



## THE LAW SOCIETY OF UPPER CANADA

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### SEXUAL ORIENTATION AND GENDER IDENTITY: CREATING AN INCLUSIVE WORK ENVIRONMENT

### A GUIDE FOR LAW FIRMS AND OTHER ORGANIZATIONS

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## INTRODUCTION

The *Ontario Human Rights Code* (the *Code*)<sup>1</sup>, the *Rules of Professional Conduct* (the *Rules*)<sup>2</sup> and the *Paralegal Rules of Conduct* (the *Paralegal Rules*)<sup>3</sup> prohibit discrimination and harassment in the legal workplace, in the delivery of services and in all professional dealings. One aspect of this is the creation of an inclusive workplace for all individuals, regardless of their sexual orientation, gender identity or gender expression.

With this in mind, the Law Society of Upper Canada created this Guide to assist law firms<sup>4</sup> in fostering a work environment in which employment benefits are conferred in a non-discriminatory manner and in which participation in the social culture of the firm is a viable option for all individuals working there. The Law Society of Upper Canada envisions that adoption and implementation of the model policy included in this Guide will contribute to law firms becoming a place in which individuals' choice to keep confidential or to disclose information about their sexual orientation or gender identity neither results in discrimination or harassment nor detracts from either the individual's dignity and self-worth or value to the firm.

The Guide is one of a series of guides adopted by the Law Society to assist law firms and legal organizations in developing their own resources.<sup>5</sup> This Guide is only up-to-date as at the date of writing.

**The document is divided into the following parts:**

**Part I: Background**

**Part II: Effective Implementation and Review of the Policy**

**Part III: The Model Policy**

**Part IV: Employers' Obligations under the Law**

**Part V: Glossary of Terms**

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<sup>1</sup> *Human Rights Code*, RSO 1990, c H19, online: <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h19\\_e.htm#BK6](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm#BK6)> [Code].

<sup>2</sup> *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, November 1, 2000, as amended based on the Federation of Law Societies Model Code of Professional Conduct, effective October 1, 2014), online: <http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486159>.

<sup>3</sup> *Paralegal Rules of Conduct* (Toronto: Law Society of Upper Canada, May 29, 2007, as amended based on the Federation of Law Societies Model Code of Professional Conduct, effective October 1, 2014), online: <<http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147486158>>.

<sup>4</sup> References to 'law firms' in this document encompasses paralegal firms, legal clinics, non-profit organizations and other professional legal environments.

<sup>5</sup> Law Society guides are available online at: <<http://www.lsuc.on.ca/with.aspx?id=2147487014>>.

## **PART I- BACKGROUND**

## WHY LAW FIRMS SHOULD HAVE WRITTEN POLICIES

Under the *Rules*, the *Paralegal Rules* and the *Code*, individual lawyers, paralegals and law firms have a positive obligation to develop a work environment that promotes respect for the personal characteristics of all individuals affiliated with the legal profession. It is also well established that the adoption of effective human rights policies and procedures and the design and delivery of education programs assist in creating a respectful work environment and in reducing the risk of liability for employers.<sup>6</sup>

The advantages of written policies include the following:

1. They encourage respect for the dignity of all individuals working at the law firm.
2. They demonstrate management's commitment to its legal and professional obligations.
3. They communicate a law firm's commitment to equity principles to people outside of the law firm, such as prospective recruits and clients.
4. They minimize the risk of workplace harassment or discrimination and of harm to individuals working at the firm.
5. They provide procedures for handling complaints and enhance transparency.
6. They outline preventative, remedial and disciplinary actions that may be taken.
7. They minimize the risk of harm to staff, paralegals and lawyers, as well as the risk that a firm will be held liable.

## MODEL POLICIES DEVELOPED BY THE LAW SOCIETY

In the last decade, the Law Society has adopted a number of model policies and guidelines to promote equality within the legal profession. The model policies and guidelines are available online:

In English: <http://www.lsuc.on.ca/with.aspx?id=2147487014&langtype=1033>

In French: <http://www.lsuc.on.ca/with.aspx?id=2147487014&langtype=1036>

### *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*<sup>7</sup>

To assist law firms in meeting their obligation to avoid discrimination in employment practices, this guide outlines a model policy for the promotion of workplace equity. The guide includes reference to employment practice topics in the areas of recruitment, interviewing job candidates, hiring and promotion, the right to equal opportunities at

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<sup>6</sup> For example, see: *Ferguson v Muench Works Ltd* (1997), 33 CHRR D/87 (BCHRT); *Aflakian v Fraser Health Authority* [2011] BCHRTD No 170, online: <<http://canlii.ca/t/fm3km>>; in Ontario, see *Ontario Public Service Employees Union v. Ontario (Ministry of Natural Resources)*, 2003 CanLII 52889 (ON GSB), online: <<http://canlii.ca/t/1pp5s>>.

<sup>7</sup> *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated March 2003).

work, professional development, accommodation, evaluation, mentors and compensation.

*Guide to Developing a Law Firm Policy Regarding Accommodation Requirements*<sup>8</sup>

The *Code* prohibits discrimination in services and employment on enumerated grounds and mandates that employers accommodate needs based on the enumerated *Code* grounds to the point of undue hardship. Based in part on the Ontario Human Rights Commission's *Policy on Creed and the Accommodation of Religious Observances*<sup>9</sup> and *Policy and Guidelines on Disability and the Duty to Accommodate*,<sup>10</sup> this document sets out the legal duty to accommodate employees' creed and religious beliefs, disability, as well as gender and family status. Particularly practical is the section on model procedures for requesting and granting accommodations.

*Guide to Developing a Policy Regarding Flexible Work Arrangements*<sup>11</sup>

One means of fulfilling an employer's legal duty to accommodate employees with family responsibilities or disabilities is through the adoption of flexible work arrangements. This guide outlines various alternate work arrangements for both associates and partners of law firms in addition to outlining responses to the challenges presented by each option.

*Preventing Harassment, Discrimination and Violence in the Legal Workplace: Guide to Developing Policies for Law Firms or Legal Organizations*<sup>12</sup>

The Law Society published this document to guide law firms in taking a proactive approach and having an effective complaints mechanism in place so that they, as employers, can limit their vicarious liability for discrimination and harassment in the workplace. The guide includes an overview of legal requirements, a discussion of policy and implementation issues, a sample model policy for law firms, and step by step complaints procedures for both medium/large and small law firms. Model forms are provided for convenience.

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<sup>8</sup> *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, updated May 2005).

<sup>9</sup> *Policy on Creed and the Accommodation of Religious Observances* (Toronto: Ontario Human Rights Commission, October 20, 1996, revised December 2009).

<sup>10</sup> *Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: Ontario Human Rights Commission, March 22, 2001, revised December 2009).

<sup>11</sup> *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, updated March 2003).

<sup>12</sup> *Preventing Harassment, Discrimination and Violence in the Legal Workplace: Guide to Developing Policies for Law Firms or Legal Organizations* (Toronto: Law Society of Upper Canada, updated January 2012).

*Guide to Developing a Customer Accessibility Policy*<sup>13</sup>

Effective January 2012, all providers of goods and services are required to comply with the *Accessibility Standards for Customer Service Regulation (the Customer Service Standards)*<sup>14</sup> adopted under the *Accessibility for Ontarians with Disabilities Act, 2005 (the AODA)*<sup>15</sup>. The *Customer Service Standards* are aimed at improving accessibility for persons with disabilities accessing services across Ontario. The Law Society published this guide to assist law firms in developing the resources to comply with the *Customer Service Standards*.

