



Making Benefit Plans Inclusive for LGBTQIA2S+ Members

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Presented to ISCEBS, Alberta Chapter, September 23, 2021

Introduction

Who am I? Why
listen to me?

A note about
language

Terminology & key concepts

LGBT / LGBTQ+ / LGBTQIA2S+

Gender / sex / orientation

Cisgender / transgender / GNC

“assigned at birth” – AMAB, AFAB

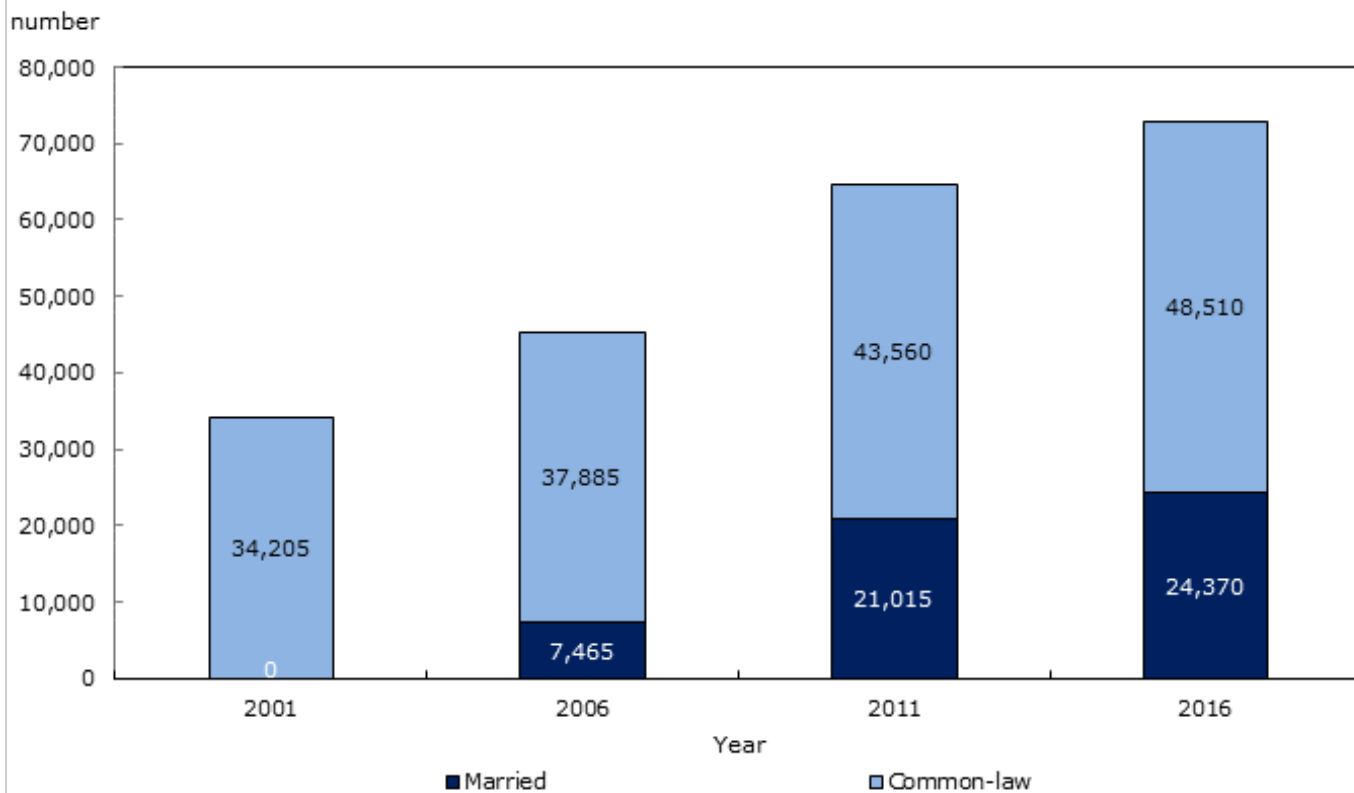
Multi-adult partnerships (polyamory)

