

## BE CODE SMART

The best way to protect yourself from discrimination and from complaints is to know and respect **The Saskatchewan Human Rights Code.**



SASKATCHEWAN  
**HUMAN RIGHTS**  
COMMISSION

# Human Rights of Transgender People

Discrimination because of gender identity or gender expression is any action, intentional or not, that imposes burdens on an individual or group and not on others, or that withholds or limits access to benefits available to other members of society. Under *The Saskatchewan Human Rights Code*, discrimination because of gender identity or gender expression is against the law in Saskatchewan.

### Discrimination and Harassment<sup>1</sup>

Discrimination can be direct or indirect, and includes systemic discrimination, such as the result from application of a non-inclusive rule or policy.

Harassment is a form of discrimination and includes comments, name-calling, jokes, 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 school, at work, renting an apartment, purchasing a t-shirt at a shop, getting a coffee at a cafe, or buying a house, based on their gender identity.

The following are examples of discrimination or harassment based on gender identity:

- A transsexual woman is denied access to the women's washroom where she works. Her supervisor defends this decision by explaining that some workers have expressed uneasiness at the thought of sharing a washroom with her.
- A transgender person responds to a posting for a job. While the individual is highly qualified, and in fact could be overqualified, he is told the job has already been filled, when it is not.
- An employee at an office tells his manager that he cross-dresses. The manager tells the employee he will not be considered for future promotions or work with the general public because clients, co-workers and the general public may be uncomfortable with his attire.

### Definitions<sup>2</sup>

**Gender Identity:** Gender identity is an individual's internal and inherent sense and/or experience of gender. A person's gender identity is fundamentally different from, and does not determine, their sexual orientation that is also protected under the *Code*.

**Gender Expression:** Gender expression is the external representation of one's gender identity. It is usually expressed through "masculine" or "feminine" behaviour, and may include clothing, hair-style, voice or physical appearance characteristics.

**Transgender:** Transgender is an umbrella term for people with diverse gender identities and/or expressions that may differ from stereotypical gender norms. It includes, but is not limited to, people who identify as transsexual and people who describe themselves as being on a gender continuum rather than identifying with "male" or "female." Transgender people may or may not undergo hormone treatment and/or medical procedures.

**Transsexual:** Transsexual people have a strong and enduring feeling that they are living in the wrong sex. Individuals who have undergone, or who want, sex-reassignment surgery may identify as transsexuals. Persons who live in their self-identified gender and may have undergone hormonal transition, but who do not wish to or cannot undergo surgery, may also use the term.



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### Explanation of the Law

The Saskatchewan Human Rights Commission enforces *The Saskatchewan Human Rights Code* (the *Code*). The *Code* provides for equal rights and opportunities, and freedom from discrimination. The *Code* recognizes the dignity and worth of every person in Saskatchewan and applies to the areas of contracts, education, employment, housing, professional trades and associations, public services, publications, purchase of property, occupations and trade unions.

Through its complaints process, public education and an equity program, the Human Rights Commission's job is to discourage and eliminate discrimination based on the protected categories outlined in the *Code*. The Court of Queen's Bench conducts hearings on cases that have been referred to it by the Commission.

### The Law and Legal Precedent

Case law from a number of jurisdictions has determined that individuals who are discriminated against because of gender identity are legally protected under the protected category of "sex." In Saskatchewan, "gender identity" is a prohibited ground under the *Code*. The Commission has accepted and resolved human rights complaints based on gender identity, however no cases have gone for adjudication in Saskatchewan.

**The Duty to Accommodate:** The duty to accommodate requires employers, service providers, and others covered by *The Saskatchewan Human Rights Code* to accommodate needs related to a prohibited ground of discrimination, up to the point of undue hardship.

This duty extends to both employees and clients. The duty to accommodate is a requirement to integrate diversity into public services and the work-workplace and may entail changing office rules, policies, practices and/or behaviours. The duty to accommodate is a shared responsibility and everyone involved, including the person asking for accommodation, must cooperate in the process and share information.

**Undue Hardship:** Undue hardship describes the limit on the duty to accommodate for employers, service providers, and others covered by *The Saskatchewan Human Rights Code*. Undue hardship can only be defined on a case-by-case basis as its determination relies on the specific facts of each case. The point of undue hardship is only reached when an employer or service provider cannot accommodate a need without, for example, a threat to health or safety, major economic impact, or serious interference with the rights or well-being of others. Undue hardship cannot be established by personal preferences based on sex or any other of the prohibited grounds under the *Code*.

**Confidentiality of Information:** If an employer or service provider legitimately needs and collects personal information that either directly or indirectly identifies a person's sex as being different from his or her gender identity, that employer or service provider must ensure that the individual's privacy is protected and the information is kept confidential.

### Footnotes

1,2 Much of this section is taken from the Ontario Human Rights Commission's website: <http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>

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