

Guide to:

LGBTQI2S Legal Rights

See also: Human Rights in Ontario



Youth identifying within LGBTQI2S communities often have legal concerns specific to their identities.

The following concerns will be covered in this pamphlet:

- What LGBTQI2S discrimination looks like
- GSAs and LGBTQ-Specific School Groups
- Trans-Inclusion and Gender Segregated Spaces
- Government Issued Identification

What does LGBTQI2S discrimination look like?

Discrimination is when someone is treated unfairly or unequally because of who they are or because of their circumstances; the discrimination may be based on one's real or perceived identity within LGBTQI2S communities.

The *Ontario Human Rights Code* ("the Code") is the law that sets out when someone is protected from discrimination in Ontario.

The law does not protect from discrimination in all situations. These "social areas" are protected from discrimination under the Code:

- Employment
- Housing
- Goods, services, and facilities
- Contracts
- Membership in a union or a professional association.

The Code protects against discrimination on many “grounds”, including:

- Sexual orientation
- Gender identity
- Gender expression

For example, the Code says it’s illegal for you to be fired from your job or harassed at work because you are gay. The protected social area is employment and the protected ground is sexual orientation.

What does “Gender Identity”, “Gender Expression” and “Trans/Transgender” mean?

Gender Identity is each person’s internal and individual experience of gender.

Gender Expression is how a person publicly presents their gender.

Trans or Transgender is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms.

Some examples of discrimination against Trans-identified persons on the basis of their gender identity and/or gender expression:

- When someone *purposefully* chooses to not use the gender pronouns that correspond to, or best meet the needs of, your gender identity as you have requested. For example, refusing to switch from “she” to “he” when you have told them that you identify as a boy/man, and that “he/him” are your identity-affirming pronouns; or, using a dehumanizing pronoun such as “it” to refer to you.
- When an individual refuses to use your chosen, identity-affirming name and purposefully insists on referring to you with your birth-assigned name.
- Removing or banning you from a gender segregated space that best aligns with, or best meets the needs of, your gender identity and/or gender expression. Such as forcing you to use the washroom designated for boys/men because of your birth assigned-sex, despite affirming your gender identity to be that of a girl/woman; or forcing you to use a gender neutral washroom when you have clearly told them that you feel most safe, and comfortable using the washroom that aligns with your gender identity.

- Purposefully outing you as transgender without your consent or permission to do so.
- Harassment can include being “teased” about personal, confidential information as it relates to transgender identities in ways that does not respect your privacy or in ways that are inappropriate; such as being teased about whether or not you’ve undergone a sex change operation, or by asking if you are “all female” or “all male”.
- Forcing the gender binary on you (in other words, refusing to acknowledge your non-binary identity as real and valid) even after you tell them that you identify outside of the gender binary. For example, purposefully refusing to use gender neutral pronouns when you have requested that they do so.

Where can I get more information?

Visit the Ontario Human Rights Commission website:

- Sexual Orientation and Human Rights:
<http://www.ohrc.on.ca/en/sexual-orientation-and-human-rights-brochure>
- Gender Identity and Gender Expression:
<http://www.ohrc.on.ca/en/gender-identity-and-gender-expression-brochure>

How do I make a claim of discrimination?

To make a claim, fill out an application form and submit it to the Human Rights Tribunal of Ontario (the “HRTTO”). You can:

- apply on-line or download the form at <http://www.sjto.gov.on.ca/hrto/forms-filing/>
- or call the HRTTO for a form to be sent to you in the mail: 1-866-598-0322

Options for legal assistance and advice are listed at the end of this pamphlet.

GSA’s & LGBTQ-Specific School Groups

Can my school deny my request for an LGBTQI2S identity-affirming group or school activity?

No. In 2012, changes to the *Ontario Education Act* were made under *Bill 13: The Accepting Schools Act* to require support for LGBTQI2S students in publicly-funded schools.

As a student in any school in Ontario you have a right to initiate a group, or other school activity that focuses on diversity in attraction, gender identity or gender expression consistent with the promotion of a positive school climate that is inclusive and accepting of all students. This includes the right to name a group 'gay-straight alliance' if students choose to do so.

Does this apply to Catholic schools?

Yes. This applies to Catholic schools and Catholic school boards, as both systems are publicly funded in Ontario.

Where can I get help to start a group in my school?