Pronouns, honorifics

Deadnaming

Chart 1

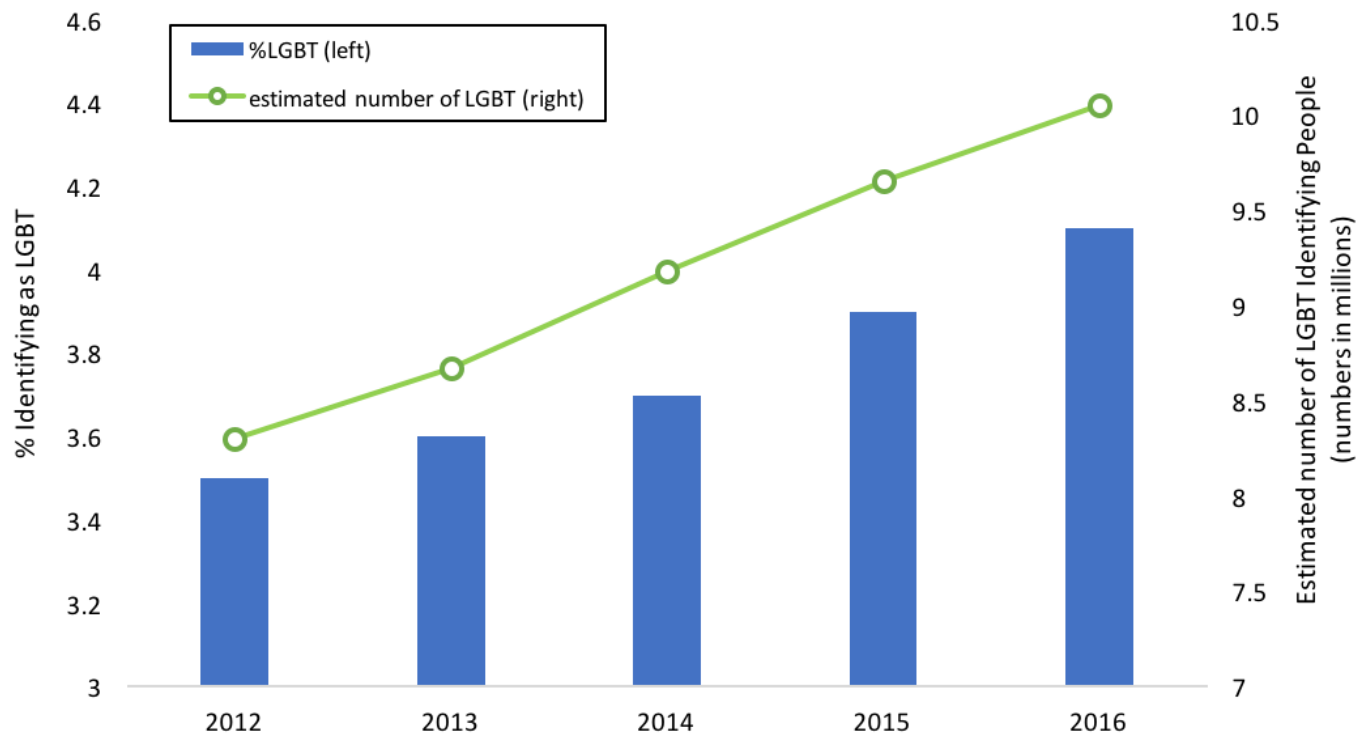
Same-sex couples, by conjugal status, Canada, 2001 to 2016



Source: Statistics Canada, Census of Population, 2001, 2006, 2011 and 2016.

- Based on Canadian Community Health Survey data from 2015-2016 and 2017-2018, Statistics Canada estimates there are 900,000 lesbian, gay and bisexual Canadians (3.3% of the population).
- The population is skewed to younger ages.
- Data on trans people will be available for the first time following the 2021 census.

U.S. Adults Identifying as LGBT, 2012-2016 (Gallup)



Source: Gates, Gary J. "In US, More Adults Identifying As LGBT." Gallup.com. January 11, 2017

