

TRANSGENDER PARENTS AND ONTARIO FAMILY LAW: parenting through transition, together or apart

This *Fact Sheet* introduces some facts and legal considerations that relate to “trans” people as parents in Ontario. It is intended to help trans parents, their loved ones and those who support them in the community to manage family law conflicts more easily and effectively. Please visit www.lgbtqpn.ca/transfamilylaw for an abridged Tip Sheet, archived webinars and more about trans parents and family law.

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Being trans is consistent with being an effective and fulfilled parent. Studies have repeatedly shown that trans people are healthier and more productive when they have the opportunity to be open and honest about who they are. By law, “parental fitness” is not diminished by a person’s experience of gender or by expressing a new gender identity. Transitioning to a new gender does not affect a person’s right to continue parenting with the same degree of involvement as any other parent.

Note: The term “**trans**” is used in this Fact Sheet to refer to all gender identities and expressions that differ from the usual alignment of birth sex and lived gender. More details can be found in Part 1, below. Since this document is written primarily to provide legal information to trans parents, the word “**you**” refers to the trans parent (unless otherwise specified).

Part I – Trans People as Parents

Being Trans

The Basics

Many parents have gender identities or expressions that differ from masculine and feminine norms. Some identify themselves as transgender, transsexual, cross-dressers, or use other words to describe their experience of gender. **A person's sex and gender are determined by a number of separate features:**

Sex (male or female) is usually assigned at birth based on bodily characteristics.

Gender Identity refers to a person's inner sense of being a man or woman (among other possibilities).

Gender Expression refers to a person's social presentation, incorporating masculine and feminine traits.

Sexual Orientation refers to the kind of sexual attraction a person has to others (include same-sex and opposite-sex attractions).^{1 2}

“Trans” includes a very diverse group of people whose gender identities or gender expressions are different from the expectations placed on them at birth. “Cisgender” refers to a person who is not trans (the opposite of “transgender”).

Many trans people do not have the same kinds of masculine or feminine appearances that are found in the mainstream. Some do not *want to* live within these two categories. Others are *unable to* blend in visually with other men and women – they may stand out physically due to medical, financial or other constraints. Some trans people are happy to live in a stable and conventional gender role, while others have more complex or fluid gender identities. For example, some might express different genders at different times, they might present some combination of masculinity and femininity, they might have a very unique way of expressing gender, or they might not feel connected to any particular gender at all. Below are some words that some trans people use to describe themselves:

Transsexual: usually a person who undergoes *at least some* forms of medical transition in order to alter the sex characteristics of their body

Cross-dresser: a person who sometimes wears clothes that are associated with the other sex; cross-dressers are often comfortable with the sex they were assigned at birth and do not wish to change it

Genderqueer: a person who does not identify with traditional gender definitions and who might identify with neither, both, or a combination of male and female genders

Other lists of terms and concepts can be found in the “Trans Parenting Resources” section at the end of this Fact Sheet. Since many different gender identity terms and pronouns are used by trans people, **it is sometimes best to ask trans people which terms they prefer.**

Even though many trans people do not live within typical gender roles, trans people generally transition in a direction from male *towards* female, or female *towards* male. “Male to female” gender identities can be

¹ Ontario Human Rights Commission, *Policy on preventing discrimination because of Gender Identity and Gender Expression* (January 31 2014). Retrieved from <http://www.ohrc.on.ca>

² Trans people frequently describe their sexual orientation in relation to their preferred sex, rather than their assigned sex. For instance, an MTF person attracted to women may identify as lesbian rather than heterosexual. An FTM person attracted to men may identify as a gay (trans) man.

abbreviated MTF (or MtF or M2F). These people may identify as “**trans women**” and use the pronouns she/her, or they may prefer other terms. “Female to male” identities are often abbreviated FTM (or FtM or F2M). They may identify as “**trans men**” and use the pronouns he/him/his, or they may prefer more fluid terms. In Ontario, roughly half of trans people are FTM and half are MTF.³ “Non-binary” pronouns used by some trans people include they/their and ze/zir.

Transphobia

“Transphobia” refers to negative attitudes towards trans people and the expression of a trans identity. The frequency and intensity with which trans people encounter these negative attitudes often have devastating effects on their mental and physical health.

98% of trans Ontarians report experiences of transphobia,⁴ including:

- increased rates of physical and verbal attacks⁵
- discrimination in employment and the workplace⁶
- discrimination in housing⁷
- lack of social support⁸
- barriers to adequate health care (such as biases in assisted human reproduction services, difficulty finding healthcare providers familiar with trans needs and difficulty accessing routine or emergency care due to biases)

It is important to recognize that **these social challenges stem from transphobia and are not part of being trans**. They are also not inevitable facts of life: these challenges exist only when biases against trans people are upheld and expressed. Transphobia can be easier to recognize when it is compared with other forms of social injustice - including racism, violence against women, ableism and ageism. The amount of transphobia that trans individuals face usually decreases over time, as the process of “transitioning” continues and as others in their social circle come to accept trans experience (even if they do not necessarily *understand* the experience).

Transitioning

The process of moving from one lived gender to another is known as “transitioning.” Studies show that when a person wants to transition and is *able to* do so, dramatic improvements are seen in their mental health and work productivity. This is true despite facing “high levels of mistreatment.”⁹ **Most negative effects of transitioning (including loss of income, housing and social support) are the result of transphobic responses.**^{10, 11}

³ Bauer G., Boyce M., Coleman T., Kaay M., & Scanlon K., “Who are Trans People in Ontario?” *Trans PULSE e-Bulletin* 1(1), July 20, 2010.

⁴ Longman Marcellin R., Scheim A., Bauer G., & Redman N., “Experiences of Transphobia among Trans Ontarians,” *Trans PULSE e-Bulletin*, 3(2), March 7, 2013.

⁵ Ibid.

⁶ Bauer G., Nussbaum N., Travers R., Munro L., Pyne J., & Redman N., “We’ve Got Work to Do: Workplace Discrimination and Employment Challenges for Trans People in Ontario,” *Trans PULSE e-Bulletin* 2(1), May 30, 2011.

⁷ National Center for Transgender Equality, “Housing and Homelessness.” Retrieved from <http://transequality.org/Issues/homelessness.html>

⁸ Travers R., Bauer G., Pyne J., & Bradley K. for the Trans PULSE team; Gale L. for Children’s Aid Society of Toronto; & Papadimitriou M. for Delisle Youth Services, “Impacts of Strong Parental Support for Trans Youth: A Report Prepared for Children’s Aid Society of Toronto and Delisle Youth Services,” *Trans PULSE Project Report*, October 2, 2012.

⁹ Grant J., Mottet J., Tanis J., Harrison J., Herman J. & Keisling M., “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, Executive Summary,” *National Center for Transgender Equality and National Gay and Lesbian Task Force*, 2011.

¹⁰ Rotondi K., Bauer R., Travers R., Travers A., Scanlon K. & Kaay M., “Depression in male-to-female transgender Ontarians: Results from the Trans PULSE Project,” *Canadian Journal of Community Mental Health* 30(2) (2011): 113-133.

