

GENDER IDENTITY OR EXPRESSION AND HUMAN RIGHTS



Gender identity or expression is a protected ground of discrimination under the **New Brunswick Human Rights Act (Act)**. This ground protects transgender, non-binary, Two-Spirit, and gender diverse people from discrimination in five protected areas in New Brunswick, and also protects anyone whose gender identity doesn't match their sex assigned at birth. The protected areas are employment, housing, services, publicity, and certain associations.

What Does Gender Identity or Expression Mean?



Gender Identity

Refers to **how someone internally feels** about their gender. It's personal and unique to each person. It can include feeling like a woman, a man, both, neither (ex: non-binary), or somewhere in between (ex: gender fluid). Your gender ID **might match the sex you were assigned at birth, or it might be different**. Gender ID is different from sexual orientation.

Gender Expression

Refers to **how someone shows or presents their gender to others**. This includes the way a person behaves and presents their appearance, including their clothes, hairstyle, makeup, body language, and voice. **A person's chosen name and pronouns** (ex: she/her, they/them, he/him, etc.) are also common ways of expressing their gender.



Gender Identity or Expression Discrimination

The **Act prohibits discrimination based on gender identity or expression** in the five protected areas. The following are examples of discriminatory conduct under human rights law.



Under the **Act**, **employers** are prohibited from:

- Treating someone unfairly in hiring, promotion, or at work because of their gender identity.
- Not letting an employee use the restroom or changing areas that match their gender identity.
- Enforcing dress codes that conflict with an employee's gender identity.
- Disclosing someone's gender identity status without their permission.
- Refusing to use an employee's preferred name or pronouns.
- Bullying or failing to address bullying of an employee because of their gender identity.



Under the **Act**, **service providers** like schools, stores, universities, government services, hotels, etc. are prohibited from:

- Turning away customers because of their gender identity or expression (ex: refusing to serve someone who is transgender).
- Putting out ads for a service which indicate that transgender or gender diverse people won't be served.
- Refusing to use a client's chosen name or pronouns (ex: calling a transgender girl or woman "he" instead of "she.").
- Not letting a person use the restroom or changing room that matches their gender identity.



Under the Act, **housing providers** (ex: landlords, property management corporations, homeowners, condo boards, etc.) are prohibited from:

- Refusing to rent or sell property to someone because of their gender identity.
- Stopping a property owner from renting or selling to a transgender person or adding conditions to contracts that say transgender or gender diverse people can't buy or rent.
- Bullying or failing to address the bullying of a tenant, owner, or potential buyer because of their gender identity.
- Ignoring a tenant's chosen name or pronouns.
- Putting out ads indicating that transgender or gender diverse individuals won't be considered as tenants or buyers.

Duty to Accommodate

Under the Act, employers, service providers, and housing providers have a legal obligation to make **reasonable adjustments to their policies, practices, and spaces to accommodate individuals based on their gender ID or expression**. This means they must ensure that their workplaces, services, and housing are inclusive and accessible to individuals protected under this ground. **This is called the duty to accommodate, and it is the law.**



If it becomes too difficult for an employer, service provider or housing provider to accommodate a person's needs related to their gender identity or expression (for example, due to extremely high financial costs), then they can deny the accommodation request. Such **denial must be based on careful assessment** – it cannot be automatic. This is called **undue hardship**.

Concerns that others will be uncomfortable sharing facilities with a transgender or gender diverse person **don't justify rejecting an accommodation request**.

Accommodation Examples



- Providing access to a single-stall washroom for individuals who feel uncomfortable using gender-specific facilities.
- Accommodating uniform requirements for employees who don't identify with traditional gender categories.
- Establishing gender-neutral washrooms, changing rooms, etc.
- Implementing policies to ensure individuals are addressed by their chosen name and pronouns.
- Providing a flexible schedule so individuals can attend medical appointments that are part of their transition process.

Right to Privacy

Transgender and gender diverse people have a right to privacy and a right to keep their gender identity private unless it needs to be disclosed for an accommodation. In some cases, a person might need to share their gender identity, for example to request time for medical appointments related to their transition.

Employers, service providers, or housing providers **should only share this information with people directly involved in the accommodation process**, unless the person concerned has given permission to share this information.

Learn more about gender identity and human rights by consulting our "Guideline on Gender Identity or Expression"!

<https://bit.ly/3wEC1M0>



Do you have questions? Contact the Commission

The New Brunswick Human Rights Commission is a government agency that ensures the human rights of all New Brunswickers are protected under the Act. If you want to learn more about your rights and responsibilities related to gender identity or expression, contact the Commission. The Commission provides free information about your rights and can provide information on filing a complaint.

If you think you have experienced discrimination in New Brunswick, you can file a complaint with the Commission.

You can reach us at:

(506) 453-2301

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