

HUMAN RIGHTS & THE LAW

LEGAL INFO 
NOVA SCOTIA



HOW ARE OUR HUMAN RIGHTS PROTECTED IN CANADA?

In Canada, our human rights are protected by:

- ▶ the common law, and
- ▶ provincial and federal statutes, including the [Canadian Charter of Rights and Freedoms](#) (the Charter), the Human Rights Acts of each province, as well as the federal *Human Rights Act*.

The term 'common law' means legal rules developed from decisions made by judges in individual court cases. Statutes, also called legislation, are written laws developed by either the provincial or federal government. They become law after being approved by a majority vote of members of Parliament (MPs) or members of the legislative assembly (MLAs), depending on the level of government.

Human rights law in Canada is a combination of common law rules and statutes. This legal information covers the basics about some important common law rules about human rights, as well as the Charter, the various provincial human rights statutes, and the federal human rights statute (the Canadian Human Rights Act). You will also learn what's involved in making a complaint that someone has discriminated against you.

There are also international agreements and laws that deal with human rights. For example, the [Universal Declaration of Human Rights](#) and the [Geneva Convention](#). They are not covered here, but you can learn about international human rights law at ijrcenter.org/human-rights-law/

WHAT IS HUMAN RIGHTS LEGISLATION?

Each province in Canada has its own human rights statute. There is also a federal human rights statute. These statutes are referred to as a *Human Rights Act* or a *Human Rights Code*. They are designed to make sure that everyone is treated equally and protected from discrimination in situations such as work, going to a store, studying at an educational institution, buying a house or renting an apartment, and many other day-to-day scenarios.

There are both provincial and federal level human rights statutes because of the way the [Canadian Constitution divides up powers](#). According to our Constitution, certain subject areas are assigned to the provincial government while others are assigned to the federal government.

Most human rights complaints fall under the jurisdiction (power) of the various provincial human rights statutes. Only complaints involving federally regulated workplaces and organizations – such as those involving transportation, communications, and banking – will fall under the jurisdiction of the Canadian *Human Rights Act*.

If you feel that you have a human rights complaint involving an organization in Nova Scotia but you aren't sure if it falls under federal or provincial jurisdiction, you can contact either the [Nova Scotia Human Rights Commission](#) or the [Canadian Human Rights Commission](#). Either agency will be able to tell you if your situation falls under their jurisdiction and, if it doesn't, can refer you to the correct agency.

WHAT IS THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS?

The Charter is the supreme law of Canada. It was proclaimed in 1982 as part of the Constitution Act, 1982. The Charter sets out our constitutional rights, including equality rights.

Before the Charter was proclaimed in 1982, Canadians already had rights and freedoms, most of which have been enjoyed since Confederation. These rights were protected by the common law and by various statutes. However, the Charter made these rights more secure and definitive.

With the proclamation of the Charter, our fundamental rights and freedoms have become **entrenched**. This means that they are written down and are part of our Constitution.

Entrenchment of the Charter means that:

- ▶ our Charter rights and freedoms cannot be easily taken away by either the provincial legislatures or the federal parliament
- ▶ courts can rule on whether or not other laws follow the Charter. The Charter is the supreme law of Canada, and so all other laws must be consistent with what the Charter says.

Ordinary statutes can be amended (changed) by a simple majority of the legislature that originally passed the law. It is much harder to change the Charter. There is a complex amending formula that must be followed. This means that our Charter rights are more secure than any rights we have from other sources of law.

Before the Charter, our courts had very limited power to strike down legislation (invalidate a law to the extent of its inconsistency with the Constitution.) Courts could do so only if they determined that the government did not have the constitutional authority to create and pass a piece of legislation. After the Charter, the role of our courts changed dramatically. Now that the Charter is in place, Canadians can challenge a law when we believe the law violates our Charter rights and freedoms.

WHAT RIGHTS AND FREEDOMS DOES THE CHARTER PROTECT?

