

Policy on preventing discrimination because of gender identity and gender expression



Approved by the OHRC: January 31, 2014

Summary

People who are transgender, or gender non-conforming, come from all walks of life. Yet they are one of the most disadvantaged groups in society. Trans people routinely experience discrimination, harassment and even violence because their gender identity or gender expression is different from their birth-assigned sex.

Under the Ontario *Human Rights Code* (the *Code*) people are protected from discrimination and harassment because of gender identity and gender expression in employment, housing, facilities and services, contracts, and membership in unions, trade or professional associations.

Gender identity is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.

Gender expression is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.

Trans or **transgender** is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms. It includes but is not limited to people who identify as transgender, trans woman (male-to-female), trans man (female-to-male), transsexual, cross-dresser, gender non-conforming, gender variant or gender queer.

Discrimination happens when a person experiences negative treatment or impact, intentional or not, because of their gender identity or gender expression. It can be direct and obvious or subtle and hidden, but harmful just the same. It can also happen on a bigger systemic level such as organizational rules or policies that look neutral but end up excluding trans people. Friends, family or others who face discrimination because of their association with a trans person are also protected.

Harassment is a form of discrimination. It can include sexually explicit or other inappropriate comments, questions, jokes, name-calling, images, email and social media, transphobic, homophobic or other bullying, sexual advances, touching and other unwelcome and ongoing behaviour that insults, demeans, harms or threatens a person in some way. Assault or other violent behaviour is also a criminal matter. Trans people and other persons can experience harassing behaviour because of their gender identity or expression (gender-based harassment) and/or their sex (sexual harassment).

Social stereotypes about gender, and prejudice and fear towards trans people are often at the root of discrimination and harassment. Negative attitudes about a trans person's racial identity, family status or other grounds can combine or intersect to make things worse.

Everyone has the right to define their own gender identity. Trans people should be recognized and treated as the gender they live in, whether or not they have undergone surgery, or their identity documents are up to date.

An organization should have a valid reason for collecting and using personal information that identifies a person's gender. They should keep this information confidential. Trans people can have their name or sex designation changed on identity documents and other records. The criteria and process should not be intrusive or medically based.

Trans people should have access to washrooms, change rooms and other gender specific services and facilities based on their lived gender identity. Dress code policies should be inclusive and flexible. They should not prevent trans people and others from dressing according to their expressed gender.

Organizations should design or change their rules, practices and facilities to avoid negative effects on trans people and be more inclusive for everyone. Any exceptions must be legitimate in the circumstances, and trans people must be provided any needed accommodation unless it would cause undue hardship.

The duty to accommodate the needs of trans people is a shared responsibility. Everyone involved should cooperate in the process, exchange only necessary information and explore options while respecting privacy.

Trans people and other gender non-conforming individuals should not be treated negatively while at work, at school, trying to rent an apartment, shopping, eating a meal in a restaurant, using health care services or shelters, dealing with law enforcement and justice services, or at any other time.

Organizations are liable for any discrimination and harassment that happens. They are also liable for not accommodating a trans person's needs unless it would cause undue hardship. They must deal with complaints, take steps to prevent problems and provide a safe, welcoming environment for trans people.

Organizations should learn about the needs of trans people, look for barriers, develop or change policies and procedures and undertake training. This will help make sure trans people and other gender non-conforming individuals are treated with dignity and respect and enjoy equal rights and freedom from discrimination.

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