

Know Your Rights:

A Guide for LGBTQ2+ Employees



Know Your Rights: A Guide for LGBTQ2+ Employees

Author: Meike Jourdain
Programming & Engagement Coordinator
Pride at Work Canada



Pride at Work Canada is the leading national not-for-profit confronting gender expression, gender identity, and sexual orientation inclusion in Canadian workplaces. Through dialogue, education and leadership, we empower organizations to foster a workplace culture that recognizes LGBTQ2+ employees as an important part of a diverse workforce.

www.prideatwork.ca

Report: www.prideatwork.ca/Know-Your-Rights/

Cite this report as: Jourdain, Meike (2021), “Know Your Rights: A Guide for LGBTQ2+ Employees” a report from Pride at Work Canada. Available at: www.prideatwork.ca/Know-Your-Rights/



ACKNOWLEDGEMENTS

The author would like to acknowledge and express gratitude to Aliah El-houni, Co-Director of the Community Justice Collective and Marcella Daye, Senior Policy Advisor at the Canadian Human Rights Commission for their support, feedback, and assistance. Their willingness to share knowledge and expertise was essential in creating this guide.

The author would also like to thank Jade Pichette, Colin Druhan, and Luis Augusto Nobre from the Pride at Work Canada team for their input and editorial support.

This guide was designed by: www.lightupthesky.ca

TABLE OF CONTENTS

5.....	Introduction
6.....	What Laws Protect Me From Discrimination in the Workplace?
7.....	What is Considered Discrimination and Harrassment?
8.....	Discrimination Has Many Forms: Successful Case Examples
12...	What is My Employer Responsible for?
13...	How Do I Advocate for Myself?
16...	Resources
18...	Glossary
20...	Further Reading
21...	Bibliography

INTRODUCTION

Every worker has the right to be free from discrimination in the workplace. This resource is a guide for LGBTQ2+ workers who are seeking information about their rights in the workplace, are uncertain whether they have experienced discrimination at work, or are looking for ways to hold their employers accountable. This guide was created with the recognition that LGBTQ2+ employees face increased challenges and barriers at work which are unique to their position as members of two-spirit, queer, trans, gender non-conforming, and other communities. These unique challenges extend to the legal system, in which it has historically been difficult for LGBTQ2+ workers to find justice. This guide aims to provide information that can better prepare LGBTQ2+ employees for navigating that system.

This resource does not cover all of the ways to advocate for yourself at work. It provides basic information regarding the process of filing a human rights complaint, which is just one avenue of recourse for being mistreated in the workplace. This guide is not legal advice, information in this document is a condensed and LGBTQ2+ specific version of available resources from federal, provincial and territorial human rights commissions and tribunals. It also includes summaries of several successful human rights complaint cases which highlight a variety of experiences that are considered discrimination and can be reported as such. We hope this guide equips the reader with the knowledge to identify discrimination in the workplace and the confidence to advocate for their rights as an LGBTQ2+ worker.

If after reading this guide you believe you have been discriminated against in your workplace, we encourage you to contact a human rights commission listed at the end of this document, or to seek out advice from a lawyer, your union or professional association.

Content Warning: This document contains descriptions of discrimination faced by LGBTQ2+ employees.

Note that this resource contains information about the law, but it is not legal advice. It is best to consult a lawyer or legal services for more information. Resources for support can be found on page 16.

¹Dan Irving, "Gender Transition and Job In/Security: Trans* Un/der/employment Experiences and Labour Anxieties in Post-Fordist Society," *Atlantis* 38, no. 1 (2017): 171; Kelsey Brennan et al., *Building the Evidence Base About Economic, Health and Social Inequities Faced by LGBTQ2S+ Individuals in Canada: Phase 1 Report* (Social Research and Demonstration Corporation: 2021), 12-19.

²Florence Ashley, "Don't Be So Hateful: The Insufficiency of Anti-Discrimination and Hate Crime Laws in Improving Trans Well-Being," *University of Toronto Law Journal* 68, no. 1 (Winter 2018); Lise Gotell, "Queering Law: Not by Vriend," *Canadian Journal of Law and Society* 17, no. 1 (2002); Samuel Singer, "Trans Rights Are Not Just Human Rights: Legal Strategies for Trans Justice," *Canadian Journal of Law and Society / Revue Canadienne Droit Et Société* 35, no. 2 (2020); J. James et al., *Legal Problems Facing Trans People in Ontario, TRANSforming JUSTICE Summary Report 1(1)*, (2018).

WHAT LAWS PROTECT ME FROM DISCRIMINATION IN THE WORKPLACE?

