



GENDER IDENTITY

YOUR RIGHTS & RESPONSIBILITIES

ONTARIO'S HUMAN RIGHTS CODE

The Ontario *Human Rights Code* (the “Code”) provides for equal rights and opportunities, and freedom from discrimination. The *Code* recognizes the dignity and worth of every person in Ontario and applies to the areas of employment, housing, facilities and services, contracts, and membership in unions, trade or professional associations.

People who are discriminated against or harassed because of gender identity are legally protected under the ground of ‘sex’. This includes transsexual, transgender and intersex persons, cross-dressers, and other people whose gender identity or expression is, or is seen to be, different from their birth-identified sex.

DEFINING GENDER IDENTITY

Gender identity is linked to a person’s sense of self, and particularly the sense of being male or female. A person’s gender identity is different from their sexual orientation, which is also protected under the *Code*. People’s gender identity may be different from their birth-assigned sex, and may include:

Transgender: People whose life experience includes existing in more than one gender. This may include people who identify as transsexual, and people who describe themselves as being on a gender spectrum or as living outside the gender categories of “man” or “woman.”

Transsexual: People who were identified at birth as one sex, but who identify themselves differently. They may seek or undergo one or more medical treatments to align their bodies with their internally felt identity, such as hormone therapy, sex-reassignment surgery or other procedures.

Intersex: People who are not easily classified as “male” or “female,” based on their physical characteristics at birth or after puberty. This word

replaces the inappropriate term “hermaphrodite.”

Crossdresser: A person who, for emotional and psychological well-being, dresses in clothing usually associated with the “opposite” sex.

DISCRIMINATION AND HARASSMENT

Discrimination because of gender identity is any action based on a person’s sex or gender, intentional or not, that imposes burdens on a person or group and not on others, or that withholds or limits access to benefits available to other members of society. This can be overt or subtle, and includes systemic discrimination, such as when there is a non-inclusive rule or policy.

Harassment is a form of discrimination. It includes comments, jokes, name-calling, or behaviour or display of pictures that insults or offends you or puts you down because of your gender identity.

No person should be treated differently while at work, at school, trying to rent an apartment, eating a meal in a restaurant, or at any other time, because of their gender identity.

Example: A transsexual person answers an ad for an apartment. The superintendent says there are no units available, even though there are.

Example: An employee tells his manager that he cross-dresses. His manager says he will no longer qualify for promotions or job training because customers and co-workers will be “uncomfortable” with him.

Example: A transsexual woman is not allowed to use the women’s washroom at her place of work. Her manager defends this by explaining that other staff have expressed discomfort. This workplace needs a policy that clearly states the transsexual employee has the right to use this washroom, while providing education to resolve staff concerns and to prevent future harassment and discrimination.

Organizations cannot discriminate, must deal with harassment complaints, and must provide a non-discriminatory environment for trans people. This responsibility extends to “third parties,” such as people doing contract work or who regularly come into contact with the organization. Individuals should be recognized as the gender they live in, and be given access to washrooms and change facilities on this basis, unless they specifically ask for other accommodation (such as for safety or privacy reasons).

THE DUTY TO ACCOMMODATE

The “duty to accommodate” is the legal obligation that employers, unions, landlords and service providers have under the *Code*. The goal of accommodation is to allow people to equally benefit from and take part in services, housing or the workplace. It is a shared responsibility and everyone involved, including the person asking for accommodation, should cooperate in the process, share information, and jointly explore accommodation solutions.

Example: A transgendered man raises safety concerns due to threats in the men’s locker room at his gym. The gym management sanctions the harassers and explores possible solutions with the client, such as a single-occupancy shower and change room, or a showering and changing stall in the men’s locker room. They provide him with access to the staff facilities in the interim.

Example: A transsexual woman is strip-searched by male police, even though she has repeatedly asked to have female officers conduct this type of search. The police service says that a male officer must be involved in the search because the complainant has not had sex reassignment surgery. The Human Rights Tribunal of Ontario has ordered that a transsexual detainee who is going to be strip-searched must be given three options: the use of male officers only; the use of female officers only; or a split search involving both.

CONFIDENTIALITY OF INFORMATION

An employer or service provider who legitimately needs and collects personal information that either directly or indirectly shows that a person’s sex is different from his or her gender identity, must ensure the maximum degree of privacy and confidentiality. This applies in all cases, including employment records and files, insurance company records, medical information, etc.

FOR MORE INFORMATION

The Ontario Human Rights Commission’s *Policy on Discrimination and Harassment Because of Gender Identity* and other publications are available at www.ohrc.on.ca.

To file an application please contact the Human Rights Tribunal of Ontario at:

Toll Free: 1-866-598-0322

TTY Toll Free: 1-866-607-1240

Website: www.hrto.ca

To discuss your rights or if you need legal help please contact the Human Rights Legal Support Centre at:

Toll Free: 1-866-625-5179

TTY Toll Free: 1-866-612-8627

Website: www.hrlsc.on.ca