Below are the categories of rights set out in the Charter along with examples of rights that fall into each category.

- ▶ **Fundamental Freedoms (Section 2)** – This includes freedom of conscience and religion; freedom of thought and expression; freedom of association and freedom of peaceful assembly.
- ▶ **Democratic Rights (Sections 3-5)** – This includes the right to vote in federal and provincial elections.
- ▶ **Mobility Rights (Section 6)** – This confirms the right to move from province to province within Canada.
- ▶ **Legal Rights (Sections 7-14)** – This includes the right to legal counsel upon arrest, the right not to be arbitrarily detained by police, the right to be free from unreasonable search and seizure, the right not to be forced to testify against oneself in a legal proceeding, and the right to be tried in a reasonable time.
- ▶ **Equality Rights (Section 15)** – This includes the right to be equal before and under the law and the right to be free from discrimination.

- ▶ **Language Rights (Sections 16-23)** – This includes the right to speak in French and English and the right, in some circumstances, to be educated in the language of your parent(s).
- ▶ **Aboriginal Rights (Section 25)** – This section recognizes the existing rights of Canada’s Aboriginal people and treaty rights. The Charter forms part of the larger *Constitution Act, 1982*. It is important to note that Aboriginal rights, including treaty rights, receive more overt and direct constitutional protection under section 35 of the *Constitution Act, 1982*.

For more detailed information about Charter rights go to www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html

WHEN DOES THE CHARTER APPLY?

The Charter applies to government action. This includes laws, bylaws, and regulations made by the federal, provincial, or a municipal government. The Charter also applies in situations where one of the parties can somehow be characterized as a public or government entity (for example, the RCMP).

The Charter does not apply to purely private matters. This means that it does not apply to disputes between private individuals, or between an individual and a private business.

HOW DOES SOMEONE ENFORCE THEIR CHARTER RIGHTS?

Charter rights are usually brought up in two different kinds of legal contexts – either in criminal matters or situations where someone engages in civil litigation (a lawsuit) in order to enforce their Charter rights.

If someone is charged with a criminal offence, they might raise a Charter argument to say that their legal rights were violated in some way. For example, an accused person might argue that they were subjected to an unlawful search and seizure.

In some cases, the courts have concluded that evidence obtained in violation of the Charter would bring the administration of justice into disrepute and so should not be allowed into a legal proceeding.

Another way to exercise Charter rights is to take a government department or other government body to court through civil litigation. This is commonly known as a Charter challenge, and it is usually used to challenge an existing piece of legislation. An example of a potential Charter challenge would be if a person or organization feels that an existing law does not conform to the Charter and should be changed in whole or in part.

If a law has been successfully challenged through a Charter challenge, the court could strike down the offending statute or provision. This means that the challenged legislation would have no effect to the extent that it is inconsistent with the Charter. In other words, whatever part(s) of the statute that do not align with the Charter would no longer be considered part of the law.

Limits to Charter rights

There are limits on our Charter rights. When the Charter is brought up in court, both sides will make arguments about the issues. The plaintiff (the person who starts the lawsuit) or the accused (in a criminal case) will first argue that their Charter rights have been violated. If the court agrees, then the onus shifts to the defendant or prosecution to argue that if there has been a violation of rights then it is “saved” by section 1 of the Charter.

Section 1 imposes a limit on our Charter rights and freedoms. It reads:

1. *The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

This means that none of our Charter rights are guaranteed to us absolutely. Section 1 is in place to allow for the courts to balance the rights of individuals against the needs of society at large. Find out more about section 1 of the Charter at www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/

Charter matters can be complex. If you feel that your Charter rights have been violated in any way, we recommend speaking to a lawyer for advice.

WHEN DOES THE NOVA SCOTIA HUMAN RIGHTS ACT APPLY?

The *Nova Scotia Human Rights Act* applies when someone has faced discrimination:

- ▶ on the basis of a protected characteristic, such as race, religion, sexual orientation, among others, and
- ▶ in a protected area, such as a workplace, a store where you are buying goods, and other situations which we will talk more about below.

