



LANDMARK STUDY SERIES

When did Canada end systemic discrimination?

An historical and legal review

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When did Canada end systemic discrimination? An historical and legal review

“Systemic racism is deeply entrenched in Canadian society. It is in our written and unwritten policies, our laws, public practices, beliefs, and systems” according to the Canadian Human Rights Commission (CHRC).¹ Yet contrary to the CHRC’s claims, the following analysis shows definitively that the Canadian legal system is *not* “systemically” racist. Indeed, virtually every form of discrimination is legally prohibited—and has been for generations.

Equality under the law

Canada is a nation governed by the rule of law. At the apex of our legal system is our Constitution: the supreme law of the land, structuring our legal and political systems. It is binding on all government bodies, including legislatures.

Part of the Constitution is the *Canadian Charter of Rights and Freedoms*,² which came into effect in 1982 and unequivocally requires equality under the law. In other words, racism is neither entrenched nor systemic in Canada’s law or legal system. Section 15(1) of the Charter is clear:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.^a

Legal protection from discrimination

This provision, read together with other Charter provisions, makes it unlawful for government entities, including legislatures, to discriminate on practically any basis—most especially race, ethnicity, or colour. (The one notable exception is so-called “employment equity” or “affirmative action”, as specified and permitted in section 15(2) of the Charter and discussed below.)

Under section 24 of the Charter, the courts are given broad powers to enforce the rights under the Charter, including the rights enunciated in section 15(1). Anyone who is the victim of prohibited discrimination by government can apply to a court for redress.

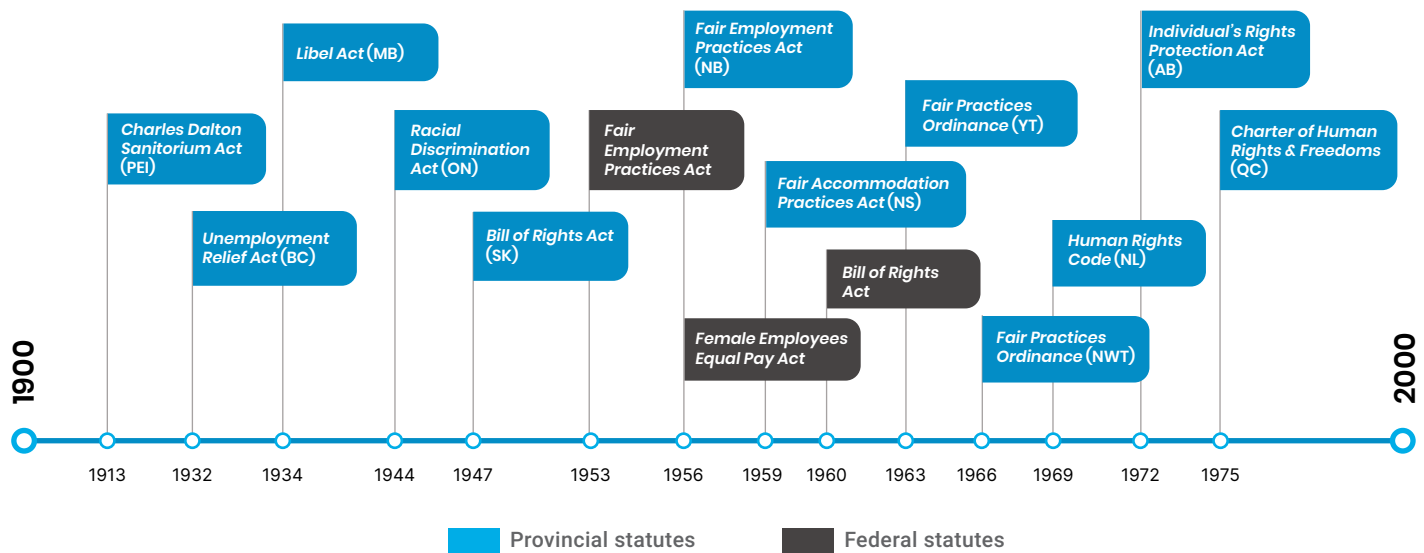
^a Strictly speaking, under section 32(2) of the Charter, section 15 did not come into effect until three years after the Charter came into force.