The workplace is a protected area under the Canadian Human Rights Act, and under every provincial and territorial human rights code in Canada. This means that in the context of employment, discrimination against an individual that is related to a protected ground is prohibited.

What is considered employment?: The definition of employment as a protected area varies by province, but in general employment can be interpreted to include full-time, part-time, volunteer, internship, temporary, and contract work. This includes employers in public or private sectors. It can also cover employment-related events such as retreats or company parties. Human rights codes also protect employees from discrimination by unions and professional or vocational associations.

In human rights codes, protected grounds (sometimes called “applicable characteristics”) are the characteristics of individuals that are illegal to discriminate against. **Gender expression, gender identity, sex/gender, and sexual orientation, are protected grounds at both the federal, provincial, and territorial levels.** Meaning that anywhere in Canada, it is illegal for your employer to treat you negatively and in ways that are different from other staff members because of your gender expression, gender identity, and/or sexual orientation. It is also illegal for your employer to harass you, or to fail to protect you against harassment at work. Though each province and territory has a different human rights code, protected grounds are very similar across the country. Manitoba and Saskatchewan are the only jurisdictions which do not explicitly include gender expression as a protected ground, instead, gender expression can be considered protected under other categories such as sex, gender, gender identity or sexual orientation.

Aside from human rights laws, provincial employment standards, the federal labour code, and occupational health and safety laws can also be a source of protection from discrimination, harassment and violence in the workplace. There are also proactive laws which can require employers to increase the workforce representation of specific groups of people, to ensure pay equity, and to ensure accessibility in workplaces. If you are in a union, you may also be protected by the union’s collective agreement with your employer. This means that you might be able to challenge the discrimination you’ve experienced through a grievance under the collective agreement.

The laws that protect you depend on where you live, where you’ve experienced discrimination, and who you work for. To find out which laws apply to your situation, it is best to find guidance from a lawyer, legal clinic, union representative or staff at the relevant federal, provincial, or territorial human rights commission.

WHAT IS CONSIDERED DISCRIMINATION?

In the context of employment, which includes hiring advertisements and processes and the use of employment agencies, discrimination can happen in many forms. In Canadian human rights law, discrimination is generally understood as the circumstance in which a person experiences negative treatment on the basis of a protected ground. When you are treated differently and unfavourably in an employment situation because of your gender expression, gender identity, or sexual orientation, and this differential treatment negatively impacts you, that is discrimination. Those that discriminate against you, whether it be an employer or a coworker, may not intend to or be aware that they are doing so, but their **intention does not matter for the purposes of determining whether or not you've experienced discrimination.**

WHAT IS CONSIDERED HARRASSMENT?

Harassment is a form of discrimination that refers to behaviours or actions that make a person feel uncomfortable, embarrassed or afraid. To be considered a human rights issue, the comments or acts that amount to harassment must be related to a protected ground. Repeated derogatory remarks, offensive jokes, sexual advances, rude language, and continued use of prior names or unwanted pronouns could all be examples of harassment. These can come in spoken or written forms, and they can come from anyone - managers, supervisors, or colleagues. Sometimes, if a single act is egregious enough, it can be considered harassment. As a rule, the more severe the behaviour, the fewer times it must happen for it to be considered harassment. Some types of harassment, including violence in the workplace, may also be the subject of criminal charges, and in these cases the police may need to be contacted as well.

The intention of the person harassing you does not determine whether or not you have, in fact, experienced harassment. **Even if you haven't spoken out about the harassment or discrimination you have dealt with in the workplace, you can still make a human rights complaint.** Your employer is responsible if they knew or if they should have known that the harassment was taking place and did not take sufficient steps to stop it, such as investigating and correcting harassment in the workplace.

DISCRIMINATION AND HARASSMENT ON MULTIPLE GROUNDS

Discrimination and harassment in the workplace can also be heightened when it is targeted at or impacts more than one part of your identity (such as your gender expression *and* a disability), **know that you can file a human rights complaint on the basis of multiple protected grounds.**

Many people experience unique forms of discrimination based on two or more protected grounds. For example, Black trans women may experience a form of discrimination and harassment at work that is shaped specifically by the interactions of racism, transphobia, and misogyny.

DISCRIMINATION HAS MANY FORMS: SUCCESSFUL CASE EXAMPLES

There is no one single form that discrimination takes. Discrimination, harassment and negative treatment can be experienced in a variety of ways. All experiences are valid. Even if you cannot see your experience in the specific examples below, you may still make a human rights claim.

The following cases offer some examples of what workplace discrimination can look like:

Wesley v. 2252466 Ontario Inc. o/a The Grounds Guys (2014, HRTO 1591)

Find the full case [here](#).