To file a human rights complaint under the *Nova Scotia Human Rights Act*, the organization that you wish to complain about must fall under provincial jurisdiction. Most stores, service providers, and employers will fall under the provincial scope, but some do not (for example, banks and telecommunication services, which are federally regulated).

You can check with the [Nova Scotia Human Rights Commission](#) if you are not certain whether your complaint falls under their jurisdiction.

The *Nova Scotia Human Rights Act* applies in what are known as '[protected areas](#)'— areas of life in which we have the protection of the Act. The Act applies:

- ▶ in employment (including volunteer work),
- ▶ in the provision of accommodation (for example, renting an apartment),
- ▶ to the purchase or sale of property,
- ▶ in the provision of goods and services to the public (for example, shopping at a store or getting a service such as education, electricity, a haircut, and numerous other examples),
- ▶ membership in professional organizations, and
- ▶ in publications, broadcasts, or advertisements.

If you believe you have been discriminated against, you can file a complaint with the Nova Scotia Human Rights Commission alleging discrimination. You must do so within a 12-month period of the last date of alleged discrimination, or the last 24 months in exceptional circumstances.

For the Nova Scotia Human Rights Commission to accept a complaint, you must show that you have faced negative treatment in a protected area and because of a protected characteristic.

Not all forms of negative treatment will be considered discrimination under the law. For example, if your boss is bullying you, this is not necessarily the basis for a human rights complaint unless you feel that they have targeted you because of a protected characteristic.

Here are some examples of possible human rights complaints:

- ▶ a complaint that you were denied a promotion at work because you are a woman,
- ▶ a complaint that you were followed around in a store because of stereotypes about your race (also known as racial profiling),
- ▶ a complaint that you were denied an opportunity to rent an apartment because of your gender identity, or
- ▶ a complaint that you were unable to attend a particular school for studies because you have a physical disability for which you use a wheelchair and the space is not accessible.

FORMS OF DISCRIMINATION COVERED BY THE NOVA SCOTIA HUMAN RIGHTS ACT

Protected characteristics under the *Nova Scotia Human Rights Act*

As we have discussed above, there are a number of 'protected areas' which are covered under the Nova Scotia Human Rights Act. These include employment and volunteer situations, access to services, the purchase and sale of property, membership in professional organizations, and in publications, broadcasts, or advertisements.

There are also a number of 'protected characteristics' which are covered under the Act. The protected characteristics are essential aspects of who someone is.

It is illegal to discriminate against someone based on any of these protected characteristics in any of the protected areas noted above.

The *Nova Scotia Human Rights Act* includes the following protected characteristics:

- ▶ age
- ▶ race
- ▶ colour
- ▶ religion
- ▶ creed
- ▶ sex (including both gender and pregnancy)
- ▶ sexual orientation
- ▶ gender identity and gender expression
- ▶ physical or mental disability
- ▶ an irrational fear of contracting illness
- ▶ ethnic, national, or aboriginal origin

- ▶ family status
- ▶ source of income
- ▶ political belief, or
- ▶ association with anyone who would fall under the category of any of the above characteristics.

The *Nova Scotia Human Rights Act* also forbids sexual harassment, or harassment on the basis of any of the protected characteristics.

Many of these protected characteristics are self-explanatory, while others require further explanation.

'Irrational fear of contracting an illness,' for example, refers to situations in which someone with an illness faces unjustifiable negative treatment due to their illness in their workplace or any other protected area. It was added as a protected characteristic in order to extend protection for those living with HIV/AIDS, but can apply to any kind of transmittable illness for which someone experiences discrimination.

'Family status' refers specifically to a parent-child relationship. It can apply to either a relationship with a parent or a relationship with a child. For example, if you are a single parent and need an accommodation (such as a modified work schedule) that lets you drop off and pick up your child from school and your employer says no, then the *Nova Scotia Human Rights Act* may apply, within certain parameters.