Chart by Tristan Bridges

Percentage of U.S. Adults Identifying as LGBT by Birth Cohort, 2012-2016

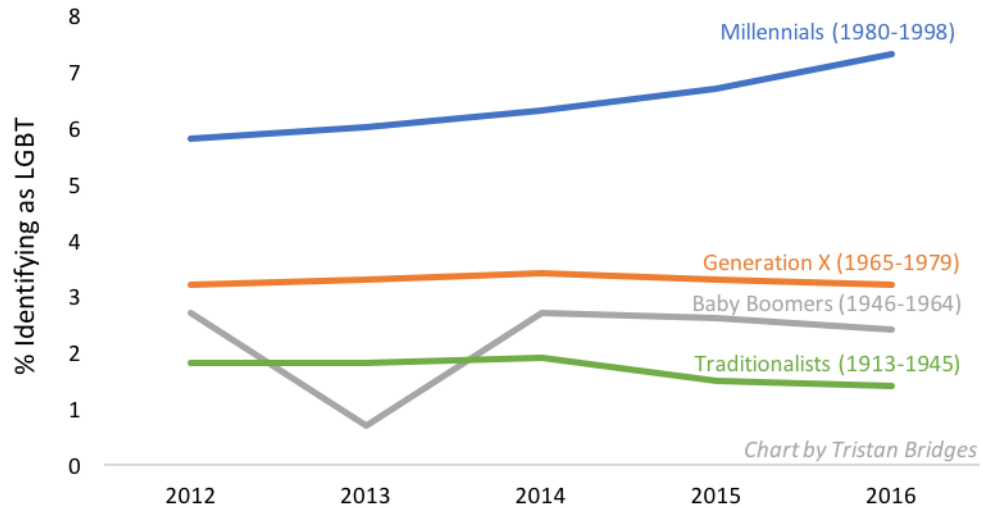
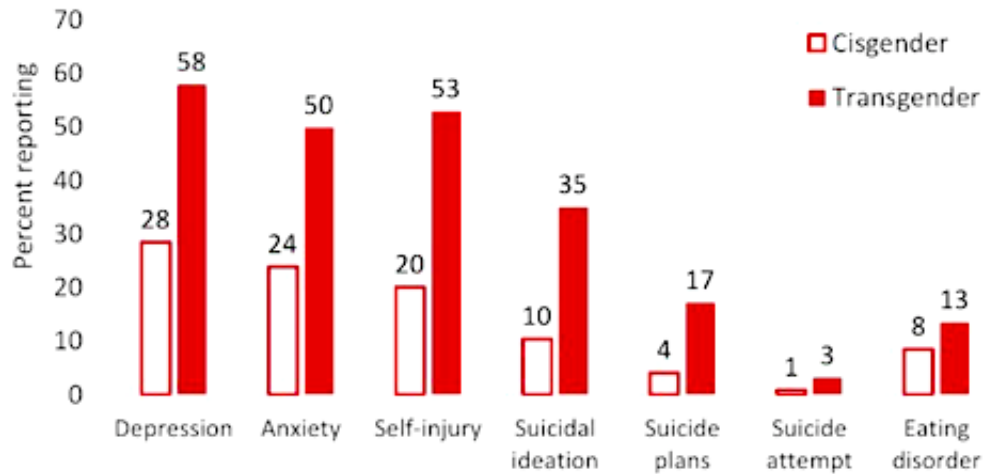


Chart by Tristan Bridges

Source: Gates, Gary J. "In US, More Adults Identifying As LGBT." Gallup.com. January 11, 2017

Transgender vs. cisgender health disparities

Percent of students reporting mental health conditions



- Chart based on [https://www.ajpmonline.org/article/S0749-3797\(19\)30219-3/fulltext](https://www.ajpmonline.org/article/S0749-3797(19)30219-3/fulltext)

Pulse study (2020)

- Survey of trans and non-binary people
 - 45% of survey respondents said they had an unmet health care need in the previous year (contrast 4% of general population)
 - 1/3 said they had considered suicide in previous year
- <https://transpulsecanada.ca/results/report-1/>

Pulse Study (2021)

- 47% of non-binary respondents felt comfortable discussing their gender-related concerns with their primary care provider
- 1 in 3 had a primary care provider that had no knowledge of non-binary or trans health needs
- 59% were misgendered daily
- In the past year, 47% of non-binary participants were referred to by their correct name or pronouns by their provider, compared to 80% of other participants.
- Non-binary respondents reported worse mental health than binary trans respondents.
 - <https://transpulsecanada.ca/results/report-health-and-well-being-among-non-binary-people/>



SPECIAL TREATMENT

Potash

- New Brunswick (Human Rights Commission) v. Potash Corporation of Saskatchewan Inc., 2008 SCC 45
 - “In my view, for a pension plan to be found to be “*bona fide*” within the meaning of s. 3(6)(a), it must be a legitimate plan, adopted in good faith and not for the purpose of defeating protected rights.”

Human Rights Code (BC)

- 8(1) A person must not
 - (b)discriminate against a person or class of persons regarding any ... service ... customarily available to the public...because of the ... sex, sexual orientation, gender identity or expression...
- (2) A person does not contravene this section by discriminating
 - (a)on the basis of sex, if the discrimination relates to ...the determination of ...benefits under contracts of... health insurance, or
 - (b)on the basis of *physical or mental disability or age*, if the discrimination relates to the determination of ...benefits under contracts of ... health insurance.

Human Rights Code (BC)

- **13** (1)A person must not
 - (b)discriminate against a person regarding employment or any term or condition of employment
 - because of the ...sex, sexual orientation, gender identity or expression, ... of that person ...
- (3)Subsection (1) does not apply
 - (b)as it relates to marital status, physical or mental disability, sex or age, ...to a bona fide group or employee insurance plan, whether or not the plan is the subject of a contract of insurance between an insurer and an employer.