There is no single transition process that all trans people follow. Some people choose to transition very gradually, while others transition quickly. Some move from one clear gender to another, while others move into more complex and ambiguous gender expressions (either by choice or due to a lack of support and resources). Regardless of the gender expression that is ultimately attained, *three types of transition* can be distinguished. Individuals may transition in some of these ways without necessarily transitioning in other ways. The available methods of transitioning consist of:

Social Transition: can involve a change of voice, clothing (including binding and/or padding), hair and makeup, body language, social/familial role, public spaces used and preferred name and pronoun

Medical Transition: can involve hormone medications, surgical procedures (often altering the face, chest and/or genitals) and hair removal or transplant

- The most widely-recognized guideline for medical transition is currently the WPATH Standards of Care (Version 7).¹²
- Most medical professionals agree that the desire to transition is not an irrational fantasy or an “illness.” For trans people, transitioning is generally seen as medically necessary and not a choice (WPATH Standards of Care, Version 7). “The medical procedures attendant to sex reassignment are not ‘cosmetic’ or ‘elective’ or for the mere convenience of the patient. These reconstructive procedures are not optional in any meaningful sense, but are understood to be medically necessary for the treatment of the diagnosed condition.”¹³
- Trans experience is not “contagious”: sexual orientation and gender identity are not inherited or “passed down” from parents to children.

Legal Transition: can involve changing legal documents that specify name and sex (including driver’s license, birth certificate, passport, health card, etc.)

Regardless of the kinds of gender transition that people go through, or how “visibly trans” they are, it is important to remember that trans people in Ontario are entitled to equality under the law and are guaranteed a wide range of legally protections. This is described in more detail in Part 2 of this Fact Sheet, below (see page 8).

Transitioning and the Family

Between 27%¹⁴ and 38%¹⁵ of trans people are parents. Some transition before becoming parents, while others transition only after they’ve had children.

- Those who transition *before* becoming parents usually have a role in the family that reflects their post-transition gender identity. For example, trans women are frequently “mothers” to their children (and “wives” or “girlfriends” to their partners), even if they contributed sperm to their child(ren)’s conception.
- People who transition *after* becoming parents may or may not take on new gender roles and titles in the family. For example, a parent might move from being called “mom” to being “dad,” they might

¹¹ Scanlon K., Travers R., Coleman T., Bauer G., & Boyce M., “Ontario’s Trans Communities and Suicide: Transphobia is Bad for our Health.” *Trans PULSE e-Bulletin*, 1(2), November 12, 2010.

¹² Coleman, E., Bockting, W., Botzer M. et al., “Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7,” *International Journal of Transgenderism* 13 (2011): 165–232. Retrieved from http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf

¹³ Ibid.

¹⁴ Bauer G. et al, “Who are Trans People in Ontario?”

¹⁵ Grant J. et al, “Injustice at Every Turn”

continuing being “mom,” use a mixture of names (depending on the social context), or they might use another name entirely. This decision is ultimately made by the family as a whole, and can be a source of either harmony or tension.

Many families experience a number of advantages when a loved one comes out as trans. Some feel a stronger sense of honesty, authenticity and bravery, and they enjoy a new kind of community support. Trans parents have described the potential for their children to become more compassionate, and to learn more about vulnerability and perseverance. Others have said that being trans has helped them better understand and support their children, and has helped their children learn how to advocate for themselves.¹⁶

However, the social stigma around being trans can also be challenging for the family. The best ways to confront these challenges include *learning* as much about trans experience as possible (to dispel any myths and misconceptions), *seeking out support* from counselors and friends and being willing to *communicate* with care and honesty.

Children’s Experiences

“Available evidence does not support concerns that a parent’s transsexualism directly adversely impacts on the children.”¹⁷ Judges in Ontario and across Canada have ruled that being trans does not make someone an “unfit parent” or affect a parent’s custody and access rights. Psychological studies have shown that the children of trans parents do not normally exhibit cross-gender identifications or behaviour. They do not experience intense or prolonged teasing. A parent’s transition does not harm the children.¹⁸

General guidelines for maintaining a strong relationship between children and a parent who transitions can be found in some of the resource materials listed in Part 3. According to these resources, **children usually respond to a parent’s transition in ways that reflect the attitudes of other adults around them.**

“Research shows that the cooperation between both parents is an important factor that supports children’s positive adjustment to a parent’s gender transition. In contrast, factors that place children at risk include having a parent who is extremely opposed to the other parent’s gender transition and conflict between the parents regarding the transition.”¹⁹

In order to make gender transition as manageable as possible for children, a number of guidelines or “best practices” have been identified. Communicating with children about a gender transition openly but in an age-appropriate way can help lower the probability of legal conflicts (including custody challenges and spousal separation). Some suggestions include:

1. Inform the child(ren). Even though courts have ruled that gender transition does not directly affect parental rights, a trans parent should still present their transition in a “sensitive” way. For instance, the trans parent should prepare the child(ren) for upcoming changes in their gender

¹⁶ Pyne, J., “Transforming Family: Trans Parents and their Struggles, Strategies, and Strengths,” LGBTQ Parenting Network, Sherbourne Health Centre (Toronto, 2012): 34-35.

¹⁷ Green, R., “Transsexuals’ Children”

¹⁸ Green, Richard, “Transsexuals’ Children,” *The International Journal of Transgenderism* (2) 4 (October-December 1998).
White, T. & Ettner, R., “Adaptation and adjustment in children of transsexual parents,” *European Child and Adolescent Psychiatry* (November 2006).

¹⁹ Cooper, L., “Protecting the Rights of Transgender Parents And their Children,” *American Civil Liberties Union and National Center for Transgender Equality* (March 2013).

expression.²⁰ However, information should be conveyed in ways that are age-appropriate. Courts have ruled that imposing too many details on a child is not in the best interests of the child.²¹ Older children might choose to educate themselves about trans experience. They may want to access some of the same resources that partners of trans people use (see Part 3, below).

2. Do not keep “secrets.” A trans parent and their child may have several conversations about gender transition. If these discussions are viewed as “secret,” courts may declare the parent unfit for having caused mental or emotional injury to the child.²² To avoid this, it is worth considering informing others (including partners and/or other family members) about trans-related activities.

3. Allow time for adjustment. Proceed with transitioning at a pace that your child seems comfortable with. Parents who transition may be looked upon more favourably by courts when they allow their children to adjust to new parental roles and titles at their own pace, rather than doing so at a pace determined by the parent.²³

4. Maintain communication with the child. In high-conflict situations, a trans parent may be asked by other family members to stop contacting a child. However, courts may see a lack of contact as abandonment (failure to communicate with a child).²⁴ A complete separation from the child can also establish a living arrangement that can be difficult to change later on.

Many lawyers recommend maintaining contact in any ways that you and the child can agree on, such as texting, video calls (“FaceTime,” “Skype”) and visits during extracurricular activities. This contact can also help you find out about and intervene in any transphobic ideas from the other parent. However, it should be clear to the child that you do not want to interfere with their relationship with the other parent and that you support their connection to the other parent.

5. Raise the question of transphobia. Family courts sometime issue rulings in favour of the cisgender parent and against the trans parent.²⁵ These rulings can be based on misunderstandings about trans people and their influence on children. When these outcomes occur (and even before they are reached), it may be worth asking whether the decision is influenced by a lack of familiarity with trans lives (i.e., transphobia).

