

Policy on Discrimination and Harassment because of Gender Identity

ONTARIO
HUMAN RIGHTS
COMMISSION

Approved by the Commission: March 30, 2000

Revised by the Commission

Available in various formats: IBM compatible computer disk, audiotape, and large print

Also available on Internet: <http://www.ohrc.on.ca>

Disponible en français

Please Note

This policy statement contains the Ontario Human Rights Commission's interpretation of provisions of the *Human Rights Code* relating to discrimination and harassment because of sex which includes gender identity. It is subject to decisions by Boards of Inquiry and the courts. The policy should be read in conjunction with those decisions and with the provisions of the *Code*. Any questions regarding this policy should be directed to the staff of the Ontario Human Rights Commission.

Table of Contents

Gender Identity	1
Introduction	1
Purpose	2
Background	2
What is “Gender Identity”?	3
Application of this Policy	4
Discrimination	4
Direct Discrimination	5
Indirect Discrimination	5
Constructive Discrimination	5
Discrimination Because of Association	6
Employment	6
Services	7
Accommodation (Housing)	7
Harassment	8
a) Definition of Harassment	8
b) Comments or Conduct Need Not be Explicit	9
c) Poisoned Environment	10
Confidentiality of Information	10
Liability of Employers for the Actions of Their Employees / Agents	11
1. Employer's Liability	11
a) Common Law: The Organic Theory of Corporate Responsibility	11

b) Vicarious Liability	11
The Role of the Commission.....	12
If You Have a Human Rights Complaint.....	12
If a Human Rights Complaint is Made Against You.....	13
Remedies under the <i>Code</i>	13
For Further Information	14
Glossary.....	15

Gender Identity

Introduction

The *Human Rights Code*¹ (the "Code") states that it is public policy in Ontario to recognize the inherent dignity and worth of every person and to provide for equal rights and opportunities without discrimination. The *Code* aims at creating a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and feels able to contribute to the community.

The Ontario Human Rights Commission (the "Commission") has developed policy statements and guidelines that cover many human rights issues. However, issues related to gender identity remain largely unresolved in policy, procedures, and law.

Gender identity is not an enumerated ground in the *Code*. However, the existing legal structure in the *Code* can support a progressive understanding of the ground of 'sex' to include 'gender identity' and protect individuals who are subject to discrimination or harassment because of gender identity. This approach toward the application of the *Code* has been accepted for some time and is well demonstrated by Mr. Justice McIntyre who said:

*It is not, in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the Code than the narrowest interpretation of the words employed. **The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment ... and give to it an interpretation which will advance its broad purposes [Emphasis added].** Legislation of this type is of a special nature, not quite constitutional, but certainly more than the ordinary²*

The right to equal treatment without discrimination or harassment because of sex extends to all persons. The Commission has taken the policy position that this protection extends to persons because of gender identity. However, this policy focuses on persons whose gender identity diverges from their birth-assigned identity.

Complaints related to gender identity are made almost exclusively by transgenderists and transsexuals. There are, arguably, few groups in our society today who are as disadvantaged and disenfranchised as transgenderists and transsexuals. Fear and hatred of transgenderists and transsexuals³ combined with hostility toward their very existence are fundamental human rights issues. As the organization responsible for the administration and enforcement of the *Code*, the Commission is in a unique position to forward the policy that the dignity and worth of every person be recognized and that equal

¹ *Human Rights Code*, R.S.O. 1990, c. H.19, as amended.

² *Ontario Human Rights Commission v. Simpsons-Sears Ltd.* (1985), 7 C.H.R.R. D/3102 at D/3105 (S.C.C.).

³ Referred to as "transphobia".

rights and opportunities be provided without discrimination because of gender identity. Mr. Justice Sopinka once noted:

*Human rights legislation is amongst the most pre-eminent category of legislation. It has been described as having a "special nature, not quite constitutional but certainly more than the ordinary..." (Ontario Human Rights Commission v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536, at p. 547). **One of the reasons such legislation has been so described is that it is often the final refuge of the disadvantaged and the disenfranchised**⁴. [Emphasis added].*

Purpose

This policy sets out the position of the Commission with respect to gender identity and is intended to help the public understand how the *Code* protects against discrimination and harassment because of gender identity and to assist employers and providers of services and accommodation to understand their responsibilities under the *Code*. The policy also can be used for educational initiatives such as the development of training materials and the revision of anti-discrimination and harassment policies so that they include gender identity.

