



Discrimination & Human Rights

Discrimination

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Legislative Framework

In Canada there are many legal sources of human rights, and legislation that prohibits discrimination on certain grounds.

On a national level there are the *Charter of Rights and Freedoms* and the *Canadian Human Rights Act*. This presentation will focus exclusively on Provincial legislation

In Nova Scotia protection against discrimination is governed by the *Nova Scotia Human Rights Act*: <http://nslegislature.ca/legc/statutes/human%20rights.pdf>

There are also a set of regulations governing Boards of Inquiry: <http://www.novascotia.ca/just/regulations/regs/hur22191.htm>

Application

The *Human Rights Act* applies to all individuals in Nova Scotia.

The *Human Rights Act* applies to Municipal governments, and the Provincial government.

The *Human Rights Act* applies to private businesses and organizations that fall under the constitutional authority of the Provinces – i.e. universities, hospitals, etc...

The *Human Rights Act* does **not** apply to the Federal Government or private businesses and Crown corporations that fall under the constitutional authority of the Federal government (i.e. CBC, Canada Post, railways, airlines, etc...) – they are subject to the *Canadian Human Rights Act*.

Discrimination

Discrimination is defined in the *Act* as the making of a distinction, either intentionally or unintentionally, based on a personal characteristic, or perceived characteristic, listed in the *Act*.

The distinction made must have the effect of imposing burdens, obligations or disadvantages on an individual, or group of individuals, not imposed upon others. Or the distinction must withhold or limit access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

The *Human Rights Act* prohibits discrimination in certain circumstances, and on the basis of a list of grounds contained in the *Act*.

Specific Circumstances

The *Human Rights Act* prohibits discrimination in the following circumstances:

- The provision of or access to services or facilities (i.e. stores, restaurants or provincially funded programs);

- Accommodation (i.e. renting an apartment);
- The purchase or sale of property;
- Employment;
- Volunteer public service;
- A publication, broadcast or advertisement; **or**
- Membership in a professional association, business or trade association, employers' organization or employees' organization.

Prohibited Grounds

The *Human Rights Act* prohibits discrimination on the following grounds:

- Age;
- Race;
- Colour;
- Religion;
- Creed;
- Sex (including pregnancy, the possibility of pregnancy or pregnancy-related illness);
- Sexual orientation;
- Gender identity;
- Gender expression;
- Physical disability or mental disability;
- An irrational fear of contracting an illness or disease;
- Ethnic, national or aboriginal origin;
- Family status (defined as being in a parent-child relationship);
- Marital status (including being single, engaged, married, separated, divorced, widowed or two people living common law);
- Source of income; **and**
- Political belief, affiliation or activity.

The Act also prohibits sexual harassment, or harassment based on any of the grounds listed above.

The *Human Rights Act* also prohibits discrimination on the basis of association with a person or group of people having a protected characteristic.

Exceptions

There are certain exceptions to the general prohibition against discrimination contained in the *Human Rights Act*.

One of the most common exceptions arises in the employment context. It is commonly referred to as 'undue hardship'.

Undue Hardship

Employers are allowed to establish what are known as '*bona fide* occupational requirements'.

A *bona fide* occupational requirement must meet the following criteria:

1. An employer must have adopted the requirement for a purpose rationally connected to the job;
2. The employer must have adopted the requirement in an honest and good faith belief that it was necessary for the fulfillment of a legitimate job related purpose (i.e. safety); **and**
3. The standard is reasonably necessary for the accomplishment of that legitimate job related purpose.

Once an employer establishes that the standard in question is a *bona fide* occupation requirement the law requires that they **must** accommodate an employee (i.e. modify workplace duties to accommodate an employee's disability) up to the point of undue hardship.

Undue hardship can include:

- Serious financial hardship to the employer;
- Significant risk to health or safety; and
- Unacceptable disruption to the employer's operation.

Whether a hardship is considered 'undue' may vary with the size and financial means of the employer in question.

Affirmative Action

Another major exception contained in the *Human Rights Act* to be aware of is what is known as 'affirmative action'.

The *Human Rights Act* allows laws, programs and activities that have as a goal the improvement of conditions of people, or groups of people, including those who are disadvantaged because of a protected characteristic.

This exception means that for example a program created to hire women does not discriminate against men.

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Disclaimer

This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

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