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# Discussion paper: Toward a commission policy on gender identity

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## Executive summary

### Introduction

Since the Ontario Human Rights Code (the “Code”) was first enacted in 1962, it has evolved to reflect both the changes in society and in our understanding of discrimination. However, while the protections in the Code extend to all people, those who are marginalised either on a group or individual basis are more likely to experience discrimination. This is the case with individuals and groups who identify as transgendered.

The Ontario Human Rights Commission (the “Commission”) has developed policy statements and guidelines that cover many of the grounds in the Code. However, issues related to transgendered persons remain largely unresolved in policy, procedures, and law.

The term ‘transgendered’ is used in the discussion paper to refer to a range of behaviours linked to gender identity and is used by individuals who are not comfortable with, or who reject, in whole or part, their birth-assigned sex.

### Background

Over the years the Commission has received human rights complaints from transgendered people in areas such as receipt of and access to services, employment, OHIP coverage for sex reassignment surgery and access to medical care, to mention a few. In the past, dialogue with various members and representatives of the transgendered community has resulted in somewhat inconsistent responses from the Commission regarding the processing of complaints and the understanding of the human rights issues faced by transgendered individuals. Eventually, the Commission did arrive at an ad hoc working position, namely that the Code does protect transgendered persons on the ground of sex.

In March 1998 at a conference held by the International Foundation for Gender Equality, Chief Commissioner Keith Norton spoke about the application of the Code as it relates to transgender issues. At that time, a commitment was made that the Commission would undertake policy development in consultation with the transgendered community. The Commission’s working position has been that the existing legal structure as set out in the Code can support a progressive understanding of the law and thereby protect transgendered

people effectively. This progressive understanding is rooted in the profound relationship between sex discrimination and gender discrimination.

## Discussion

This discussion paper is a first significant step toward fulfilling the commitment made by the Chief Commissioner and subsequent obligations contained in the Commission's public accountability framework. In writing this discussion paper, policy staff reviewed jurisprudence, domestic and international legislation, literature, and other human rights commission policies. As well, they consulted with members and representatives of the transgendered community.

Research and consultation indicates that transgendered people experience negative stereotypes that have a pervasive and often traumatic impact on virtually every aspect of their daily lives. For transgendered people some of the fundamental things that we take for granted, like jobs, housing and family life, are potentially at risk because they decide to 'come out' or are involuntarily discovered.

## Conclusion

The discussion paper reaffirms the principles and aims articulated in the preamble of the Code. The development of a progressive policy within the legal framework of the Code would ensure protection of transgendered individuals given their very real experiences with both individual and systemic discrimination.

**Ontario Human Rights Commission**  
**Prepared by the Policy and Education Branch**  
**October 1999**



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