Systems design

- Forms
- Change procedures ('proof')
- Computer databases
- Call centres
- Staff & training



Disclaimer: The Government of Alberta cannot guarantee that a birth certificate with the non-binary marker "X" will be accepted by authorities in other organizations.

Typical enrollment form

Plan member information

To be completed
by employee

Plan member's last name _____ First name _____

Date of birth (dd/mmm/yyyy) _____ Sex ☐ Male ☐ Female Province of residence _____

Language ☐ English ☐ French Do you have a spouse? (married, common law or civil union?) ☐ Yes ☐ No

Forms and systems

- Consider:
 - Name-in-use and legal name
 - Title (allowing for non-standard titles e.g. Mx.)
 - Pronouns (again allowing for non-standard)
 - Sex, gender (do you need to know? Space for “X”)
 - Relationship status (do you need to know?)
- Then USE the info (carefully)

Privacy considerations

- *Re: Edmonton Public School District No. 7, Order F2016-26*
 - Breach of the Freedom Information and Privacy Act to reveal trans student's legal name to fellow students

Access problems

- Do your fraud detection systems discriminate?
 - Can women get prostate exams if she has a prostate?
 - Will a man be flagged if he submits a claim for a drug to treat ovarian cancer?
- If there is a flag, what information is requested to clear that flag?

Common exclusions

- Some common benefit exclusions disproportionately affect queer communities.
 - Contraception
 - PrEP
 - Fertility assistance
 - Sexual function medication
 - Treatment for thinning hair / wigs
 - “medical necessity” / “cosmetic purposes”
 - Needles and syringes (when not for insulin)
 - Mental health exclusions

Access barriers

- Standard design / gatekeeping
 - Infertility: requirement for 6m unprotected sex
 - Requirement for certain specialists' review
- Questions re surgical status
- Proving medical necessity
- Negative perception of “doctor shopping”
- Costs
 - Copays
 - Travel costs



Pre-existing conditions

- Being transgender no longer permitted as preexisting condition under Obama's healthcare reform

Fertility

- *Toronto (City) v. Toronto Professional Fire Fighters' Association*, 2009 CanLII 28639 (ON LA)
 - Gay couple used surrogacy to have a child
 - Insurer denied coverage for fertility medication for surrogate and egg donor



- “The benefit is not child production, it is fertility drugs; and the appropriate comparator is not persons with different forms of infertility disability who could benefit from taking fertility medication, but those whose disabilities – of whatever kind – are not amenable to drug therapy (whether or not, through a contractual arrangement, they could derive some benefit, or even the same benefit, out of the drugs being taken by others).”

“Cosmetic” procedures

- Appellant v Manitoba Health, Healthy Living and Seniors, Insured Benefits, 2015 CanLII 94115 (MB HAB)
 - Transgender woman sought approval for hair removal (laser and electrolysis) at public expense
 - Health Appeal Board: letter from physician and woman’s testimony demonstrated medical necessity of hair removal (psychological best interest)

...but not in Ontario

- Contrast Brodeur v. Ontario (Health and Long-Term Care), 2013 HRTO 1229
 - Transgender women sought provision at public expense of hair removal, speech therapy and breast augmentation
 - Complainants failed to demonstrate “medical necessity” for speech and hair removal. Breast services were funded at the same rate trans as cis women.

Polyamory

- “If the number of people involved in polyamorous relationships is indeed growing, the potential economic and legal implications are significant, as almost all of Canada’s most important social institutions are predicated on the assumption that adult relationships come only in pairs.”
 - Boyd, J-P. “Polyamory in Canada: Research on an Emerging Family Structure.” Transition (guest post). The Vanier Institute of the Family.

Underwriting

- “Transgender individuals who receive adequate care can expect a marked improvement of their symptoms of gender dysphoria. There is mild to moderate extra mortality, especially in younger individuals...The extra mortality is mainly due to suicide with a slight increase in cardiovascular deaths.”
 - <https://www.munichre.com/ca-life/en/perspectives/2018/underwriting-gender-dysphoria.html#1607058741>

Why you should care.

- Population estimates
- Cost of not treating
 - Violence
 - Mental illness/suicide
- Loss of talent, recruitment challenges
- Demands of society

Key Takeaways

- Systems design, exclusions and access can intentionally or unintentionally discriminate against LGBTQ+ people
- Legal trends appear to support increased benefit provision, although movement is slow
- Discrimination is not exempted in the HRC
- Reviewing benefits can be a recruitment and retention tool

Further resources

- www.egale.ca
- <https://prideatwork.ca/>
- <https://ccgsd-ccdgs.org/>
- www.transpulseproject.ca
- www.transpulsecanada.ca
- <http://www.phsa.ca/transcarebc/>