

HOMOPARENTAL FAMILIES: SOCIETY'S LEGAL AND ETHICAL RESPONSIBILITIES



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HOMOPARENTAL FAMILIES: SOCIETY'S LEGAL AND ETHICAL RESPONSIBILITIES

All families have the legal and ethical right to be safe and recognized. Civil society groups and tribunals, supported by our laws and charters, advocate for the well-being of all families, including families with lesbian or gay parents. The following is a description of the laws, jurisprudence and policies that guarantee the safety, protection and social integration of homoparental families.¹



1

From legal to social equality: Towards a national strategy to fight homophobia [Translation], Québec's Human and Youth Rights Commission.

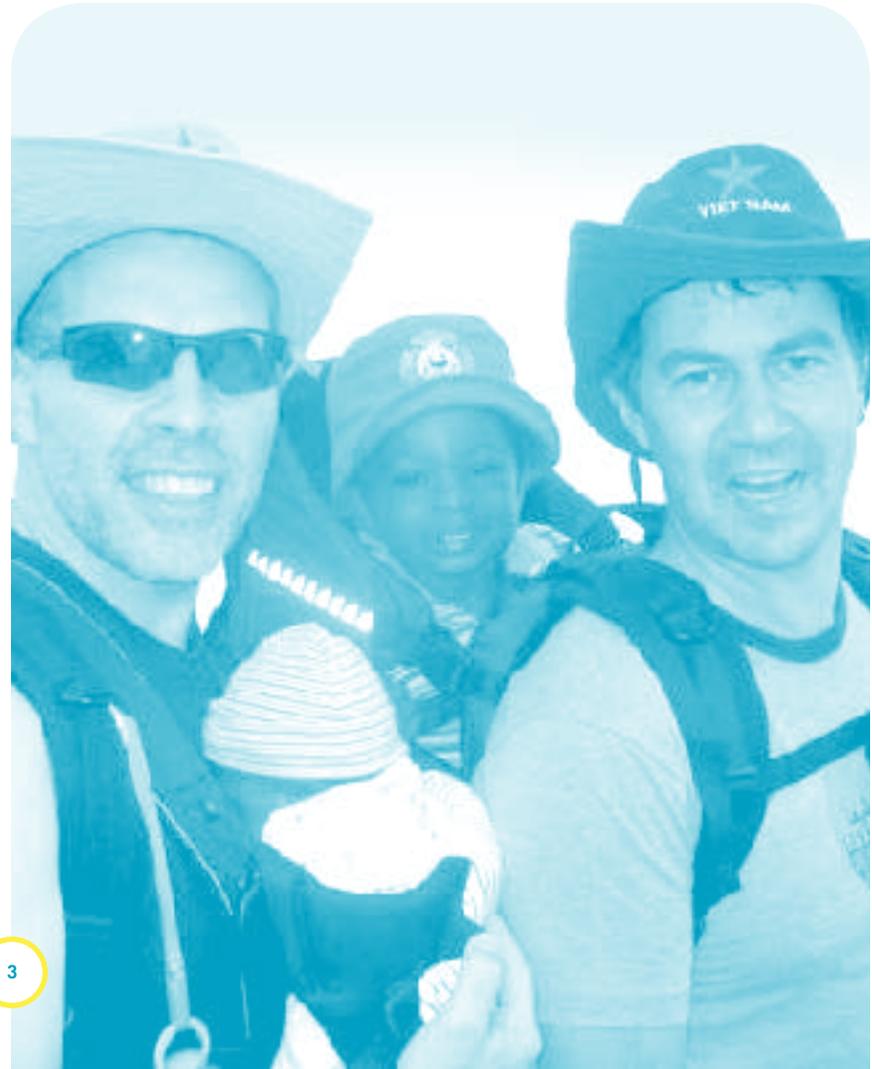
Backed by Québec's Charter of Human Rights and Freedoms, the province's Human and Youth Rights Commission—the Commission des droits de la personne et des droits de la jeunesse du Québec (CDPDJ)—published a report in 2007 on the existence of homophobia and heterosexism in Québec. According to the report, services and institutions need to be adapted to address this issue. Of the CDPDJ's numerous recommendations, several concerned the specific needs of homoparental families.²

Here are some of the report's highlights:

13.1.1.1 The Ministry of Health and Social Services (MSSS) must ensure the promotion of services that are adapted and receptive to the realities of sexual minorities and homoparental families in order to provide suitable care within the health and social services network.

