transsexuals.

## ***Montreuil v. National Bank of Canada (Canadian Human Rights Tribunal)* [February 5, 2004]**

The Canadian Human Rights Tribunal upheld a complaint by Micheline Montreuil. Ms. Montreuil had not gone through gender-affirming surgical care and had no intention to in the future. Notwithstanding this, the Tribunal found that the National Bank of Canada discriminated on the basis of sex when its decision not to hire her was influenced by their perception that Montreuil would use her position to crusade for trans rights.

**Vancouver Rape Relief Society v. Nixon [2005] SCCA 601**

On February 1, 2007, the Supreme Court of Canada denied Kimberly Nixon's leave to appeal application, ending her 12-year case against Vancouver's Rape Relief Society. Ms. Nixon, a trans woman, was rejected from volunteer training for peer counselling services provided by the Vancouver Rape Relief Society. She filed a human rights complaint. That Court stated that the behaviour of the Society met the test of discrimination; however, it was exempted by section 41 of the *Human Rights Code*. That section allows charitable or social organizations to grant preference to an identifiable group of people. In this case, the Society only took peer counsellors who were born women and raised as women. It is noteworthy that the earlier Court said that exclusion from the volunteer training session was "quite a different case from being excluded from a restaurant because of her trans characteristics. Unlike a for-profit business providing services or recruiting employees from the general public or a volunteer organization open to all, Rape Relief defined itself as a women-only organization and defined that group as women who had been born women."

This decision is regarded as a setback for trans people. Its impact will be limited however, because of the specific situation applying to social and charitable organizations under BC human rights legislation.

**Hogan, Stonehouse, AB and McDonald v. Ontario Minister of Health and Long-Term Care [2006] HRTO 32**

In 2006, Ontario's Human Rights Tribunal ruled in favour of three trans people who fought the de-listing of gender-affirming surgical care (at the time called sex reassignment surgeries/SRS) from OHIP, Ontario's public health insurance programme. The complainants were in the process of transitioning when gender affirming surgical care was de-listed. The ruling confirms that gender-identity is a protected ground under "sex" and "disability" where relevant. The government was found to have breached the complainant's human rights by not continuing to cover those who had begun the process before de-listing. However, the Tribunal did not compel the government to re-list gender-affirming surgery. The labour movement joined with trans activists to call for the re-listing of SRS. In May 2008, the Ontario government finally relisted SRS.

**AB v. Minister of Transportation and Minister of Government Services (Settlement, HRTO [2006])**

A settlement was reached in a complaint about changing the sex designation on a driver's license and birth certificate, before having gender-affirming surgery. The Ministry of Transportation had a practice (but not a written policy) whereby it would only change the sex designation on a driver's license after a person had surgery.

With respect to changing the sex designation on a birth certificate, the *Vital Statistics Act* requires that a person have "transsexual surgery" in order to get the designation changed. There is no definition of "transsexual surgery" in the Act. Historically, the Ministry (now called Government Services) assumed that the required surgery was genital reconstruction surgery.

As a result of this settlement, the Ministry of Transportation will now change the sex designation on a driver's license if a physician provides a letter advising that the physician has treated or examined the person and in the practitioner's opinion the change on the license would be appropriate. The Ministry also agreed to review the *Vital Statistics Act*. This is now the rule in most Canadian jurisdictions.