D. Wesley filed a human rights complaint after experiencing harassment and discrimination because of his race, colour, ancestry, ethnic origin, disability, sexual orientation, and sex while working for a landscaping company.

Though Wesley had never told anyone at his workplace that he was gay, his boss made homophobic comments and gestures about him in front of his coworkers who laughed in response. He was also deaf, and the notepad that his hearing coworkers used to communicate with him was used to make discriminatory remarks. Wesley, who believed himself to be the only Indigenous person in the workplace, felt that his indigeneity factored into the mistreatment he experienced as well. He was fired after six weeks on the job.

The Ontario Human Rights Tribunal ruled that:

- **This was harassment on the basis of the applicant's sexual orientation** and sex because, even though Wesley never said he was gay, the comments made towards him were discriminatory as they “characteriz[ed] being gay and sexual acts between men as insults” (Wesley v. 2252466 Ontario Inc. o/a The Grounds Guys, 2014, ¶33).
- **This created a poisoned work environment** for Wesley. The comments and actions from his boss and coworkers made the workplace hostile and uncomfortable for Wesley. It is a form of discrimination for an employer to let this kind of work environment continue.
- **Firing Wesley was discrimination on the basis of a disability.** There were complaints from his coworkers about having to communicate with him through a notepad. Rather than exploring other options to accommodate Wesley, the employer fired him. This was considered a discriminatory act.

The employer was ordered to pay Wesley \$8,200 for lost income and \$25,500 as compensation for injury to his dignity, feelings and self-respect. The landscaping company was also ordered to provide Wesley with a positive reference letter.

Vanderputten v. Seydaco Packaging Corp. (2012, HRTO 1977)

Find the full case [here](#).

Maria A. Vanderputten filed a human rights complaint after experiencing harassment and discrimination because of her gender identity while working for a packaging company.

The employer was aware that Vanderputten was transitioning, yet they told her that she had to be treated in the same manner as the men in the workplace until they received medical or legal documentation that she was a woman. Vanderputten faced harassment in the men's change room, and when she told her employer, they refused to find solutions that would have made her more comfortable and prevented any further discrimination against her. The employer fired Vanderputten when she got into a verbal altercation with a coworker who had made discriminatory remarks about her gender identity.

The Ontario Human Rights Tribunal ruled that:

- **The employer discriminated against Vanderputten's gender identity.** It is a form of discrimination to insist that someone be treated according to the gender they were assigned at birth until they have medical documentation that "proves" their transition. Even though the employer thought they were following the law in asking for this "proof", they are still responsible for this discrimination, regardless of their intent.
- **This created a poisoned work environment for Vanderputten.** The work environment was hostile and uncomfortable for Vanderputten because the employer did not do enough to respond to her complaints of harassment from coworkers about her gender identity.
- **Even though Vanderputten was not always the best employee, she still had the right to a harassment-free workplace.** She may have disobeyed directions from supervisors or had issues with her coworkers at times, but this was irrelevant for determining whether or not she had experienced discrimination at work. Much of her "bad" behaviour was a response to the poisoned work environment that the employer did nothing about, so firing her because of this behaviour was a form of discrimination.

Seydaco Packaging Corp., and one of Vanderputten's coworkers who had made discriminatory comments towards her, were ordered to pay her \$1,000 for injury to her dignity, feelings, and self-respect. Seydaco Packaging Corp. was also ordered to pay Vanderputten an additional \$21,000, as well as the wages she lost after being fired.

Commission des droits de la personne et des droits de la jeunesse c. Maison des jeunes (1998, QC TDP)

Find the full case [here](#).

**note that this case took place before gender identity and gender expression had been included as protected grounds in human rights codes across Canada.*

M.L. filed a human rights complaint after she informed her employer that she was in the process of transitioning and was then fired from her job as a youth worker at a youth centre.

After being offered a new employment contract, M.L. let her employer know that she would like to be hired as a woman for this new contract because her job was the only area of her life in which she was still living according to the gender she had been assigned at birth. M.L.'s employer responded by terminating her current contract and revoking the offer of the new employment contract.

The Human Rights Tribunal of Quebec ruled that:

- **Firing M.L. was discriminatory.** The chairman of the youth centre's board admitted that he fired M.L. because he believed having a trans staff member would be bad for the reputation of the centre. The chairman also admitted that he fired M.L.'s cisgender coworker at the same time as a way to cover up the fact that M.L.'s transition was the reason she was fired.
- **It was discriminatory for the employer to claim that M.L.'s gender identity would affect her ability to do her job.** The employer attempted to argue that M.L. had been fired because they thought her transition would negatively affect the youth she worked with. The tribunal dismissed this claim, stating that there was no reason to assume that M.L.'s transition would make her bad at her job.

