

Trans Parents & Family Law



Trans Family Law Project

This *Info Sheet* provides facts and legal information related to trans people as parents in Ontario. It is meant to help trans parents and their families manage family law conflicts more easily and effectively.

Trans People

“Trans” (or transgender) refers to people with gender identities and expressions that differ from the sex they were assigned at birth. Some of the people this includes are:

- transsexual
- genderqueer
- gender variant
- cross-dressers

Not sure which pronoun to use?

Just ask.

When people *transition* to a new gender, they might change their body, name, clothing, and so on. Many people are happiest when they express an in-between, ambiguous or fluid gender.

Did you know?

Trans people can be gay, straight or bisexual.

Discrimination against trans people creates difficulties in many areas of life. Trans people may have a hard time obtaining employment, housing, health care, consistent documentation and more. These challenges lead to high rates of depression among trans people. It is important to remember that these problems are not caused by trans people – they result from biases that many non-trans (or *cisgender*) people have. Transphobia is usually felt most strongly when a person first comes out as trans, and then decreases over time.

Parents who are Trans

Parents have found that being trans helps them teach their kids about honesty, authenticity, compassion, self-advocacy and perseverance.

- ✓ **The law** says that everyone has the right to express their gender however they want (Ontario Human Rights Code, Bill 33).
- ✓ In Canada, **every court case** involving trans parents has concluded that being trans does not change any parenting rights. Judges have ruled that children who have a trans parent are more likely to be hurt by receiving negative messages about trans people than by having a parent who is trans.
- ✓ **Medical researchers** around the world have said that being trans is not a choice, it is not a “disorder,” it is not contagious, and it deserves care and attention. Having a trans parent does not harm the children, and it does not make children gay or trans.
- ✓ **Sociologists** agree that kids with trans parents have the same levels of friendships as other kids. Most do not experience prolonged teasing. They benefit from staying in contact with their parents.

Did you know?

People who come out as trans *before* having kids often use words that match their gender.

A trans woman may be called “mom.”

Those who come out as trans *after* they have kids may or may not use a new title. A trans woman who comes out after having kids might go by “dad” or “mom” or another word.

Kids and Partners

When kids and partners struggle to accept a parent's transition, family breakdowns can happen. These can lead to difficult and unpredictable legal battles. Unwanted outcomes become more likely as more "outside" people get involved in family decisions. To avoid these problems it is important for each family member to get support. It helps to talk to friends and counselors who are understanding. Family members also need to talk openly with each other *and* listen carefully. A lot of negative ideas about trans people come from misunderstandings. The best way to overcome those ideas is by finding good information about trans people.

Kids of trans people often need support, information and time to adjust. Parents can show that they are responsible and caring by being understanding about this. When trans parents tell their kids about gender transition, the information kids receive should match their age and the questions they ask. It is best for parents to tell other people about these conversations, so kids don't think that they're secrets.

Spouses and partners can help trans parents manage the stress of transitioning. But partners also need support and information. They might wonder how to describe their relationship, what to say to others, and about their own identities. Many parts of a relationship stay the same when a person transitions, but some parts may change. Talking about these things can help couples understand and accept each others' needs. Communication, support and information can help avoid legal disputes.

Acceptance vs Understanding

Partners can learn to **accept** things about each other that they don't necessarily like, **understand** or relate to.

How to Help

Support a trans person in expressing their gender identity. Depression and suicide decrease when trans people can live in the gender they want. When a person is able to transition, they become happier, better workers and better parents.

Couples Thinking About Breaking Up

When parents separate, they have to decide how they will share custody of the kids.

Couples who make their own custody decisions can get help from a **mediator** (a neutral person who helps the couple come to a settlement or resolution).

For couples who choose litigation (going to court), this decision is overseen by a **family court judge**. If the case goes to trial, custody and support decisions are made by the judge. More often, the judge organizes a "case conference." Here, the parents and their lawyers meet and try to resolve their disputes themselves. In Toronto, people who go to family court have access to free mediation services.

Parental Alienation

a serious situation involving a parent who tries to make a child dislike the other parent. A judge may issue a "non-disparagement order," give exclusive custody to the alienated parent or find other remedies.

Is mediation cheaper, friendlier, faster and more private than going to court? Sometimes. But it is important to recognize that during mediation, it is easier for one person to pressure the other. Inappropriate agreements can be reached with nobody else's knowledge – especially when mediators fail to understand trans people's lives. It is important to get help from a lawyer even if you choose mediation. Lawyers help make sure an agreement is fair and will not create problems later.