13.2.1.1 The Ministry of Education, Recreation and Sports (MÉLS) must require school administrations to educate their personnel (teachers, health professionals, social workers, coaches, activity leaders, etc.) about the realities of sexual minority youth, homoparental families and the issue of homophobia, paying special attention to the risk of homophobic incidents within the school.

13.3.1.5 The Ministry of Families and Seniors (MFA) must encourage daycare centre management to ensure that the realities of homoparental families are covered during ongoing training offered to early childhood educators.



In Québec, inclusive teaching practices are not only an ethical responsibility, but a legal one. Thus, Article 22, Line 3 of the **Education Act** (R.S.Q. Ch. I-13.3) states that:

« *A teacher shall: take the appropriate means to foster respect for human rights in his or her students.* »

It is important to note that this obligation applies not only to teachers, but to other stakeholders, including school administration.

Furthermore, **Article 1460 of the Civil Code of Québec** highlights how Québec schools are responsible for their minor students. Children under 16 are legally required to attend school (where they spend at least seven hours a day). Parents entrust teachers and administrators with the responsibility for their children's safety and well-being. Schools act in *locus parentis*, and are therefore responsible for the well-being of those in their charge.

A person who, without having parental authority, is entrusted, by delegation or otherwise, with the custody, supervision or education of a minor is liable, in the same manner as the person having parental authority, to reparation for injury caused by the act or fault of the minor. Where he is acting gratuitously or for reward, however, he is not liable unless it is proved that he has committed a fault.

Finally, a **Supreme Court of Canada judgment** also recognized that schools play a key role in promoting respect for human rights. Given the age and vulnerability of their clientele and their educational mandate, fundamental human rights are an important issue. The Supreme Court declared:

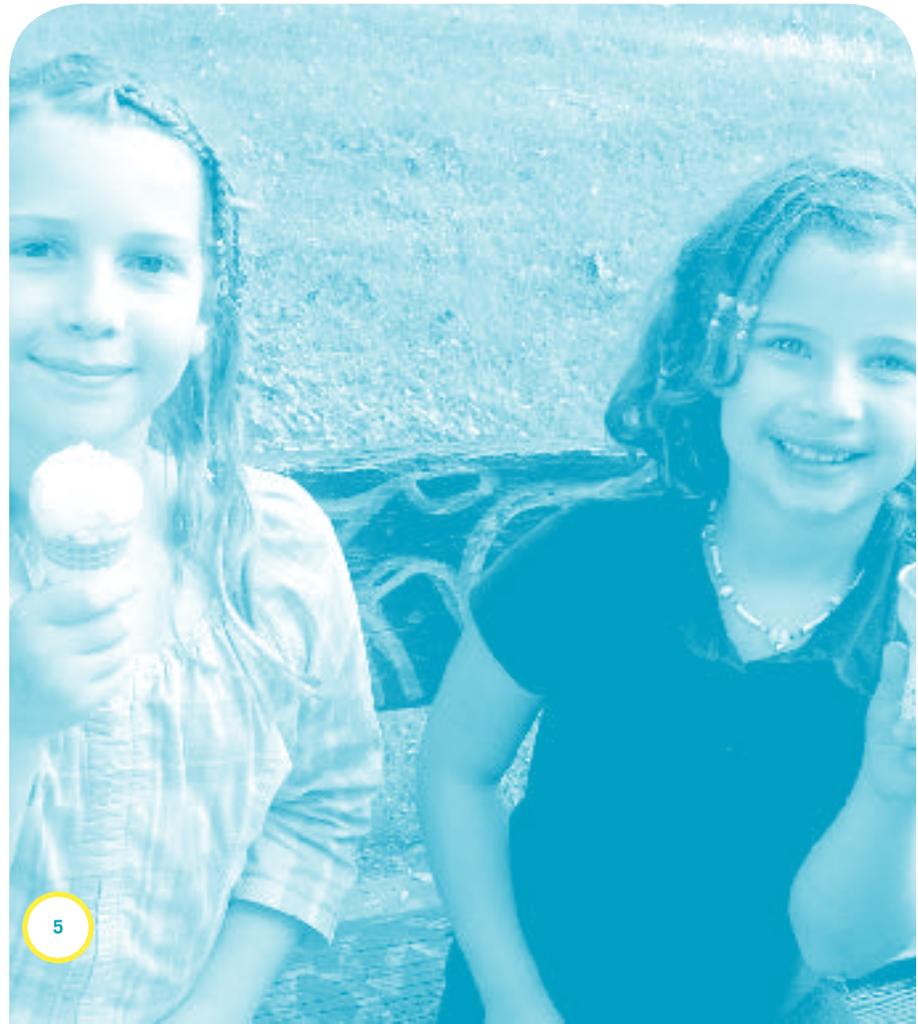
« *A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate... A school board has a duty to maintain a positive school environment for all persons served by it.*³ »

