



INFORMATION SHEET

BE CODE SMART

The best way to protect yourself from discrimination and from complaints is to know and respect *The Saskatchewan Human Rights Code, 2018*.

HUMAN RIGHTS OF TRANSGENDER PEOPLE

Discrimination 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, 2018* (the *Code*) discrimination because of gender identity is against the law in Saskatchewan.

Discrimination and Harassment

Discrimination can arise from direct and intentional decisions, but it can also result from indirect and unintentional actions, such as may arise from the application of non-inclusive rules or policies. 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.

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 transgender person 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.

- A transgender university student is routinely referred to by names and pronouns associated with their sex assigned at birth and not their current and correct names.

Definitions

Gender Identity: Gender identity is an individual's internal and inherent sense and/or experience of gender. A person's gender identity is different from their sexual orientation, which 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, hairstyle, voice or physical appearance characteristics.

Transgender: Transgender is often used as an umbrella term for people whose gender identity is different from their sex assigned at birth. It includes people who describe themselves as being on a gender continuum rather than identifying as male or female.

The Duty to Accommodate: A key concept in human rights law in the concept of accommodation. The duty to accommodate requires employers, service providers, and others covered by the *Code* to accommodate needs related to a prohibited ground of discrimination, up to the point of undue hardship. The duty to accommodate may entail changing office rules, policies, practices and/or behaviours.

Undue Hardship: 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, unbearable economic impact, or serious interference with the rights or well-being of others. Undue hardship cannot be established by the consideration of other people's personal preferences regarding gender identity 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.

Overview of Human Rights Law

The Saskatchewan Human Rights Commission enforces *The Saskatchewan Human Rights Code, 2018*. 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 Saskatchewan Human Rights Commission's job is to discourage and eliminate discrimination based on the protected categories outlined in the *Code*. The Court of King's Bench conducts hearings on cases that have been referred to it by the Commission.

The Law and Legal Precedents

While explicit protection against discrimination on the basis of "gender identity" was not added to the *Code* until 2014, previous legal precedents in Canada, beginning in the 1990s, had established

that people who are discriminated against because of their gender identity were legally protected under the protected category of "sex." As such, protections against discrimination for transgender persons is not new.

Notable Complaints Accepted by the Saskatchewan Human Rights Commission

Discrimination Cases:

The Saskatchewan Human Rights Commission has taken a number of complaints regarding discrimination in employment and public services on the basis of gender identity. While anonymity is not guaranteed through the complaint process, the majority of these cases have not been publicized. The following complaints are examples of cases that were resolved through the Commission:

- A transgender woman alleged discrimination against the operators of a transit service. She alleged the service providers spoke to her in a derogatory and mocking way. She ultimately chose a different method of transportation. Through mediation, the complaint was resolved with a letter of apology and monetary compensation.
- A transgender woman alleged discrimination against a potential employer who she alleged refused to hire her following a job interview on the basis of her gender identity. She alleged that the potential employer said that it would be difficult for her to work with the other employees, who were newcomers and unlikely to acknowledge her as a woman. Ultimately the matter was resolved during an investigation. The terms of the settlement included a letter of apology and monetary compensation.
- A transgender woman alleged discrimination against a business owner who refused to allow her to try on a wedding dress for her upcoming marriage ceremony. This matter was resolved through mediation at the Saskatchewan Human Rights Commission. In this case, at the request of the complainant, the business owner agreed to make donations to two local charities in recognition of the discriminatory incident.

Government-Issued Identification Cases:

A series of cases brought forward by transgender persons through the Saskatchewan Human Rights Commission resulted in changes to provincial legislation and government practices.

Prior to **February 2016**, transgender adults were required to have “gender reassignment surgery” before their birth certificate could be changed to reflect the sex consistent with their gender identity. In response to a complaint filed by a transgender person, the Saskatchewan Human Rights Commission applied to the Court for a hearing on her behalf, arguing that The Vital Statistics Act, 2009 was contrary to section 12 of the *Code*.

During this process, the Court of Queen’s Bench issued, by consent, an order giving authority to the Registrar of Vital Statistics to change the sex designation for transgender people 18 years of age and older.

This also triggered a change to the designation on birth certificates. Saskatchewan residents may also request an update to their sex designation on their Saskatchewan Health Card and Saskatchewan Driver’s Licence. Changing government identification now requires:

- a statutory declaration that is signed before a Commissioner for Oaths or Notary Public;
- a letter from a physician or a psychologist; and
- processing fees to change the birth registration and the long form birth certificate.

In **May 2018**, in response to two human rights complaints filed with the Saskatchewan Human Rights Commission, the Court of Queen’s Bench ordered the provincial government to allow for the removal of gender markers (“M” or “F”) from birth certificates. Saskatchewan was the first jurisdiction in Canada where this was permitted.

This order also allowed people under the age of 18 to apply for changes to the gender marker on their birth certificate.

In **February 2022**, in response to a human rights complaint filed with the Saskatchewan Human Rights Commission, Saskatchewan Government Insurance (SGI) announced that residents would thereafter be able to request the gender field on their driver’s licence (or SGI-issued photo identification) be left blank. This was in addition to the currently available “M”, “F”, or “X” indicator options.