*Summary of Fair Hiring Practice Guidelines*<sup>16</sup>

This document was published by the Law Society to assist firms in reviewing their interview and hiring practices and to ensure that they comply with the *Code, the Rules*, and the *Paralegal Rules*, which prohibit harassment and discrimination. The document outlines best hiring practices and provides examples of inappropriate comments and questions that an employer may ask during the recruitment process.

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<sup>13</sup> *Accessibility for Ontarians with Disabilities Act, 2005 - Guide to Developing a Customer Service Accessibility Policy* (Toronto, Law Society of Upper Canada, November 2011).

<sup>14</sup> *Accessibility Standards for Customer Service Regulation*, O Reg 429/07, online: <[http://www.e-laws.gov.on.ca/html/source/regs/english/2007/elaws\\_src\\_regs\\_r07429\\_e.htm](http://www.e-laws.gov.on.ca/html/source/regs/english/2007/elaws_src_regs_r07429_e.htm)>.

<sup>15</sup> *Accessibility for Ontarians with Disabilities Act*, SO 2005, c 11, online: <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_05a11\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_05a11_e.htm)>.

<sup>16</sup> *Summary of Fair Hiring Practice Guidelines* (Toronto, Law Society of Upper Canada, April 2011).

## SEXUAL ORIENTATION, GENDER IDENTITY AND THE LEGAL PROFESSION

Although the legal profession is becoming increasingly diverse, there is evidence that persons who identify as lesbian, gay, bisexual, transsexual, transgender, intersex, queer/questioning, two-spirited, and allies (LGBTTIQQ2SA) still experience barriers to equality in the legal profession. Studies indicate the following:

- The Discrimination and Harassment Counsel (DHC) Program was established by Convocation in 1999 to provide services to individuals who allege harassment or discrimination by a lawyer, and since 2008, by a paralegal. In her report to Convocation for the period of January 1, 2003 to December 31, 2011, the DHC reported that sexual orientation was raised as a ground of discrimination in 5% of cases.<sup>17</sup> The report also cited several incidences of discrimination based on sex, experienced by transsexual women and a trans-man.<sup>18</sup> Complaints raised included a refusal of counsel to use correct pronouns in referring to the trans<sup>19</sup> person, as well as a complaint about gender based employee dress code expectations in the workplace.<sup>20</sup>
- In 2004, the Law Society of Alberta released the results of a study on bias and equity in Alberta's legal profession.<sup>21</sup> Eighty-eight percent of the gay, lesbian or bisexual lawyers and sixty-eight percent of the heterosexual lawyers who responded believed that there is discrimination on the basis of sexual orientation in the profession. In the five-year period preceding the survey, 40% of the gay, lesbian and bisexual respondents had experienced discrimination while seeking or during employment. In addition to experiencing bias in the courtroom, gay, lesbian and bisexual lawyers reported being subjected to discrimination in pay, quality of work assignments, rainmaking opportunities, performance evaluations and exclusion from social events. The authors also cited a number of American studies that support the finding of discrimination on the basis of sexual orientation in the profession.<sup>22</sup>

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<sup>17</sup> C. Peterson, *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada for the Period of January , 2003 to December 31, 2011* (Toronto: Law Society of Upper Canada, 2011) at 16 [Peterson].

<sup>18</sup> *Ibid* at 18-19. "Trans-man" is a term for the transition from female to male.

<sup>19</sup> See Glossary of Terms, Part V for definition.

<sup>20</sup> Peterson *supra* note 17 at 23, 30.

<sup>21</sup> M. Cooper, J. Brockman & I. Hoffart, *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, 2004).

<sup>22</sup> For example, see Judicial Council of California, *Sexual Orientation Fairness in the California Courts: Final Report of the Sexual Orientation Fairness Subcommittee of the Judicial Council's Access and Fairness Subcommittee* (Orange County, CA: Judicial Council of California, 2001), online: <[http://www.courts.ca.gov/documents/sexualorient\\_report.pdf](http://www.courts.ca.gov/documents/sexualorient_report.pdf)>; Lesbian and Gay Law Association of Greater New York, *LeGaL Report on Sexual Orientation Fairness in Second Circuit Courts* (New York: LeGaL, 1997) available at <<http://www.le-gal.org>>; King County Bar Association, *In Pursuit of Equality: The Final Report of the KCBA Task Force on Lesbian and Gay Issues in the Legal Profession* (Washington, DC: King County Bar Association, 1995), cited in Washington State Bar, "Trends and Issues Affecting Lesbians and Gays in the Legal Profession" (1999) 12 Washington State Bar News Online, available at <<http://www.wsba.org/media/publications/barnews/archives/1999/dec-99-diversity.htm>>; Los Angeles County Bar Association, Committee on Sexual Orientation, *Report of the*

- The Law Society has undertaken various initiatives to promote equality for persons identifying as to lesbian, gay, bisexual, transsexual, transgender, intersex, queer/questioning, two-spirited, and allies (“LGBTTIQQ2SA”) within the legal profession, in accordance with its mandate.<sup>23</sup>

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*Committee on Sexual Orientation Bias* (Los Angeles, CA: County Bar Association, 1994), online: <<http://www.lgbtbar.org/assets/LACountyBarAssociationComitteeOnSexualOrientationBias.pdf>>.

<sup>23</sup> Law Society initiatives that promote equality for lesbian, gay, bisexual, Two-Spirited, transgender and queer identified individuals in the legal profession include:

**Discrimination and Harassment Counsel:** a service provided by the Law Society to confidentially assist anyone who may have experienced discrimination or harassment by a lawyer or paralegal (mentioned above)

**Equity and Diversity Mentorship Program:** This program encourages students from equity-seeking communities to consider law as a career and to assist in the transition into the profession. In cooperation with school boards, legal organizations and law schools, the Law Society matches students (law school students, Licensing Process students and newly called lawyers) with volunteer members of the profession who give insight into the practice of law

**Equity Advisory Group (EAG):** a group of lawyers, paralegal and legal organizations with expertise in the area of equality and diversity. It is mandated to assist the Equity Committee in the development of policy options for the promotion of equity and diversity in the legal profession; and

**Equity Public Education Series:** includes lectures, seminars, workshops and consultations to address issues of equity and diversity in the legal profession. It also aims to build bridges between the legal profession and members of the public (particularly from Aboriginal, Francophone and equity-seeking communities) who are concerned about equality rights and want to contribute to enhancing equity and diversity in the legal profession.

**PART II- EFFECTIVE IMPLEMENTATION AND REVIEW OF THE  
POLICY**

## **ESTABLISHING A DRAFTING COMMITTEE**

The starting point to develop a policy is to establish a committee to draft the policy. To the extent possible, the committee should be diverse and composed of partners and employees of varying gender identities and of differing age, ethnic origin, marital and partnership status, gender identity and sexual orientation. If there are lawyers or individuals in the law firm with expertise in the relevant employment and discrimination law, one or more should be included.

It is most important that the committee include respected individuals of the law firm who appreciate the importance of the issues to be addressed and who will be able to communicate these matters to others within the law firm. The composition of the committee is critical to the credibility of the process and the policies that are produced.