The youth centre, as well as the president and treasurer of the board, were ordered to pay M.L. \$1,750 for lost wages and \$4,000 for infringing on her right to be free from discrimination.

T.M. v Manitoba (2019, MBHR 13)

Find the full case [here](#).

T.M., a worker at the Manitoba Youth Centre, filed a human rights complaint after being harassed by his coworkers on the basis of his sexual orientation.

Throughout his employment at the youth centre, T.M.'s coworkers made negative and disparaging remarks and gestures to him about sex between men. When T.M. told his employer about these experiences and the humiliation it caused him, the employer did not take appropriate action to ensure that the behaviour would stop and that the work environment would be made safer and more respectful.

The Manitoba Human Rights Tribunal ruled that:

- **T.M. was subjected to harassment on the basis of his sexual orientation.** The behaviour of T.M.'s coworkers was considered "offensive, demeaning, objectionable, abusive, and unwelcome" (T.M. v Manitoba, 2019, ¶196).
- **The lack of complaints from other LGBTQ2+ employees was irrelevant in determining whether or not T.M. had experienced discrimination.** The employer argued that T.M.'s claims were exaggerated because other employees who were members of the LGBTQ2+ community had not made complaints about a culture of harassment in the workplace. The tribunal dismissed this argument, suggesting that even if other LGBTQ2+ employees in the workplace have not experienced discrimination, this does not mean an applicant's complaints are false.
- **Even though T.M. did not make complaints about his coworkers' behaviour right away, his complaints were still valid.** T.M. described his fear of coming forward and being seen as a snitch by others in the workplace as the reason why it took him a long time to come forward with a complaint. The length of time it took T.M. to make a complaint was irrelevant in determining that he had, in fact, experienced discrimination.
- **Whether or not the employer believed T.M.'s complaints about harassment to be true, the employer was obligated to respond.** The employer failed to immediately investigate and address the existence of a poisoned work environment after T.M. made a complaint. This failure was considered discriminatory.

The Manitoba Youth Centre was ordered to designate a Respectful Workplace Advisor, and have staff undergo training on how to conduct a workplace harassment investigation. The Manitoba Youth Centre was also ordered to pay T.M. \$75,000 to compensate for the injury to his dignity, feelings, and self-respect.

WHAT IS MY EMPLOYER RESPONSIBLE FOR?

Organizations (including businesses, associations, institutions, etc.) in Canada are obligated by human rights legislation to make sure that their workplaces are free from discrimination. This includes regularly reviewing their workplaces, and changing the way they do things to prevent discrimination from occurring. This means that **employers must consider and respond to the needs of employees and their unique identities. Employers must change their facilities, practices and policies to ensure that they do not have discriminatory effects.** This is known as an organization's **duty to accommodate**.

If an employee comes forward with a complaint about discriminatory experiences in the workplace, whether it be related to a written or unwritten policy or interactions between people in the workplace, the **employer is responsible for making the necessary changes to address the needs identified by the complaint.** Though organizations should be proactive in ensuring that everyone's needs are met in the workplace, requests for accommodation related to someone's gender expression, gender identity, sexual orientation, or another protected ground, must be provided unless there are compelling reasons suggesting that this would create undue hardship for the employer. Employers can claim that a requested accommodation is too costly or difficult to provide, this is what "undue hardship" means. When responding to accommodation requests, an employer is not necessarily obligated to provide the employee's preferred solution (though they should consider it), but they must offer a solution which at least meets the employee's needs. In these situations, the employee is expected to compromise with the employer on an accommodation.

Proactive employers should take steps, including appointing a discrimination or harassment officer and putting in place regular training, to stay up to date with their legal responsibility to maintain workplaces that are free from discrimination and harassment. Human rights education can be offered through provincial and territorial human rights commissions. Pride at Work Canada also works with employers to support them in creating workplace environments that are affirming for LGBTQ2+ employees. For more information about the programs we offer, visit our [website](#).

HOW DO I ADVOCATE FOR MYSELF?

If you have experienced discrimination at work, in a hiring process, or in any other employment-related context:

STEP ONE

make yourself familiar with your workplace's anti-discrimination and anti-harassment policies and bring your concerns to a supervisor, the discrimination or harassment officer at your workplace, the human resources department, or your union. It is a good idea to try and resolve the issue informally and internally to your organization before turning to the human rights legislation that protects you. Your case may be made stronger if your employer fails to take action regarding your complaint. Understandably, you may feel unsafe raising your complaint in a hostile work environment, or maybe the harasser is your supervisor, or you've already spoken to management or HR and they haven't appropriately responded. This is when you should take next steps. If possible, keep documentation of your experiences (emails, texts, a journal recording dates of incidents, etc.).

