

Fighting for the right to work

Discrimination an ongoing issue for trans individuals on the job

By Silvia Pikal

JAN BUTERMAN woke up on October 7, 2008, his birthday, hoping for a low-key day. When the phone started to ring, he had no idea that he was about to be fired from his job for undergoing gender reassignment surgery.

"I was declared not important on my birthday," says Buterman.

At the time, he was working as a substitute teacher in St. Albert. He informed the Greater St. Albert Catholic Schools board in June 2008 that he was transitioning from woman to man. Four months later, Steve Bayus, deputy superintendent, informed Buterman that he was off the substitute teacher list.

Bayus affirmed the decision in a letter sent to Buterman: "Your gender change is not aligned with the teachings of the church and would create confusion and complexity with students and parents."

Transitioning is a long, complex process fraught with lengthy wait times to see specialists; when Buterman applied for the job, his identity papers still used his birth name. He says that after speaking to the Alberta Teachers' Association (ATA), he decided to inform his employers of his transition because he underwent a name change — requiring all new documentation in regards to a passport, driver's licence and banking records. He waited until the summer break in June 2008 before beginning discussions with his employers.

"It's a tragedy for us to be excluded from the workplace for paperwork," says Buterman. "People get married all the time, change their names and the world doesn't fall down."

After being fired for being trans, Buterman again contacted the ATA, informing them about his treatment.

The ATA launched a complaint with the Alberta Human Rights Commission on Buterman's behalf, and last year the Greater St. Albert Catholic Schools district offered him a \$78,000 settlement or a one-year teaching job, with the condition

that he must drop the human rights complaint and never talk publicly about the case. Buterman said he was not comfortable accepting the settlement.

"It came to the point where it was, 'take some money and shut up,'" he says. "I'm not okay with the idea of letting them cover up something I disagree with. This is an opportunity to have discourse."

Shortly after Buterman rejected the offer, the ATA stopped paying his legal fees. Dennis Theobald, a spokesman for the association, says that while they were supportive of Buterman's efforts, they had to consider whether the case would be successful.

Buterman said he is still waiting for the human rights tribunal to make a decision, and that a hearing has not been set. In the meantime, he's pursuing a master's degree at the University of Alberta.

He is not an anomaly. Trans individuals often experience discrimination in the workplace as gender identity is not explicitly protected under the federal or provincial human rights acts. Gender identity is defined as a person's internal sense of being male or female, while gender expression is the external presentation of gender identity through behaviour, clothing and other characteristics.

In June 2000, the Canadian Human Rights Act review panel released a report recommending gender identity be added to the list of prohibited grounds of discrimination. The report stated that until then, the human rights tribunal would have to determine whether a claim fits into the concept of gender identity on a case-by-case basis.

However, some provinces and territories have taken steps of their own. Gender identity is explicitly protected in the Northwest Territories. On June 13, 2012, the Ontario Human Rights Code was amended to include gender identity and gender expression. Manitoba passed an amendment to include gender identity the same month. With these new amendments, those provinces offer protection to



Avery Mitchell won public support in a radio contest but lost half her clients as a teacher.

the job and expect to keep the job," says Jessica Willes, a trans advocate, secretary for Pride Calgary and president of Calgary Outlink. "If we did get inclusion and protection under the charter of rights, that would be a huge start."

Willes was working as an aircraft maintenance engineer for a Calgary company until it became a hostile work environment due to her transition. Willes said she is afraid to file a complaint in case it would be a hindrance when it comes to applying for other work.

"I've heard the story a million times and knew it was a likely possibility," Willes said. "I'm not really surprised it turned out that way. That's the reality we live in."

She is currently upgrading courses and looking for other work.

Similarly, Mercedes Allen, a Calgary-based writer and graphic designer, was managing the Edmonton location of a large Canadian paint store chain in 2005 when she began the transition from man to woman. At the time, she had been with the company for 19 years. Allen spoke to the regional manager of the store about the process and he was positive and understanding, but asked her to hold off on the transition until head office developed a workplace policy for trans individuals. Allen says she waited about six months while working, during which time she started taking hormones. After this period, Mercedes went on stress leave.

"I had already been living as female outside of work," Allen says. "I was constantly having to go back into that closet and, by that point, the process of having to put on that face again was too much."

