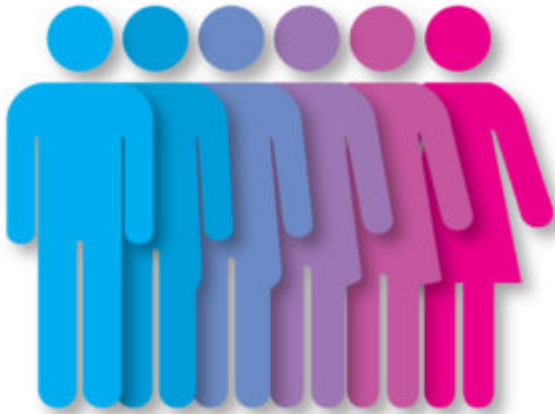


# Gender Identity & Sexual Orientation Quiz



## QUESTION

“Gender identity” and in some cases “Gender expression” jurisdictions across Canada have added these terms as prohibited grounds of discrimination pursuant to their human rights legislation. Are these situations where employers across Canada can discriminate in the basis of gender identity or gender expression on the hiring, training, promoting or firing of transgender employees?

## ANSWER

An Employer can only make out a bona fide occupational requirement (BFOR) by showing in a balance of probabilities that the rule:

- was adopted for a purpose rationally connected to the performance of the job;
- was adopted in an honest and good faith belief that it was necessary to fulfill, the legitimate work-related purpose; and
- was reasonably necessary to accomplish the legitimate work-related purpose, in that it was impossible to accommodate the claimant without imposing undue hardship on the employer.

## WHY IS IT RIGHT

### GENDER IDENTITY AND SEXUAL ORIENTATION

The Ontario Human Rights Commission defines gender identity as “each person’s internal and individual experience of gender. It is a person’s sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person’s gender identity may be the same as or different from their birth-assigned sex.”

### GENDER EXPRESSION

The Ontario Human Rights Commission defines gender expression as “how a person publicly expresses or presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A

person's chosen name and pronoun are also common ways of expressing gender. Others perceive a person's gender through these attributes.

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

## **GENDER EQUALITY**

Gender equality is the state in which access to rights or opportunities is unaffected by one's gender identity, gender expression or sexual orientation. In other words, when there is an environment where everyone has access to the same opportunities and rights across all sectors and levels of society, including economic participation and decision-making. When the many behaviours, aspirations, needs and perspectives of all are equally valued and favoured; one can conclude that gender equality is happening.

## **Trans or Transgender**

The Ontario Human Rights Commission defines trans or transgender as "an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms. It includes but is not limited to people who identify as transgender, trans woman (male-to-female MTF), trans man (female-to-male FTM), transsexual, cross-dressers, or gender non-conforming, gender variant or gender queer."

## **Transitioning**

Some people who identify as transgendered or transsexual decide to adjust their physical appearance, and/or name and pronouns to better represent the gender that they identify with. For some individuals this is done only by living as the opposite gender, while others choose to undergo medical treatment. This is a highly personal process and specific to each individual's decisions.

## **Support for a colleague who is transgender or transitioning**

- Use the name and pronoun they have asked you to use – if you make a mistake, simply say sorry and move on.
- Don't tell anyone else about this person's transsexual or transgender identity unless he or she asks you to. If you hear someone speculating or making fun, ask them to stop and let them know you don't think it's funny.
- Respect the individual's right to be in gender-specific spaces, like washrooms or change rooms.
- Don't treat them any differently than you did before.

## **Sexual orientation, human rights protections, case law and legislation**

**Introduction.** 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 provisions of the Code are aimed 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. Every person in Ontario has a right to be free from discrimination and harassment relating to sexual orientation in all the social areas protected by the Code. These include employment, services, goods and facilities, housing accommodation, contracts and membership in trade unions and vocational associations. Sexual orientation "Sexual

orientation" is not specifically defined in the Code. However, the OHRC recognizes that 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, including intimate emotional and romantic attachments and relationships. It is most commonly gay and lesbian people who make claims of discrimination on the basis of sexual orientation. However, the protection of the Code extends to all individuals who are denied equal treatment because of sexual orientation. The Code also prohibits discrimination because of gender identity, such as that faced by transsexual, transgender and intersex persons. These protections are extended on the basis of sex rather than sexual orientation, and are discussed in the OHRC's Policy on discrimination and harassment because of gender identity.

## **GENDER IDENTITY IN THE WORKPLACE: AN OVERVIEW**

In recent years, there has been increased acknowledgement of the difficulties faced by transgendered people, particularly in the workplace. Transgendered people routinely experience harassment and discrimination because of their chosen gender identity. Courts have recognized that they are a "historically disadvantaged group." For these reasons, it is crucial that employers understand the issues relevant to transgender people and adopt appropriate policies to ensure that these employees are able to work in a safe and secure environment, free from discrimination.