By developing this policy the Commission is:

- ✓ Promoting the dignity and equality of those whose gender identity does not conform to traditional social norms;
- ✓ Ensuring that all people are protected by the *Code*;
- ✓ Promoting awareness of gender identity and preventing discrimination and harassment; and
- ✓ Dispelling stereotypes and myths that foster discrimination and harassment against individuals because of their gender identity.

Background

Over the last two decades, there has been a growing awareness of people whose gender identity is different from their birth-assigned genders and from social norms of 'male' and 'female'. These people may include pre- and post-operative transsexuals, transgenderists, intersexed people, cross-dressers and others⁵. Along with the emerging visibility of these individuals is a growing appreciation and understanding of the problems that they face in their daily lives. There are numerous community organizations, newspapers, magazines and websites dedicated to gender identity issues that have chronicled these problems which include employment discrimination, harassment, denial of services, violence, high suicide rates, substance abuse and poverty.

⁴ See *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 S.C.R. 321.

⁵ A glossary containing definitions used in this policy can be found at the end of the document.

This increased awareness of gender identity led the British Columbia Human Rights Commission to propose including 'gender identity' as a formal ground for protection in their human rights law⁶. However, at this time, this proposal has not been adopted. Other jurisdictions are moving toward recognition of gender identity as a protected ground in their laws. Australian discrimination laws as well as several American municipalities and states recognize transgendered people and have included the ground of gender identity or similar concepts in their human rights laws⁷.

In 1998, the Commission developed a discussion paper on gender identity. The discussion paper was based on research, community consultations and interviews with selected officials and health professionals. The paper canvassed jurisprudence, domestic and international legislation, literature, and other human rights organizations' policies. The discussion paper *Toward a Commission Policy on Gender Identity* was publicly released in October 1999⁸. This policy is based on the work done to date and reflects the Commission's formal position on gender identity.

What is "Gender Identity"?

Gender identity is linked to an individual's intrinsic sense of self and, particularly the sense of being male or female. Gender identity may or may not conform to a person's birth assigned sex. The personal characteristics that are associated with gender identity include self-image, physical and biological appearance, expression, behaviour and conduct, as they relate to gender.

At birth, a child is assigned a gender by a health care professional based on observation of the child's genitalia. Society makes the assumption that based on this medical assessment a child will grow up to exhibit correspondingly masculine or feminine behaviours and appearances. However, this is not always the case. A person's felt identity or core identity may differ in part or in whole from their birth assigned sex⁹. Individuals whose birth-assigned sex does not conform to their gender identity include transsexuals, transgenderists, intersexed persons and cross-dressers.

A person's gender identity is fundamentally different from and not determinative of their sexual orientation.

⁶ See B.C. Human Rights Commission, *Human Rights for the Next Millennium*, (January 1998), recommendation 6.

⁷ Two examples are the Australian province New South Wales' *Anti-Discrimination Act 1977* which prohibits discrimination *inter alia* because of transgender; and the City of Pittsburgh, Pennsylvania which covers discrimination under its *Pittsburgh Code of Ordinances, Title Six – Conduct\Article V: Chapter 651(Ord. 20-1992)* which seeks to assure equal opportunity for all persons because of 'sex' among other grounds, and defines 'sex' as "the gender of a person, as perceived, presumed or assumed by others, including those who are changing or have changed their gender identification". For more information see Appendix 1, *Toward a Commission Policy on Gender Identity, Discussion Paper*, from <<http://www.ohrc.on.ca/english/Discussion/genderid.htm>>.

⁸ *Ibid.*

⁹ The incident rate in relation to transsexual adults is 1 in 24,000 to 37,000 men and 1 in 103,000 to 150,000 women, according to the American Psychiatric Association. The Gender Identity Clinic at the Clark Institute of Psychiatry in Toronto uses data from the United Kingdom, Sweden, and Australia which estimates the prevalence of transsexualism at about 1 case per 50,000 adults. It is important to note that transsexualism is a subgroup and the statistical information does not include transgenderists, the inter-sexed, or cross-dressers.