STEP TWO

determine which jurisdiction your situation falls under. If you work in a federally regulated sector (banks, telephone companies, federal government departments, most airlines, and more), the Canadian Human Rights Commission will be the place to turn to for information on filing a complaint. Most employees in Canada work for provincial or territorial regulated employers (credit unions, schools and universities, hospitals, and most stores, businesses and non-profit organizations), and in that case you will want to look up your province or territory's human rights commission or tribunal and contact them. If you're not sure whether your complaint is federal or provincial, go to www.chrc-ccdp.gc.ca/eng/make-a-complaint; follow the steps and you'll be redirected to the appropriate jurisdiction. Staff at both provincial and federal commissions will be willing to help and provide information regarding filing a complaint, but they are not lawyers and cannot represent you in the complaints process.

STEP THREE

file a complaint with the appropriate human rights commission or tribunal as soon as possible. All human rights codes have a filing deadline, (often 6 or 12 months after the last incident). There is no fee for filing a complaint, and you are not required to hire a lawyer (though if you do, you must cover the costs). You can file a complaint for someone else as long as you have their consent. Complaints can be filed online, if you need help with the filing process you can call the relevant commission or tribunal and they will assist you. It is a good idea to have someone you trust support you throughout the complaint process (this person should not be involved in the situation you are making a complaint about).

You should have the following information ready when filing a complaint:

- » Know the protected ground(s) and area that you're claiming.
- » Have a detailed description of what happened, when it happened, and how the treatment you experienced was related to the parts of your identity that are protected grounds.
- » Be ready to describe how the treatment you've experienced has negatively impacted you.
- » Have ready the names of any witnesses to the events, or any other employees that you know have experienced similar discrimination or harassment.
- » What steps you have taken to raise or resolve the issue (such as filing an internal complaint or a union grievance).

It is important to file your complaint to a human rights commission or tribunal within the deadline even if you are going through another grievance or complaint process to ensure that you preserve your right to file.

Commissions will screen your complaint and determine whether it can proceed to a tribunal. When reviewing your complaint, a tribunal or commission may try to determine whether or not the information you've provided, if proven true in an investigation, could be considered discrimination under human rights law.

This is called a *prima facie* test, and your complaint will need to show that it has the potential to meet the test's requirements:

1. You have — or were perceived to have — one or more characteristics that are considered a protected ground (such as gender expression, gender identity or sexual orientation).
2. You have experienced negative and differential treatment in the context of your employment.
3. The protected grounds you have specified were at least part of the reason why the negative treatment happened.

If your complaint is accepted, the organization you filed a complaint against (the respondent) will be notified. Many human rights commissions or tribunals offer mediation to help you and the respondent resolve the issue in a faster, less formal process. If this isn't an option, an investigation or hearing may be held for your complaint and you'll be asked to identify witnesses and hand in documents that support your claims.

Some commissions and tribunals may require that you try other options (such as union grievances) before they can proceed with your human rights complaint, and they may dismiss your complaint if they determine your concerns have been fully decided and remedied in another process.

Human rights tribunals are administrative law bodies, and will decide whether or not your experience meets the legal standards of discrimination (the *prima facie* test), whether the respondent raised a successful defence, and, whether you should receive remedy for any discrimination or harassment you have faced. Based on this decision, your case will either be dismissed or the respondent will be ordered to remedy the discrimination or harassment by paying you money, giving you back your job, and/or changing its policies and educating its staff.

What if I've faced discrimination because I'm living with HIV?

In human rights codes, HIV status falls under the protected ground of disability. This means that if you've experienced discrimination at work due to your HIV status, you would file a human rights complaint on the basis of a disability. Employers are also responsible for making accommodations on the basis of disabilities, and a failure to do so can be considered a form of discrimination. To learn more, check out the HIV Legal Network's Know Your Rights [guide](#) which includes detailed information about the workplace rights of people living with HIV.

RESOURCES

Federal (Canada)

Human Rights Commission:

www.chrc-ccdp.g.ca

Complaints Information:

www.chrc-ccdp.gc.ca/eng/make-a-complaint: webpage to help you find the right jurisdiction.

Alberta

Human Rights Commission:

www.albertahumanrights.ab.ca

Complaints information:

Alberta Civil Liberties Research Centre: LGBTQ2+ friendly lawyer referrals.

Pride Centre of Edmonton: LGBTQ2+ friendly lawyer referrals, assistance and consulting through complaints processes.

British Columbia

Human Rights Tribunal: www.bchrt.bc.ca

Human Rights Commission: bchumanrights.ca

Legal help:

BCHRT resource page:

includes legal service organizations by location and LGBTQ2+ specific legal support.