The law is clear that each person is entitled to determine their own gender identity. If a person's gender identity differs from the person's birth gender, the person should be treated according to the gender they identify with. In April 2014, the Ontario Human Rights Commission released its *Policy on Preventing Discrimination because of Gender Identity and Gender Expression*. This policy sets out some key terms relating to the concept of gender:

- **Gender identity** is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.
- **Gender expression** is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.
- **Trans** or **transgender** is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms. It includes but is not limited to people who identify as transgender, trans woman (male-to-female), trans man (female-to-male), transsexual, cross-dresser, gender non-conforming, gender variant or gender queer.

Although "**gender identity**" is not an expressly prohibited ground of discrimination in all human rights legislation across Canada, the courts in Canada have consistently held that transgender people are protected from discrimination on the ground of sex. In recent years, jurisdictions across Canada, including the Northwest Territories, Manitoba, Nova Scotia and Ontario

have expressly added the terms **“gender identity”**, and in some cases **“gender expression”**, as prohibited grounds of discrimination under their human rights legislation. This means that employers across Canada are prohibited from discriminating on the basis of gender identity in the hiring, training, promoting or firing of transgender employees, unless the discriminatory rule or standard is based on a ***bona fide occupational requirement*** (“**BFOR**”).

In *British Columbia (Public Service Employee Relations Comm.) v. BCGSEU*, [1999] 3 S.C.R. 3 (“*Meiorin*”), the Supreme Court of Canada held that an employer could only make out a BFOR defence by showing on a balance of probabilities that the rule:

- was adopted for a purpose rationally connected to the performance of the job;
- was adopted in an honest and good faith belief that it was necessary to fulfill the legitimate work-related purpose; and
- was reasonably necessary to accomplish the legitimate work-related purpose, in that it was impossible to accommodate the claimant without imposing undue hardship upon the employer.

Accordingly, *Meiorin* stands for the proposition that an employer has a duty to accommodate its employees up to the point of undue hardship. This duty imposes a legal obligation upon employers to accommodate the needs of transgendered employees. The usual types of accommodations for transgendered employees are not onerous and will likely involve changes to workplace policies or requirements in order to make the working environment more inclusive.

**The following items are some examples of the TYPES OF ACCOMMODATION that employers may be required to implement for transgendered employees:**

#### **(a) Self-Identification and Employment Records**

Transgendered employees must be allowed to define their own gender identity and should be addressed in person by their chosen name and gender. Employees should also be identified by the pronoun of their choice, even if it differs from their identity documents. If gender or pronouns are required on certain employment records, these records should include the preferred gender and pronoun of the particular employee.

#### **(b) Washrooms and Change Rooms**

Employers should allow transgendered employees access to washrooms, change rooms and other gender specific facilities based on their own gender identity. If certain facilities or change rooms do not have separate privacy stalls, it is recommended that employers look into specific accommodations to provide gender-neutral facilities for transgendered employees.

#### **(c) Uniforms and Dress Codes**

Workplace uniforms and dress codes should be gender neutral and any workplace dress policies should apply equally to all genders. If a workplace has gender specific uniforms, an employee must be provided with the choice of which uniform to wear. In addition, employees must be allowed to dress in accordance with their gender identity.

#### **(d) Recognition of Privacy Rights**

In addition to their rights under human rights legislation, transgendered employees also have statutory rights with respect to privacy. Employers must ensure that there is no unlawful or unnecessary disclosure of an employee's personal information, including medical information. For example, disclosing that an employee is transgendered without the employee's permission is a breach of that employee's privacy rights and may constitute harassment.

#### **(e) Workplace Harassment and Bullying Policies**

Harassment is one of the most significant concerns for transgendered employees. Workplace harassment may take the form of inappropriate comments or questions, teasing, isolation, bullying, and verbal or even physical abuse. Employers should ensure that they have workplace harassment and bullying policies in place, which include gender identity and gender expression as prohibited grounds of harassment.

#### **(f) Adoption of Guidelines for Transitioning Employees**

Employers should have appropriate guidelines in place to assist employees who are transitioning from one gender to another at the workplace. These guidelines may address issues such as guidelines for facilitating the transition process, medical leave entitlements, medical benefits coverage, processes for updating employee records and dress code and washroom policies, to name a few.