1913 and beyond: The history of colour-blind laws in Canada

But codifying colour-blindness did not start in 1982. Years before the Charter, Parliament and all provincial legislatures across Canada prohibited various forms of discrimination, as shown in figure 1 and the appendix table. The earliest of these bills was passed in 1913.

Figure 1

Timeline of the introduction of anti-discrimination legislation by jurisdiction



Before the 1960s, seven out of ten provinces had introduced anti-discrimination laws:

1. Prince Edward Island: In 1913, the province legislated that treatment for tuberculosis victims be administered without regard for “class, creed or nationality.”³
2. British Columbia: In 1932, the province outlawed discrimination in relation to unemployment benefits. All who qualified would receive benefits regardless of their political affiliation, race, or religion.⁴
3. Manitoba: In 1934, the *Libel Act* prohibited “the publication of a libel against a race or creed likely to expose persons belonging to a race or professing the creed to hatred, contempt or ridicule.”⁵

4. Ontario: In 1944, the province banned discriminatory signs and symbols that targeted the race or creed of any person.⁶
5. Saskatchewan: In 1947, the province passed its own *Bill of Rights*, prohibiting discrimination on multiple grounds and protecting individual rights.⁷
6. New Brunswick: In 1956, racial, ethnic, and religious discrimination was officially prohibited.⁸
7. Nova Scotia: In 1959, the province enacted the right to “accommodation, services and facilities, regardless of race, religion, religious creed, colour or ethnic or national origin.”⁹

Federally, Parliament passed its first anti-discrimination legislation in 1953. *The Fair Employment Practices Act* stated that, “No employer shall refuse to employ... or otherwise discriminate against any person in regard to employment or any term or condition of employment because of his race, national origin, colour, or religion.”¹⁰

Then, in 1960, Parliament passed the *Canadian Bill of Rights Act*, which contained strong language that positioned it above all legislation except the Constitution.¹¹ Section 1 of this federal legislation recognized and declared that in Canada individuals have the right to equality before the law without discrimination by reason of race, national origin, colour, religion, or sex. Like the Charter after it, this legislation applied to relations between governments and Canadians but did not extend to discrimination between private individuals and entities such as employers and employees.

However, in the private realm Canada also has a long statutory history of prohibiting citizens from discriminating against other citizens, in various contexts, based on various grounds. This includes not only the previously-mentioned federal legislation of 1953 prohibiting employers from discriminating against workers based on race, but also in 1956, the federal government restricted employers from employing a female for any work at a rate of pay that was less than the rate at which a male was employed by that employer for identical or substantially identical work.¹²

All of the provinces introduced human rights legislation before the Charter—the last of which was Quebec in 1975.¹³ This pre-Charter legislation applied both in the public and private realms. The earlier human rights legislation prohibited discrimination based on a limited list of attributes including race, colour, sex, age, religious beliefs, ancestry, or place of origin. In the intervening decades, the list of attributes has been expanded to include gender, gender identity, gender expression, sexual orientation, physical disability, mental disability, nationality, source of income, marital status, and family status.

¹³ Note: Quebec is the only province that did not sign—and still has never formally approved—the Charter.

Scope and enforcement of protections

The situations in which discrimination was originally prohibited were limited to such areas as employment, accommodation, and the provision of goods and services. In more recent decades, the contexts are pretty much limitless.

Although enforcement mechanisms under human rights legislation vary across the country, generally tribunals are set up with authority to receive complaints of discrimination and to grant remedies where discrimination is established. Most remedy provisions are extensive. Where a person is aggrieved by a private party, they may file a complaint with the appropriate authority. The authority may be federal or provincial, and complaints are investigated by the relevant authority. If accommodation cannot be reached between the parties, the complaint may proceed to a hearing. Depending on the nature of the complaint, and the process involved, the courts may also become involved. The point is this: There is legal recourse for anyone who has been discriminated against on a prohibited ground.