## **DEVELOPING A POLICY**

Committee members should educate themselves about the applicable law and become familiar with existing firm practices and policies that may be relevant.

It is suggested that committee members consult with individuals at the firm, such as the diversity committee or the executive committee. The committee may wish to circulate a draft of the policy for comments. This purpose of that step is to generate support and allow for useful insight. It is important to explain the rationale for introducing such a policy, as well as the effect of the proposed policy on existing arrangements.

It is important for the committee to be respectful of persons identifying as lesbian, gay, bisexual, transsexual, transgender, intersex, queer/questioning, two-spirited, and allies (“LGBTBIQQ2SA”) who wish to keep their gender identity or sexual orientation confidential or to openly express them.

## **COMMUNICATING THE POLICY**

Once adopted, firms should communicate the policy to all staff, paralegals and lawyers at the firm and develop an education or awareness strategy. The initial presentation of the policy combined with a clear statement of senior and managing partners’ support are important to its success.

The law firm may wish to distribute copies of the policy directly to each individual working at the firm, and/or post copies of the policy in a common area and online. Firms may also wish to publicize the existence of the policy in their recruitment materials.

## **IMPLEMENTING THE POLICY**

It is advisable that individuals charged with implementing and applying the policy

be fully versed in the specifics of the policy, the law, interviewing techniques and information gathering. It is important that individuals working at the law firm understand the negative impact that harassment and discrimination has on the dignity of those who identify as LGBTTIQQ2SA within the workplace, as well as on workplace productivity.

Factors that may cause opposition within the workplace should be identified, and discussed frankly. One example may be the misconception that such policies outlaw personal relationships between members of the law firm, and create a “chilling” anti-social atmosphere. These concerns should be recognized and addressed at the outset through discussion of the purposes and goals of workplace policies.

## **REVIEWING, EVALUATING AND REVISING THE POLICY**

It is important to review and revise the policy on a periodic basis, and evaluate the fairness of its implementation, and its effectiveness in reducing barriers for those working at the firm who identify as LGBTTIQQ2SA. The first review should take place after there has been sufficient time to evaluate its operation.

Confidential channels of communication may be created to encourage staff comments on the policy, either on an ongoing basis, or during the course of the review.

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The pages that follow are a precedent for a policy that firms may adapt for their own use. In some cases, a firm may wish to add details or examples from the footnotes to the actual text of its own policy.

The precedent addresses the most common situation: a firm composed of partners, associates, and other staff who are not subject to a collective agreement. Where a workplace is governed by a collective agreement, modifications may need to be made to the policy, and possibly to the collective agreement.

The Sexual Orientation and Gender Identity model policy is a precedent intended to provide guidance, rather than to represent the ultimate or ideal policy. A firm will need to design its own policy, tailoring the recommended model to its particular circumstances.

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## **PART III- MODEL POLICY**

# SEXUAL ORIENTATION AND GENDER IDENTITY: CREATING AN INCLUSIVE WORK ENVIRONMENT

## MODEL POLICY FOR “THE FIRM”<sup>24</sup>

### STATEMENT OF PRINCIPLES

1. The Firm recognizes that discrimination in employment on the basis of gender identity, gender expression, sex, sexual orientation, marital status and/or family status, is illegal and the Ontario *Human Rights Code* (the *Code*), the *Rules of Professional Conduct* (the *Rules*) and the *Paralegal Rules of Conduct*, (the *Paralegal Rules*) of the Law Society of Upper Canada prohibit harassment and discrimination on those grounds.
2. The Firm recognizes that the choice of a partner and the manner in which one chooses to live with that individual, as well as the expression of one’s intrinsic gender identity are fundamental human rights worthy of respect and non-discriminatory treatment.
3. The Firm is committed to providing a work environment that promotes equality and ensures that all individuals are treated with respect and dignity.
4. Harassment and discrimination are not tolerated by the Firm. Regardless of position or seniority, individuals found to have engaged in behavior constituting harassment or discrimination may be severely disciplined.

### APPLICATION

5. The policy applies to everyone working for the Firm or who is a partner, director, member or employee of the Firm, whether part-time, full-time or casual, regardless of their position in the Firm, including [professional and administrative staff, articling students, summer students, paralegals, salaried lawyers, contract lawyers, associates and partners].<sup>25</sup> The policy also applies to others in the work context, such as [volunteers, co-op students, dependent and independent contractors].<sup>26</sup> The term “all individuals working at the Firm” encompasses all those named in this paragraph.

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<sup>24</sup> References to “the Firm” in this document encompasses paralegal firms, legal clinics, non-profit organizations and other professional legal environments. Individual workplaces may replace “The Firm” with their own applicable term.

<sup>25</sup> The terminology used in this paragraph may have to be adapted based on terminology used by the firm or organization. For example, some law firms do not have “directors”.

<sup>26</sup> *Ibid.*

6. The policy applies to employment relationships and professional dealings within the context of the legal work environment and includes dealings by and between partners, along with dealings related to the partnership.
7. The policy applies to every aspect of the legal work environment, including recruitment, selection, promotion, transfer, training, compensation and performance reviews.
8. The policy covers any legal work-related environment and professional dealings including,
  - a. any place where the business of the firm is conducted or where social and/or other functions related to the business of the firm occur;
  - b. activities that are incidental or connected to the business of the firm, including activities that are incidental or connected to the business of partners or the partnership; or
  - c. incidents that occur after the official business of a meeting but are incidental or connected to the meeting.
9. The policy is not intended to constrain acceptable social interactions between people in the Firm.

## DEFINITIONS

The following definitions apply for the purposes of the policy:

10. **“Discrimination”** means differential treatment, whether intentional or not, that imposes a disadvantage or a burden on a person or group of persons, or that results in the denial of a benefit to a person or group of persons, based on one or more of the prohibited grounds of discrimination set out in the *Code*.
11. **“Harassment”** means engaging in a course of vexatious comment or conduct against an individual in the workplace that is known or ought reasonably to be known to be unwelcome.
12. **“Spouse”** means a person cohabiting in a conjugal relationship with another person of the same or different sex, whether or not the two persons are legally married to each other.<sup>27</sup>
13. **“Transgender”** refers to someone whose life experience includes existing in more than one gender. This may include people who identify as transsexual and

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<sup>27</sup> The firm may wish to include a minimum period of conjugal cohabitation in this definition. The length of required periods of conjugal cohabitation vary according to various statutes, such as the *Employment Standards Act, 2000*, SO 2000, c 41, online: <[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_00e41\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00e41_e.htm)> [ESA, 2000], or the *Income Tax Act*, RSC 1985, c 1 (5<sup>th</sup> Suppl), online: <<http://laws.justice.gc.ca/eng/acts/I-3.3/FullText.html>> [ITA], as well as the Firm’s employment benefit providers. If a time period is included, the firm should verify its compliance with the requirements of relevant statutes.

people who describe themselves as being on a "gender spectrum" or as living outside the categories of "man" or "woman".<sup>28</sup> For the purposes of this policy, this includes persons who identify as “**transsexual**”, whether or not they have undergone sex reassignment surgery.<sup>29</sup>

14. “**Gender identity**” refers to a person’s subjective sense of self, in particular, their inner sense of being male or female. A person’s gender identity is different from their sexual orientation. People’s gender identity may be different from their birth-assigned sex and/or their physical sex characteristics and may include female , male, transgender, transsexual, intersex, crossdresser, or trans.<sup>30</sup>