Allen was anxious to return to work after three months of stress leave and contacted head office several times, but was told there still wasn't a policy in place. Allen waited an additional three months, but by this point her short-term disability stress leave had run out. After disclosing that she was transsexual, Allen said she was denied long-term disability from the employer's insur-

trans individuals when it comes to discrimination in the workplace.

Alberta Liberal MLA Kent Hehr said that the Liberal party supports full inclusion for trans individuals.

"There should probably be a change to the Alberta Human Rights Code that recognizes people who are transgendered," Hehr says. "There's a growing stigma around it, and if we can eliminate some of that stigma by enshrining it into the legislation, why not?"

On June 15, 2012, the Alberta government reinstated coverage for gender reassignment surgeries. The procedures had been delisted in April 2009, leaving trans-identified Albertans to come up with between \$20,000 and \$80,000 of their own money. The policy change will mean up to 25 people per year can have the surgery for a total annual cost of about \$1 million.

The trans community is praising the renewed coverage, but there is still a long way to go before these individuals achieve equality — under Alberta's act, gender identity simply falls under the term "gender." However, it is unclear whether this includes protection for all trans individuals, or only those who have undergone the transition process.

Case by case

"It's pretty dangerous to come out on

“

WE NEED MORE TRANS PEOPLE TO TALK TO THEIR COMPANIES ABOUT DEVELOPING POLICIES, OR EVEN JUST TALK TO THEM ABOUT THEIR TRANSITION IN AN OPEN WAY. IT WOULD GO A LONG WAY TO CHANGING HOW TRANS PEOPLE ARE PERCEIVED IN THE WORKPLACE. IT'S IMPORTANT FOR PEOPLE TO ADVOCATE FOR THEMSELVES.

— Brianne Langille

”



Mercedes Allen was asked to return to work at a reduced wage and lower position.

legal rights.

“At the time there was the perception that we don’t have legal coverage, and, technically, we don’t because we were not explicitly listed in human rights legislation,” she says.

The PULSE project — an Ontario-based organization that seeks to shed light on the challenges experienced by trans people — found that while 71 per cent of trans people have some college or university education, about half make only \$15,000 per year or less. Only seven per cent of respondents made more than \$80,000 a year. One out of five respondents were unemployed or on disability.

Brianne Langille, founder of the Calgary Dyke March and president of the Trans Equality Society of Alberta, currently works for Telus, where she is helping the company develop a trans-inclusive policy. Langille says that policies in the workplace are key to protecting trans individuals, particularly when they transition on the job. In addition, Langille says the community needs advocates and allies willing to speak up for trans rights to reduce workplace discrimination.

“We need more trans people to talk to their companies about developing policies, or even just talk to them about their transition in an open way,” says Langille. “It would go a long way to changing how trans people are perceived in the workplace. It’s important for people to advocate for themselves.”

Exposure

Last year a local radio station, Amp Radio Calgary, ran a controversial contest where the prize was a \$10,000 breast augmentation. The entrants were required to submit a photo of themselves, along with a statement explaining why they deserved to win. The station narrowed the entries down to 10 finalists, which were then posted on the Amp website to be voted on by the public. Avery Mitchell, 24, a Calgary-based music teacher, producer and musician who was transitioning from male to female,

won by a landslide, receiving 76 per cent of 30,000 online votes.

In February 2011, Mitchell announced her transition at the music store where she gives guitar lessons. Her students — mostly young children — were all notified. She had been taking hormones for four months.

“When I transitioned I lost about half my clients,” Mitchell says. “It was brutal.”

While her manager and coworkers are supportive, she is concerned that finding other work will be a problem while transitioning.

“When I go for a job interview or hand in a job application... people look at me like, ‘you think you can get this job?’” Mitchell says. “I feel like when you go into a lot of places, people go off of stereotypes. They think you’re going in dressed as a girl handing in a resumé.”

Mitchell’s success in the Amp contest demonstrates that attitudes are changing. On a national level, Vancouver’s Jenna Talackova made headlines after being disqualified from Miss Universe Canada in March 2012, on the grounds that she was not a “naturally born” woman. She fought, and won, the right to compete in the Miss Universe pageant.