Discussion

There is one form of discrimination, however, that Canadian law tolerates. Reverse discrimination is permitted under section 15(2) of the Charter. Hence, in one sense, systemic discrimination *does* exist where the “law, program or activity... has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” As Mark Milke notes in *The Victim Cult*, and without endorsing ethnic, racial, and gender quotas and/or other forms of reverse discrimination:

To be sure, some present-day policies are illiberal and imperfect now in their own right: preferential race and gender hiring preferences, for examples. But those are... the opposite of anti-minority racism and prejudice given that their very purpose, right or wrong, is to ameliorate the effects of past discrimination upon minorities.¹³

Weighing the merits and demerits of that newer form of discrimination is beyond the scope of this paper, but the evidence is clear: With the exception of what is known as “employment equity” in Canada (or “affirmative action” in the United States), under our legal system, there is no systemic racism or other form of systemic discrimination in Canada aimed at minority populations or women. Indeed, such discrimination is illegal.

But what about systemic discrimination in other areas? Some will point to disparities in income or the greater likelihood for some groups to experience poverty as proof that Canada is racist. To assume that discrimination is the reason for all differences in outcomes

between ethnic cohorts is simplistic analysis because it assumes a mono-causal reason for observed effects: racism, real or assumed, is assumed to explain all or most outcomes including disparities between cohorts. However, when multiple variables are considered, such as education levels, geography, family, and cultural differences, to name but a few, it becomes clear that differences among people have many causes. For instance, indigenous and non-indigenous Canadians with equal credentials earn around the same annual incomes; in fact, indigenous Canadians with more than a bachelor's degree make more money, on average, than other Canadians with the same level of education.¹⁴ Likewise, race is a poor predictor of poverty in Canada. Not only are there more "white" Canadians in poverty than all other ethnicities combined, but amongst all Statistics Canada cohorts—including indigenous and black Canadians—the overwhelming majority (over 80 percent) are above the poverty line.¹⁵

Does this mean there are no bigots or racists in Canada? Unfortunately, such people do exist, but their existence does not a system make. By analogy, we have criminal laws in Canada under which certain defined conduct is prohibited. These laws are broken from time to time. Canada has criminals, but this does not make Canada a systemically criminal state.

Conclusion

The claim that Canada's present-day laws and legal system are systemically racist is unfounded. Government bodies, private entities, and individuals are prohibited in Canada from discriminating against anyone in virtually every context, as a matter of law. This is not new but has been true for generations, beginning as early as 1913 and culminating in the 1960 *Bill of Rights*. What is novel is one sole exception. In 1982, the *Charter of Rights and Freedoms* opened the way for reverse discrimination, which favours groups that are either perceived to be or historically were at a disadvantage. In other words, there is one form of systemic discrimination in Canada, but its advocates are attempting to justify new discrimination based on past discrimination. Such reasoning is faulty and should be the subject of further analysis by all who aim at equal opportunity for all.

Appendix Table

Jurisdiction	Name of Law	Section(s)	Wording	Year of Effect
CONSTITUTIONAL				
	Canadian Charter of Rights and Freedoms ¹⁶	15.1	“Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”	1982
FEDERAL				
	Fair Employment Practices Act ¹⁷	4	“No employer shall refuse to employ or to continue to employ, or otherwise discriminate against any person in regard to employment or any term or condition of employment because of his race, national origin, colour, or religion.”	1953
	Female Employees Equal Pay Act ¹⁸	4	“No employer shall employ a female employee for any work at a rate of pay that is less than the rate of pay at which a male employee is employed by that employer for identical or substantially identical work.”	1956
	Canadian Bill of Rights Act ¹⁹	1	“It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely... (b) the right of the individual to equality before the law and the protection of the law”	1960
PROVINCIAL				
Alberta	Individual's Rights Protection Act ²⁰	1-7, 9	Multiple prohibitions of discrimination “...because of the race, religious beliefs, colour, sex, age, ancestry or place of origin...”	1972
	Individual's Rights Protection Act ²¹	2	“No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of that person or class of persons.”	As amended & consolidated in 1980
		3	Prohibition against discrimination related to accommodation, services, facilities open to the public “because of the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of that person or class of persons.”	
		4	Prohibition against discrimination related to residential and commercial tenancies “because of the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of that person or class of persons.”	
		6	Prohibition against different rates of pay for males and females.	
		7	Prohibition against employment discrimination “because of the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of that person or class of persons.”	
		8, 10	Further prohibitions against discrimination “because of the race, religious beliefs, colour, sex, physical characteristics, age, ancestry or place of origin of that person or class of persons.”	