## DUTY OF CONFIDENTIALITY

15. The Firm respects each individual’s choice to disclose or to keep confidential information about their sexual orientation, their gender identity and/or experience as a transgender person.
16. The Firm understands that care and diligence in the administration of employment benefits and pension plans is necessary so as not to expressly or inadvertently reveal the sexual orientation or gender identity of an individual who may wish to keep this information private.<sup>31</sup>
17. To enable an individual to register for, or to collect employment or pension benefits, the Firm may be required to record information that directly or indirectly identifies an individual’s sexual orientation or gender identity. Subject to reasonable limits, the Firm will ensure the confidentiality of the information collected for these purposes. The Firm will also request that, as much as may be practical and subject to any requirements imposed by law, the benefits and pension plan providers will keep the information confidential.
18. Pension plan and employment records, including, but not limited to, requests for bereavement and parental leave, medical/dental insurance claims, next-of-kin declarations, beneficiary designations, inquiries about the extension of benefits/pensions to a spouse, as well as resumés, academic transcripts, and letters of reference, shall be kept confidential, subject to reasonable limits and except where disclosure is required by law.
19. Personal information disclosed to the Firm shall be stored in a manner so as to limit access to this information to those who require access to handle a matter.

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<sup>28</sup> For definition, please refer to the Glossary of Terms at Part V. A firm may wish to include the Glossary of Terms, or some of the definition, in its policy.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> The Firm is aware that information which identifies the gender of an individual's spouse or claims for benefits for certain prescription drugs/ medical treatments can indirectly reveal an individual's sexual orientation or gender identity.

20. Where practical, the Firm will arrange for individuals who work at the Firm to register and submit claims directly to the provider with whom the Firm has contracted for employment benefits and pension plans. Where that provider is unwilling/unable to consent to the request that individuals who work at the Firm submit claims directly to that provider, [insert title of position appointed under this policy] will be responsible for assisting in the registration and collection of benefits. Individuals entrusted with this responsibility will be trained with regard to the Firm's expectation that any information acquired while carrying out related duties is to be kept in strict confidence.

## PROCEDURES

21. The Firm ensures that its employment benefits and pension plans comply with the statement of principles and duty of confidentiality outlined in this policy.
22. The Firm will appoint [insert title of position(s) responsible, hereinafter "the Appointed Person"]<sup>32</sup> to ensure that all policies adopted by the Firm are consistent with this policy.<sup>33</sup>
23. The Appointed Person will also be available to answer, in confidence, any questions an individual working at the firm may have with respect to this policy or the Firm's employment benefits and pension plan

## APPLICATION

### *Employment and Pension Benefits and Employment Practices*

24. Employment and pension benefits are conferred on all individuals who work at the Firm, regardless of that individual's sexual orientation or gender identity. Examples of such benefits include:
- a. **Bereavement Leave**- a leave granted to an individual, either with or without pay, on the death of a relative or a relative of a spouse.
  - b. **Dental Benefits**- see Medical Benefits.

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<sup>32</sup> Depending on the size and structure of the organization, the firm may wish to appoint the Director of Human Resources, a Senior Partner, or a committee of individuals to fulfill this role.

<sup>33</sup> The Appointed Person should be provided with a private workspace or office area so as to be able to answer questions about employment benefits in confidence. When completing administrative work related to the registration and collection of benefits, the Appointed Person must ensure that the general public or others who are in the vicinity cannot see the enrollment and claim forms or computer submissions.

- c. **Emergency Leave**- a leave granted to an individual,<sup>34</sup> either with or without pay, to attend to a matter, emergency or otherwise, of a family member.<sup>35</sup>
- d. **Group Life Insurance**- term insurance covering a group of people such as employees of a company. A spouse may be designated the beneficiary of group life insurance. The plan provider may require disclosure of the plan members' beneficiary designations.
- e. **Maternity Leave**- a leave, either with or without pay, granted to a birth mother to provide time off for pregnancy and childbirth and to provide time to bond with the newly born child.
- f. **Medical Benefits**- packages offered by employers covering various health and dental expenses. The Firm should communicate its medical and dental benefits plan to all employees.
- g. **Parental Leave**- a leave granted, either with or without pay, to an individual following the birth of a child or the coming of a child into the individual's custody, care and control for the first time. Parental leave cannot be denied to qualifying employees on the basis of sexual orientation.<sup>36</sup>
- h. **Pension Plan Survivor Benefits**- survivor benefits are benefits paid to the eligible survivors or to the estate of a deceased contributor who has made enough contributions to the Canada Pension Plan. The benefits are

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<sup>34</sup> The Firm may choose to extend Emergency Leave to all individuals who work at the Firm regardless of its size and regardless if they fall within the ambit of the *ESA, 2000*, *supra* note 27.

<sup>35</sup> The *ESA, 2000* defines "spouse" as either of two persons who,

- (a) are married to each other, or
- (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right. ("conjoint")

Section 50(1) of the *ESA, 2000*, sets out an entitlement to a leave of absence without pay for employees of employers who regularly employ 50 or more employees because of:

- 2. The death, illness, injury or medical emergency of an individual described in subsection (2) [or]
- 3. An urgent matter that concerns an individual described in subsection (2).

Section 50(2) states that:

Paragraphs 2 and 3 of subsection (1) apply with respect to the following individuals:

- 1. The employee's spouse
- 2. A parent, step-parent or foster parent of the employee, the employee's spouse
- 3. A child, step-child or foster child of the employee, the employee's spouse
- 4. A grandparent, step-grandparent, grandchild or step-grandchild of the employee or of the employee's spouse
- 5. The spouse of a child of the employee.
- 6. The employee's brother or sister.
- 7. A relative of the employee who is dependent on the employee for care or assistance.

<sup>36</sup> Section. 48(1) of the *ESA, 2000* states that

**48. (1)** An employee who has been employed by his or her employer for at least 13 weeks and who is the parent of a child is entitled to a leave of absence without pay following the birth of the child or the coming of the child into the employee's custody, care and control for the first time.

available to qualifying spouses or common law partners, regardless of sex. Spouses or common law partners who at “relevant times” live separate and apart from the pension plan member lose entitlement to benefits.<sup>37</sup>

- i. **Relocation Allowances**- expenses arising from the relocation of an individual who works at the Firm and their spouse that are reimbursed by the Firm shall be reimbursed by the Firm regardless of an individual’s sexual orientation.

25. **Next of Kin Declarations**- Human Resources or the Appointed Person shall keep this confidential information on file for use in the event of a medical emergency.

26. The Firm shall not administer its benefit plans in a discriminatory manner based on sexual orientation, gender identity or gender expression.

#### *Social Events*

27. The Firm is committed to creating a work environment in which those who work at the Firm and identify as LGBTTIQQ2SA are treated with respect and are included in all aspects of the Firm’s social culture. Milestones in the personal lives of individuals who work at the Firm that are celebrated by the Firm shall include all individuals, regardless of their sexual orientation or gender identity.

28. The following events in the personal life of an individual who works at the Firm may be either officially or informally observed:

- a. **Events to Celebrate the Birth of a Child/ Adoption/ Weddings/ Commitment Ceremonies/ Anniversaries** - The Firm encourages the celebration of significant events in the lives of all individuals covered by this policy.
- b. **Funerals** - The Firm extends expressions of sympathy on the death of a spouse or family member of any individuals working at the Firm. .
- c. **Holiday or Firm Parties** - The Firm encourages those covered by this policy and their spouses/guests, if they wish, to attend holiday or firm parties.