**Dawson v. Vancouver Police Board (No. 2) [2015] BCHRT 54**

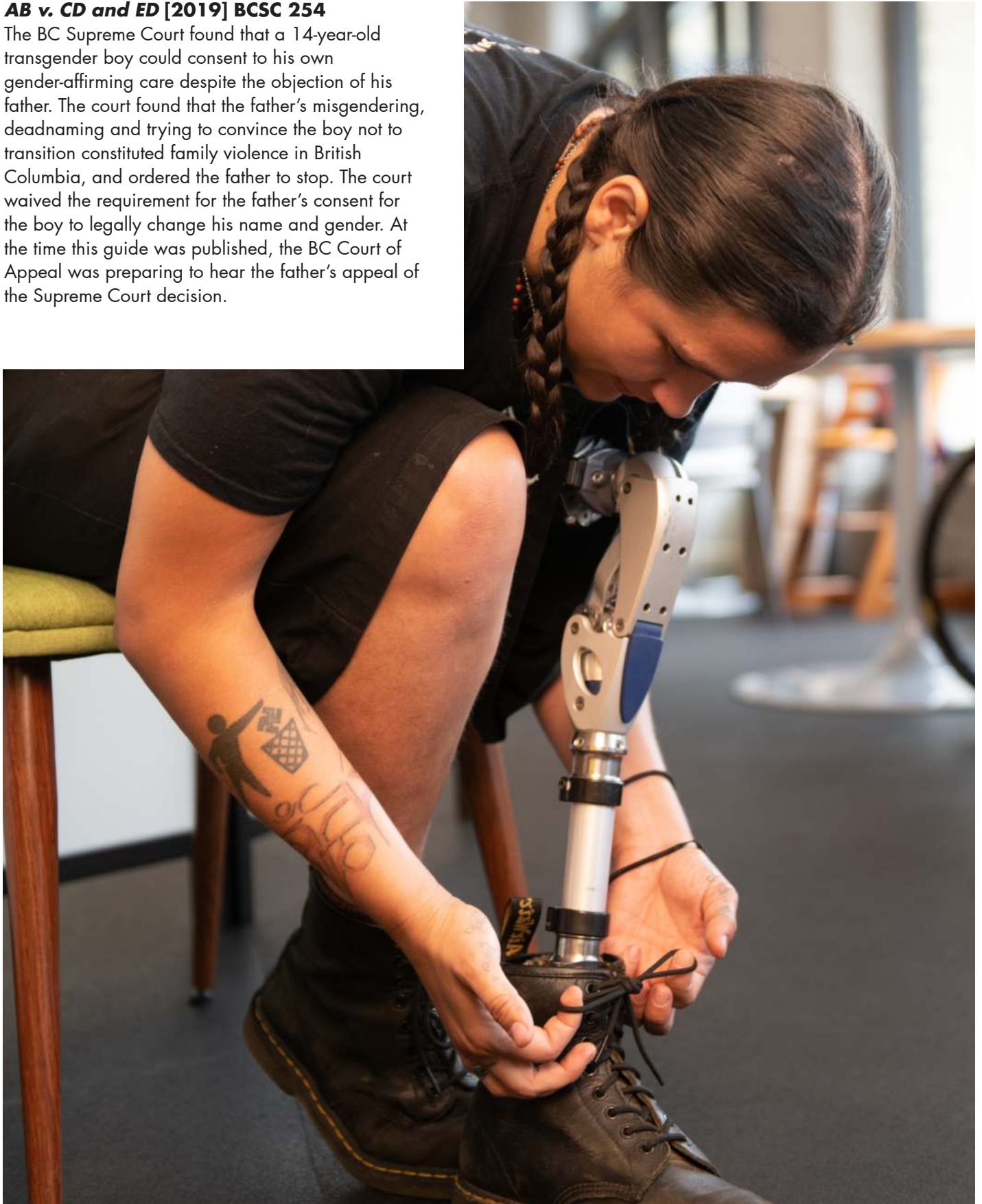
In 2012, a trans woman was misgendered and deadnamed multiple times during her arrest. She was also deprived of critical medical care related to her gender affirming surgery while in jail in Vancouver. The BCHRT found that the police violated the woman's human rights by deadnaming her and misgendering her repeatedly, and awarded her \$12,000 in damages.

**Oger v. Whatcott (No. 7) [2019] BCHRT 58**

A trans woman ran for provincial office in Vancouver. A detractor, William Whatcott published pamphlets showing the candidate's deadname and an image of her, which he distributed in the community. The BCHRT issued a lengthy decision outlining types of discrimination trans people often experience and found that Whatcott had violated Oger's rights. The BCHRT also awarded Ms. Oger \$35,000 for injury to her dignity and an additional \$20,000 for special damages because the respondent and his counsel misgendered and deadnamed the complainant throughout the process, and ignored an order from the tribunal not to do so.

**AB v. CD and ED [2019] BCSC 254**

The BC Supreme Court found that a 14-year-old transgender boy could consent to his own gender-affirming care despite the objection of his father. The court found that the father's misgendering, deadnaming and trying to convince the boy not to transition constituted family violence in British Columbia, and ordered the father to stop. The court waived the requirement for the father's consent for the boy to legally change his name and gender. At the time this guide was published, the BC Court of Appeal was preparing to hear the father's appeal of the Supreme Court decision.