As well as:

« *Our Court accepted ... that teachers are a medium for the transmission of values. It is obvious that the pluralistic nature of society and the extent of diversity in Canada are important elements that must be understood by future teachers because they are the fabric of the society within which teachers operate and the reason why there is a need to respect and promote minority rights... Schools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance.*⁴ »

Legal precedents now exist in Canada that underline the responsibility of schools and school boards in regards to the safety and well-being of students faced with homophobia. In June 1996, Azmi Jubran, a Grade 10 student at Handsworth Secondary School in North Vancouver, lodged a human rights complaint, claiming he was a victim of discrimination since the school board failed to protect him because of his sexual orientation. Despite being heterosexual, Azmi Jubran experienced harassment, insults and bullying of a homophobic nature because he was perceived as being gay. Although the school reacted to certain specific incidents, the tribunal concluded that the school had been negligent in failing to modify its strategy to combat the overall discriminatory, homophobic culture that reined the halls. On April 6, 2006, the British Columbia Supreme Court reiterated that public schools have the obligation, as a preventative measure, to create educational environments free of discriminatory harassment based on real or perceived sexual orientation.⁵

The tribunal also declared that homophobic harassment was not unique to Azmi Jubran's high school, but that it was deep-rooted problem in all schools. The tribunal considered it of no importance that Azmi Jubran was not gay.



3

Adoption of non-discriminatory policies by certain youth institutions and organizations in Québec and Canada

Certain educational institutions and organizations that work with young people in Québec and Canada have already adopted non-discriminatory policies. These policies stipulate that the institution will not tolerate people being treated differently, being insulted, harassed, or attacked because they are gay, lesbian, bisexual or because someone thinks they are. Adopting and implementing this type of policy sends a clear message to young people that they are recognized, respected and equal, and that their safety and well-being are taken to heart. On September 1, 1999,



Commission scolaire de Montréal (CSDM) trustees passed a resolution amending its sexual harassment policy to include sexual orientation as a motive for harassment. This resolution led to the adoption, on December 22, 1999, of the “Politique concernant les moyens de contrer le harcèlement fondé sur le sexe ou sur l’orientation sexuelle”⁶ [Policy regarding methods to counter harassment based on gender or sexual orientation]. With this policy, the CSDM made the following commitments:

The CSDM intends to protect the rights of all people in an environment free of harassment based on gender or sexual orientation.

The CSDM recognizes that, in the case of harassment on the grounds of gender or sexual orientation, effective measures must be taken in order to stop it.

The CSDM recognizes that any person who believes he or she is a victim of harassment based on gender or sexual orientation has the right to be protected by support mechanisms and appropriate recourse.⁷

4

Québec preschool and primary programs

The new preschool and primary programs, approved by the Minister of Education in June 2001,⁸ make room for notions related to the acceptance of differences, as well as self-respect and respect for others; all fundamental aspects in the fight against homophobia. Furthermore, they allow teaching staff to teach about sexual diversity and homophobia in an age-appropriate manner.

5

Adoption of policies by unions and professional associations to fight homophobia

Several unions and professional associations have also adopted policies to combat homophobia. La Centrale des syndicats du Québec (CSQ), la Confédération des syndicats nationaux (CSN), la Fédération des travailleurs et travailleuses du Québec (FTQ), l'Alliance des professeurs de Montréal and the Canadian Teachers' Federation (CTF) are some examples.

6

Responsibilities of Québec health and social services

The Québec law on health and social services⁹ states that the health and social services system must be respectful of the characteristics of the clientele being served and meet their needs (MSSS, 1997). The MSSS's department orientations concerning the adaptation of health and social services to the realities of homosexuals propose different areas of intervention, intended to eliminate "all discrimination from the provision of health and social services." These actions are intended to help in "fighting discrimination against gays and lesbians" as well as to "[adapt] services to the needs of this clientele," be they adults or youth.

7

Act instituting civil unions and establishing new rules of filiation (Québec)

The year 2002 was the year Bill 84, the *Act instituting civil unions and establishing new rules of filiation*,¹⁰ came into force. Recognized legally only in Québec, this act created a new institution—the civil union—and modified rules of filiation¹¹ by authorizing two mothers or two fathers to be named on a child's birth certificate. As such, same-sex parents are legally equal and have the same rights and responsibilities towards their children as heterosexual parents. Samesex partners can also apply to adopt as a couple.

