



BE CODE SMART

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

Human Rights of Transgender Individuals

Discrimination and Harassment¹

Discrimination because of gender identity is any action based on a person's sex, 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 is against the law in Saskatchewan.

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 café, 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 transgendered individual 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.

Gender Identity Definitions²

Gender identity is connected to an individual's inherent sense of self and particularly the sense of being male or female. A person's gender identity is fundamentally different from, and does not determine, their sexual orientation which is also protected under the *Code*.

Transgender or Transgendered: Transgendered individuals are uncomfortable with, and disagree with, in whole or in part, their birth-assigned gender identities. This may include people who identify as transsexual and people who describe themselves as being on a gender continuum rather than identifying with "male" or "female." Transgendered individuals may or may not undergo hormone treatment and/or surgical procedures.

Transsexual: Transsexual individuals 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. The term may also be used by persons who live in their self-identified gender and may have undergone hormonal transition, but who do not wish to, or cannot, undergo surgery.

Explanation of the Law

The Saskatchewan Human Rights Code: The Saskatchewan Human Rights Commission (Commission) and the Saskatchewan Human Rights Tribunal (Tribunal) are the separate bodies that enforce *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 and areas outlined in the *Code*. The Tribunal is the independent, quasi-judicial provincial body that conducts public hearings of complaints that have been referred to it by the Commission, and also reviews dismissed complaints at the request of a complainant.

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 certain instances discrimination based on gender identity falls under the protected category "disability" when, for example, an individual is in transition and discriminated against because of their preoperative state.

At the point of drafting this document³, no cases on gender identity have gone to Tribunal for adjudication in Saskatchewan. If a case with reasonable and probable grounds of discrimination based on gender identity presents itself to the Commission, it will be formalized under the protected category of "sex" and/or "disability" based on legal precedent from other jurisdictions.

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 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 it is impossible for the employer or service provider to 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 Much of this section is taken from the Ontario Human Rights Commission's Information Sheet "Gender Identity: Your Rights and Responsibilities" found at http://www.ohrc.on.ca/en/issues/gender_identity

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