Partners’ Experiences

Although many relationships are enriched by a partner’s gender transition, the process is often challenging and requires a great deal of support, willingness and ability to communicate openly. It is understandable that many couples focus on the amount of change that a gender transition brings, but there is usually a large degree of *continuity* at the same time. For example, a person’s interests, values, goals and character often stay the same while their gender expression shifts. Couples usually share the same pastimes, struggles and love before and after a gender transition. Still, it is often helpful to **find accurate information about trans people**, to deal with the questions and assumptions that can arise. **Seeking help from counselors and supportive friends** can be a great benefit to couples going through this period of adjustment. To fully understand each person’s needs and

²⁰ Minter, S.P., & Wald, D.H., “Protecting Parental Rights,” in J.L. Levi and E.E. Monnin-Browder (Eds.), *Transgender Family Law: A Guide to Effective Advocacy* (Bloomington, IN: AuthorHouse, 2012): 68.

²¹ *Boyce v Boyce* (2004) CanLII1602 (Ont Ct J.)

²² *Daly v Daly* (1986) 102 Nev. 66, 715 P.2d 5

²³ *Boyce v Boyce*.

²⁴ *Daly v Daly*.

²⁵ *M. (J.D.) v M. (L.)*, 2012 CarswellNS 161

experiences, it is important to **speak openly and honestly and to listen with care and respect**. When a partner transitions, some of the topics that may arise for couples include:

Acceptance and Relationship Changes. Many friends and family members find it difficult to understand the experience of coming out as trans (or gay, lesbian or bisexual). It can be helpful to remember that we do not need to *understand* another person's experience in order to *accept* it and to offer empathy and support. Still, a gender transition often brings significant changes to a relationship. Some things in the relationship may become more exciting, other things become more difficult or even painful, while many things do not change at all. Some people find it helpful to pinpoint each of these so they can be addressed separately. Areas in which there is a lot of change – either positive or negative – may benefit from extra support and communication. On the other hand, some of the stress that can arise during a partner's transition may be based on relationship issues that are not new. In that case, the focus can move away from the gender transition and towards pre-existing relationship issues. Some people feel a great sense of loss around a partner's gender transition. It can be helpful to question whether this loss is necessary and inevitable, and whether your partner can help minimize this loss in any way.

Shifting Identity. How each person defines their sexual orientation can become more complex when a partner transitions. Some people use the same terms as before ("heterosexual," "lesbian," etc.) while others embrace a new sexual orientation. Many people eventually accept less clear and fixed definitions of their sexuality.

Sexual Relations. Some couples do not change the way they have sex when a partner transitions. Other couples may shift their sex life (a little or a lot) or discontinue sexual relations altogether. Some couples become non-monogamous after a gender transition, yet many experience a great deal of fear around this possibility. Most couples find that it takes time to find ways to remain intimate in a supportive way through a gender transition.

Negotiating Needs. A person who transitions has important needs that may involve medical interventions, counseling and other assistance as they move into a new lived gender. However, the partner of a trans person has equally important needs around adapting to a new kind of relationship, coping with stigma and managing their own fears and concerns. Both people's needs deserve to be validated, recognized and responded to. Each partner may go through times of needing more and being able to give less. Although meeting both people's needs can be difficult at times, many couples find that simply being able to recognize, accept and articulate their needs is an important first step.

Coming Out. Each person in a family has choices to make about what they will say to others about having a trans loved one. Some factors that help in making these choices include: Who already knows? Who needs to know? Who is (or could be) an ally? Many people find that the closer a friend or acquaintance is, the more important (and inevitable) it is that they be told about the gender transition.

For more information and resources for partners and children of trans people, see Part 3 (Trans Parenting Resources), page 20.

Part 2 – Trans Parents and Family Law

Know Your Rights

Trans Legal Rights and Legislation

Since this Fact Sheet focuses on *family law*, it deals with issues related to child custody and access, marriage, divorce, spousal support and child support. Of course, trans people can face legal issues that involve other areas of law. For example, issues relating to discrimination in employment and housing, identity documents and access to services fall into the category of *human rights law*. *Criminal law* deals with theft, threats and violence, and decisions about jail time.

It is important to remember that ***freedom of gender expression is a human right***. The Ontario Human Rights Code (OHRC) states that it is illegal to discriminate against trans people and/or to prevent them from transitioning:

“Everyone has the right to define their own gender identity. Trans people should be recognized and treated as the gender they live in, whether or not they have undergone surgery, or their identity documents are up to date.”²⁶

The section of the law that protects gender expression in Ontario is Bill 33 (or “Toby’s Act”). It was passed on June 19th 2012. Toby’s Act makes it illegal to discriminate against anyone because of gender identity or gender expression in areas such as services, accommodation, contracting and employment. To be specific, “inappropriate comments, questions, jokes, name-calling, images, email ... and ongoing behaviour that insults, demeans, harms or threatens” are prohibited. Efforts are being made to pass similar laws on a federal level.

Laws that protect freedom of gender expression are supported by statements from prominent medical organizations:

“[A]ll adolescents and adult persons have the right to define their own gender identity”... including “the right to free expression of their self-defined gender identity.” The Canadian Psychological Association “opposes stereotyping, prejudice, and discrimination on the basis of... self-identified gender identity or the expression thereof in exercising all basic human rights.”²⁷

Similar statements have been published by the Canadian Psychiatric Association²⁸, the American Psychological Association, the American Psychiatric Association²⁹ and the World Professional Association for Transgender Health (WPATH).³⁰ WPATH’s position has been adopted by the Canadian Professional Association for Transgender Health (CPATH).³¹

²⁶ OHRC, “Policy on preventing discrimination because of Gender Identity and Gender Expression.”

²⁷ Canadian Psychological Association, “Policy & Position Statements: Gender Identity in Adolescents and Adults” (October 2010). Retrieved from http://www.cpa.ca/aboutcpa/policystatements/#Gender_Identity

²⁸ Canadian Psychological Association, “Sexual Orientation and Gender Identity.” Retrieved from <http://www.cpa.ca/aboutcpa/cpasections/sexualorientationandgenderidentity/>

²⁹ The American Psychological Association, “Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression” (2011). Retrieved from <https://www.apa.org/topics/sexuality/transgender.pdf>

³⁰ WPATH. Standards of Care, Version 7.

³¹ Canadian Professional Association for Transgender Health, “CPATH Position Statement: Standards of Care, June 2009.” Retrieved from http://www.cpath.ca/wp-content/uploads/2010/05/CPATH_PS_SOC_0609.pdf

Trans Parents and The Law

Ontario courts have ruled that **being trans does not affect a parent’s rights to custody of their child(ren)**. No Ontario court has ever ruled to the contrary. Likewise, being a parent does not affect a person’s right to transition.

Three court cases in Canada have addressed the rights of trans parents to maintain custody or access of their children. These are summarized below. Please note that these rulings refer to trans identities using terms that are somewhat outdated. They also refer to the parents’ birth sex designations, rather than their current gender identities.

