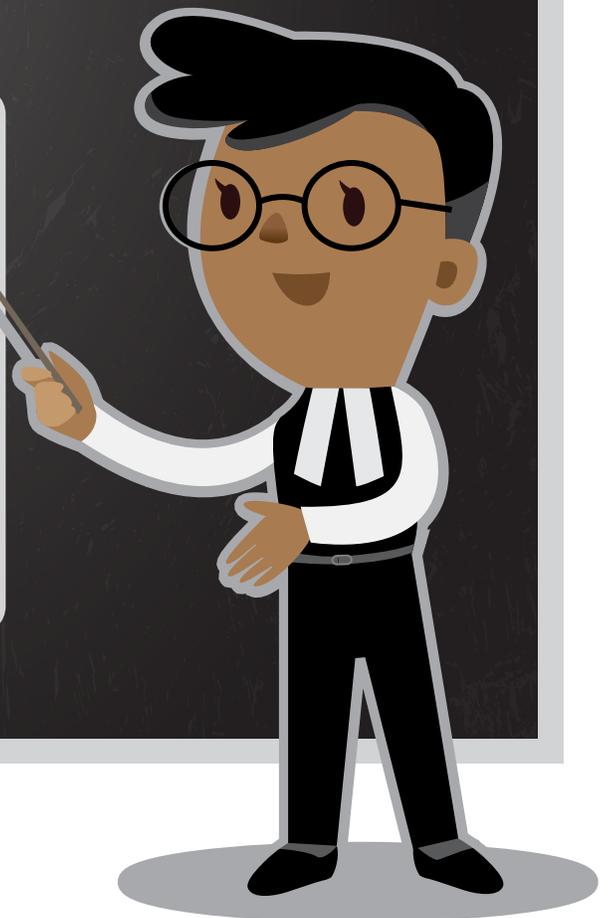




NOVA SCOTIA BARRISTERS' SOCIETY

GUIDELINES FOR LAWYERS: SUPPORTING TRANS* & GENDER-VARIANT CLIENTS, COLLEAGUES & EMPLOYEES

These guidelines, prepared by the EQUITY & ACCESS OFFICE of the NOVA SCOTIA BARRISTERS' SOCIETY, provide lawyers with a baseline understanding of how to support trans* and gender-variant clients, colleagues and employees. The guidelines are designed to allay the fear and discomfort some people feel when they first consider these issues. They define basic terms, explain the principles of trans* and gender-variant inclusion and provide further resources.



March 2017

LANGUAGE

A common understanding of sex, gender identity, gender expression and sexual orientation does not yet exist. Language used to describe these concepts is evolving. Consequently, the language used in these guidelines may need to be updated from time to time.

BASIC TERMS

Identity is complex, with dozens of terms to describe it. It is not necessary to be familiar with all of these terms to be able to support trans* and gender-variant clients, colleagues and employees. It is necessary to understand the difference between sex, gender identity, gender expression and sexual orientation. The following are some common relevant terms:

SEX:

The classification of people as male, female or intersex. Sex is usually assigned at birth and is based on an assessment of a person's reproductive systems, hormones, chromosomes and other physical characteristics.

GENDER IDENTITY:

A person's internal and individual experience of gender. It is a person's sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. A person's gender identity is fundamentally different from and not related to their sexual orientation.

GENDER EXPRESSION:

How individuals publicly express or present their gender. This can include behaviour and outward appearance such as dress, hair, makeup, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender. Others perceive a person's gender through these attributes.

All people, regardless of their gender identity, have a gender expression and they may express it in any number of ways. For trans* people, their chosen name, preferred pronoun and apparel are common ways of expressing gender. People who are trans* may take medically supportive steps to align their body with their gender identity.

GENDERQUEER / GENDER NON-CONFORMING / GENDER VARIANT:

Individuals who do not follow gender stereotypes based on the sex they were assigned at birth. They may identify and express themselves as “feminine men” or “masculine women” or as androgynous, outside of the categories “boy/man” and “girl/woman.” People who are gender non-conforming may or may not identify as trans*.