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<sup>37</sup> *Canada Pension Plan* (RSC, 1985, c C-8), online: <<http://laws-lois.justice.gc.ca/eng/acts/C-8/FullText.html>> [*Canada Pension Plan*].

## *Inclusion of Transgender Individuals working at the Firm*

29. The Firm recognizes that transgender individuals may face distinct barriers to inclusion in the workplace. The following employment practices are adopted to ensure that transgender persons are treated equally and with dignity:

- a. **Washroom and other Gender-Specific Facilities-** The Firm respects the needs of those who identify as transgender regarding the use of washrooms and gender-specific facilities. It is that person's right to use a washroom that is in accordance with their gender identity and presentation.
- b. **Dress Code Policy-** The Firm's Dress Code policy respects the rights of those who identify as transgender, and permits any person to dress consistently with their gender identity. This provision is subject to reasonable limits and/or *bona fide* occupational requirements.
- c. **Name and sex-designation change-** The Firm recognizes that a person at the Firm who is transitioning may choose to change their legal name and pronoun to reflect their reassigned gender. When the person who is transitioning is ready, the Firm will use the new name and pronoun in all daily written and oral communication. Once the person's name has been legally changed, the Firm will update all internal and benefits related systems to reflect the new name.
- d. **Use of the appropriate pronoun-** The Firm and its employees will use the pronoun chosen by the person who identifies as transgender in any and all communications. If unsure of which pronoun to use, it is appropriate to respectfully ask the person which pronoun they prefer.
- e. **Medical and leave benefits-** Effective June 2008, some may be eligible for coverage of sex reassignment surgery as an insured service under the Ontario Health Insurance Plan (OHIP).<sup>38</sup> Any additional medical or leave benefits related to sex reassignment surgery will be communicated by the Firm to all employees.
- f. **Privacy and Confidentiality-** The Firm recognizes that a person's transgender identity is confidential and may only be disclosed with the consent of the person. The Firm will take any steps necessary to ensure

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<sup>38</sup> *O Reg 6/04*, amending the *Health Insurance Act*, RSO 1990, c H6. Coverage for sex-reassignment surgical procedures is only available to patients who have completed the Gender Identity Clinic program operated by the Center for Addiction and Mental Health and for whom the clinic has recommended that surgery take place. See *Relisting of Sex-Reassignment Surgery under OHIP*, Bulletin 4480, Ministry of Health and Long Term Care (June 2008), online: <http://www.health.gov.on.ca/en/pro/programs/ohip/bulletins/4000/bul4480.pdf>.

that a person's privacy needs are met when dealing with day to day workplace policies, such as payroll and identification documents.

## RECOURSE

30. Should a person believe that benefits are being conferred or administered in a discriminatory manner, the Firm encourages that person to report it to [insert the title of the position responsible for handling complaints], who shall do what is necessary to address the situation. All complaints or inquiries made under this section will be confidential.
31. Further recourse may be available under other policies adopted by the Firm, including [the Firm should list other applicable policies, such as a policy on preventing or addressing discrimination and harassment; an accommodation policy, etc...].
32. Nothing in this policy precludes a person from seeking assistance or filing complaints under external avenues of recourse including,
  - the Discrimination and Harassment Counsel;
  - the right to file an application with the Ontario Human Rights Tribunal under the *Code*;
  - the right to file a complaint with the Law Society of Upper Canada under the *Rules and Paralegal Rules*.

## EDUCATION AND TRAINING

33. As an extension of its commitment to a discrimination and harassment-free workplace, all current and future individuals who work at the Firm will be informed of the policy. The Firm will make the policy available to all who work at the Firm.<sup>39</sup>
34. Training on the duty of confidentiality under this policy will be provided for all individuals at the Firm who have access to confidential information collected for the purposes of registration and administration of the employment benefits and pension plans.

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<sup>39</sup> The firm may wish to state in its recruiting materials that where it extends benefits to spouses, it is committed to providing those benefits in a non-discriminatory manner. Also, the firm may assert in its recruiting materials that it is commitment to encouraging full participation in the firm's employment and social benefits, regardless of sexual orientation and gender identity.

## **PART IV- EMPLOYER OBLIGATIONS UNDER THE LAW**

## SAME-SEX BENEFITS

### Sexual Orientation as Prohibited Ground of Discrimination

*Ontario Human Rights Code*<sup>40</sup>

Sexual orientation is a prohibited ground of discrimination under the *Code*. It has been repeatedly and actively recognized by the courts and the Human Rights Tribunal of Ontario that same-sex relationships are fundamentally worthy of the same respect, dignity and equal treatment as the intimate relationships of heterosexual individuals.

*Legal Recognition of Same-Sex Marriage*

The *Civil Marriage Act*<sup>41</sup>, grants same sex marriage rights to all Canadians, by providing a gender neutral definition of marriage.<sup>42</sup> In its enactment, the *Civil Marriage Act* also amended several other pieces of Federal legislation to conform with the changes.<sup>43</sup>

### Tax benefits

*Income Tax Act*<sup>44</sup>

With the legalization of same sex marriage, the *Income Tax Act (ITA)* was amended to confer benefits equally to both heterosexual and same sex spouses and common law conjugal partners.<sup>45</sup>

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<sup>40</sup> *Code supra* note 1.

<sup>41</sup> *Civil Marriage Act*, SC 2005, c 33, online: <<http://laws-lois.justice.gc.ca/eng/acts/c-31.5/FullText.html>> [*Civil Marriage Act*].

<sup>42</sup> Section 2 of the *Civil Marriage Act* states that: "Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others".

<sup>43</sup> Consequential Amendments from the *Civil Marriage Act* include *Canada Business Corporations Act* (RSC, 1985, c C-44), online: <<http://laws-lois.justice.gc.ca/eng/acts/C-44/FullText.html>>; *Canada Cooperatives Act* (SC 1998, c 1), online: <<http://laws-lois.justice.gc.ca/eng/acts/c-1.7/FullText.html>>; *Canada Pension Plan supra* note 37; *Civilian War-Related Benefits Act* (R.S.C., 1985, c C-31), online: <<http://laws-lois.justice.gc.ca/eng/acts/C-31/FullText.html>>; *Divorce Act* (RSC, 1985, c 3 (2<sup>nd</sup> Supp)), online: <<http://laws-lois.justice.gc.ca/eng/acts/d-3.4/FullText.html>>; *Federal Law-Civil Law Harmonization Act, No 1* (SC 2001, c 4), online: <<http://laws.justice.gc.ca/eng/acts/f-7.5/FullText.html>>; *Income Tax Act* (RSC, 1985, c 1 (5<sup>th</sup> Supp)), online: <<http://laws.justice.gc.ca/eng/acts/I-3.3/FullText.html>> [*ITA*]; *Marriage (Prohibited Degrees) Act* (SC 1990, c 46), online: <<http://laws-lois.justice.gc.ca/eng/acts/M-2.1/FullText.html>>; and, *Modernization of Benefits and Obligations Act* (SC 2000, c 12), online: <<http://laws-lois.justice.gc.ca/eng/acts/M-8.6/FullText.html>>.