'Source of income' can apply to any legitimate means by which someone makes an income. This protected characteristic often comes up when someone is a recipient of Income Assistance. It is illegal, for example, for a landlord to deny renting someone an apartment because they are on Income Assistance.

'Gender identity and gender expression' are the most recent additions to the *Nova Scotia Human Rights Act*, added in 2012. These characteristics are distinct from the protected characteristic of sex, which is used to cover most gender-based human rights complaints. Gender identity and expression extend human rights protections to trans and non-binary people.

'Gender identity' refers to how someone identifies (for example, as a man, a woman, non-binary, two-spirit, genderqueer, or any of the many other gender identities that exist across the world). 'Gender expression' refers to how someone expresses their gender (for example, the way they dress, the pronouns they use, their name, and numerous other characteristics). It is illegal to discriminate against trans and non-binary people in employment or any other protected area. Discrimination of this kind can include refusing to use someone's name or pronouns, making transphobic comments, or refusing to allow someone access to a washroom which best aligns with their gender identity.

If you feel that you have experienced discrimination based on any of the above characteristics, you should contact the [Nova Scotia Human Rights Commission](#) for information and assistance. The Commission can give you guidance on what to do next if you are experiencing discrimination and can let you know if your situation would qualify as a human rights complaint.

HOW TO FILE A HUMAN RIGHTS COMPLAINT IN NOVA SCOTIA

You can contact the [Nova Scotia Human Rights Commission](#) (Commission) and discuss your situation with a Human Rights Officer. Before you do this, it's a good idea to use the Commission's complaint self-assessment tool which will help you better understand if you likely have a complaint that the Commission could address.

Human Rights Commissions are government offices given the task of upholding and enforcing human rights legislation in each province and federally. The federal Human Rights Commission deals with complaints that fall under the jurisdiction of the federal legislation (the *Canadian Human Rights Act*), while each provincial Human Rights Commission is responsible for dealing with complaints that fall under provincial jurisdiction.

A human rights complaint is a written statement in which the complainant (the person who is alleging discrimination) describes the incident or incidents which have occurred and explains why they feel there was discrimination.

After a human rights complaint is filed, the Commission is responsible for seeing that complaint through to its end. This may include undertaking an investigation, in which information is gathered from everyone involved in the dispute, including the respondent (the organization which has committed the alleged discrimination), witnesses, and anyone else who has a valuable perspective or information to contribute.

The Nova Scotia Human Rights Commission is committed to using [restorative approaches](#) whenever possible when handling complaints. This means that the Human Rights Officer who investigates the complaint may facilitate a [Resolution Conference](#) in order to help resolve the complaint. A Resolution Conference is a process through which those who have been involved in or impacted by discrimination have an opportunity to participate in a talking circle in which they share their experiences, how they have been impacted, and work together to find a meaningful solution.

A Resolution Conference is not appropriate in every situation, for example if there is a significant power imbalance between the two sides in a dispute, or if assembling together in this manner would cause more harm than good. If you are going through a human rights complaint process, your Human Rights Officer can explain the process in detail with you and discuss options for addressing your complaint.

Some human rights complaints are not resolved through a Resolution Conference or other internal investigative process used by the Nova Scotia Human Rights Commission. Some complaints are dismissed because the investigation reveals, for example, that there is no evidence of discrimination.

Other complaints may be referred to a Board of Inquiry, which is a public inquiry in which a Board Chair reviews the evidence (including all documentary evidence and witness statements) and determines whether discrimination has occurred. You can go to humanrights.novascotia.ca/content/board-inquiry-decisions to read many past Board of Inquiry decisions in Nova Scotia.

For more detailed information about the Nova Scotia Human Rights Commission's dispute resolution process, you can visit the Commission's [Frequently Asked Questions](#) page.

WHEN DOES THE CANADIAN HUMAN RIGHTS ACT APPLY?

Similar to the *Nova Scotia Human Rights Act*, the *Canadian Human Rights Act* applies when someone has experienced discrimination in a protected area due to a protected characteristic.