TRANS* / TRANSGENDER:

Umbrella terms that describe people with diverse gender identities and gender expressions that do not conform to stereotypical ideas about what it means to be a girl/woman or boy/man in society. “Trans*” can mean transcending beyond, existing between, or crossing over the gender spectrum. It includes but is not limited to people who identify as transgender, transsexual, cross-dressers or gender non-conforming (gender variant or gender-queer).

Trans* identities include people whose gender identity is different from the gender associated with their birth-assigned sex. Trans* people may or may not undergo medically supportive treatments, such as hormone therapy and a range of surgical procedures, to align their bodies with their internally felt gender identity.

CIS / CISGENDER:

Cisgender indicates that a person’s gender identity is in line with or “matches” the sex they were assigned at birth. Cis can also be used as a prefix to an assortment of words to refer to the alignment of gender identity and the assigned at birth sex status including cisnormativity, cissexual, cisgender, cis male and cis female.

SEXUAL ORIENTATION:

The direction of one’s sexual interest or attraction. It is a personal characteristic that forms part of who you are. It covers the range of human sexuality from lesbian and gay to bisexual and straight.

*Note: These definitions are adapted from **The 519’s** [Glossary of Terms](#).*

PRINCIPLES TO FOLLOW

PRIVACY AND CONFIDENTIALITY

▶ **Treat a person's assigned sex and legal name as medical information.**

Many organizations gather information about a person's assigned sex or their legal name as a matter of routine. This can cause problems for anybody whose name or gender identity is different from what may be found on their legal documents. Collect this information only if there is a *bona fide* reason for doing so. If collection is necessary, explain to the person why you are collecting it and how you will protect their confidentiality.

▶ **Do not out anybody.**

"Outing" is when one discloses information about somebody else's sex, gender identity or sexual orientation without their consent. All persons have the right to keep this information private as they see fit. Always let the client or employee determine how much they want to share and with whom. If you are unsure, just ask.

Examples:

- *If an employee has disclosed to you that they are in the midst of a transition, do not tell anyone else or make an all-staff announcement without the employee's permission.*
- *If your client's gender identity is not a relevant part of their case, do not refer to it needlessly in court documents.*

▶ **Do not focus on whether somebody has had surgery.**

The decision to have surgery is personal, and is often influenced by an individual's health, finances or family situation. Many trans* and gender-variant people choose not to or cannot have surgery. Surgery does not determine whether or not a person is trans* or gender variant. It is not necessary or appropriate to ask if somebody has had surgery to determine their gender identity.

RESPECTING GENDER IDENTITY

Always allow a colleague, employee or client to determine how they wish to be identified. This includes respecting their used name, gender identity, pronouns and gender expression:

▶ Used name

Many trans* and gender-variant people use a name that differs from their legal name. If it is necessary for you to record a person's legal name, make sure to also record their used name and ensure they are referred to by their used name.

Example:

- *Use an intake form that can accommodate both a legal name (if necessary) and a used name. If your current form can only accommodate one name, enter the used name. If this is not possible, have safeguards in place to ensure that all documents and other forms of communication contain only the employee or client's used name.*

▶ Gender identity

Ensure all persons are able to work and be represented in accordance with their gender identity. This includes people whose gender identity falls outside of the male-female binary (e.g., genderqueer, non-binary, Two-Spirit, agender).

Examples:

- *If the judge or opposing counsel refers to your male-identified client as "Ms. Smith," be sure to correct them with your client's used honorific. You may need to share these guidelines in such circumstances. Note that some people may choose to use an alternate honorific that is gender neutral, such as "Mx" (pronounced /miks/).*
- *If your first contact with a person is via letter, use their full name as a greeting instead of using an honorific (e.g., "Dear Sally Jones" instead of "Dear Ms. Jones".)*
- *Ensure everyone in your office has access to all-gender washroom facilities.*

▶ **Pronouns**

Get into the habit of asking and sharing your own used pronouns during employee recruitment or client intake process. It is important to do this even with employees and clients you assume to be cisgender. Not everybody uses the pronouns he/him/his or she/her/hers. Some people may choose to use alternate pronouns that are gender neutral. Examples include “**they**” (as a singular pronoun), “**ze**” (pronounced /zee/ and replaces “he/she”) and “**hir**” (pronounced /here/ and replaces “him/her”).