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Jurisdiction	Name of Law	Section(s)	Wording	Year of Effect
	Alberta Human Rights Act ²²	3, 4, 5, 7, 8, 9	Same prohibitions as noted in the 1980 consolidated version except for the following new wording "because of the race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation of that person or member."	As amended & consolidated in 2000
		6	Prohibition against different rates of pay based on sex.	
British Columbia	Unemployment Relief Act ²³	15	"In no case shall discrimination be made or permitted in the employment of any persons by reason of their political affiliation, race or religious views."	1932
	Social Assistance Act ²⁴	8	"In the administration of social assistance there shall be no discrimination based on race, colour, creed, or political affiliations."	1945
	Human Rights Code ²⁵	7, 8, 9, 10, 11, 13, 14	Multiple prohibitions of discrimination "because of the Indigenous identity, race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of that person or member, or because that person or member has been convicted of a criminal or summary conviction offence that is unrelated to the membership or intended membership".	1996 with consolidated amendments to 2021
		12	Prohibition against different rates of pay based on sex.	
Manitoba	Libel Act ²⁶	1	Amended to prohibit "the publication of a libel against a race or creed likely to expose persons belonging to a race or professing the creed to hatred, contempt or ridicule, and tending to raise unrest or disorder among the people."	1934
	Fair Employment Practices Act ²⁷	4	"No employer shall refuse to employ, or continue to employ, or otherwise discriminate against, any person in regard to employment, or any term or condition of employments, because of his race, national origin, colour, or religion."	1953
	The Human Rights Act ²⁸	2, 3, 4, 5, 6, 7	Multiple prohibitions of discrimination "because of the race, nationality, religion, colour, sex, age, marital status, family status, physical or mental handicap, ethnic or national origin of that person."	1987
	The Human Rights Code ²⁹	9, 13, 14, 15, 17, 18	Multiple prohibitions of discrimination based on "ancestry, including colour and perceived race; nationality or national origin; ethnic background or origin; religion or creed or religious belief, religious association or religious activity; age; sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy; gender identity; sexual orientation; marital or family status; source of income; political belief, political association or political activity; physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device; social disadvantage" [numbering omitted from quote]	2023
New Brunswick	Fair Employment Practices Act ³⁰	3	Prohibitions regarding "preference as to race, national origin, colour or religion unless the limitation, specification or preference is based upon a bona fide occupational qualification."	1956
	Human Rights Act ³¹	4, 5, 6, 7	Multiple prohibitions of discrimination "because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation, sex, social condition, political belief or activity."	1973
	Human Rights Act ³²	4, 5, 6, 7, 8	Multiple prohibitions of discrimination based on race, colour, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, family status, sex, sexual orientation, gender identity or expression, social condition, political belief or activity.	2011 with amendments to 2023