Application of this Policy

Based on a purposive and liberal interpretation of the ground of sex, it is the Commission's position that the protection of the *Code* extends to all individuals who are denied equal treatment because of gender identity. The Commission will accept complaints related to gender identity on the ground of sex where it is the person's gender identity that is the reason for the discrimination. The Commission deals with complaints on a case by case basis regardless of which grounds are identified.

This policy applies to:

- i) The workplace (including recruiting, application forms, interviews, promotions, and access to and receipt of employee benefits);
- ii) Services, goods and facilities (private businesses, municipal governments, shops, restaurants, hospitals, correctional facilities, insurance services, etc.);
- iii) The occupancy of accommodation (including rental accommodation such as apartments, college residences, hotel/motel facilities, condominium housing as well as commercial premises);
- iv) Contracts (verbal or written agreements); and
- v) Membership in vocational associations and trade unions.

Discrimination

Every person has the right to equal treatment without discrimination because of sex, which includes gender identity. Discrimination because of gender identity includes distinctions such as exclusions, restrictions or preferences based on gender identity, or those that result in the impairment of the recognition of human rights and fundamental freedoms on an equal basis. In *Andrews v. Law Society of British Columbia*¹⁰, Mr. Justice McIntyre defined discrimination as:

*... a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunity, benefits, and advantages available to other members of society*¹¹.

¹⁰ *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

¹¹ *Ibid* at 174.

Direct Discrimination

A person discriminates directly when he or she treats another person unequally or differently because of his or her gender identity.

Example: An employee advised her employer that she was taking time off work to undergo sex-reassignment surgery. The employer granted the employee the time off but when the employee returned to work after the surgery, she was terminated. In this case, the tribunal considered the meaning of the protected ground of sex contained in section 10 of Québec's *Charter of Human Rights and Freedoms* and concluded that sex does not include just the state of a person but also the very process of transformation that is part of transsexualism¹².

Indirect Discrimination

Discrimination can also be indirect and may occur when one person causes another to act on his or her behalf and to discriminate against a person because of his or her gender identity.

Example: A landlord advises the superintendent that she does not want any apartments rented to transsexuals. A person who is a transsexual responds to an advertisement for the apartment and is advised by the superintendent that there are no units available, even though there are units available. The landlord may also be named as a respondent in a human rights complaint because the landlord indirectly discriminated by requiring the superintendent to follow a discriminatory instruction.

Constructive Discrimination

Constructive discrimination arises when a neutral requirement, qualification or factor has an adverse impact on members of a group of persons who are identified by a prohibited ground of discrimination under the *Code*. Constructive discrimination results from this adverse impact. Section 11(1) of the *Code* provides that constructive discrimination occurs:

Where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member.

In such a case, the person responsible for the discrimination must establish if the rule is reasonable and *bona fide* and then take steps to accommodate the affected person to the point of undue hardship.

¹² See *M.L. and Commission des droits de la personne et des droits de la jeunesse du Québec v. Maison des jeunes*, (1998) (Trib. Qué.).

Example: A nightclub patron who is a pre-operative male to female transsexual was denied access to the women's washroom even though she was presenting herself as a woman. The nightclub's policy on the use of washrooms was that transsexuals were not permitted to use the women's washroom. She filed a human rights complaint and the tribunal found that while this policy was neutral, it had an adverse effect on transsexuals. The tribunal concluded its decision, which was in the complainant's favour, by stating that discrimination against a transsexual constitutes discrimination because of sex¹³.

Example: The *Vital Statistics Act*¹⁴ requires that all birth certificates in the province identify individuals as male or female. This requirement is neutral on its face since it requires all people to be identified as male or female. However, for an individual whose gender identity does not conform to the designation on his or her birth certificate, this may have an adverse impact. The person who shows this identification or relies on it to obtain a permit or official document may be refused because the service provider observes an inconsistency between the way the person presents him/herself and the designation on the birth certificate.

Discrimination Because of Association

Persons who are subject to discrimination because of their association with a person protected under the *Code* may file a complaint based on section 12, which protects against discrimination because of association.