Egale Canada Human Rights Trust has created a website with resources to help students across Canada, visit their website: MyGSA.ca

Trans-Inclusion & Gender Segregated Spaces

Protection in spaces and public services

The Ontario Human Rights Code protects all individuals from discrimination based on gender identity and gender expression. Under the *Code*, there is a legal duty to accommodate the needs of people based on their gender identity or gender expression, unless it would cause "undue hardship". Undue hardship is legal test that looks at many factors; you should discuss this with a lawyer.

Does my school have to make sure I have a trans-inclusive classroom and school community?

Schools must make changes to accommodate and provide an identity-affirming, discrimination-free learning environment for trans, non-binary, Two Spirit and gender variant students. These changes are to ensure integration and full participation in all aspects of the classroom and school community.

Do I have a right to use gender segregated spaces?

As a trans, non-binary, Two Spirit and/or gender variant person, you have the right to access gender segregated spaces that correspond with, or best meet your needs in relation to, your gender identity. Examples of these spaces: locker rooms, change rooms, washrooms and sports teams.

Alternative accommodations, such as a separate all-gender washroom or change room, are within your legal right to request. However, an alternative accommodation cannot be forced on you. You have a right to use the gender segregated space that best meets your self-identified needs in relation to your gender identity.

Where can I read more about this topic?

There are many resources available, including:

[Policy on Preventing Discrimination Because of Gender Identity and Gender Expression](http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression), by the Ontario Human Rights Commission

www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression

[Policy on Creating Inclusive Environments for Trans Participants in Canadian Sport](http://cces.ca/sites/default/files/content/docs/pdf/cces-transinclusionpolicyguidance-e.pdf), by the Canadian Centre for Ethics in Sport

<http://cces.ca/sites/default/files/content/docs/pdf/cces-transinclusionpolicyguidance-e.pdf>

[Leading the Way: Working with LGBT Athletes and Coaches](http://www.caaws-homophobiainsport.ca/e/resources_caaws/documents/CAAWS_LeadingtheWay.pdf), by Canadian Association for the Advancement of Women and Sport and Physical Activity

www.caaws-homophobiainsport.ca/e/resources_caaws/documents/CAAWS_LeadingtheWay.pdf

Government-Issued Identification

How do I change the sex designation on my identity documents?

The first step in changing the sex designation on identity documents is to make the change on your birth record or birth certificate.

If you are 15 years of age or under, you will apply as a child and you will need:

- Written consent from yourself and of all persons with legal custody of you.
- Proof of notice to all persons with legal access to you.
- A letter signed by a physician or psychologist that supports your requested change.

If you are 16 or 17 years of age, you can apply as a child (described above) or as an adult. To apply as an adult, you will need:

- A statutory declaration, from yourself, as the adult applying for change of sex designation.
- A letter signed by a physician or psychologist that supports your requested change.

For both a child and an adult, your birth must have been registered in Ontario.

Download forms from the ServiceOntario website:

<https://www.ontario.ca/page/changing-your-sex-designation-your-birth-registration-and-birth-certificate>

Or you can call ServiceOntario and they can send you blank forms in the mail: 1-800-461-2156.

I disagree with the requirement that I need a letter signed by a physician or psychologist to support my request. Could this change?

Yes. The requirements to change the sex designation on an identity documents are constantly changing.

In 2012, Ontario became the first province in Canada to allow a sex designation change on a birth certificate without first undergoing specific surgeries.

Many human rights advocates continue to fight for other changes, such as self-identification as the only requirement to change the sex designation on identification.

As of June 2016, Ontario stopped displaying a sex designation on Health Cards.

Sometime in 2017, Ontario will include the additional gender identifier of 'X' (in addition to 'M' and 'F') on Driver's Licenses.

The law continues to change. You should speak to a lawyer for advice about your specific situation.

FOR HELP FINDING A LAWYER:

- Human Rights Legal Support Centre - www.hrlsc.on.ca 1-866-625-5179
- Justice for Children and Youth - www.jfcy.org, 416-920-1633 or 1-866-999-5329
Services for young people under 18 or homeless youth under 25
- Lawyer Referral Service - www.lsuc.on.ca/lrsr, receive up to 30 min free advice.
- Community Legal Clinics - www.legalaid.on.ca, locate and contact the clinic closest to you

OTHER SERVICES:

- Kids Help Phone - www.kidshelpphone.ca, 1-800-668-6868, phone and online support
- Egale Youth OUTreach Counselling Centre - www.egale.ca/outreach, 1-844-44-Egale (3-4253)
- LGBT YouthLine - www.youthline.ca, 1-800-268-9688

Organizations should feel free to add local resources:

This pamphlet gives general information only.
Speak to a lawyer about your situation. March 2017