BC Human Rights Clinic: free legal services for those that need assistance with provincial human rights complaints.

Manitoba

Human Rights Commission: www.manitobahumanrights.ca

New Brunswick

Human Rights Commission: www2.gnb.ca

Newfoundland and Labrador

Human Rights Commission: www.thinkhumanrights.ca

Legal Help: Public Legal Information Association of NL: lawyer referral service.

Note:

You must make your complaint directly to the Human Rights Tribunal in BC, Ontario, and Nunavut. In all other jurisdictions, including federally, you must file your complaint with a Human Rights Commission, which is a screening body to determine whether your complaint will proceed to a Tribunal.

Northwest Territories

Human Rights Commission: www.nwthumanrights.ca

Nova Scotia

Human Rights Commission: www.humanrights.novascotia.ca

Nunavut

Human Rights Tribunal: www.nhrt.ca

Ontario

Human Rights Tribunal: www.tribunalsontario.ca/hrto/

Human Rights Commission: www.ohrc.on.ca/en

Legal help:

Human Rights Legal Support Centre: legal advice, assistance and consultation through complaints processes.

Prince Edward Island

Human Rights Commission: www.peihumanrights.ca

Quebec

Human Rights Commission: www.cdpdj.qc.ca

Legal help:

Montreal LGBTQ Community Centre: LGBTQ2+ friendly lawyer referrals, legal information.

Action Santé Travesti(e)s et Transsexuel(le)s du Québec (ASTT(e)Q): advocacy and referral services.

Saskatchewan

Human Rights Commission: www.saskatchewanhumanrights.ca

Legal help:

Out Saskatoon: LGBTQ2+ friendly lawyer referrals.

Yukon

Human Rights Commission: www.yukonhumanrights.ca

GLOSSARY

Duty to accommodate: An employer's legal responsibility to make adjustments to workplace policies, practices, and environments when an individual has needs related to a protected ground. If an employer does not respond appropriately to these needs, their failure to uphold the duty to accommodate can be considered discrimination.

Federal: Refers to jurisdictions regulated by the central, or national government.

Gender expression: Human rights codes do not have fixed definitions for gender expression and related terms. Codes generally describe gender expression as the way that a person presents and expresses their gender through things like their outward appearance, behaviour, and pronouns.

Gender identity: Human rights codes do not have fixed definitions for gender identity and related terms. Codes generally describe gender identity as a person's internal and individual experience of gender which may be the same as or different from the sex they were assigned at birth. Gender identity is not restricted to the classifications of "man" or "woman". Instead, it refers to a broad spectrum of identities.

Human rights code: The law that is meant to ensure equality and protect people from discrimination in certain social areas (see definitions for protected area and protected ground). Each province and territory has its own human rights code, at the federal level this law is the Canadian Human Rights Act.

Human Rights Commission: Human rights institutions are different in each province, territory, and at the federal level. Commissions typically receive and investigate human rights complaints, they may offer mediation or some other kind of informal resolution process before referring the case to a tribunal or adjudication board. Commissions may or may not participate in the hearing process once a case has been referred to a tribunal or adjudication board. Many commissions are also involved in educational and advocacy work related to human rights.

Human rights complaint: In this document, human rights complaints refer to claims made under the Canadian Human Rights Act, provincial, or territorial human rights laws that one's rights to equal opportunity, fair treatment, and an environment free from discrimination have been violated.

Human Rights Tribunal: Human rights institutions are different in each province, territory, and at the federal level. Tribunals (or, in some cases, adjudication boards) typically play a role similar to a court, but they only make decisions regarding human rights cases. They weigh the evidence brought forward in a human rights case and determine if discrimination has occurred. In some provinces and territories, such as Nunavut, human rights complaints are filed directly with the tribunal because there is no commission.

Prima facie test: The criteria for determining whether or not the evidence produced by the individual(s) making a human rights complaint, if proven true, would amount to discrimination. This criteria is the same across all Canadian jurisdictions (see page 12 for a list of the three criteria).

Protected area: The contexts (such as employment, housing, goods and services delivery, etc.) in which discrimination is prohibited by human rights legislation.

Protected ground: The characteristics (such as race, disability, sexual orientation, religion, etc.) of an individual's identity that are protected from discrimination by human rights codes.

Provincial / territorial: Refers to jurisdictions regulated by the governments of the provinces and territories.

Respondent: The organization and/or individual identified in a human rights complaint as being responsible for the discrimination faced by the person who filed the complaint.

Sexual orientation: Human rights codes do not have fixed definitions for sexual orientation and related terms. Codes generally describe sexual orientation as a person's potential for emotional, intellectual, spiritual, intimate, romantic and/or sexual interest in other people. It is an all-encompassing phrase that refers to the range of human sexuality, and may also form a core part of an individual's identity.