Under the Canadian Human Rights Act, discrimination is prohibited in employment situations, employee organizations, the provision of accommodation (including residential and commercial tenancies), and in the provision of goods and services to the public.

Human rights complaints must be filed within a 12-month window of the last date of alleged discrimination. In certain exceptional circumstances, such as prolonged illness, the Canadian Human Rights Commission may consider complaints outside of this time period.

The *Canadian Human Rights Act* applies only to organizations which are federally regulated. For example, if

you feel that you have experienced discrimination by the police, you would speak to the Canadian Human Rights Commission if you were dealing with the RCMP, but the Nova Scotia Human Rights Commission if you were dealing with the municipal police. The difference is that the RCMP falls under the federal jurisdiction, while the local police fall under the provincial scope.

Other organizations that fall under the federal jurisdiction include banks, telecommunications organizations (such as cell phone providers), organizations that involve travel across provinces (such as airlines, railway companies, and much of the trucking industry), among others.

Sometimes jurisdiction can be difficult to determine, particularly when an organization has characteristics that seem like they fall under federal power and characteristics that seem more provincial in nature. If you are not sure whether your complaint is federal in nature, you can contact the [Canadian Human Rights Commission](#). They can let you know if your complaint falls within their jurisdiction, and if not, can direct you to the correct agency.

For more detailed information, visit the [Canadian Human Rights Commission Frequently Asked Questions](#) page, which includes information about what qualifies as a human rights complaint and the complaint process.

FORMS OF DISCRIMINATION COVERED BY THE CANADIAN HUMAN RIGHTS ACT

Protected characteristics under the *Canadian Human Rights Act*

The characteristics which are protected under the *Canadian Human Rights Act* are slightly different from the protected characteristics under the *Nova Scotia Human Rights Act*.

Under the *Canadian Human Rights Act*, discrimination is prohibited on the basis of:

- ▶ race
- ▶ national or ethnic origin
- ▶ colour
- ▶ religion
- ▶ age
- ▶ sex (including both gender and pregnancy)
- ▶ sexual orientation
- ▶ gender identity and gender expression
- ▶ marital status
- ▶ family status
- ▶ genetic characteristics (for example, the possibility that someone may develop a particular disease or condition as determined through genetic testing).
- ▶ disability, and
- ▶ conviction for an offence for which a pardon has been granted.

The *Canadian Human Rights Act* also forbids harassment, as well as the publication of discriminatory notices and hate messages.

If you feel that you have experienced discrimination in a protected area covered by the [Canadian Human Rights Act](#), you can contact the Canadian Human Rights Commission for more information. You may also wish to complete this [online self-assessment tool](#) to see if your complaint likely falls within the federal Commission's scope.

OTHER OPTIONS TO ADDRESS DISCRIMINATION IN THE WORKPLACE

If the discrimination is at your place of work and you belong to a union, the union may be able to help you. Or you may be able to make a complaint to [Nova Scotia Labour Standards](#), the government office that administers the *Labour Standards Code*. Depending on the circumstances, you might be able to sue in court for wrongful dismissal. It is a good idea to seek legal advice on your options.

If you have experienced sexual harassment at work, go to www.legalinfo.org for information on Sexual Harassment in the Workplace and ways to get legal advice.

WHAT IS THE DUTY TO ACCOMMODATE?

The duty to accommodate is a concept in human rights law that refers to an obligation to provide special adaptations or accommodation to people with disabilities or other characteristics covered by a *Human Rights Act*.

For example, imagine you are an employee at a large company and much of your job consists of writing reports. Over time, you have developed a medical condition which impacts your joints and in particular your ability to grip and type using a keyboard. In this situation, voice recognition software is an accommodation that your employer could easily provide and that would allow you to still perform your job duties.

Another example of the duty to accommodate would be if a transgender employee comes out to their manager with their updated name and pronouns. In this situation, the duty to accommodate would mean that the employer should update the employee's personnel file and take steps to make that the correct name and pronouns are used on any future documents regarding this employee.