<sup>44</sup> *ITA supra* note 43.

<sup>45</sup> The definition of spouse as exclusive to the domain of heterosexual couples was challenged in *Rosenberg v Canada (Attorney General)* (1998) 158 DLR (4<sup>th</sup>) 664, online: <<http://canlii.ca/t/6gx2>>. Rosenberg was employed by C.U.P.E., which required mandatory enrollment in a private pension plan. Under the plan, surviving opposite-sex spouses of deceased members were entitled to two-thirds of the member's benefits. The C.U.P.E. plan was registered with Revenue Canada (now the Canada Customs and Revenue Agency) in order to take advantage of the tax deferral benefits offered under the *ITA*, *supra* note 44. However, s. 252(4) of the *ITA* limited private pension plans registration to plans which restricted

## GENDER IDENTITY

Prior to June 2012, discrimination on the basis of gender identity or gender expression was not explicitly prohibited under the *Code*. Discrimination against those who identify as transgender was considered to be discrimination on the basis of sex, disability (Gender Identity Disorder found to be a disability) or both.<sup>46</sup>

In June 2012 however, the Ontario Legislature passed Bill 33, also known as *Toby's Act*, enshrining the "Right to be free from discrimination and harassment because of gender identity or gender expression" into the *Code*.<sup>47</sup> Pursuant to *Toby's Act*, the *Code* was amended to explicitly protect the rights of those who identify as transgender, and serves as an important step towards ensuring that those who identify as transgender in Ontario enjoy both equal treatment as well as equal access to all goods and services.<sup>48</sup>

In the employment context in Ontario, the *Code* provides that every person has the right to equal treatment without discrimination because of sex, gender identity or gender expression. *The Code* aims to protect individuals who may be targeted for discriminatory behaviour because of stereotypes, rather than being judged on their individual merits. An employer is prohibited from limiting employment opportunities for

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survivor benefits to opposite-sex spouses. Under the *ITA*, the term 'spouse' was expansive, encompassing opposite-sex couples who were both legally married and those who had been living in common law conjugal relationships for a period of 12 months. The Ontario Court of Appeal held that the definition was discriminatory on the basis of sexual orientation and that the appropriate remedy would be to include same-sex partners into the *ITA* definition. With the enactment of the *Civil Marriage Act*, the *ITA* was further amended to simply refer to "spouse" and "common-law partner" inclusive of all individuals regardless of sex.

<sup>46</sup> See *Hogan v Ontario (Health and Long-Term Care)* 2006 HRTO 32, online: <<http://canlii.ca/t/1r791>>; *MacDonald v Downtown Health Club for Women*, 2009 HRTO 1043, online: <<http://canlii.ca/t/24nsb>>; *Kavanagh v Canada (Attorney General)*, [2001] CHR D No 21, at para 135, online: <<http://canlii.ca/t/1q946>>.

<sup>47</sup> Bill 33, *Toby's Act* (Right to be Free from Discrimination and Harassment Because of Gender Identity or Gender Expression) SO 2012 C 7, online: <[http://www.e-laws.gov.on.ca/html/source/statutes/english/2012/elaws\\_src\\_s12007\\_e.htm](http://www.e-laws.gov.on.ca/html/source/statutes/english/2012/elaws_src_s12007_e.htm)>.

<sup>48</sup> In the lead up to the enactment of *Toby's Act*, the Human Rights Tribunal of Ontario (HRTO) further affirmed that gender identity should be determined based on lived experience rather than a surgical procedure. In *XY v. Ministry of Government and Consumer Services (XY)* the HRTO held that the *Vital Statistics Act* (VSA) discriminated against transgendered people by requiring them to undergo sex reassignment surgery in order to change the sex designation of their birth certificate. The VSA was subsequently amended to remove the surgery requirement, thus enabling all trans people to have identification documents which reflects their experienced gender. See *XY v Ontario (Government and Consumer Services)*, 2012 HRTO 726, online: <<http://canlii.ca/t/fqxvb>>. The decision in *XY* is further supported by the Ontario Human Rights Commission's *Policy on Discrimination and Harassment based on Gender Identity (2000)* intended to help the public understand how the *Code* protects against discrimination and harassment based on gender identity (understood at this time as "sex"). The Policy is currently in the process of being revised and updated. See *Policy on Discrimination and Harassment based on Gender Identity* (OHRC: March 2000, revised December 2009), online: <[http://www.ohrc.on.ca/sites/default/files/Policy\\_on\\_discrimination\\_and\\_harassment\\_because\\_of\\_gender\\_identity.pdf](http://www.ohrc.on.ca/sites/default/files/Policy_on_discrimination_and_harassment_because_of_gender_identity.pdf)>.

transgender individuals and from discriminating against individuals based on their gender identity or gender expression.

## **PROFESSIONAL RESPONSIBILITY**

Section 6.3.1 (Discrimination) of the *Rules*<sup>49</sup> (formerly Rule 5.04) and Rule 2.03 (Harassment and Discrimination) of the *Paralegal Rules*<sup>50</sup> impose an obligation on all lawyers and paralegals to refrain from discrimination on enumerated grounds. Under the same rules, lawyers and paralegals are charged with the responsibility of respecting human rights laws in force in Ontario.

A prohibition on sexual harassment is found in Section 6.3 (Sexual Harassment) of the *Rules* (formerly Rule 5.03) and Rule 2.03 of the *Paralegal Rules* (Harassment and Discrimination). The commentary to Rule 6.3-0 suggests that behaviours such as making unwanted inquiries or comments about another's sexual orientation or sex life, making degrading comments about a particular sex, as well as making derogatory comments of a sexual nature toward an individual are unacceptable actions. The Rule imposes a duty on all members of the profession to refrain from such offensive behaviour.

## **PENSION BENEFITS AND REGISTRATION OF PENSION PLANS**

With the legalization of same sex marriage in Canada, pension benefits are extended equally to both heterosexual and same sex spouses and common law partners of plan members. Spouses can receive a pre-retirement benefit where the plan member dies before retirement or a survivor benefit if the plan member dies after retirement.<sup>51</sup>

Married spouses, living separate and apart, continue to be eligible for survivor pension benefits as long as the marriage has not ended in divorce or the contributor has not resided in a conjugal relationship with another person for at least one year. However, upon the separation of common law spouses, their right to survivor pension benefits is relinquished. Thus, the common law spouses must be living together at the time of the contributor's death in order to collect survivor pension benefits.<sup>52</sup>

Pension plans that entitle same sex partners of the plan members to survivor benefits may be registered under the *ITA*.<sup>53</sup>

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<sup>49</sup> *Rules supra* note 2.

<sup>50</sup> *Paralegal Rules supra* note 3.

<sup>51</sup> *Canada Pension Plan supra* note 37.

<sup>52</sup> See *Hodge v Canada (Minister of Human Resources Development)*, [2004] SCR 357, online: <http://canlii.ca/t/1j0tf>.

<sup>53</sup> See *Rosenberg supra* note 45.

## **EMPLOYMENT BENEFITS- GENERALLY**

Benefits granted in addition to those set out in the *Employment Standards Act, 2000* (*ESA, 2000*)<sup>54</sup> and its companion, *O.Reg.286/01*, are conferred at the discretion of the employer. Employers have a legal obligation to extend benefits to opposite-sex and same-sex spouses and partners alike.