# Appendix 2: Collective Agreement Model Language and Bargaining Demands

*Clear collective agreement language will provide the best protection for workers transitioning on the job. Negotiating language for trans workers also allows the union to educate our members before anyone transitions at work and helps prepare a more open and accepting workplace.*

## **Non-Discrimination Clause:**

Add “gender identity” and “gender expression” to prohibited grounds of discrimination and harassment language.

## **General Transition Policy:**

The “Union” and \_\_\_\_\_ agree to the following general transition policy to cover transgender employees at work.

\_\_\_\_\_ and the “Union” will make every effort to protect the privacy and safety of trans workers at all times, and during an accommodated transition.

Upon request by an employee, \_\_\_\_\_ will update all employee records and directories to reflect the employee’s name and gender, and ensure that all workplace-related documents are also amended. This may include name tags, employee IDs, email addresses, organizational charts, health care coverage, schedules and human resources documents. No records of the employee’s previous name, sex, gender or transition will be maintained unless required by law.

\_\_\_\_\_ will provide safe washroom and change room facilities to all workers. \_\_\_\_\_ and the “Union” recognizes that a trans worker has the right to use the washroom of their lived gender, regardless of whether or not they have sought or completed surgeries, or completed legal name or gender changes.

Health care benefit coverage for transition-related costs, and medical leaves of absence for transitioning employees, will be provided/accommodated.

[Insert any other policies applicable to transitioning employees in the workplace—e.g., gender specific positions, dress codes.]

Upon notification by an employee wishing to transition or in need of a gender support plan, or at the request of the union, \_\_\_\_\_ will work with the union and the employee to tailor a transition or support plan to the employee’s particular needs.

## **Group Benefit Plan:**

\_\_\_\_\_ will put in place a group benefit plan with coverage for the costs of gender-affirming care, not covered by provincial health plans. In addition, \_\_\_\_\_ will include coverage for any transition-related expenses, not already covered under the benefit plan (for example: drug costs (specifically hormone blockers and cross-hormone treatment), wigs, binders, gaffers, electrolysis, breast and penile prosthesis, hormone therapy, silicone/saline implants, special bras for prosthesis, voice classes, counselling, medical-related travel expenses, etc.).

## **Transition Leave**

\_\_\_\_\_ will grant an employee up to 8 weeks of leave with pay for medical procedures required during the transition period, available for each gender-affirming surgical procedure and revision.

## **Making the Collective Agreement Gender Neutral**

\_\_\_\_\_ and the union agree to global changes in the collective agreement which will remove language to the effect that the masculine includes all workers, and will replace every gendered pronoun (he/she) from the agreement and with a gender-neutral pronoun (they) or other gender neutral language (an employee). References to maternity leave and references to female employees or mothers will be replaced with the phrase ‘birthing parent’ or ‘pregnant employee.’



# Appendix 3: Sample Transition or Support Plan

## Objectives:

- For the employee to remain at their current location as a (job classification).
- For the union, employees and (employer name) to ensure that (name of transitioning employee) continues to enjoy all the same rights with respect to the collective agreement between (employer name) and (union name) while performing their duties.
- To accommodate the employee in another position in the company should re-integration into the current work site become too difficult from the transitioning worker's point of view.

## Achieving these Objectives:

Since the first priority is for (employee name) to remain at their current work location, the following initiatives need to take place.

(The timing will be adjusted according to any leaves of absence, which are currently scheduled from (insert dates). This plan will be based on these timelines but with the flexibility to adjust as necessary.)

Educating the management team is the first priority in this exercise so that they will be able to address any concerns or take immediate action should there be any inappropriate conduct. Equally important will be a partnership with the union at the (regional or national level/insert as appropriate) and the (insert as appropriate) at the location to work together with the site manager and management team to address these objectives.

Thus far knowledge of this situation has been limited to (insert as appropriate): VP Operations, "Union" National Representative, VP Human Resources, Assistant VP Labour Relations, Labour Relations Advisor, etc.

Advising others must be done in a manner which respects the employee's wishes and privacy and only on a need-to-know basis for the purposes of achieving our objectives.

## Specific Initiatives:

- Reading material including resources on transition pronouns, workplace promising practices, as well as presentations by subject matter experts in the area.
- Presentations to management team and union representatives on (insert date).
- Design of education plan for employees at site to be determined by management and union in consultation with the employee. Timing to be discussed with employee.
- Education of other employees who are in regular contact with the site will be designed and delivered as appropriate.
- Review of human rights training and human rights legislation and how it applies to this situation may also be appropriate for the immediate staff.