The duty to accommodate usually comes up in employment situations, but it can arise in other protected areas too. Another area in which it frequently arises is in an educational setting. Students with particular disabilities, for example, may require additional time to complete exams or course work.

Accommodations take many forms. Examples of accommodations include time off for an employee who requires a medical leave, modifications to a work station for someone with a physical disability, a work-from-home arrangement for someone whose illness is aggravated by sensory conditions in an office space, extra time to write an exam, or permission for a service dog or emotional support animal to accompany a person into a public building.

CAN MY EMPLOYER ASK FOR MEDICAL INFORMATION TO SUPPORT MY ACCOMMODATION NEEDS?

Yes, your employer can ask for medical information regarding your accommodation needs. In most situations, accommodations must be supported by medical documentation.

For example, if you feel that you need an accommodation at work, your employer is within their rights to request a medical note that confirms your accommodation needs and helps them understand what is required of them.

This doesn't mean that your employer has a right to know the specific details of your diagnosis if your accommodation is related to a disability. An employer only has the right to know as much information as would be necessary to uphold their obligations under the law.

For example, if an employee does physical labour, the employer may need to know if there are any restrictions on this person's ability to perform their job duties. After a major surgery, an employee's doctor may advise that this person refrain from lifting objects over a certain weight for a given period of time until they have suitably recovered. This is the kind of information which an employer would need to know in order to provide an appropriate accommodation.

To give another example, if an employee is off on a medical leave, their employer may ask for information from the employee's doctor about expected return date and their ability to perform their job duties upon return.

When seeking medical information, employers are allowed to ask if the accommodation is related to a disability, the prognosis, and for details of what kind of accommodation is required. The employee is responsible for cooperating with any reasonable requests for medical information.

LIMITS ON THE DUTY TO ACCOMMODATE

The duty to accommodate has limitations. In human rights law, the duty to accommodate only exists up to the point of what is called 'undue hardship.'

Undue hardship is the point when it would be logistically impossible or excessively difficult for an employer or service provider to accommodate a person's needs.

Undue hardship is assessed on a case-by-case basis. Some scenarios will reach a point of undue hardship more easily than others. For example, imagine that someone has a job which regularly involves operating a motor vehicle and they develop a condition which significantly impacts their eyesight. There are no other positions at the organization for which the employee would be qualified. In this situation, it is unlikely that the employer would need to accommodate the employee, because the employee is no longer able to perform the core functions of their job in a safe manner and there are no other appropriate positions available.

According to the Nova Scotia Human Rights Commission, [factors that can be used in determining whether the accommodation would pose an undue hardship are:](#)

- ▶ employee and customer safety,
- ▶ financial cost,
- ▶ interchangeability of the workforce and facilities,

- ▶ disruption of a collective agreement,
- ▶ disruption of services to the public,
- ▶ the morale of other employees, and
- ▶ the size of the employer's operation.

An employer's obligations under human rights law can be case-specific. The same is true of undue hardship. If you feel like you have been denied an accommodation, you should contact your local Human Rights Commission to discuss your situation.

CONTACT INFORMATION FOR FURTHER INFORMATION

Nova Scotia Human Rights Commission

Toll-free in Nova Scotia: 1-877-269-7699

Local in Halifax: 902-424-4111

TTY services available via 711

hrcinquiries@novascotia.ca

humanrights.novascotia.ca

When contacting the Commission please include your name and a contact phone number along with any instructions about the best time to reach you directly.

Canadian Human Rights Commission

Toll Free: 1-888-214-1090

TTY: 1-888-643-3304

info.com@chrc-ccdp.gc.ca

chrc-ccdp.gc.ca

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legalinfo.org

This publication explains the law in a general way as it applies in Nova Scotia, Canada. The information is not intended as legal advice. If you have a legal problem, contact a lawyer for advice about what steps you should take in your situation.

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