Legal Info for Trans Parents

Family disputes sometimes go to court. If you think this could happen, it is important to start keeping notes about everything a judge might want to know. Your notes should include information about:

- ✓ **job searches and applications** – so that employment problems are not seen as your fault
- ✓ **medical appointments** – to show that you are looking after yourself as well as possible
- ✓ **parenting activities** – to support your requests for custody or access
- ✓ **interactions with your partner** – so the judge understands any conflict and transphobia at home

Educate lawyers and judges: Be sure your lawyer understands your experiences. Your lawyer must explain to the judge that any challenges that you face are temporary and not your fault. They should also ensure the judge doesn't assume that trans people are not credible. Your lawyer may get experts to explain that being trans is not an illness, and does not make you less capable of parenting. Some lawyers provide "collaborative law" services (a way of creating an agreement without going to court).

Tip

Have a friend come with you. An "advocate" can help keep track of what's been said.

Separation agreements: Get it right the first time. Arrangements with your partner are very hard to change later. They are often permanent, even if you didn't plan it that way. Moving out of your home can be seen as abandoning your kids. If you leave, it can be hard to get your parenting rights back.

Custody and Access: By law, both parents have the same custody rights. If a judge has to change a custody arrangement, they consider what is in the *best interests of the child*. This is measured in a few ways, including:

- ✓ what each person's role as a parent has been. Notes that you have kept over the last few months can help show how involved you have been in your child's life.
- ✓ your ability to be a good parent. This includes having a place to live where the kids are close to their friends and school, and have their own rooms. Create a realistic plan to show how you will keep your kids connected to their friends and family, how you will discuss your transition, how you will get the support they need, and how you will care for them.

Being trans can make it hard to have stable housing, employment, health care and more. If you have these challenges, your lawyer may need to show the judge that the problems are caused by transphobia, and are not your fault or "part of being trans."

Depression

...can affect custody and access if it is not treated. Serious depression should be treated by a psychiatrist or psychologist, since courts usually trust them more than therapists or counselors. Be sure any professional knows how to take notes that could be used in court.

Home assessments: Judges sometimes order home assessments to find out what is best for children. Assessment workers are not usually familiar with trans people. By asking for an LGBT trainer, educator and counsellor to help with the assessment, transphobia is less likely to come up.

Finding Legal Support

Most legal workers have little experience with trans parents, but many of them will be open to learning more. Their job is to be sure that transphobic attitudes do not interfere with any legal decisions.

Lawyers who work in family law can help with separation, divorce, custody, and support payments. The Law Society of Upper Canada (www.lsuc.on.ca) provides listings of lawyers and arranges free consultations.

Licensed mediators and arbitrators can be found through the Ontario Association for Family Mediation (www.oafm.on.ca). Talk to a lawyer before you sign any agreements, especially if any threats or power struggles come up during mediation. In Toronto, free mediation services are available to people who go to family court.

Legal Aid Ontario (www.legalaid.on.ca) offers free and low-cost legal services to low-income people.

Family Law Information Centres (FLICs) are available in most Ontario family courts.

Community legal clinics can be found in many communities, but not every clinic offers family law services. Services are often free or low-cost. Information about these clinics can be found through Community Legal Education Ontario (www.cleo.on.ca).

Resources

These are only a few of the organizations that trans parents and their families may find helpful.

Sherbourne Health Centre groups for trans people and their families: www.sherbourne.on.ca

Trans Partner Network support for partners of trans people: www.transpartnernetwork.com

Parents and Friends of Lesbians and Gays (PFLAG) for families of trans people: www.pflagcanada.ca

Colage “Kids of Trans Resource Guide”: www.colage.org

Your Legal Rights detailed legal information for Ontario from CLEO: www.yourlegalrights.on.ca

About this Info Sheet

This information is provided by the LGBTQ Parenting Network, a program of Sherbourne Health Centre. Every effort is made to ensure that the information is as current as possible, but we cannot guarantee the accuracy of the information. Please verify the information before acting on it. We welcome reports of errors and omissions as well as suggestions.

LGBTQ Parenting Info Sheets are published by the LGBTQ Parenting Network.

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.

The LGBTQ Parenting Network is a program of Sherbourne Health Centre.

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