Example: A female tenant of an apartment asks for maintenance on her unit. This request is denied because the superintendent says he does not like her friend who is a cross-dresser. Although the tenant was not subjected to discrimination because of her own gender identity, she was subjected to discrimination because of her relationship with a person who is a cross-dresser.

Employment

Section 5(1) of the *Code* provides that every person has a right to equal treatment in employment without discrimination because of sex, which includes gender identity. Denying or restricting employment opportunities in hiring, training, promotion, transfers, etc. because of gender identity is a violation of the *Code*. This is based on the notion that individuals who are the targets of the discriminatory behaviour are being judged on stereotypes about how men and women should behave and look and not on the basis of merit.

Example: A woman working on a temporary basis is offered a full-time position as a customer service associate by her supervisor on the condition that she wear dresses and change her hairstyle to a more feminine one. The employer believes

¹³ *Sheridan v. Sanctuary Investments Ltd. et al.*, January 8, 1999 (B.C. Human Rights Tribunal) from <<http://www.bchrt.gov.bc.ca/sheridan2.htm>>.

¹⁴ *Vital Statistics Act*, R.S.O. 1990, c. V.4.

this is necessary because the customers will not like the woman's overly masculine appearance.

Example: An employee discloses to his manager that he cross-dresses. The manager subsequently tells the employee that he will no longer qualify for promotions or further career training because customers and co-workers will be uncomfortable with him.

Services

Section 1 of the *Code* provides that every person has a right to equal treatment with respect to services, goods, and facilities, without discrimination because of sex, which includes gender identity. This includes refusal of a service or other differential treatment.

Example: A transsexual woman volunteered as a librarian at a community organization for lesbians and also became a member of the organization. In an article that appeared in a community newspaper, she identified herself as a lesbian but not a woman. Two board members of the organization disapproved of her remarks in the newspaper article. The woman subsequently received a letter advising that her services as a librarian were no longer required and that she was no longer welcome in the organization. The woman filed a human rights complaint, and while the tribunal did not find that the individual was an employee of the organization, they did find that she was discriminated against in the provision of a service because of sex¹⁵.

Example: A municipality that provides the service of issuing proclamations must do so in a non-discriminatory manner. A transgender support group asks for a proclamation for “Transgender Pride Week” and the Mayor and City Council reject the request. The basis for the refusal is that the Mayor and City Council morally oppose the goals and activities of the group, while they routinely approve proclamations from other groups whom they support¹⁶.

Example: A restaurant owner who refuses service to a customer who is a transsexual and throws her out of the restaurant infringes the person’s right to receive a service without discrimination¹⁷.

Accommodation (Housing)

¹⁵ *Mamela v. Vancouver Lesbian Connection*, September 8, 1999 (B.C. Human Rights Tribunal) from <<http://www.bchrt.gov.bc.ca/mamelav.htm>>.

¹⁶ For example see generally *Oliver v. Hamilton (City)* (1994), 24 C.H.R.R. D/293 (Ont. Bd. Inq.); *Hudler v. London (City)* (1997), 31 C.H.R.R. D/500 (Ont. Bd. Inq.); *Hill v. Woodside* (1998), 33 C.H.R.R. D/349 (N.B. Bd. Inq.).

¹⁷ *Commission des droits de la personne du Québec v. Anglsberger* (1982), 3 C.H.R.R. D/892(P.C.).

Section 2(1) of the *Code* provides that every person has a right to equal treatment with respect to the occupancy of accommodation (housing) without discrimination because of sex which includes gender identity.

Example: A student responds to an advertisement for a house that is for rent and arranges to view the house and meet with the owner. A few days later, she contacts the owner and advises him that she wishes to rent the house. At the second meeting with the owner of the house, he asks her if she is really a woman and proceeds to tell her that he does not rent to transvestites.

Membership in Vocational Associations

Section 6 of the *Code* provides that every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of sex which includes gender identity.

