

# local news

## Heard at last

*Transsexuals in Portland are on the verge of securing basic civil rights*

by Inga Sorensen

**T**he Metropolitan Human Rights Commission has voted unanimously to recommend the inclusion of "transsexuals and other sexual minorities" in Portland's human rights ordinance.

The recommendation comes on the heels of fact-finding hearings held in late March and April that were designed to assess the level of discrimination against those populations in Portland.

"I burst into tears when they voted unanimously," transsexual rights activist Margaret Deirdre O'Hartigan told *Just Out* the morning after the Oct. 8 vote. "I cried because I'm always stunned when people actually hear us."

Last January, O'Hartigan requested that the Portland City Council extend civil rights protections to transsexuals by amending the city's Civil Rights Code, which currently covers several categories including sexual orientation.

The MHRC hearings were the immediate result of that request. Nearly 30 people submitted oral or written testimony; 11 people testified they had personally experienced or witnessed discrimination against transsexuals in employment, housing or public accommodations in Portland.

An MHRC report states that while the data compiled from the hearings is "insufficient to clearly establish" whether there is a "system or pattern" of discrimination in Portland against transsexuals, the testimony about broader discrimination and harassment was enough to convince commission members to recommend that transsexuals be covered by the city Civil Rights Code.

"This has been a real learning experience for many members of the commission," says MHRC Executive Director Helen Cheek. "Prior to this, many of us didn't know a whole lot about transsexuals and the problems they encounter. We heard these heart-rending stories about how they have been mistreated by family, employers, the insurance and medical communities. There clearly is a lot of harassment and discrimination going on out there."

### BOLI will investigate transsexuals' discrimination claims

An official with the Oregon Bureau of Labor and Industries, the agency charged with enforcing state anti-discrimination statutes, says BOLI will immediately begin accepting discrimination claims based on transsexualism.

BOLI had been under fire from some critics, including transsexual activist Margaret Deirdre O'Hartigan, who blasted the agency for its prior refusal to investigate such claims.

During a Metropolitan Human Rights Commission hearing this spring, O'Hartigan testified that BOLI had failed to enforce the law when it declined to investigate transsexuals' claims of discrimination in employment.

"In the past, they failed to investigate our complaints on the basis that we were not a protected class," she said. "But in fact we fall under the state's disability statutes. How can we expect to be treated fairly when an agency whose job is to protect us refuses to uphold the law?"

O'Hartigan then presented MHRC members with a 16-page report detailing BOLI's alleged misconduct. During those hearings another trans-

sexual, during the hearings, supporters shared tales of harassment, and voiced frustration with the insurance industry for denying coverage for sex-reassignment surgery. A female-to-male transsexual testified he had been fired from a job in Portland after his employer learned he was a transsexual. Others talked about being the victims of anti-transsexual violence.

Cheek says, "While some of that testimony did not pertain to our mandate, it was important to hear that testimony in order for us to get a sense of how far-reaching the problem may be."

She says the commission's report and recommendation will be forwarded to Portland City Commissioner Gretchen Kafoury, who will decide whether to take the proposal to the City Council.

That has O'Hartigan nervous. "Actually, I'm terrified that Gretchen Kafoury is handling this," she says. "When I first started talking about [amending the code to include transsexuals], Helen Cheek was open to the idea, but Kafoury's office nixed it. I was told by [former Kafoury aide] Ben Merrill that they had spoken with other commissioners and decided they didn't want to give the OCA any more ammunition."

Kafoury admits she questioned whether O'Hartigan's timing was prudent.

"When this idea was first brought up, the Oregon Citizens Alliance was circulating petitions [for another anti-gay initiative]," she says. "I wondered whether it was wise to do that then, and I asked Margaret whether she could delay this. That was the issue for me. Luckily the OCA seems to have dissolved under its own weight."

When *Just Out* spoke with Kafoury she had not seen the final MHRC report, and thus could not comment on it.

Cheek, meanwhile, says three cities—San Francisco, Minneapolis and Seattle—include transsexuals in city civil rights codes, as does the state of Minnesota.

says Marcia Ohlemiller, a BOLI legal policy advisor. "We'll handle those claims the way we do all the others."

According to Ohlemiller, BOLI officials took a close look at relevant legal cases and the state disability statute, which was approved in the 1970s and bars employers from discriminating against a person due to a physical or mental impairment. The law also bans discrimination in public accommodations based on one's physical or mental impairment. Additionally, it prohibits discrimination if the person is simply regarded as having a physical or mental impairment.

Some transsexuals, O'Hartigan among them, say disability statutes clearly apply to them. For ammunition, they point to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, which classifies transsexuals as having a mental disorder.

According to Ohlemiller, the Americans with Disabilities Act, a federal disability law passed in 1990, specifically excludes transsexuals from its protections. But she says an earlier federal statute, the Rehabilitation Act of 1973, does not.

"And we at BOLI, after looking at the legislative history involving the state law, concluded that the state statute was really fashioned on the Rehabilitation Act," she says. "Now a case may go up to the Court."

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