Case Title	Year	Jurisdiction	Key Decision Points
<i>Ghidoni v Ghidoni</i> , 1995 CanLII 1018 (BCSC)	1995	Nanaimo BC	“There was expert evidence that the husband's gender disorder should not be considered detrimental to his having custody.” “It was the opinion of all of the professionals associated with the gender dysphoria clinic that Mr. Ghidoni’s gender disorder should not be considered detrimental to him having custody. Dr. Marcus [psychiatrist] and Mr. Colby [psychologist] came to the same conclusion.” [para. 12]
<i>Forrester v Saliba</i> , 2000 CanLII 28722 (Ont. Ct. J.)	2000	Brampton ON	“The fact that the father went through a transgendering process was not by itself a material change of circumstances. The father had recovered from the depressive episode such that she was now able to meet the child's best interests.” “[T]ranssexuality, in itself, without further evidence, would not constitute a material change in circumstances, nor would it be considered a negative factor in a custody determination.” [para. 19]
<i>Boyce v Boyce</i> , 2004 CanLII 602 (Ont Ct J.)	2004	St. Thomas ON	“The respondent’s gender dysphoria is not relevant to the issue of custody ” [para. 26]

Protect Your Rights: Navigating Legal Disputes

Being trans does not take away from your right to equal treatment under the law. **Every person in Ontario is guaranteed equality, dignity and respect, regardless of how they express their gender.** Trans people are entitled to equality in court rooms, law firms, health and counseling services and more. If a person is discriminated against because of their gender expression, the government is required to end the discrimination or find other remedies.

It is also important to know that being trans does not give anyone permission to force you out of your home. This is true even if your partner bought the house on their own and asks you to leave.³² Marital status does not affect a person’s right to stay in their home. If you would like to protect your right to stay in the home that two of you share, you may ask a court for an order that would emphasize your right to stay in the home.

General Legal Preparedness

Going through a legal dispute can be a difficult, emotional process. If you are transitioning at the same time, the stress you experience can be very intense. To cope with this stress, it is important to turn to friends, counselors or other support systems. Talking with others about your feelings will help you stay more calm and coherent

³² Of course, an application for a restraining order can be made to the court if one person causes another to fear for their health, safety or wellbeing, or if they physically harm another person.

when you interact with legal professionals. Remember that the way you interact with lawyers and other officials can have an effect on how legal disputes play out.

It is important to recognize that legal proceedings can have unforeseen outcomes. This is true whether you go to trial, see a mediator or achieve an out of court settlement. The process can be expensive, legal workers might not know much about trans experience, and the outcome may not be what you want or expect. The following points can help prepare for a legal dispute:

1. **Keep a record of important events** that take place at home and at work. This can be a journal, emails that you save, a Facebook page, or other kinds of documents. Any evidence that you provide will make it easier for judges and lawyers to take your experiences into account. It can be helpful to keep notes about:
 - a. *job, career and financial activities.* Being fired by your employer, searching for jobs, or training for new work can have important effects on your financial status. Transphobia can make it difficult to find and keep a job. By keeping records of your career activities, judges and lawyers will be able to see that you are being as financially responsible as possible. For details, see page 13.
 - b. *medical appointments.* If you see a health care provider (including doctors, clinics, counselors or psychiatrists) about issues that could relate to transitioning, parenting or your ability to work, keep records of these appointments. These documents can help show that you are addressing your medical needs as responsibly as possible. For details, see page 17.
 - c. *parenting activities.* Keeping notes about activities you do with your child(ren) is an important way of showing how involved you are as a parent. This can affect custody and access decisions, or other court orders that relate to parenting. For details, see page 15.
 - d. *interactions with your spouse.* If you think that you and your spouse might separate, keeping records of important interactions can help judges and lawyers understand your experiences of domestic conflict.
 - e. *any instances of transphobia that arise within the family.* Evidence of this can make it easier for lawyers and judges to assess the impact of transphobia in the home.
2. Be prepared to **educate any professionals you are dealing with.** They might need to learn more about what the law says and what previous legal cases have taken place. This need can arise in many circumstances:
 - a. Home assessment workers, school teachers and others might need information about trans parents.
 - b. Lawyers, judges, staff conducting “Mandatory Information Programs” (sessions sometimes held during a separation or divorce) and other legal professionals may also need to know more about trans parents and the law.
3. **Consider bringing an advocate with you** to your lawyer appointments. The advocate could be anyone you trust, who can help you keep track of what is said. You might experience better service from your lawyer when your advocate can help you discuss your expectations, your legal rights, what the law says and so on.

Importance of Fair Arrangements Immediately Upon Separation

Parents going through a separation should try to agree to a living arrangement and parenting plan that works *in the long term*. **Some couples make the mistake of agreeing to an imperfect “temporary arrangement,” which unintentionally becomes permanent. Try to get it right the first time.** In family law settings, any status quo (or existing arrangement) sets a strong precedent. For example, moving out of the home establishes a precedent of living away from the children, and this can be hard to change later on. Established living arrangements usually have a strong influence on final court orders, and those orders usually cannot be changed unless the court recognizes a “material change in circumstances.”³³ If you move out of the home and leave the children to live with the other parent, you have essentially given the other parent sole custody of the children.³⁴ After that, it can be difficult to get a court order that increases the amount of time you spend with your children.

Even if a living arrangement *is not* written out as a court order, changing an established living arrangement usually requires a court order or domestic contract – and these can be difficult to obtain. If the children are old enough to travel on their own and contact the parents themselves, it is often easier to change the amount of time that each parent spends with the children.

If you and your partner decide to separate, even temporarily, getting advice from a lawyer can help avoid legal problems down the road. A lawyer can help make sure that the separation agreement is as fair as possible and works in the long term. Signing an agreement without a lawyer makes it more likely that unwanted decisions are made about housing, property rights and parenting rights.

It is important to recognize that the way you behave around the time of separation can have a strong impact on the outcome of separation agreements (which can include child custody arrangements). There have been instances where one parent has videotaped (or audiotaped) interactions with the other parent, and these recordings have been used as evidence in court. If a parent seems unkind, angry or uncooperative, a judge may be less likely to see them as a good parent. If you believe that your partner might accuse you of being violent, it can be helpful to have a friend stay at home with you. This person can act as an eyewitness, and testify about any allegations that either partner makes.

Choosing a Settlement Process: Litigation, Mediation and More

When parents separate, decisions have to be made about how they will share custody of the kids, spousal support, child support and more.

- Couples who choose to create their own separation agreements can get help from a mediator (a neutral person who helps the couple come to a settlement or resolution). More information about mediation can be found on page 19.
- For couples who choose litigation (going to court), these decisions are overseen by a family court judge. If the case goes to trial, custody and support decisions are made by the judge. More often, though, the judge arranges a “case conference.” Here, the parents and their lawyers meet and attempt to resolve their disputes themselves. If they cannot achieve a resolution, the judge will impose one. In Toronto, couples who go to family court have access to free mediation services.

“Collaborative law” is being increasingly used as a way to resolve family law disputes. For details, see page 18.

³³ This refers to some “substantial” change in your life or your partner’s life. This may involve income, where people live, the child reaching age 18, or other things. Canadian judges have ruled that transitioning is *not* a “material change in circumstances” that affects parental rights (Forrester v Saliba, 2000).