## **EMPLOYMENT BENEFITS- GROUP INSURANCE PLANS**

Section 44 of the *ESA, 2000* expressly prohibits discrimination on the basis of marital status, which includes same-sex partnerships, in the provision of employee benefits.<sup>55</sup> Regulation 286/01 sets out exceptions where distinctions are permitted on the basis of sex, age, disability and marital status. In essence, it is not permissible to differentiate on the grounds of marital status between people with opposite-sex partners and those with same-sex partners. It is permissible, however, to distinguish between employees with partners (either of the opposite or same sex) and those without partners. The legislation mandates that permitted differential treatment must be made on an actuarial basis.

## **PREGNANCY AND PARENTAL LEAVE**

Minimum pregnancy and parental leaves are mandated by the *ESA, 2000* and are available to employees who qualify. In the case of maternity leave, it is available to all qualifying and birth mothers, including surrogate mothers.

Parental leave is available under the *ESA, 2000* to a qualifying adult who is a parent following the birth of a child or the coming of the child into the individual's custody, care and control for the first time.<sup>56</sup> "Parent" as defined in s. 45 of the *ESA, 2000*, "includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own". Because the leaves are a statutory right, employers have no discretion to grant or withhold maternity and parental leave to qualifying individuals.

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<sup>54</sup> *ESA, 2000 supra* note 27.

<sup>55</sup> *ESA, 2000* s 44 (1) provides:

Except as prescribed, no employer or person acting directly on behalf of an employer shall provide, offer or arrange for a benefit plan that treats any of the following persons differently because of the age, sex or marital status of employees:

1. employees.
2. beneficiaries.
3. survivors.
4. dependants.

<sup>56</sup> *ESA, 2000 supra* note 27 at s 48(1).

Under the *Employment Insurance Act, 1996 (EIA)*<sup>57</sup> maternity benefits are available to qualifying individuals who can prove their pregnancy.

The *EIA* makes parental benefits available to qualifying individuals for the care of one or more new-born children of the claimant or one or more children placed with the claimant for the purposes of adoption under the laws governing adoption in the province in which the claimant resides.

Payable as of January 2011, the *EIA* also provides special benefits to self employed persons, including maternity, parental, adoption, sickness and compassionate care benefits.<sup>58</sup> The *EI Special Benefits* were previously only available to wage earners and salaried workers.

An employer may supplement benefits (“top up”) received under the *EIA* provided the conditions set out in s. 38 the *Employment Insurance Act Regulations* are met.<sup>59</sup> The conditions are that the combined weekly benefits received under the *EIA* and from the employer do not exceed the employee’s weekly earnings and that the amount paid by the employer does not reduce the individual’s accumulated sick or vacation leave, severance pay or other accumulated credits from employment.

Effective March 2009, the Law Society of Upper Canada launched the “Parental Leave Assistance Program” (PLAP) to support lawyers in small firms or sole practitioners to maintain their practices after the birth or adoption of a child. The program provides financial benefits to practising lawyers who are partners in firms of five lawyers or fewer who do not have access to other maternity, parental, or adoption financial benefits under public or private plans and who meet the eligibility criteria.<sup>60</sup>

## **EMERGENCY LEAVE**

The *ESA, 2000* provides for unpaid leaves for employees whose employer regularly employs 50 or more employees in the event of death, injury or medical emergency of a spouse, partner or other family members.<sup>61</sup>

## **PUBLIC COMMITMENT CEREMONIES**

Though same sex marriage is now legal in Canada, some couples (whether heterosexual or same sex) may choose to undergo public commitment ceremonies

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<sup>57</sup> *Employment Insurance Act*, SC 1996 c 23, online: <<http://laws-lois.justice.gc.ca/eng/acts/E-5.6/FullText.html>>.

<sup>58</sup> For details of the new EI benefits plan and how to apply, see Human Resources and Skills Development Canada, online: <<http://www.hrsdc.gc.ca>> and Services Canada, online: <<http://www.servicecanada.gc.ca/eng/sc/ei/sew/index.shtml>>.

<sup>59</sup> *Employment Insurance Act Regulations* SOR/96-332 as amended SOR/2002-274, s 2; SOR/202-274, s 3, online: <<http://laws-lois.justice.gc.ca/eng/regulations/sor-96-332/FullText.html>>.

<sup>60</sup> For more details about the program and eligibility criteria see The Law Society of Upper Canada, online: <<http://www.lsuc.on.ca/with.aspx?id=2147487024>>.

<sup>61</sup> Section 50(2) of the *ESA, 2000*, *supra* note 27, provides an exhaustive listing of the particular individuals and their relationship to the employee.

instead of legal marriage. In *Boutilier v Canada (Natural Resources)*<sup>62</sup>, the Canadian Human Rights Tribunal held that the Treasury Board's practice of denying leave to employees for the purpose of participating in public same-sex commitment ceremonies was discriminatory. In addition to ordering the employer to cease the discriminatory practice, the Tribunal ordered the Treasury Board to grant leaves for marriage and public commitment ceremonies on the same terms. The employer was further ordered to credit the complainants' annual leave used when marriage leave was denied and to pay \$5,000 for the pain and suffering of each complainant.

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<sup>62</sup> *Boutilier v Canada (Natural Resources)* [2003] CHRD No 14 (CHRT) <<http://canlii.ca/t/1g96x>>.

## **PART V- GLOSSARY OF TERMS**

## GLOSSARY OF TERMS

The definitions in this glossary are adapted and/or taken from:

- The Ontario Human Rights Commission *Gender identity and gender expression* brochure<sup>63</sup>;
- The Ontario Human Rights Commission's *Policy on discrimination and harassment because of gender identity*,<sup>64</sup>
- Project Open Door's *Trans Inclusion Policy and Procedure Toolkit* <sup>65</sup>;
- The 519 Church Street Community Centre's *Equity Glossary of Terms*<sup>66</sup>;
- The University of British Columbia's *Sexual Orientation and Gender Identity Glossary*;
- The University of California Davis' *LGBTQIA Glossary*; and
- The definition of "Two-Spirited person" was developed by the *McGill Project: Two Spirited People*.<sup>67</sup>

The Law Society recognizes that language is fluid and culturally specific. The terms and definitions listed below may change over time and may have different meanings in different contexts. Furthermore, in all instances, self-identification is paramount.

This is not an authoritative and/or exhaustive list.

**Ally:** A person who understands that lesbian, gay, bisexual, transgender, Two-Spirited and queer people suffer from discrimination, and who uses their privilege to support or advocate for these communities. Being an ally can mean using inclusive language, being sensitive, and showing respect and support to individuals and community members.<sup>68</sup>

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<sup>63</sup> *Gender identity and gender expression* brochure, Ontario Human Rights Commission, (Toronto: Queen's Printer for Ontario, 2013), online: <<http://www.ohrc.on.ca/en/gender-identity-and-gender-expression-brochure>> [*Gender identity and gender expression brochure*].

<sup>64</sup> *Policy on Discrimination and Harassment Because of Gender Identity* (Toronto: Ontario Human Rights Commission, March 2000, revised December 2009), online: <[http://www.ohrc.on.ca/sites/default/files/Policy\\_on\\_discrimination\\_and\\_harassment\\_because\\_of\\_gender\\_identity.pdf](http://www.ohrc.on.ca/sites/default/files/Policy_on_discrimination_and_harassment_because_of_gender_identity.pdf)>.