Examples:

- *When meeting a new employee or client, inform them of your name and used pronouns and ask them for their own: “Hello, my name is John. I use the pronouns he, him and his. What about you?”*
- *Avoid using the phrase “he or she” in written or oral communication. If the use of a pronoun cannot be avoided, use the singular “they.” (See the [Federal Department of Justice guidelines](#)¹ for information on using “they” when drafting legislation.)*

▶ **Gender expression**

Ensure that dress codes are inclusive of all persons. Dress codes should not promote the idea that dressing appropriately means adhering to traditionally masculine or feminine standards of dress.

Examples:

- *Review your dress code to eliminate gendered references such as “women’s makeup” or “men’s trousers” and different standards for things like hair length or skin exposure.*
- *Do not advise a client to alter their gender expression for when they appear in court.*

1 <http://canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p32.html>

PROMOTING A CULTURE OF INCLUSION AT YOUR WORKPLACE

Take responsibility for the following:

▶ **Employee and client well-being**

Ensure all employees and clients feel safe bringing their “whole self” to the workplace: Use the scorecards in The 519’s [Gender Identity and Gender Expression Toolkit](#)². Where are you doing well? What areas need improvement?

▶ **Display supportive and inclusive visuals**

Posters or inclusive symbols help trans* or gender-variant employees or clients feel welcome.

▶ **Ensure staff receive ongoing education**

Successfully including trans* and gender-variant employees and clients requires ongoing education. Individuals will not be fully educated after a single workshop. Commit to ensuring that all staff receive updated education on an annual basis.

▶ **Create policies before matters arise**

Do not burden a transitioning employee with the responsibility of creating an appropriate office policy. Make sure the workplace abides by human rights law and has trans*-inclusive policies and guidelines in place.

2 <http://www.the519.org/education-training/training-resources/trans-inclusion-matters/creating-authentic-spaces>

WHAT DO YOU DO WHEN YOU MAKE A MISTAKE?

It is okay to make mistakes. If you use the wrong name or pronoun, simply offer a quick, sincere apology and then move on. There is no need to explain yourself, feel ashamed or “draw out” the apology.

CONCLUSION

These guidelines provide a basic introduction to supporting trans* and gender-variant employees and clients. Visit the following web links for further information and resources:

For Nova Scotia-specific information, [The Youth Project](#)³ is a local organization providing professional development sessions that cover issues of sexual orientation and gender identity. Visit its [education](#) page to learn more.

The Nova Scotia government has published [Guidelines to Support Trans and Gender Variant Employees](#)⁴.

Other valuable resources include those from [The 519](#)⁵, a Toronto organization committed to the health, happiness and full participation of the LGBTQ community. [Creating Authentic Spaces: A Gender Identity and Gender Expression Toolkit](#)⁶, a 519 publication, is a free resource that describes barriers to trans* inclusion and provides detailed steps for how employers can make their workplaces more welcoming.

[Pride @ Work Canada](#)⁷ provides online and in-person education on LGBTQ inclusion in the workplace.

The Nova Scotia Barristers’ Society maintains an online resource portal for lawyers and legal entities on matters of employment equity and cultural competence. It includes a section on [sexual orientation and gender identity](#)⁸.

3 <http://youthproject.ns.ca/>

4 <http://0-nsleg-edeposit.gov.ns.ca.legcat.gov.ns.ca/deposit/b10691261.pdf>

5 <http://www.the519.org/>

6 <http://www.the519.org/education-training/training-resources/trans-inclusion-matters/creating-authentic-spaces>

7 <http://prideatwork.ca/>

8 <http://nsbs.libguides.com/content.php?pid=679663&sid=5634680>