Example: A transsexual employee was involved with in a dispute with her employer. The individual did not feel that her union's actions on her behalf regarding this dispute were adequate. She alleged that the union discriminated against her in its response to the incident, both initially and with respect to the events that followed the initial dispute, and in the way it responded to the employer's handling of the complaint made against her. The tribunal found that the union had treated her worse than it would have treated other union members in similar circumstances and that her status as a transsexual was a factor in her treatment. The tribunal ordered the union to cease its contravention of the human rights law and to pay her damages for lost wages and the injury it had done to her dignity, feelings and self-respect¹⁸.

Harassment

Harassment because of gender identity is covered by the *Code* under the ground of sex.

a) Definition of Harassment

Harassment is defined in subsection 10(1) of the *Code* as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". This definition guides the Commission in determining what forms of behaviour are inappropriate under the *Code*.

The reference to comment or conduct that is known or ought reasonably to be known to be unwelcome establishes an objective test for harassment:

- i) In some situations, it should be obvious that the conduct or comments will be offensive or unwelcome.

¹⁸ *Ferris v. Office and Technical Employees Union, Local 15*, October 15, 1999 (B.C. Human Rights Tribunal) from <<http://www.bchrt.gov.bc.ca/ferrisv.htm>>.

- ii) Since the individual may be in a vulnerable situation, there is no requirement that the individual object to the behaviour in order for there to be a violation of the *Code*. It may be unrealistic to require an individual who is the target of harassment to object to the offensive treatment as a condition of being able to claim a right to be free from such treatment.
- iii) Conduct or comments which relate to a person's gender identity may not, on their face, be offensive. However, they may still be unwelcome from the perspective of the particular individual. If the individual objects and if similar behaviour is repeated, it may constitute a violation of the *Code*.

Each situation that is brought to the attention of the Commission through a human rights complaint will be assessed on its own merits. However, transphobic epithets, comments ridiculing individuals because of their gender identity, or singling out an individual for humiliating or demeaning teasing or jokes related to, or because of, gender identity may be conduct which ought reasonably to be known to be unwelcome.

Examples of situations that might be considered harassment include the following:

- i) A landlord says to a tenant, who is a member of a cross-dresser organization, "I don't know why you people don't go live with your own kind, because you sure don't belong here".
- ii) Demeaning sexual remarks, jokes or innuendo about an employee, client or customer, or tenant told to others might deny the right of those persons who are the subject of the comments to be viewed as equals.
- iii) Demeaning comments, signs, caricatures, or cartoons displayed in a service environment such as a store, restaurant, or in a workplace or rental apartment building may create a poisoned environment in violation of the *Code*.
- iv) The display of transphobic, derogatory or offensive pictures, graffiti or materials is humiliating and also impairs the right of those persons who are members of the targeted group to be viewed as equals. An employer, service provider or landlord that tolerates inappropriate pictures, graffiti or materials and does not take any steps to remove them may create a poisoned environment. Depending on the particular circumstances, some persons may be humiliated or may experience feelings of hurt, anger and resentment because of their gender identity.

b) Comments or Conduct Need Not be Explicit

Comments or conduct do not need to be explicit to infringe a person's right to equal treatment without discrimination or harassment. Where a person is singled out and treated differently because of gender identity, even where the differential treatment does not include explicit reference to gender identity, there may still be a violation of the *Code*.

Example: In a warehouse, a transgendered female employee is repeatedly made the brunt of practical jokes and called a "freak" by her co-workers.

c) Poisoned Environment

A single instance of harassment because of gender identity may not fall within the definition of harassment under the *Code*. However, there could be circumstances in which a single incident of inappropriate behaviour may be significant or substantial enough to constitute a breach of the *Code* by creating a poisoned environment for individuals because of their gender identity. In other words, there could be circumstances in which unequal treatment does not have to occur continually or repeatedly in order for a violation of the *Code* to occur.

A consequence of creating a poisoned environment is that certain individuals are subjected to terms and conditions of employment, tenancy, services, etc. that are quite different from those experienced by individuals who are not subjected to these comments or conduct. In such instances, the right to equal treatment may be violated. Demeaning remarks, jokes or innuendo based on gender identity not only poison the environment for transgenderists and transsexuals but affect everyone's environment.

The conduct at issue must be objectively evaluated. It must be of such a nature and degree so as to amount to a denial of equality through the creation of a poisoned environment.