³⁴ Children's Law Reform Act, C. 12, s. 20 (4)

Approaching the Court as a Trans Parent

If a legal dispute goes to family court, being trans can present some unique needs. Your judge might not know as much about trans experience and trans parenting as you would like, or your partner's lawyer might make negative allegations about trans people. Because of this, **your lawyer might need to give the court extra information about trans people.** Specifically, your lawyer might need to:

- show the court that being trans is not an “illness” or a “failing” (i.e., *de-pathologizing* trans identity) and that a parent's trans identity has no negative effect on the children. To do this, the lawyer might call in an expert witness or an intervener.
- emphasize the strength of your parenting skills (*parental competency* or *parental fitness*), to make sure the judge focuses on these abilities instead of the fact that you are trans.
- make reference to academic studies about trans parents. If there is no expert witness to present these studies, the court might not be able to consider them. However, some leeway is sometimes given to defendants who are self-represented.

In some cases, especially ones involving trans parents, a court might order an assessment of the parents. Family assessments help the court determine what is best for the children, and often conducted by the Office of the Children's Lawyer. The law allows any assessment worker to get help and input from others.³⁵ When a parent is trans, **it can be helpful for these family assessments to be done with help of somebody who is very familiar with trans experiences.** This can help prevent the family's dynamics from being misread and distorted due to transphobia.

Support Payments

When a couple separates, agreements must be made about how to share the costs of raising your child(ren), and how to distribute money and other belongings. It is important to know that these arrangements can *only* be ordered by a judge if two people are seen as a legal “couple.” Keeping notes, emails, photos and other documents about a relationship can help a court recognize the romantic ties that you had. Proving that your relationship was a “spousal relationship” (and not just a casual arrangement) is usually necessary if you want to receive support payments.³⁶

Most kinds of support payments depend on the amount of money each person has and how much they can earn. For trans people, this is often a very important and challenging point. Transitioning often harms a person's financial wellbeing – at least temporarily. For example, a person might lose their job when they transition (even if they are highly educated), or they might find only low-paying or intermittent jobs. They might be temporarily unable to work due to depression. They might have to pay for expensive medical treatments. Judges might not understand the impact of transitioning on your finances.

50% of trans people in Ontario earn less than \$15000/year, despite the fact that over 70% have completed at least some college or university education.³⁷ Only 37% have succeeded in obtaining full-time employment. Being trans makes it difficult for workers to obtain letters of reference and academic transcripts.³⁸

³⁵ Children's Law Reform Act, C.12, s. 30 (15)

³⁶ Sharp v McLean (2004) CarswellSask 311 (Q.B.)

³⁷ Bauer G. et al, “Who are Trans People in Ontario?”

³⁸ Bauer G. et al., “We've Got Work to Do”

If you do not keep detailed records of how transitioning affects you financially, a judge may believe that your income is higher than you've claimed. The judge could then directly hand over (or *impute*) some of your income to your ex-partner. This can happen if the judge believes that:

- a) you are choosing to be unemployed, or
- b) you have enough money to make support payments (especially if they believe you are "hiding" or intentionally not reporting some income)

To give a judge a clear sense of your financial status, it is very important to have detailed documents ready to show the court. These documents should indicate how transitioning affects your income, expenses and employment. This includes:

- documenting your job searches, job applications, responses to your applications, job interviews and changes in your employment (being hired or fired)
- documenting any experiences of discrimination and harassment in your workplace or job searches
- keeping your medical receipts (including therapy bills, prescription receipts, medical travel receipts and bills for electrolysis, surgery or other medical treatments)
- keeping your bank statements or other financial statements

It can also be helpful to have an expert witness explain to a judge the ways that transphobia causes many trans people to have very low incomes. This can make it easier for judges to have an accurate sense of whether or not you can make support payments.

After a couple separates, two ways of balancing out their money and other belongings can be required: these include *spousal support* and *equalization of family property*.

Spousal Support

If a couple separates, one person might owe money to the other person ("spousal support payments") – either for a limited time or indefinitely. There are a few possible reasons why this might happen:

- if financial support was written into a marriage contract (a "pre-nup"). This is called "contractual" spousal support.
- if "Jack" contributed to "Jill's" career (especially if they gave up their own career to allow the other person to work), then "Jack" might be able to receive spousal support from "Jill." This is "compensatory" spousal support.
- if a separation causes "Jack" to be much less wealthy than "Jill," then "Jack" might be able to receive spousal support from "Jill." This is "non-compensatory" spousal support.
- disability can sometimes be a reason for one partner to receive spousal support from the other, and trans has occasionally been understood as a disability. If a trans parent wanted to request spousal support on the basis of "trans identity as a disability," they would have to get a report from their doctor explaining why being trans has made it impossible to work. The trans parent may also have to show plans for "treatment" (such as a medical transition and/or counseling) and a return to work.

Equalization of Property

An "equalization payment" is often ordered when a marriage ends. (This does not usually apply to common law relationships.) When two people divorce, the law looks at how much each person had when the marriage began and when it ended. If one person gained much more than the other person during the marriage, the first person

might have to pay the other so that each partner gains an equal amount. This is called an “equalization payment” or “equalization of net family property.” The amount of money and other belongings that a person has can be significantly affected by transitioning. If the value of these things has changed recently because of being trans, it is important to keep a record of what has changed and why. This will help a court order equalization payments that are more fair.

Child Support

After a separation, if a child lives with one parent (the “custodial parent”), the other “non-custodial” parent(s) may be required to pay child support to the custodial parent.³⁹ The amount of money that a non-custodial parent pays to the custodial parent is usually not negotiable. The amount is determined by only two things: the number of children being supported and the income of the non-custodial parent.

As mentioned earlier, the income of a trans person can be complex and unpredictable. Transitioning can affect a parent’s employment, income and expenses. **As a trans parent, if you are asked to pay child support, it can be very important to show how transitioning has affected your financial wellbeing.** If a judge believes that you have extra or “hidden” income, they might hand over or “impute” some of your income to the custodial parent. If your income changes (for example, because of a separation or a change in your employment), it is important to document why this has happened and report any changes to the court.

Child Custody, Access and Parental Recognition

Being trans does not take away a person’s right to spend time with their kids and to make parenting decisions. Nobody can force a parent to be less involved with their children simply because they are trans or going through a gender transition.

Obtaining legal recognition as a parent *before* a conflict arises can help parents avoid legal disputes. The types of legal recognition that parents require depend on their particular circumstances. These include birth registration, second parent adoptions, and declarations of parentage. For more information, please refer to the LGBTQ Parenting Network’s info sheets entitled “Birth Registration in Ontario,” “Second Parent Adoption in Ontario” and “Declarations of Parentage in Ontario.”

It is important to recognize that when a custody dispute arises, the best results are achieved when parents focus on the needs of their children instead of protecting their own interests. Courts are likely to recognize that being fair to the other parent and to the children is a valuable and appropriate parenting practice. For a parent who is trans, a court’s perceptions of parenting skills and general cooperativeness can greatly influence an outcome.

It can be helpful to know how the law defines *child custody* and *access*:

Custody is the right to make major decisions regarding health, education, religion and general welfare. This *often* goes along with which parent the child lives with (“primary residence”), but custody and residence are legally separate issues. In most cases, custody arrangements (sometimes referred to as “parenting plans”) should be specified in a court order. Keeping this document safe and available will make it easier to refer to, in case another parent violates the custody order.

³⁹ Child support payments are normally meant to pay for the basic expenses involved in raising a child. “Extra” expenses (such as tutoring, university and extracurricular activities) are usually shared by the parents on top of the regular child support payments.