In Parliament, laws have been introduced that seek to protect the rights of trans individuals in Canada. In 2011, NDP MP Randall Garrison and Liberal MP Hedy Fry each introduced a private member’s bill in the House of Commons that proposes to amend the Canadian Human Rights Act to prohibit discrimination based on gender identity and gender expression. In addition, both Bill C-276 and Bill C-279 would amend the Criminal Code to include trans individuals as a recognized group, so that crimes committed against this group would be treated as hate crimes.

Private members’ bills, introduced by backbenchers and opposition MPs, rarely become law, but if one of the bills does pass, it could encourage education and awareness around trans issues.

Garrison introduced Bill C-279 in September 2011. The bill passed second reading in June and now heads to committee before returning to the House for third reading and ultimately the Senate. Fry’s Bill C-276 is identical to Garrison’s law, so it is unlikely it will move forward unless C-279 is defeated.

Allen says that an amendment to human rights legislation would have benefited her in the workplace. “There wouldn’t have been this resistance to finding out about me and what having me as a store manager would have really meant to the company,” Allen says. “Inclusion would have helped as it would have given the company impetus to generate a trans-inclusive policy probably even before I transitioned.”

The last time there was a big review of the Alberta Human Rights Act was about 15 years ago, and trans rights were not on the agenda, but Audrey Dean, senior legal counsel to the Alberta Human Rights Commission, says that might change. “I suspect it may be considered later,” she says. “The act hasn’t been amended for some time and it’s a bigger issue now.”

Pressing on

James Demers, co-chair for the Calgary Miscellaneous Youth Network, and outreach co-ordinator for the Fairy Tales Presentation Society, is still debating whether to file a human rights complaint against the company that fired him.

Now 23, Demers started his transition from woman to man at the age of 19. At the time, he had been working as a carpenter’s apprentice with a small construction company in Calgary. He started his apprenticeship in high school and had been with the company for over three years. Before transitioning, Demers identified as a lesbian, and says nobody had a problem with it. “I think it’s because we had women in common at least,” he jokes.

When he announced his transition, however, the company wasn’t supportive.

“Being in a small company on a construction site, you really rely on the people around you for safety,” Demers says. “It didn’t take very long for me to feel unsafe on site.”

Demers took a month leave over Christmas to let things cool down and the company reassured him that he would still have a job when the leave was over, but when he called back, he was told he should work somewhere else.

“It was a bit rough,” says Demers. “It meant my apprenticeship was halted.”

Demers is currently a third-year apprentice carpenter with a different company, which is supportive and has given him sick time for surgeries.

For Demers an amendment to the Alberta Human Rights Act would streamline the process of filing a human rights complaint for trans individuals.

“Right now I’d be looking at the situation of suing the company, and doing what this bill would already do — making a case that trans people exist in the charter,” he says.

It took over a decade for Alberta to amend the human rights act to include protection for sexual orientation — Delwin Vriend, a former lab instructor at a Christian college in Edmonton, was fired in 1991 because he was gay; the Alberta Human Rights Commission would not hear his case on the grounds that sexual orientation was not a protected class, so Vriend took his battle all the way to the Supreme Court. In April 1998, the court ruled that provincial governments could not exclude gays, lesbians and bisexual people from human rights legislation. Alberta, however, didn’t officially change the legislation until 2009.

Jan Buterman will continue to fight for trans rights in the workplace, even if it takes several years for the human rights legislation to change. “Social change takes a long time,” he says. “It’s a slow process, but it opens a possibility for things to be more wonderful for trans people.”

Comment on this story at ffwdweekly.com

er. Allen waited a total of one year to hear whether there was a policy in place.

After six months of stress leave and still no word, Allen was desperate to get back to work as she didn’t want to lose her job. She began negotiating with head office to find a solution. She was told that to be able to return as a woman, she had to take a lower position at the store.

“There was this fear from head office of a transsexual store manager in ‘redneck Alberta,’” says Allen.

Customers and coworkers, however, were supportive. “Many of the customers that we dealt with were contractors and painters,” says Allen. “Many of them by this point knew and were very positive.”

Allen returned as a customer service representative, not a manager, and at a reduced wage. She was also expected to repay her short-term disability coverage out of her paycheque. She worked in this new role for just under a year before leaving for another job.

“The biggest reason I stayed on is I would have lost my work history due to my name change,” Allen said. “To change jobs at the same time as transitioning makes it difficult and I would have to justify that in job interviews.”

Allen did not proceed with legal action because she was unsure of her