Confidentiality of Information

Gender identity is a personal characteristic that may or may not be known to others. While most people are not concerned about others knowing their gender identity, this may not be the case for transsexuals and transgenderists. Despite the protections set out in the *Code*, individuals who identify or are identified as transsexual or transgendered face the very real possibility of being subjected to overt or subtle discrimination and/or harassment. This can be particularly detrimental in the workplace.

An employer or service provider who legitimately requires and collects personal information that either directly or indirectly identifies a person's sex which may be different from his or her gender identity must ensure the maximum degree of privacy and confidentiality of the information. This applies in all situations and circumstances including employment records and files, insurance company records, medical information, etc. The information might be required to enable an employee or individual to claim or register for benefits, to apply for an apartment, or other purposes. All information should remain

exclusively with designated personnel (such as the human resources person) in a secure filing system in order to protect the individual's confidentiality.

Confidential information that might be collected includes:

- birth certificate;
- driver's licence;
- identification of next of kin;
- identification of beneficiary for insurance purposes; and
- a claim for health benefits.

An employer or service provider who fails to properly safeguard personal information about an individual's sex or gender identity may infringe the *Code*. A complaint could be made where this results in a person being subject to discrimination and/or harassment because of his or her gender identity.

Liability of Employers for the Actions of Their Employees/Agents

1. Employer's Liability

a) Common Law: The Organic Theory of Corporate Responsibility

Generally, an employer is not liable for acts of harassment carried out by its employees unless it can be proven that it was aware of the harassment. The corporation may also be held responsible for the actions of that employee if it can be shown the employee was part of the management or "directing mind" of the organization. In such cases, the decisions and acts of the employee are so closely identified with the employer that they are treated as one and the same. In other words, the acts or omissions of supervisors, managers, etc. are considered to be the acts of the employer, giving rise to corporate responsibility.

b) Vicarious Liability

Under section 45 of the *Code*, a corporation, union, trade or occupational association will be held responsible for discrimination committed by employees or agents as though the corporation, union, trade or occupational association had committed the breaches itself. This is known as vicarious liability. The corporation, union, etc. is vicariously liable for the acts of its employees or agents. The doctrine of vicarious liability does not apply to harassment as defined in subsection 10(1)(f) of the *Code*. Rather, it applies to breaches of the equality rights provisions of the *Code*.

The Role of the Commission

If You Have a Human Rights Complaint

1. If you have a human rights complaint, you may contact the general inquiries line at 1-800-387-9080 (TTY 1-800-308-5561 toll free) or in Toronto at (416) 326-9511 (TTY 416-314-6526 local) from Monday to Friday during office hours. Commission staff will tell you if your concerns are covered by the *Code*.
2. Commission staff will explain how the *Code* applies to your situation and how the complaint procedure works. Commission staff will work with you and the other party to resolve the concerns. The Commission also offers mediation services.
3. If you want the Commission to address your concerns, you should file a complaint within 6 months from the last incident of discrimination. This time limit is set out in section 34 of the *Code*.
4. Filing a complaint means that you have completed the Commission's complaint form and provided all requested details. You must have signed, dated and returned the form to the Commission.
5. When you file a complaint, Commission staff will work with you and the person/company you have filed against, to try and resolve the complaint through mediation.
6. The Commission may consider not to deal with a complaint under section 34 if:
 - a) another Ontario law would be better suited to deal with the situation, such as the *Labour Relations Act*;
 - b) you have no reasonable basis to support a claim of discrimination, or that you have made the complaint in bad faith, or that you have already obtained a remedy somewhere else;
 - c) the matter is outside the Commission's legal authority;
 - d) you have waited longer than 6 months from the last incident of discrimination to file a complaint.
7. The Commission is neutral and does not take sides in the complaint. Commission staff will assist you with questions about the complaint procedure. However, if you require legal advice, please contact a lawyer.