## Duty to Accommodate:

- All parties must work together to ensure that the employee can remain in their workplace in their current job.
- Continuous monitoring of the work environment through contact with the employee should ensure that accommodation is successful.
- After a reasonable period of time, should the re-integration of the employee back into the work unit prove to be too difficult in the view of the employee, the employer and the bargaining unit agent, together with the employee, should look at other options. This would include but is not limited to positions elsewhere in the company with the preference to remain in the employee's current classification.

## Going Forward:

- Identify key personnel for management and union contact for employee and to ensure consistency during integration back into the workplace.
- (Employer contact) to serve as HR contact throughout transition and integration back into the workplace.
- Employee to identify any concerns immediately to manager, labour relations advisor or union representatives as necessary.



- Labour relations and employee relations to provide support to management team and employee as necessary.
- Employee to ensure that medical documentation remains valid as per the health plan and collective agreement requirements, prior to return to work after sick leave period.

Note: Only some of these provisions would be needed in a support plan for a trans employee requiring support in the absence of gender-affirming care. In that case, references to leave and re-integration would be omitted, and some clear language about the specific needs of the worker would be included. These could be about proper name and pronoun use, and access to appropriate washroom facilities.





# Appendix 4: Multimedia Resources

## National and International Organizations

World Professional Association for Transgender Health:

<https://www.wpath.org/>

Trans PULSE Canada: [transpulsecanada.ca](http://transpulsecanada.ca)

Egale Canada: [egale.ca](http://egale.ca)

Canadian Professional Association for Transgender Health (CPATH): <http://cpath.ca/en/>

The Canadian Center for Gender and Sexual Diversity: <http://ccgsd-ccdgs.org/>

## Regional Organizations List

Compiled by the Canadian AIDS Society:

<https://www.cdnaids.ca/key-transgender-support-resources/>

## Union Resources

### Canadian Union of Public Employees (CUPE)

Pronouns and Gender Diversity:

[https://cupe.azureedge.net/sites/cupe/files/pronouns\\_eng.pdf](https://cupe.azureedge.net/sites/cupe/files/pronouns_eng.pdf)

### CUPE BC

Pronoun Video:

[https://www.cupe.bc.ca/cupe\\_bc\\_launches\\_video\\_on\\_appropriate\\_pronoun\\_use](https://www.cupe.bc.ca/cupe_bc_launches_video_on_appropriate_pronoun_use)

<https://player.vimeo.com/video/226046415>

Allies on Gender Diversity:

<https://cupe.ca/allies-gender-diversity>

### Public Service Alliance of Canada (PSAC)

Building Trans Inclusive Workplaces: A Guide for managers, unions and workers (includes sample emails/communications to co-workers):

<http://psacunion.ca/sites/psac/files/attachments/pdfs/psac-trans-inclusive-workplaces-2018-updated.pdf>

Building Trans Inclusive Workplaces Fact Sheet:

<http://psacunion.ca/sites/psac/files/attachments/pdfs/trans-inclusive-tips-2018-en.pdf>

Gender Inclusive Washrooms in your Workplace:

<http://psacunion.ca/sites/psac/files/attachments/pdfs/gender-inclusive-washroom-en-4page.pdf>

## Unifor

Workers in Transition:

[https://www.unifor.org/sites/default/files/documents/document/unifor-pride-workers-in-transition\\_en\\_fin\\_web.pdf](https://www.unifor.org/sites/default/files/documents/document/unifor-pride-workers-in-transition_en_fin_web.pdf)

## United Food and Commercial Workers

November 20, Trans Day of Remembrance:

[http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Trans\\_Day\\_Remembrance/2018/TransgenderDay-Nov20-2018-8x11-EN.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Trans_Day_Remembrance/2018/TransgenderDay-Nov20-2018-8x11-EN.pdf)

How to be a trans ally at work:

[http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/How\\_to\\_be\\_trans\\_ally\\_2019/How-To-Be-Ally-2019-EN.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/How_to_be_trans_ally_2019/How-To-Be-Ally-2019-EN.pdf)

Why we fight for transgender inclusion in society:

