

SHER

VANCOUVER

DISCRIMINATION
AND HUMAN
RIGHTS

SUMMARY OF TOPICS

"SEXUAL ORIENTATION" AND
"GENDER IDENTITY OR EXPRESSION"

DEFINING DISCRIMINATION: THE LAW IN CANADA

PROTECTION FROM DISCRIMINATION
IN CANADA AND BRITISH COLUMBIA

CANADIAN HUMAN RIGHTS ACT

BRITISH COLUMBIA HUMAN RIGHTS CODE

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

EMPLOYMENT EQUITY ACT

MARRIAGES

COMMON LAW RELATIONSHIPS

SPOUSAL SPONSORSHIP

ADOPTIONS



"SEXUAL ORIENTATION" AND "GENDER IDENTITY OR EXPRESSION"

Canadian law recognizes thirteen categories or grounds on which individuals may not be discriminated against, including race, national or ethnic origin, colour, religion, sex, sexual orientation, and gender identity and expression. These categories define Canada's identifiable groups.

In 1996, Canada added "sexual orientation" to the list of identifying factors protected from discrimination in the Canadian Human Rights Act.¹ In 2017, the government added "gender identity and gender expression" to that list.

Canada's criminal law protects these identifiable groups from hate speech and discrimination.² The Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act, the Employment Equity Act, and the British Columbia Human Rights Code also protect people from discrimination based on sexual orientation and gender identity and expression.³

DEFINING DISCRIMINATION: THE LAW IN CANADA

Discrimination is an action or decision that treats a person or group badly and unfairly for reasons such as their race, age, or gender.⁴ Canada's anti-discrimination laws protect people's right to be free from discrimination in the workplace, in their dealings with the government, and in society as a whole. (See the list of anti-discrimination laws below, under the heading "Protection from Discrimination in Canada and British Columbia").



The following are examples of what discrimination in different settings:

A provincial marriage commissioner refuses to marry two people because they are gay or lesbian. This may be a case of discrimination based on sexual orientation

An employer fails to accommodate the needs of an employee who is transgender. This may be a case of discrimination based on gender identity and expression

A bank makes it especially difficult for new immigrants to get loans. This may be a case of discrimination based on race and national or ethnic origin

A landlord asks for a person's citizenship status and refuses to rent to them because they are not a citizen. This may be a case of discrimination based on national or ethnic origin.

For more examples of possible discrimination, visit the Canadian Human Rights Commission's website: <https://www.chrc-ccdp.gc.ca/eng>

PROTECTION FROM DISCRIMINATION IN CANADA AND BRITISH COLUMBIA

If you or someone you know has experienced discrimination, you should consider speaking to a lawyer. You may be able to file a complaint with the Canadian Human Rights Commission.

The provinces have their own human rights laws too. BC has the British Columbia Human Rights Code. The British Columbia Human Rights Tribunal deals with human rights complaints in BC.



CANADIAN HUMAN RIGHTS ACT⁵

Under the Canadian Human Rights Act

People in Canada are protected from discrimination when they are employed by the federal government or receive services from the federal government or companies that are regulated by the federal government

Employers and service providers have a duty to accommodate their employees up to a certain extent and to ensure that all employees are treated fairly. This means that employers may be required to make changes to an employee's work environment or duties to make it possible for that person to do their job every day

A person who has been discriminated against can file a complaint with the Human Rights Commission. The Commission investigates discriminatory practices, including complaints against the federal government.

The Canadian Human Rights Act outlines the following as prohibited grounds of discrimination:

Race	Marital Status
National or Ethnic Origin	Family Status
Colour	Disability
Religion	Genetic Characteristics
Age	A conviction for which a pardon
Sex	has been granted or a record
Sexual Orientation	suspended
Gender Identity or Expression	



BRITISH COLUMBIA HUMAN RIGHTS CODE⁶

The province of British Columbia has its own laws to protect human rights. The BC Human Rights Code helps protect people from discrimination and harassment. For example, the Code prohibits people from refusing to rent or sell an apartment to someone because of where they come from, the colour of their skin, their sex, sexual orientation, or their gender identity or expression. The Code applies to all citizens in their dealings with each other.

Like the Canadian Charter of Rights and Freedoms, the BC Human Rights Code recognizes different grounds on which people cannot be discriminated against. These are:

Race	Physical or Mental Disability
Colour	Sex
Ancestry	Sexual Orientation
Place of Origin	Gender Identity or Expression
Religion	Age
Marital Status	Family Status

The Human Rights Tribunal is responsible for dealing with complaints under the Human Rights Code. For more information about the Code and the Tribunal, visit the BC government's website:

<https://www2.gov.bc.ca/gov/content/justice/human-rights/human-rights-protection>



CANADIAN CHARTER OF RIGHTS AND FREEDOMS⁷

The Canadian Charter of Rights and Freedoms is a part of Canada's Constitution, the supreme law of the land. The Charter protects every person's right to be treated equally under the law. The Charter applies to the actions of the Government of Canada.

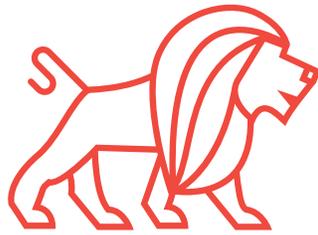
The Charter protects people's rights from unjust laws, policies, or government actions, including police actions. Under the Charter, individuals or groups can challenge the government or agencies acting on behalf of the government.

EMPLOYMENT EQUITY ACT⁸

The Employment Equity Act is a federal law. It requires all organizations and businesses regulated by the federal government to provide equal opportunities to four groups:

- Women;
- Aboriginal peoples, First Nations, Inuit, or Metis;
- People with disabilities; and
- Members of visible minorities.