- *Split custody* refers to siblings being “split up,” so that they live in different homes.
- *Joint custody* means that both/all parents are allowed to make important decisions about the child. The parents must still consult each other about these decisions. *Shared parenting* is generally synonymous with joint custody.
- *Shared custody* does not refer to which parent(s) make major decisions about the child. Instead, it allows the “access parent” (see below) to pay less child support as long as the child spends at least 40% of their time with him/her.

Access is the right to spend time with the child(ren). It also includes the right to receive information from children’s care providers, such as schools, counselors and doctors. These rights should be specified in orders or agreements. The parent who has access to the child (but does not live with them) is called the *non-custodial* or *access* parent.

Many people wonder which parent has custody of the child(ren) by default. In Ontario, each parent has an equal right to the custody of their child(ren). This can only be changed if:

- a) a court makes an order that gives custody to one parent, or
- b) the parents come to an agreement (preferably in writing) about custody arrangements

It is illegal for one parent to take the child(ren) without the other parent’s permission, or to try to prevent the other parent from spending time with the child(ren). If one parent is prevented from seeing the child(ren), they can ask a court for an emergency order to have the child returned.

Anybody can ask a court for custody of a child, although courts give some preference to those who have a biological or adoptive connection to the child. Being married or unmarried has no effect on a parent’s request for custody of their child. Also, the amount of money that each person has usually does not affect custody decisions very strongly. **When a court makes a child custody decision, they usually try to create as little change as possible for the child. Their main concern is to decide what is in the child’s best interests.** The “best interests of the child” are measured in a few ways:

Your previous relationship (or connection) with the child. It is helpful if you can show a record of what your role was as a parent. This can include the amount of time you normally spent with your child, and what activities you usually did together.

The child’s relationship with other people you live with (including siblings, another partner, etc.).

Your ability to be a parent.

- a. A court will find it easier to recognize your parenting abilities if you write down and present a detailed and realistic plan for how you intend to raise your children. This can include how you will keep your child connected to their school, friends and family members (including their other parents). This plan should explain how you will make decisions about upbringing (perhaps together with your ex-partner), how you would offer the child any counseling or support they might need and how you will explain the changing situation to the child. Your plans will be seen as more realistic if they reflect your history as a parent. For trans parents, this should also include ideas about how you will explain your transition to the child (in an age-appropriate way) and how you will accommodate their responses.
- b. Being able to prove your “parental fitness” can also be important. This deals with how well you can provide the care that a child needs. It can include your ability to work and whether you have any problems with mental health or substance abuse.

- c. Anyone asking for custody of a child would have to show that they have a stable and safe place to live. For trans parents, housing conditions can be especially important, because a court may be concerned about the child being in any “improper” or sexualized situations. Ideally, kids should have their own bedroom(s) or beds, and girls and boys should sleep in separate areas.

When the law discusses the “best interests of the child,” sexual orientation and gender are not mentioned. Being trans should not affect how a court decides what is in the child’s best interests. However, many courts do not have all the information they need in order to overlook and eliminate transphobia. **When a trans parent asks for custody of a child, some unique situations can arise:**

1. The non-trans parent might try to turn the child away from the trans parent by telling the child false and objectionable things about trans people. This can be an unsafe situation for the child *and* for the trans parent. It may be an instance of “parental alienation” (see page 17 for details). If this happens, and if the trans parent has been very involved in the child’s life, it may be necessary for the trans parent to leave the home with the child. This can be done by bringing an urgent request to a court, requesting “exclusive possession” of the child.
2. When a person transitions, they may lose their job and their housing and they may face depression. These situations can make it much harder to receive child custody or primary residence. Some trans parents choose to wait until their living conditions improve before they make a request for child custody, overnight access or primary residence. In the meantime, keeping up visits or having other kinds of access can help maintain a relationship with the child. Other trans parents decide to go ahead with a child custody request even though they face some challenges from transitioning. In this situation, it can help to
 - a. emphasize your history of being a good parent. This includes showing that there is a close bond between you and the child, showing that you have been highly involved in parenting activities and showing that you have a convincing plan for raising your child(ren). Parenting plans are discussed above (see page 15).
 - b. show that the challenges you are facing originate from transphobia and are not “inherent” parts of who you are. If you need support in dealing with any social challenges, it is important to show the court that you are getting all the support you can.
 - c. find an extended family member who you and the children can live with, if your own housing does not seem suitable for children. Courts might be open to having your children stay with you at an extended family member’s home, especially if you have a realistic plan to find better housing.
3. Many judges have received no training about trans people, so they may not have the knowledge they need in order to make fair decisions. As a result, the judge might:
 - a. find it easier to believe the cisgender parent than the trans parent. For example, the cisgender parent may behave disrespectfully towards the trans parent may make it difficult for the children to communicate with the trans parent. If a judge has a tendency to find the cisgender parent more credible, the experiences of the trans parent could be overlooked.
 - b. assume that being trans is a form of inappropriate or bad parenting. Even if you have clearly documented your transition-related health care, a court might not fully understand what it means to be trans.

A court’s lack of familiarity with trans lives should be anticipated by your lawyer (for details, see page 18). Just as trans parents often have to educate their lawyers, so too do lawyers often have to educate courts and other legal workers about the normal experiences of trans people.

Mental Health

It is very common for people to experience depression or other mental health problems around the time that they transition. Most trans people in Ontario have seriously considered suicide, especially if they have been harassed or assaulted because of their gender identity or expression, and if they lack personal support.⁴⁰ This figure rises when transitioning is planned but not begun and drops very quickly once transitioning begins.⁴¹

If mental health becomes a significant challenge, it is important to get social support and treatment. If you are a trans parent who is *not likely* to go to court, then you may access any type of support you prefer (such as counselors, psychotherapists, etc.). However, it is important to know that in court, your partner's lawyer might raise questions about your mental health. If that happens, it can be helpful to show that your mental health is being treated by a psychiatrist or psychologist, since courts usually trust them more than other therapists. If you see a professional for mental health issues, the notes they take during your appointments can be used in court. For that reason, **it is important to see a psychiatrist or psychologist who knows that your mental health could become a legal issue.** They should know that the notes they take could be used by lawyers on both "sides" in court. Mental health problems that have already been treated and resolved should be irrelevant in court. Normally, judges can only consider your mental health *at the time of trial* and not how it was in the past.

If your partner (or their lawyer) alleges that you are mentally unstable, it is important to show that the challenges you face are rooted in transphobia. You and your lawyer might need to explain very clearly that any mental health problems are not inherent parts of who you are, they are not "part of" being trans, they are being treated, and they are expected to decrease as experiences of transphobia decrease.

Parental Alienation

As mentioned earlier, a parent may try to make a child strongly biased against the other parent. When this behaviour becomes extreme it is known as "parental alienation." A non-trans parent may spread negative and transphobic messages about a trans parent, so that the child will distance themselves from the trans parent.

If you believe that another parent is trying to bias a child against you, it is important to document the activities that concern you. This will help a court decide whether parental alienation is occurring, or whether a more generalized kind parental preference is taking place. If the problem seems severe, then there may be an urgent need to bring the concerns to court. Some lawyers believe that in court, it could be more helpful to make claims about *transphobia* than about "parental alienation."⁴² In fact, a Canadian court has already ruled that it is harmful to children when a negative attitude towards a trans parent is promoted (*Ghidoni v Ghidoni*, 1995).