### **WHY IS EVERYTHING ELSE WRONG**

#### **GENDER EQUALITY AND GENDER BASED VIOLENCE (GBV)**

#### **GENDER EQUALITY AND GENDER-BASED VIOLENCE IN EMERGENCIES AND DEVELOPMENT**

In our fight for a world free from hunger, it's essential that we understand the different experiences women, men, girls and boys have in the countries in which we work. For example, women and girls in South Sudan often eat last and the least within their families. In India, many young boys who travel away from home for work do not know how to cook for themselves don't always get the proper nutrients they need. Being aware of these differences allows us to design efficient programs.

In the majority of the contexts where we work, men and boys have more privileges than women and girls. This means, women and girls have less access to education, political representation, decision making at all levels, and control over resources. We work to change these dynamics as part of our mandate: gender inequality is one of the fundamental causes of hunger.

The **Action Against Hunger Gender Unit** supports commitment to gender equality. We provide the tools and capacity building to our teams in nearly 50 countries, to promote an environment where gender-based violence and gender discrimination are mitigated.

#### **THE IMPORTANCE OF GENDER EQUALITY**

Action Against Hunger has made gender equality an important part of our organization and work. In our fight against hunger, we consider the different

roles, needs and opportunities of men, women, boys and girls. Because of this, our programs not only tackle malnutrition, but also work to close the gender gap and make a lasting impact. Gender inequality is a cause and consequence of hunger.

Worldwide, women produce the majority of food, and they are the primary caregivers for children and other family members. Although this is fundamental for the development of societies, the caregiving economy is usually unpaid, invisible and unrecognized. This is an important factor to consider, since it is estimated that 60% of the world's hungry are women and girls. Gender inequality leads to a higher malnutrition rates among women and girls.

## **APPROACH TO ENSURING GENDER RESPONSIVE PROGRAMMING**

The first step we take to ensure gender responsive programming is understanding the gender and age dynamics of societies where we implement our projects.

After that, we make sure all those gender dynamics are considered at project level, to ensure every gender and age group needs are covered. Thus, everyone benefits from the project, participates in its design and we can prevent obstacles and gender-based violence.

## **ACCOUNTABLE FOR GENDER EQUALITY**

Gender equality is considered in all our internal and external policy and practice. We are committed to building the capacity of our staff and our partners to be able to both gender mainstream and engage in transformative programming.

Action Against Hunger has developed an internal set of standards and qualification called the Gender Minimum Standards.

## **FIVE STANDARDS WHICH ACTION AGAINST HUNGER HOLDS ITSELF ACCOUNTABLE TO ARE:**

1. Internal processes and practices contribute to an enabling environment for gender equality.
2. Policies and practices involving partners, stakeholders and beneficiaries are gender sensitive.
3. Staff are supported and encouraged to mainstream gender.
4. Staff capacity to mainstream gender equality is developed and reinforced.
5. Gender is considered in all programs.

## **GENDER BASED VIOLENCE (GBV)**

Gender-based violence (GBV) is an umbrella term for any harmful act that is perpetrated against a person's will, and that is based on socially ascribed (gender) differences between males and females.

## **THE IMPORTANCE TO CONSIDER GENDER BASED VIOLENCE IN THE WORKPLACE**

Gender-based violence (GBV) and undernutrition are part of a vicious cycle. Increasing levels of gender inequality and power imbalance are a cause and consequence of gender-based violence.

**Some examples of how gender-based violence is linked to undernutrition include:**

- Increased stress, lack of basic needs and disagreements on how household resources (such as food) are managed can increase forms of domestic violence.
- Higher levels of food insecurity and hunger can lead women or men to exchange food for sex.
- Survivors of gender-based violence may experience physical, psychological and emotional consequences that impact their consumption of healthy and nutrition foods.

## **HOW DOES ACTION AGAINST HUNGER INTEGRATE GENDER-BASED VIOLENCE RISK MITIGATION INTO ITS NUTRITION AND HEALTH PROGRAMS?**

To effectively mitigate and prevent gender-based violence in our programs, we begin by understanding the risks and causes of gender-based violence in the communities that we work. We also connect and coordinate with gender-based violence specialists and other sectors to understand what services available; how other actors are mitigating and prevent gender-based violence in the community; and how our programs can link to those services.

Once we understand the risks and opportunities for collaboration, we can take specific actions to mitigate the risks of gender-based violence, depending on the context. Some examples include:

- Building the capacity of staff involved in designing, implementing and monitoring a project
- Ensuring the community can access, and is comfortable using feedback mechanisms
- Creating support groups for women and men participating in nutrition programs to discuss issues such as childcare and household work in addition to nutrition concerns
- Ensuring adequate lighting both inside and outside of latrines and other WASH facilities