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Jurisdiction	Name of Law	Section(s)	Wording	Year of Effect
Newfoundland & Labrador	Human Rights Code ³³	6, 7, 9, 10, 11, 14	Multiple prohibitions of discrimination based on race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, family status, age, physical disability or mental disability of that person or class of persons.	1969 with amendments to 2010
	Human Rights Act ³⁴	11, 12, 14, 16, 19	Multiple prohibitions of discrimination based on race, colour, nationality, ethnic origin, social origin, religious creed, religion, age, disability, disfigurement, sex, sexual orientation, gender identity, gender expression, marital status, family status, source of income and political opinion.	2010
Nova Scotia	Fair Accommodation Practices Act ³⁵	3	“Every person and every class of persons has the right to obtain admission to and enjoyment of the accommodation, services and facilities available in any place to which the public is customarily admitted, regardless of the race, religion, religious creed, colour or ethnic or national origin of such person or class of persons.”	1959
	Human Rights Act ³⁶	5, 7	Multiple prohibitions of discrimination based on age, race, colour, religion, creed, sex, 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, marital status, source of income, political belief, affiliation or activity.	1989 with amendments to 2024
Ontario	Racial Discrimination Act ³⁷	1	No publishing or display of “any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race or creed of such person or class of persons.”	1944
	Labour Relations Act ³⁸		Amended to withhold recognition of collective agreements that discriminate on the basis of race or creed.	1950
	Fair Employment Practices Act ³⁹		Forbids employers and trade unions from discriminating against any person because of race, creed, colour, nationality, ancestry, or place of origin.	1951
	Female Employees Fair Remuneration Act ⁴⁰		Prohibits an employer from discriminating between male and female employees by paying a female employee at a lower rate than a male employee doing the same work in the same establishment.	1951
	Human Rights Code ⁴¹	1	“Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.”	1990 with amendments to 2023
Prince Edward Island	An Act to Incorporate the Charles Dalton Sanitorium ⁴²		“in which the inhabitants thereof afflicted with incipient Tuberculosis, without regard to class, creed or nationality, may be treated by the most recent and up-to-date methods.”	1913
	Human Rights Code ⁴³	4, 5, 6	Multiple protections from discrimination due to “race, religion, religious creed, colour or ethnic or national origin of such persons or class of persons, or of any other person or class of persons.”	1968
		7	“No employer and no person acting on his behalf shall pay a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for substantially the same work done in the same establishment.”	
	Human Rights Act ⁴⁴		Multiple prohibitions of discrimination “in relation to age, colour, creed, disability, ethnic or national origin, family status, gender expression, gender identity, marital status, political belief, race, religion, sex, sexual orientation, or source of income of any individual or class of individuals.”	1988 with amendments to 2023

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Jurisdiction	Name of Law	Section(s)	Wording	Year of Effect
Quebec	Charter of Human Rights and Freedoms ⁴⁵	11, 12, 13, 15, 16, 17, 18, 19	Multiple prohibitions of discrimination: "Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap."	1975 with amendments to 2023
Saskatchewan	Saskatchewan Bill of Rights Act ⁴⁶	8, 9, 10, 11, 12, 13, 14	Multiple prohibitions against discrimination based on race, creed, religion, colour, sex, or ethnic or national origin.	1947 with amendments to 1978
	Saskatchewan Human Rights Code ⁴⁷	2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19	Multiple prohibitions against discrimination based on religion, creed, marital status, family status, sex, sexual orientation, disability, age, colour, ancestry, nationality, place of origin, race or perceived race, receipt of public assistance, or gender identity.	1979
Northwest Territories	Fair Practices Ordinance ⁴⁸	3	Multiple protections from discrimination based on "race, creed, colour, nationality, ancestry or place of origin."	1966
	Fair Practices Act ⁴⁹	3	"No employer shall refuse to employ or refuse to continue to employ a person or adversely discriminate in any term or condition of employment of any person because of the race, creed, colour, sex, marital status, nationality, ancestry, place of origin."	1988 with amendments to 2002
	Human Rights Act ⁵⁰	5, 7, 8, 9, 10, 11, 12, 13	Multiple prohibitions against discrimination based on race, colour, ancestry, nationality, ethnic origin, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity or expression, marital status, family status, family affiliation, political belief, political association, social condition, and a conviction that is subject to a pardon or record suspension.	2002 with amendments to 2023
Yukon	Fair Practices Ordinance ⁵¹	3, 4, 5	Multiple prohibitions against discrimination based on "race, religion, religious creed, colour, ancestry, or ethnic or national origin."	1963
	Human Rights Act ⁵²	7, 9, 12, 15	Multiple prohibitions against discrimination based on ancestry, colour, race, national origin, ethnic or linguistic background or origin, religion, creed, religious association, religious activity, sex, including pregnancy and pregnancy related conditions, gender identity or gender expression, sexual orientation, physical or mental disability, criminal charges or criminal record, political belief, association or activity, marital or family status, source of income, actual or presumed association with people from the foregoing categories.	2002 with amendment to 2023
Nunavut	Human Rights Act ⁵³	7, 9, 10, 11, 12, 13, 14	Multiple prohibitions against discrimination based on race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, gender identity, gender expression, marital status, family status, pregnancy, lawful source of income, and a conviction for which a pardon has been granted.	2003 with amendments to 2023

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