If the court agrees that parental alienation is taking place, a judge can order several solutions or "remedies." A "non-disparagement order" could be issued, which would prevent the other parent from making negative statements about you. A court may also give custody to the alienated parent and allow the other parent to maintain visits with the child (with penalties if they keep trying to bias the child against you).

⁴⁰ Scanlon K., et al, "Ontario's Trans Communities and Suicide"

⁴¹ Pyne J., Bauer G., Redman N. & Travers R., for the Trans PULSE Project Team, "Improving the Health of Trans Communities: Findings from the Trans PULSE Project," conference presentation at the Trans Health Advocacy Summit, London ON (August 11, 2012). Retrieved from <http://transpulseproject.ca/wp-content/uploads/2012/08/Trans-Health-Advocacy-Summit-2012-Results-vFINAL.pdf>

⁴² Using the language of "transphobia" may focus the court's attention on how the other parent is spreading the false belief that a parent's trans identity is bad for a child. Also, most courts would have not yet considered a trans parent experiencing parental alienation.

Accessing Legal Support

Working with a legal professional can be helpful in many situations, including making separation agreements, deciding custody arrangements and finding out what your rights are. There are wide range of legal professionals you might work with, including those listed below.

It is important to recognize that most legal professionals have very little knowledge or information about trans people. If trans lives are not fully understood by lawyers, judges, mediators, and assessment workers, transphobia can easily influence decisions about the family. To prevent this from happening, **it may be necessary to help educate legal professionals about trans experiences**, medical procedures, demographics, “depathologization” and mental health implications. Resources at the end of this Fact Sheet (including the Legal Backgrounder produced by the LGBTQ Parenting Network) may be very helpful.

Lawyers

Lawyers are licensed to provide legal advice with respect to all Ontario laws. However, most lawyers provide services in only a few areas of law. Lawyers who work in family law can usually help with issues that relate to separation, child custody and support. Some lawyers work independently, while others work for larger law firms.

Collaborative family law is a process in which the two people each hire a lawyer and then work in a collaborative way together to resolve their family law disputes. The lawyers make a commitment not to take the case to court, and they meet along with the parents to discuss possible outcomes. If successful, the lawyers draw up a separation agreement (which again can include custody and access arrangements) for the people to review and sign. If the collaborative approach is not successful, the two people would have to hire new lawyers to take their case to court.

Collaborative law requires a high level of trust and willingness to be open and cooperate, so it may not be appropriate where one person has more power or is behaving abusively to the other. It is also important to ensure that both lawyers are familiar with trans issues and experiences. At this time, full Legal Aid certificates are not available for collaborative family law. However, couples who qualify financially may be able to receive a limited Legal Aid certificate to assist in the drafting of a separation agreement.

All lawyers in Ontario are regulated by the *Law Society of Upper Canada*. Although each lawyer sets their own fees, the costs of hiring a lawyer can be quite high (\$50 to \$1000 per hour). However, free 30-minute consultations with a lawyer or paralegal near you can be arranged by the Law Society’s “referral service.” For information about these referrals, or to find a listing of every lawyer in Ontario, you may call the Law Society at 1-800-268-8326 or visit their website: <http://www.lsuc.on.ca>

Lawyers who are familiar with trans experiences can sometimes be found through LGBT directories (online or in print). Asking for referrals from friends, acquaintances, LGBT organizations and the Law Society can often help. **It is crucial for lawyers to be able to identify and challenge transphobia**, including any misconceptions that they themselves have. Educating your lawyer about trans people will require more meetings than lawyers usually have with their clients, which can add to your legal costs. Your lawyer must be prepared to argue that being trans has no effect on your ability or rights to be a parent. They may choose to bring in expert witnesses to help support this argument.

Paralegals

Paralegals are licensed to provide legal advice on only *specific* Ontario laws. Most paralegals are not prepared to help clients involved in family law disputes.

Mediators and Arbitrators

A mediator is a “neutral” person who helps those who are involved in a dispute come to an agreement that both of them can accept. Mediation is a process that often helps a couple avoid litigation (going to court). This process can help resolve many kinds of disputes. For example, parent-child visits can be agreed upon and custody arrangements can be made. If two people cannot (or do not want to) come to an agreement, the mediator can act as an “arbitrator” and make a decision for them.

Mediators are generally paid directly by their clients. However, free mediation services are available for people in Toronto who go to family court. Although it is possible for anyone to act as a mediator, a list of accredited mediators can be found on the *Ontario Association for Family Mediation’s* website: <https://www.oafm.on.ca>

Many people are interested in mediation because the process seems less combative than a court trial. It is also usually more private, faster and less expensive than going to court. It is true that if both people can get enough of what they want through mediation, they can move forward with a plan that works. But mediation can also lead to problems that might not come up in court:

- Mediation can lead to unfair and imbalanced outcomes, especially when one person has more power than the other.
- If the two people do not treat each other with respect, the process can be difficult and lead to poor outcomes. Frustration can overshadow each person’s concerns for what is best for the children.
- A mediator who does not have the skills and knowledge they need to work with your family could allow unfair agreements to be made.
- One parent could threaten the other parent if mediation does not go the way they want. For example, if a parent is trans and has not “come out” completely, the cisgender (non-trans) parent may threaten to “out” the trans parent if mediation does not go the way they would like.

When an agreement is made through mediation, it can be very difficult to change. Because of this, it is important to enter into mediation only if both parents have fairly equal power, if they are on good terms and if they work with a highly qualified mediator. It is also a very good idea to work with your own lawyer during mediation and show your lawyer any agreements you are thinking about signing. If you do not have a lawyer, you can sometimes rely on Legal Aid’s “duty counsel” to review your mediation documents.

Legal Aid Ontario (LAO)

“Legal Aid” provides low-income people with a range of free legal services. These include information, referrals and representation. Legal Aid lawyers work with clients in many ways: from short-term help in court (“duty counsel”) to full representation throughout a trial (the “certificate program”). Legal Aid does not offer help with divorce or property equalization issues and they provide limited assistance with the costs of family law mediation. More information about LAO’s programs and eligibility criteria can be found on their website: <http://www.legalaid.on.ca>

Family Law Information Centres (FLICs)

Most Ontario family courts have “Family Law Information Centres.” These offices offer free information, advice and assistance with preparing documents. Legal Aid lawyers work at many FLICs for at least a few hours each week; you may contact a FLIC near you to find out when a lawyer is available. A listing of FLIC offices can be found on the website of the Ministry of the Attorney General: <http://www.attorneygeneral.jus.gov.on.ca/english/family/infoctr.asp>

Community Legal Clinics

Legal clinics usually provide services for free. They are staffed by lawyers, community legal workers and sometimes law students. Not all legal clinics offer family law services, so it is best to find out in advance

whether the clinic near you deals with the issues you are facing. For more information about legal clinics, and to find a listing of clinics in your area, visit the website of Community Legal Education Ontario:

<http://www.cleo.on.ca/en/publications/ontario/community-legal-clinics>

The Office of the Children’s Lawyer (OCL)

When a child under the age of 18 needs to be represented in a court case, OCL appoints a lawyer to represent the child. This may take place in child custody and access cases and in other trials.