FURTHER READING

BC Human Rights Clinic. “Know Your Rights: What to Do About Discrimination.” Last modified July 2017. https://bchrc.net/wp-content/uploads/2019/07/BCHRC_Know_Your_Rights_Final.pdf.

Canadian Human Rights Tribunal. “Frequently Asked Questions.” Accessed April 30, 2021. <https://www.chrt-tcdp.gc.ca/about/faqs-en.html>.

Government of Canada. “About Human Rights Complaints.” Accessed April 30, 2021. <https://www.canada.ca/en/canadian-heritage/services/human-rights-complaints/about.html>.

Human Rights Legal Support Centre. “How-to Guides and FAQs.” Accessed April 30, 2021. <https://www.hrlsc.on.ca/en/how-guides-and-faqs>.

Northwest Territories Human Rights Commission. “Know Your Rights.” Accessed April 30, 2021. <https://nwthumanrights.ca/your-rights/#:~:text=The%20NWT%20Human%20Rights%20Act,workers'%20association%2C%20or%20trade%20union>.

Nunavut Human Rights Tribunal. “A Guide to Filing a Notification with the Nunavut Human Rights Tribunal.” Accessed April 30, 2021. http://www.nhrt.ca/files/Broch_App_Guide_Eng.pdf.

Ontario Human Rights Commission. “Glossary of Concepts in Human Rights.” Human Rights and the Family in Ontario. Accessed April 30, 2021. <http://www.ohrc.on.ca/en/human-rights-and-family-ontario/glossary-concepts-human-rights#:~:text=Prima%20facie%20Case%20of%20Discrimination&text=A%20prima%20facie%20case%20in,answer%20from%20the%20respon- dent%E2%80%93employer>.

PEI Human Rights Commission. “Complaint Form and Guide.” Last modified September 2015. <https://www.peihumanrights.ca/sites/www.peihumanrights.ca/files/Complaint%20form.pdf>.

Public Services and Procurement Canada (PSPC). “Support for Trans Employees: A Guide for Employees and Managers.” Last modified November 7, 2019. <https://www.tpsgc-pwgsc.gc.ca/apropos-about/guide-et-te-eng.html#s3>.

Steps to Justice. “I’m Transgender or Non-Binary. What Are My Rights at Work?” Accessed April 30, 2021. <https://stepstojustice.ca/questions/human-rights/im-transgender-or-non-binary-what-are-my-rights-work>.

Yukon Human Rights Commission. “What is a Human Rights Complaint?” Accessed April 30, 2021. <https://yukonhumanrights.ca/human-rights-complaints/#What-is-a-Human-Rights-Complaint>.

BIBLIOGRAPHY

Alberta Human Rights Act, RSA 2000, c. A-25.5.

<https://www.qp.alberta.ca/documents/Acts/A25P5.pdf>. Accessed April 30, 2021.

Ashley, Florence. “Don’t Be So Hateful: The Insufficiency of Anti-Discrimination and Hate Crime Laws in Improving Trans Well-Being.” *University of Toronto Law Journal* 68, no. 1 (Winter 2018).

Brennan, Kelsey, Christina Hackett, Chloe Halpenny, Basia Pakula, and Sean Waite. *Building the Evidence Base About Economic, Health, and Social Inequities Faced by LGBTQ2S+ Individuals in Canada: Phase 1 Report*. Social Research and Demonstration Corporation, 2021.

<https://www.srdc.org/media/553123/wage-phase1-report.pdf>. Accessed April 30, 2021.

British Columbia Human Rights Code, RSBC 1996, c. 210.

https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96210_01#section1.

Canadian HIV/AIDS Legal Network. *Living with HIV: Know Your Rights*. 2013.

<http://www.hivlegalnetwork.ca/site/kyr/?lang=en>. Accessed April 30, 2021.

Canadian Human Rights Act, RSC 1985, c H-6.

<https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html>. Accessed April 30, 2021.

Chun, Jiwon and Cathy Gallagher-Louisy. *Overview of Human Rights Codes by Province and Territory in Canada*. Canadian Centre for Diversity and Inclusion, 2018.

<https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>. Accessed April 30, 2021.

Gotell, Lise. “Queering Law: Not by Vriend.” *Canadian Journal of Law and Society* 17, no. 1 (2002): 89-113.

Hixon-Vulpe, Jacq. *Creating Authentic Spaces: A Gender Identity and Gender Expression Toolkit to Support the Implementation of Institutional and Social Change*. The 519, last revision 2017.

<https://www.the519.org/media/download/3442>. Accessed April 30, 2021.