If a Human Rights Complaint is Made Against You

1. If the Commission receives a complaint against you, Commission staff will contact you to discuss the matter.
2. Commission staff will explain how the *Code* applies to the situation and how the complaint procedure works. Commission staff will work with you and the person making the complaint to try and resolve the concerns. The Commission also offers mediation services.
3. If the concerns cannot be resolved and mediation is not successful, the complaint may proceed to the investigation stage.
4. You can ask the Commission not to deal with the complaint under section 34 of the *Code* if:
 - a) another Ontario law would be better suited to deal with the situation, such as the *Labour Relations Act*,
 - b) you believe that the person making the complaint has no reasonable basis to support a claim of discrimination, or that the complaint is in bad faith, or that a remedy has already been obtained by the complainant somewhere else;
 - c) the matter is outside the Commission's legal authority;
 - d) the person making the complaint waited longer than 6 months from the last incident of discrimination to file a complaint.
5. The Commission is neutral and does not take sides in the complaint. Commission staff will assist you with questions about the complaint procedure. However, if you require legal representation or advice, please contact a lawyer.

Remedies under the *Code*

The purpose of human rights legislation is not to find fault but to eliminate discrimination and to provide redress. It is meant to be preventative and remedial, rather than punitive. A remedy to a complaint might include restoring the complainant to a position the individual would have held had the *Code* not been violated. It may consist of compensation for loss of earnings or job opportunities, or damages for mental anguish suffered as a result of the violation.

Human rights remedies also address issues of public interest. This may include requiring changes to an organization's policies, the implementation of training initiatives, the establishment of internal human rights complaint resolution mechanisms, introduction of anti-harassment policies, a written apology, etc.

For Further Information

For more information about the Ontario Human Rights Commission or this policy statement, please contact the Commission during regular office hours from Monday to Friday at:

- 1-800-387-9080 (toll free)
- (416) 326-9511 (local)
- (TTY) (416) 314-6526 (local)
- (TTY) 1-800-308-5561 (toll free)

You can also visit the Commission website at: **www.ohrc.on.ca**

or

Send an e-mail to the Commission at: **regional@ohrc.on.ca**

Glossary

This glossary was developed based on the Commission's research for this policy and for the discussion paper, *Toward a Commission Policy on Gender Identity*. The glossary is intended to provide general information on the terminology related to gender identity and is not intended to be an exhaustive or authoritative guide on the subject.

- **Cross-Dresser** refers to people who dress in the clothes of the opposite sex for emotional satisfaction and psychological well being. Cross-dresser is preferred over the term 'transvestite' which is seen as a diagnostic term associated with medical identity.
- **Gender** may be defined in various ways and could include any or all of the following categories: physical anatomy (or sex organs), secondary sex characteristics that develop at and after puberty, behaviour and conduct, the mind, and fashion choices.
- **Intersexed** means being born with the (full or partial) sex organs of both genders, or with underdeveloped or ambiguous sex organs. About 4 per cent of all births may be intersexed to some degree. This word replaces the inappropriate term 'hermaphrodite'.
- **Sexual orientation** is more than simply a status that an individual possesses; it is an immutable personal characteristic that forms part of an individual's core identity. Sexual orientation encompasses the range of human sexuality from gay and lesbian to bisexual and heterosexual orientations.
- **Sex-reassignment surgery (SRS)** is the medical procedure by which an individual is surgically altered to create the physical appearance of the opposite sex.
- **Transgendered** describes individuals who are not comfortable with, or who reject, in whole or in part, their birth assigned gender identities. The word transgendered is generally viewed as an umbrella term that unifies people who identify as transsexual, transgenderist, intersexed, transvestite or as a cross-dresser.
- **Transgenderists** self-identify and live as the opposite gender but have decided not to undergo sex reassignment surgery.
- **Transition** is the process of changing sex, including hormones, cross living, and surgery. A practical minimum duration for this process is about two years but it is not unusual for it to take longer.
- **Transphobia** is the unrealistic or irrational fear and hatred of cross-dressers, transsexuals and transgenderists. Like all prejudices, it is based on negative stereotypes and misconceptions that are then used to justify and support hatred, discrimination, harassment, and violence toward people who are transgendered.
- **Transsexuals** are individuals who have a strong and persistent feeling that they are living in the wrong sex. This term is normally used to describe individuals who have undergone sex-reassignment surgery. A male transsexual has a need to live as a woman and a female transsexual has a need to live as a man.