For more information about your rights in the workplace, visit the Government of Canada's website: <https://www.canada.ca/en/canadian-heritage/services/rights-workplace.html>



SHER

VANCOUVER

SAME-SEX
RELATIONSHIPS



MARRIAGES

In 2005, the Civil Marriage Act legalized same-sex marriage across all of Canada.⁹

Canadian law protects the rights of LGBTQ+ people and their relationships. These laws include the Canadian Human Rights Act, the Charter of Rights and Freedoms, the Canadian Criminal Code, and the BC Human Rights Code.

In Canada, for a marriage that took place in another country to be valid, it must be considered legal in that country as well as in Canada. This applies to all marriages, including same-sex marriages.¹⁰

COMMON LAW RELATIONSHIPS

In Canada, common law relationships are a legally recognized form of relationships. Couples with common law status have the similar rights and privileges as those enjoyed by married couples. Common law marriage status is given to couples who have been cohabitating or living together in a relationship for a certain amount of time outside of a traditional marriage.

In BC, a couple must reside together for 2 years to be considered in a common law relationship. For common law marriage, living together means living together continuously. Any separation between partners must be temporary and short. Rules of common law relationships apply to all couples, including same-sex couples.



The rule for common law relationships is slightly different for immigration purposes, as a couple needs to prove that they have lived together in a conjugal relationship for one 1 year.¹¹ This rules still applies to all couples, including same-sex couples.

For more information about common-law relationships and cohabitation, visit the Government of Canada's website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-common.html>

SPOUSAL SPONSORSHIP

A Canadian citizen or a permanent resident may sponsor their same-sex partner to immigrate to Canada as their spouse, so long as the marriage is recognized as legal in the country where it occurred as well as under Canadian law. Couples should consider the following:

It is the sponsor's responsibility to prove to Immigration, Refugees and Citizenship Canada that the marriage was legally recognized at the time and place it occurred;

Same-sex partners who are not married may be sponsored as common-law partners if they have lived together for one year;

Couples who have not been able to live together for one year, may have the foreign partner apply as a conjugal partner if they have maintained a conjugal relationship for at least one year; and



Some nations outside Canada recognize same-sex unions under legal means other than marriage (such as civil unions or domestic partnerships). In Canada, these relationships may be considered common-law partnerships

You can find more information about same-sex sponsorship on the Government of Canada's website: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-relationship.html>

ADOPTIONS

Adoption by same-sex couples is legal in all provinces and territories.



FOOTNOTES

- 1 Canadian Human Rights Act, RSC 1985, c. H-6, s. 3 <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-256800>
- 2 Criminal Code, RSC 1985, c. C-46, s.319 <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-319.html>
- 3 Krishna Rau, “Lesbian, Gay, Bisexual and Transgender Rights in Canada,” The Canadian Encyclopedia, Last Edited March 19, 2019: <https://www.thecanadianencyclopedia.ca/en/article/lesbian-gay-bisexual-and-transgender-rights-in-canada>
- 4 “About Human Rights,” Canadian Human Rights Commission: <https://www.chrc-ccdp.gc.ca/eng/content/what-discrimination>
- 5 Canadian Human Rights Act, RSC 1985, c. H-6 <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html#h-256800>
- 6 Human Rights Code, RSBC 1996, c. 210 http://www.bclaws.ca/Recon/document/ID/freeside/00_96210_01
- 7 Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK),1982, c.11 <https://laws-lois.justice.gc.ca/eng/const/page-15.html>
- 8 Employment Equity Act, SC 1995, c. 44 <https://laws-lois.justice.gc.ca/eng/acts/e-5.401/>
- 9 Civil Marriage Act, SC 2005, c. 33, Preamble <https://laws-lois.justice.gc.ca/eng/acts/c-31.5/page-1.html>
- 10 “Assessing the relationship between spouses or common-law partners,” Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-relationship.html>
- 11 “Assessing a common-law relationship,” Government of Canada <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/permanent-residence/non-economic-classes/family-class-determining-spouse/assessing-common.html>

EXCLUSION DISCLAIMER

FOR REFERRAL LISTS

The referrals on this website do not constitute a representation or guarantee of the quality of service provided by those referred. This is only a list of entities who provide services to members of the LGBTQ+ community. Sher Vancouver is not liable for any consequences arising between clients and the referred entities. The user of this referral list waives the right to any legal action against Sher Vancouver for financial loss or detriment, however sustained, resulting from reliance on the information on this website.

NOTHING ON THIS WEBSITE CONSTITUTES LEGAL ADVICE

The information provided on this website does not, and is not intended to, constitute legal advice. All information, content, and materials available on this website are purely for general informational purposes only. It is not intended to provide legal advice or opinions of any kind and may not be used for professional or commercial purposes. No reader, user, or browser of this site should act or refrain from acting on the basis of information on this site without first seeking appropriate legal or professional advice.

This website contains links to other third-party websites. Such links are only for the convenience of the reader, user or browser. Sher Vancouver does not necessarily endorse the contents of the third-party sites. All liability with respect to actions taken or not taken based on the contents of this site are hereby expressly disclaimed. The content on this posting is provided "as is;" no representations are made that the content is error-free. All materials on this website are used at the reader's own risk.

Pro Bono Students Canada (PBSC) - UBC Chapter

Students: Janice Lu and Adil Altan Ahmed

Lawyer Supervisor: Guida Heir

Organization Contact: Alex Sangha of Sher Vancouver

Completed: April 2020