Irving, Dan. “Gender Transition and Job In/Security: Trans* Un/der/employment Experiences and Labour Anxieties in Post-Fordist Society.” *Atlantis* 38, no. 1 (2017): 168-178.

James, J., G. Bauer, R. Peck, D. Brennan, and N. Nussbaum. *Legal Problems Facing Trans People in Ontario*. TRANSforming JUSTICE Summary Report 1(1), 2018.

<https://www.rainbowhealthontario.ca/wp-content/uploads/2018/09/TransFJ-Report2018Sept-EN.pdf>

Manitoba Human Rights Code, C.C.S.M. c. H175.

https://web2.gov.mb.ca/laws/statutes/ccsm/_pdf.php?cap=h175. Accessed April 30, 2021.

Manitoba Human Rights Commission. *Discrimination Based on Gender Identity: Your Rights, Your Responsibilities*. Last revision October 2016. <http://www.manitobahumanrights.ca/v1/education-resources/resources/pubs/guidelines/gender-identity-guideline-feb-17.pdf>. Accessed April 30, 2021.

New Brunswick Human Rights Act, RSNB 2011, c. 171. <http://laws.gnb.ca/en/ShowPdf/cs/2011-c.171.pdf>. Accessed April 30, 2021.

Newfoundland and Labrador Human Rights Act, SNL2010, c. H-13.1.

https://assembly.nl.ca/Legislation/sr/statutes/h13-1.htm#9_. Accessed April 30, 2021.

Northwest Territories Human Rights Act, SNWT 2002, c. 18.

<https://www.justice.gov.nt.ca/en/files/legislation/human-rights/human-rights.a.pdf>. Accessed April 30 2021.

Nova Scotia Human Rights Act, R.S., c. 214, s. 1.

<https://nslegislature.ca/sites/default/files/legc/statutes/human%20rights.pdf>. Accessed April 30, 2021.

Nunavut Human Rights Act, S.Nu. 2003, c. 12.

<https://www.nunavutlegislation.ca/en/download/file/fid/11459>. Accessed April 30, 2021.

Ontario Human Rights Code, R.S.O. 1990, c. H.19.

<https://www.ontario.ca/laws/statute/90h19/v28>. Accessed April 30, 2021.

Ontario Human Rights Commission. *Policy on Discrimination and Harrassment Because of Sexual Orientation*. Last revision December 2009.

http://www3.ohrc.on.ca/sites/default/files/attachments/Policy_on_discrimination_and_harassment_because_of_sexual_orientation.pdf.

Ontario Human Rights Commission. *Policy on Preventing Discrimination Because of Gender Identity and Gender Expression*. 2014.

<http://www3.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20gender%20identity%20and%20gender%20expression.pdf>. Accessed April 30, 2021.

Prince Edward Island Human Rights Act, RSPEI 1988, c. H-12.

<https://www.princeedwardisland.ca/sites/default/files/legislation/H-12%20-Human%20Rights%20Act.pdf>. Accessed April 30, 2021.

Prince Edward Island *Human Rights Commission*. *Gender Identity and Expression Fact Sheet*. 2018.

<https://www.peihumanrights.ca/sites/www.peihumanrights.ca/files/GIGE.pdf>. Accessed April 30, 2021.

Quebec Charter of Rights and Freedoms, CQLR c. C-12.

<http://legisquebec.gouv.qc.ca/en/showdoc/cs/c-12>. Accessed April 30, 2021.

Singer, Samuel. “Trans Rights Are Not Just Human Rights: Legal Strategies for Trans Justice.”

Canadian Journal of Law and Society / Revue Canadienne Droit Et Société 35, no. 2 (2020): 293-315.

The Saskatchewan Human Rights Code, SS 2018, c. S-24.2.

<https://saskatchewanhumanrights.ca/wp-content/uploads/2020/03/Code2018.pdf>. Accessed April 30, 2021.


Saskatchewan Human Rights Commission. *Human Rights of Transgender People*. August 22, 2016.

https://saskatchewanhumanrights.ca/wp-content/uploads/2020/03/SHRC_Transgender.pdf.

Saskatchewan Human Rights Commission. *Employment Discrimination and the Duty to Accomodate*. August 22, 2016.

<https://saskatchewanhumanrights.ca/wp-content/uploads/2020/03/SHRCemploymentdiscrimination.pdf>.

Yukon Human Rights Act, RSY 2002, c. 116. https://legislation.yukon.ca/acts/huri_c.pdf. Accessed April 30, 2021.



**Note: Some
human rights legislation
cited here are the unofficial
consolidation documents of
provincial and territorial human
rights codes and acts, intended
for information and reference
purposes only.**