The OCL also employs “assessment workers.” These social workers may investigate the child’s home life to try to find out what is in the child’s best interests. Their reports are then submitted to a court. Parents are given the opportunity to respond to OCL reports and statements. This may be a written response, or the parent’s lawyer may cross-examine the clinician before or during the trial.

It is important to know that OCL workers are not always very knowledgeable about trans or LGB experiences. However, OCL is permitted to work with experts who are familiar with LGBT experiences when they conduct an assessment. This can help give the court a more clear sense of the family’s home life, free of any misunderstandings about LGBT lives.

Part 3 – Trans Parenting Resources

Below is a small selection of the many resources that may be helpful to trans parents facing family law challenges. These resources are generally considered reliable and trustworthy, and many of them can direct you to other sources of information and support. For additional resources, please contact the LGBTQ Parenting Network by emailing lgbtqpn@sherbourne.on.ca or visiting www.lgbtqparentingnetwork.ca.

Personal Support and Community Information

- The 519 Church Street Community Centre (queer parenting and trans groups): www.the519.org
- Affirming ministries of The United Church of Canada: affirmunited.ause.ca/ontario
- Colage (Children of Lesbians and Gays Everywhere): www.colage.org
 - “Kids of Trans” Resource Guide: www.colage.org/wp-content/uploads/2010/12/KOT-Resource-Guide-Draft-2.pdf
- GLAAD (Gay & Lesbian Alliance Against Defamation) (New York, California): www.glaad.org
- LGBTQ Parenting Network (supporting lesbian, gay, bisexual, trans and queer parenting): www.lgbtqparentingnetwork.ca
- Metropolitan Community Churches (a global Christian affirming church): www.mcccchurch.org
- PFLAG (Parents and Friends of Lesbians and Gays, Canada): www.pflagcanada.ca
- Trans Partner Network: www.transpartnernetnetwork.com
- The Trans PULSE Project (statistics and research): www.transpulseproject.ca

Legal Information and Support

- Community Legal Education Ontario: www.cleo.on.ca
 - “An Introduction to Family Law in Ontario”: www.cleo.on.ca/en/publications/introfam
- Legal Aid Ontario
 - Community Legal Clinics: www.legalaid.on.ca/en/contact/contact.asp?type=cl
 - Duty Counsel Offices: www.legalaid.on.ca/en/contact/contact.asp?type=dc
 - Family Law Service Centres: www.legalaid.on.ca/en/contact/contact.asp?type=flsc
 - Family Law Information Centres: www.legalaid.on.ca/en/getting/type_familylawinformationcentre.asp

- LGBT-friendly lawyers: www.gaylawnet.com/attorneys/ca_on.html
- LSUC (Law Society of Upper Canada, family lawyers): www1.lsuc.on.ca/specialist/jsp/namelist1.jsp?code=FAM
- OBA (Ontario Bar Association family lawyers): www.oba.org/For-the-Public/Find-a-Lawyer/Results?areaoflaw=FAM
- Ontario Human Rights Code
 - Gender Identity Brochure: www.ohrc.on.ca/en/gender-identity-and-gender-expression-brochure
 - Policy on preventing discrimination because of gender identity and gender expression: www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression
- Select Legal Clinics
 - Downtown Legal Services (Toronto): www.downtownlegalservices.ca
 - Pro Bono Students Canada (various locations): www.probonostudents.ca
 - Schlifer Clinic (legal help, counseling and language interpretation to women, including trans women, who have experienced violence): www.schliferclinic.com
- SOGIC (The Canadian Bar Association's Sexual Orientation and Gender Identity Conference): www.cba.org/cba/sogic/main
- OAFM (Ontario Association for Family Mediation): www.oafm.on.ca/mediator-search
- Your Legal Rights: www.yourlegalrights.on.ca

Trans Research and Advocacy

- CPATH (Canadian Professional Association for Transgender Health): www.cpath.ca
- WPATH (World Professional Association for Transgender Health): www.wpath.org
- "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey": www.hogg.utexas.edu/uploads/documents/NTDS_Exec_Summary.pdf
- Trans PULSE Project (Ontario community-based trans research): www.transpulseproject.ca

Trans Services and Support Groups

Eastern Ontario

- Muskoka Pride (Bala): www.muskokapride.com
- Seaway Valley Health Center (Cornwall): www.seawayvalleychc.ca
- Trans Family Kingston: www.transfamilykingston.com
- Gender Mosaic (Ottawa): www.gendermosaic.com
- Pink Triangle Services (Ottawa): www.ptsottawa.org
- LGBTIQ+ Around the Rainbow (Family Services Ottawa): www.familyservicesottawa.org/children-youth-and-families/around-the-rainbow

Northern Ontario

- AIDS Access Network (Sudbury): www.accessaidsnetwork.com
- Growing Under the Rainbow (Thunder Bay): www.facebook.com/GrowingUnderTheRainbow
- North Bay Regional Health Centre (North Bay): www.nbrhc.on.ca
- NorWest Community Health Centre (Thunder Bay): www.norwestchc.org
- TG Innerselves (Sudbury): www.tginnerselves.com

Central Ontario

- CAMH (Centre for Addiction and Mental Health) Adult Gender Identity Clinic: www.camh.ca
- Canadian Crossdressers Club (Toronto): www.wildside.org
- David Kelley Services (Toronto): www.familyserVICetoronto.org/programs/davidkelley.html
- Gender Journeys, The Peterborough Clinic: www.ptboclinic.com

- Gender Journeys, Sherbourne Health Centre (Toronto): www.sherbourne.on.ca/get-involved/events-and-support-groups
- Peterborough Family Health Team (Peterborough): www.peterboroughfht.com
- QX, and Peel Transitions, East Mississauga Community Health Centre: www.eastmississaugachc.org/PeelTransitions.php
- Transition Support, The 519 Church Street Community Centre (Toronto): www.the519.org
- The Well: LGBTQ Community Wellness Centre (Hamilton): www.thewellhamilton.ca
- Xpressions (Toronto): www.xpressions.org

Southwestern Ontario

- Gender Journeys (Windsor): www.windsorfht.ca/lgbt
- Guelph Family Health Team (Guelph): www.guelphfht.com
- Quest Community Health Centre (St. Catharines): www.questchc.ca
- Torchlight Gender Support Group (Kitchener): grsmedia@hotmail.com

Other Documents In This Series



Detailed *Legal Backgrounder* for lawyers, judges and other legal professionals



Abridged *Tip Sheet* for trans parents, their families and service providers

Plus: two 90-minute webinars; one for legal professionals, and one for trans parents, their families and service providers

Visit www.lgbtqpn.ca/transfamilylaw for details.

Produced by the LGBTQ Parenting Network, November 2014. The Trans Family Law Project is an initiative of the LGBTQ Parenting Network. It is a Connecting Communities project, supported by Community Legal Education Ontario. These materials were made possible by a grant from the Law Foundation of Ontario's Access to Justice Fund.

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Suggested Reference:

LGBTQ Parenting Network, *Transgender Parents and Ontario Family Law: parenting through transition, together or apart* (Toronto: 2014). Downloadable at www.lgbtqpn.ca/current



The LGBTQ Parenting Network supports lesbian, gay, bisexual, trans and queer parenting through training, research, resource development and community organizing. We work with individuals, organizations and communities from the local to the international.

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