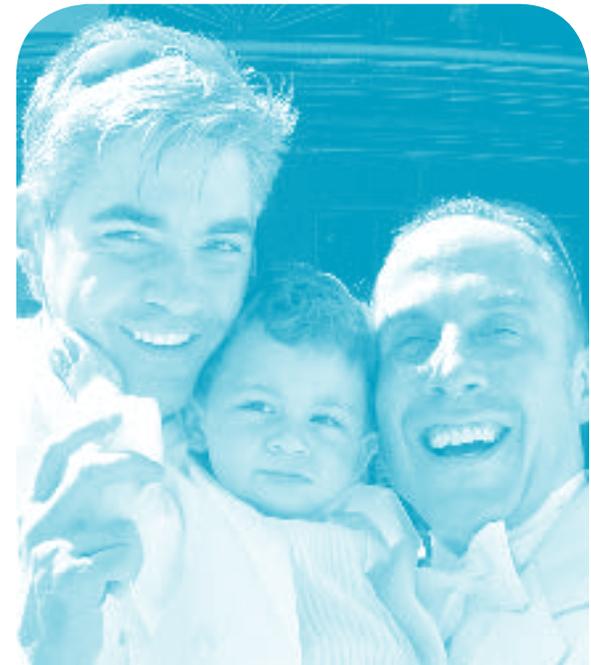
On June 28, 2005, the Canadian House of Commons ratified the *Civil Marriage Act*,¹² allowing same-sex couples to marry in parts of the country where same-sex marriage had not already been legalized.

In Québec, in 1977, with the inclusion of sexual orientation as one of the motives for discrimination, Québec's Charter of Human Rights and Freedoms became an important legal instrument for the recognition of gay and lesbian equality.

All people are entitled to be recognized and to exercise, in full equality, their human rights and freedoms without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap. (Articles 10 and 10.1 of the Charter)

Since the beginning of the 1980s, the Charter has been successfully used in Québec tribunals. Our laws forbid discrimination. No group may be harassed or insulted. The Charter promises to protect and defend citizens, including, of course, gay, lesbian, bisexual and transgender people as well as their children.

- 1 The material in this section comes from three documents: a) Commission des droits de la personne et des droits de la jeunesse – Québec (2007). *De l'égalité juridique à l'égalité sociale : Vers une stratégie nationale de lutte contre l'homophobie*; b) Commission des droits de la personne et des droits de la jeunesse – Québec (2002). Conference proceedings "Jeunes gais et lesbiennes : Quels droits et libertés à l'école ?"; c) Coalition jeunesse montréalaise de lutte à l'homophobie (2005). Guide de ressources et de sensibilisation "Orientation sexuelle et homophobie : Mieux intervenir auprès des jeunes."
- 2 For the complete list of recommendations, please see CDPDJ (2007), *op. cit.*
- 3 *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825
- 4 *Trinity Western University v. College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31
- 5 *School District No. 44 (North Vancouver) v. Jubran* (2005) B.C.C.A. 201.
- 6 Commission scolaire de Montréal. POLITIQUE CONCERNANT LES MOYENS DE CONTRER LE HARCÈLEMENT FONDÉ SUR LE SEXE OU SUR L'ORIENTATION SEXUELLE. CSDM Provisional Council Resolution XXIV on June 3, 1998. Amendment: Council of Commissioners, Resolution XVIII on December 22, 1999.
- 7 Martin & Beaulieu, 2001, p. 11.
- 8 Ministère de l'Éducation, Programme de formation de l'école québécoise : éducation préscolaire et enseignement primaire, 2001.
- 9 Ministère de la Santé et des Services Sociaux. Adapting Health and Social Services to Homosexuals: Department Orientations. Québec, ministère de la Santé et des Services Sociaux, 1997.
- 10 Bill 84 (2002, chapter 6) An Act instituting civil unions and establishing new rules of filiation. www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2002C6A.PDF
- 11 Filiation is the legal bond between a child and his or her parents. At the legal level, filiation must be clearly established to ensure recognition for the resulting rights and obligations, in other words, the parents must be clearly identified.
- 1 Bill C-38 was adopted by the House of Commons and the Senate on 28 June and 19 July 2005 respectively and came into effect with Royal Assent on 20 July as Chapter 33 of the Statutes of Canada for 2005.





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