[http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Trans\\_Day\\_Remembrance\\_2017/HRED-WhyTransInclusion\\_2017\\_EN.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Trans_Day_Remembrance_2017/HRED-WhyTransInclusion_2017_EN.pdf)

Tips for negotiation gender inclusive language in collective agreements:

[http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/UFCW-LGBTQ-Action-card\\_V4-email.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/UFCW-LGBTQ-Action-card_V4-email.pdf)

Publicly funded, gender-affirming medical care in Canada:

[http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Publicly\\_Funded\\_Transition\\_Posters/SRS-genderAssignment\\_8.5x11\\_EN\\_2018.pdf](http://www.ufcw.ca/templates/ufcwcanada/images/media/posters/Publicly_Funded_Transition_Posters/SRS-genderAssignment_8.5x11_EN_2018.pdf)

## USW

A Helpful Guide When Gender Transitioning in the Workplace: USW Transition Handbook:

<http://documents.clcctc.ca/whr/Pride-LGBT/USW-TransitionGuide-2019-07.pdf>

## Relevant Reports and Surveys

The Trans PULSE Project (Ontario), on the impact of social exclusion and discrimination on the health of trans people in Ontario, Canada.

<http://transpulseproject.ca/>



Trans PULSE Canada (survey in progress as of summer 2019).

<https://epibio.schulich.uwo.ca/redcap/tycan/surveys/?s=FMET8DD8WW>

Creating Authentic Spaces: - A Gender Identity and Gender Expression Toolkit and other resources developed by The 519 in Toronto.

<http://www.the519.org/education-training/training-resources/our-resources>

The Trans Coalition Project (Toronto).

<http://transcoalitionproject.com/index.php>

Rainbow Health Ontario.

<https://www.rainbowhealthontario.ca/trans-health/>

Public Service and Procurement Canada – Support for trans employees: A guide for employees and managers.

<https://www.tpsgc-pwgsc.gc.ca/apropos-about/guide-et-te-eng.html>

## Select Readings

Transgender Law Centre: Peeing in Peace – A Resource Guide for Transgender Activists and Allies  
<https://transgenderlawcenter.org/resources/public-accommodations/peeing-in-peace>

### Select Canadian Books

- Fireweed by Tunchai Redvers
- Little Fish by Casey Plett
- From the Stars in the Sky to the Fish in the Sea by Kai Cheng Thom
- Love Lives Here by Amanda Jetté Knox
- Gender Failure by Ivan E. Cayote and Rae Spoon

### Select Canadian Magazines

Red Rising Magazine Issue 7 – Two Spirit:

<https://www.facebook.com/redrisingmagazine/>

Our Times: Be Bold, Be Brave: Trans Workers on Building an Inclusive Labour Movement - Summer 2018 Issue:  
<https://ourtimes.ca/magazine/issue/summer-2018>

## Video Resources

PSAC:

<https://www.facebook.com/psac.national/videos/2333550210218201/>

### Algonquin Student's Association Pride Center, 'Q'words! ' video series

Trans\*:

18 <https://www.facebook.com/AlgonquinSAWellnessandEquity/videos/vl.1181992655289281/1358781560910852/?type=1>

Non-Binary:

<https://www.facebook.com/AlgonquinSAWellnessandEquity/videos/1479055035550170/>

### MTV Docs Transformation:

<https://www.youtube.com/watch?v=qA5fNBQNVyE>

### MTV's Decoded:

5 Transgender Tropes that Need to Stop:

[https://www.youtube.com/watch?v=d\\_kPSWB5HCA](https://www.youtube.com/watch?v=d_kPSWB5HCA)

Can you Choose your own Pronouns?

<https://www.youtube.com/watch?v=kCXY4RVPcW4>

8 Comebacks for Transphobic Relatives over the Holidays:

<https://www.youtube.com/watch?v=yCTyj60mGto>

### Them:

What does "Two-Spirit" Mean?

<https://www.youtube.com/watch?v=A4lBibGzUnE>

What it's Like to be Trans with Eisha Love:

<https://www.youtube.com/watch?v=2LsJGYTcwDA>

How Gender Impacts Everyday Life:

<https://www.youtube.com/watch?v=R9hbF13BqKE>

National LGBT Cancer Network (U.S.) – Vanessa Goes to the Doctor:

<https://www.youtube.com/watch?v=S3eDKf3PFRo>



**NOTES:**