<sup>65</sup> *Trans Inclusion Policy and Procedure Toolkit* (Toronto: Project Open Door, the 519 Church Street Community Centre, 2011) [*Trans Inclusion Policy*].

<sup>66</sup> *The 519's Equity Glossary of Terms*, The 519 Church Street Community Centre, available online: <<http://www.cfcollaborative.ca/wp-content/uploads/2011/12/The-519s-Equity-Glossary-of-Terms-Oct-21-11.pdf>> [*Equity Glossary of Terms*].

<sup>67</sup> For the full definition and citation see Brotman, Shari and Ryan, Bill, *Critical Issues in Practice with Gay, Lesbian, Bisexual and Two-Spirit People*, McGill School of Social Work (2001) at 9, online: <[http://www.sexualhealthcentresaskatoon.ca/pdfs/p\\_critical.pdf](http://www.sexualhealthcentresaskatoon.ca/pdfs/p_critical.pdf)>.

<sup>68</sup> *Trans Inclusion Policy* *supra* note 65 at 50.

**Asexual:** A person who has no sexual attraction to others.<sup>69</sup>

**Bisexual:** A person who may be sexually or romantically attracted to people of any gender or sex.<sup>70</sup>

**Crossdresser:** A person who, for emotional and psychological well-being, dresses in clothing usually associated with the “opposite” sex.<sup>71</sup>

**Gay:** A man who is romantically/sexually attracted to or involved with other men. This term has also been used as an umbrella term for everyone who has same-sex romantic/sexual attractions or relations, particularly in mainstream media, but this usage is falling-out of favour because it is not as inclusive as some of the other umbrella terms, such as “queer” or the acronym “LGBTTIQQ2SA.” Some lesbians prefer to call themselves “gay”.<sup>72</sup>

**Gender expression:** The external attributes, behaviour, appearance, dress, etc. by which people express themselves and through which others perceive that person’s gender.<sup>73</sup>

**Gender identity:** A person’s subjective sense of self, in particular, their inner sense of being male or female. A person’s gender identity is different from their sexual orientation. A person’s gender identity may be different from their birth-assigned sex and/or their physical sex characteristics and may include female, male, transgender, transsexual, intersex, crossdresser, or trans.<sup>74</sup>

**Heterosexism/Heteronormativity:** The presumption that heterosexuality is universal, normative and/or superior to homosexuality, lesbianism and bisexuality. Prejudice, bias or discrimination may be based on such presumptions.<sup>75</sup>

**Homophobia:** A learned discomfort with, or fear, dislike or hatred of homosexuality and/or lesbianism or gay people. This could include, but is not limited to, a discomfort with or dislike of lesbian or gay people, bisexual people (biphobia) and transgender people (transphobia).<sup>76</sup>

**Intersexed:** Being born with both XX and XY chromosomes, the full or partial sex organs of both male and female genders, or with underdeveloped or ambiguous sex organs, in addition to a hormone balance reflective of both genders. Those who are

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<sup>69</sup> 519’s Equity Glossary of Terms *supra* note 66 at 4.

<sup>70</sup> *Ibid.*

<sup>71</sup> Gender identity and gender expression brochure *supra* note 63.

<sup>72</sup> The University of British Columbia’s Sexual Orientation and Gender Identity Glossary, online: <<http://www.students.ubc.ca/access/orientation-gender/glossary/>>.

<sup>73</sup> Gender identity and gender expression brochure *supra* note 63.

<sup>74</sup> *Ibid.*

<sup>75</sup> 519’s Equity Glossary *supra* note 66 at 2.

<sup>76</sup> *Ibid* at 3.

born intersexed may also embody secondary sex characteristics of either gender. This word replaces the inappropriate term 'hermaphrodite'.<sup>77</sup>

**Lesbian:** A female identified person who is romantically/sexually attracted to or involved with other women.<sup>78</sup>

**LGBTTIQQ2SA:** An acronym used to refer to lesbian, gay, bisexual, transsexual, transgender, intersex, queer/questioning, two-spirited, and allies.

**Out:** A person who lives as openly gay, lesbian, bisexual or trans.<sup>79</sup>

**Queer:** An umbrella term used by some people who self identify as members of the LGBTTIQQ2SA communities and cultures. This term has not been reclaimed by everyone and may be hurtful for some.<sup>80</sup>

**Sexual orientation:** An enduring emotional, romantic, sexual, and/or affectional attraction. Terms include homosexual, heterosexual, bisexual, pansexual, non-monosexual, queer, and asexual, and may apply to varying degrees.<sup>81</sup>

**Sex-reassignment surgery:** Medical procedures by which an individual's genitals and/or secondary sex characteristics are surgically altered to create the physical appearance of a different biological sex.<sup>82</sup>

**Two-Spirited:** A term derived from interpretations of Aboriginal languages used to describe a person who has received the gift of having the privilege to house both male and female spirits in their bodies. The concept of Two-Spirited person relates to today's designation of being a gay, lesbian, bisexual and transgender person of Aboriginal origins. Being given the gift of two-spirits means that the individual has the ability to see the world from multiple perspectives at the same time. The term also has significant cultural and spiritual layers.<sup>83</sup>

**Trans:** An umbrella term that encompasses any person whose gender identity does not match society's expectations of someone with their physical sex characteristics. This may include transgender or transsexual individuals.<sup>84</sup>

**Transgender:** Someone whose life experience includes existing in more than one gender. This may include people who identify as transsexual and people who describe

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<sup>77</sup> *Gender identity and gender expression brochure, supra note 63.*

<sup>78</sup> *519's Equity Glossary, supra note 66 at 4.*

<sup>79</sup> *Ibid at 5.*

<sup>80</sup> *Trans Inclusion Policy, supra note 65 at 51.*

<sup>81</sup> The University of California Davis' *LGBTQIA Glossary*, available at <http://lgbtcenter.ucdavis.edu/lgbt-education/lgbtqia-glossary>.

<sup>82</sup> *Ibid.*

<sup>83</sup> *McGill Project, supra note 67 at 9.*

<sup>84</sup> *Ibid.*

themselves as being on a "gender spectrum" or as living outside the categories of "man" or "woman".<sup>85</sup>

**Transgenderists:** Self-identifying and presenting as a different gender than that which is socially expected based on their physical sex characteristics, but have decided not to undergo sex reassignment surgery.<sup>86</sup>

**Transition:** The process of changing one's sex, which may or may not include hormones, cross living, and sex-reassignment surgery.<sup>87</sup>

**Transphobia:** A learned discomfort with, or fear, dislike or hatred of trans persons. Like all prejudices, it is based on negative stereotypes and misconceptions that are then used to justify and support discrimination, harassment, and violence toward people who are transgender.<sup>88</sup>

**Transsexual:** People whose gender identity is different from the sex assigned to them at birth. They may seek or undergo one or more medical treatments to align their bodies with their internally felt identity, such as hormone therapy, sex-reassignment surgery or other procedures.<sup>89</sup>

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<sup>85</sup> *Gender identity and gender expression brochure supra note 63.*

<sup>86</sup> *Policy on discrimination and harassment because of gender identity supra note 64 at 15.*

<sup>87</sup> *Ibid.*

<sup>88</sup> *Trans Inclusion Policy supra note 65 at 52.*

<sup>89</sup> *Gender identity and gender expression brochure supra note 63.*