



**Sexual Orientation as  
represented in the Canadian  
Charter of Rights and  
Canadian Context**



Fatemeh Mohammadi (TRU ID:T00699230)

Mayanthi Bhagya Basnayake (TRU ID:T00732426)

Prabhuta Kaushish (TRU ID: T00715903)

Simranjit Kaur (TRU ID: T00712020)

Faculty of Education and Social Work

Thompson Rivers University

EDUC 5130 - 02 - Managing Multiple Systems: Policy and Practice

Professor Frederic Fovet

Week 10



# Land Acknowledgement

"We respectfully acknowledge that the land on which we gather in Kamloops is the traditional and unceded territory of the Secwépemc (Shuswap) Nation. We recognize and honor the enduring presence, resilience, and contributions of the Secwépemc people, who have cared for and nurtured this land for thousands of years. We are grateful for the opportunity to live, work, and learn on this territory, and we commit to fostering respectful relationships with the Indigenous communities who call this land home."



# Topics of focus

- Navigating Legal Frameworks: The Canadian Charter of Rights and Freedoms and the Bill of Rights in Education
- Analyzing Legal Milestones: A Review of Canadian Case Law on Educational Equality
- From Policy to Practice: The Impact of Legal Precedents on Educational Inclusivity
- The Boundaries of Inclusion: Evaluating the Efficacy of Case Law in Guiding Educational Leaders



**Part 1**  
**Navigating Legal**  
**Frameworks: The**  
**Canadian Charter of**  
**Rights and Freedoms and**  
**the Bill of Rights in**  
**Education**

# The Canadian Bill of Rights

- The first federal human rights law
- Federal statute (law) and not part of the Constitution.
- was not constitutionally entrenched and could be overridden by later legislation.
- Protecting a limited set of rights and freedoms
- Provinces were not bound by it
- General provision related to equality before the law.

“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”.

- While the Canadian Bill of Rights mentions “sex” as a protected category, it does not provide detailed or specific provisions related to gender rights and equality.

# The Canadian Charter of Rights Development in Gender equality

- Influential in shaping the legal framework for gender rights and equality
- It includes provisions related to equality rights and non-discrimination

**“ 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”**

- Section 15 of the Charter is a fundamental provision that guarantees equality rights to all individuals in Canada. It prohibits discrimination on various grounds, including race, national or ethnic origin, color, religion, sex, age, and mental or physical disability. It ensures that everyone is entitled to equal protection and benefit of the law, regardless of these characteristics.

# Progress in Recognizing LGBTQ+ Rights

- Significant progress in Canada over the past decade in promoting equal rights and recognition for same-sex couples
- Decriminalization of homosexual activity
- Removal of restrictions based on sexual orientation in the military and immigration regulations
- Key legislative changes, including Bills C-33, C-78, C-23, and C-11, addressing pension benefits, immigration rights, and common-law partnerships



# Challenges and the Way Forward

## Discrimination based on gender, gender identity, and sexual orientation among postsecondary schools

The Canadian Centre for Justice and Community Safety Statistics study in 2019 in postsecondary schools in Canada:

- Approximately 47% of Canadian postsecondary students witnessed or experienced discrimination based on gender, gender identity, or sexual orientation. Women were more likely to have witnessed or experienced discrimination compared to men (52% of women and 42% of men). Women were also more likely to have experienced various forms of discriminatory behaviors.
- One in five women (20%) and one in eight men (13%) reported experiencing discrimination. \*
- Discrimination was experienced more frequently by students who identified as lesbian, gay, bisexual, or had non-heterosexual orientations. Discrimination was also reported by students with disabilities and those who wore visible religious symbols
- Most students found discrimination based on gender, gender identity, or sexual orientation to be offensive, with women generally finding it more offensive than men.

**Part 2**  
**Analyzing Legal Milestones:  
A Review of Canadian Case  
Law on Educational Equality  
&  
From Policy to Practice: The  
Impact of Legal Precedents  
on Educational Inclusivity**





**Trinity  
Western  
University v.  
BC College of  
Teachers**

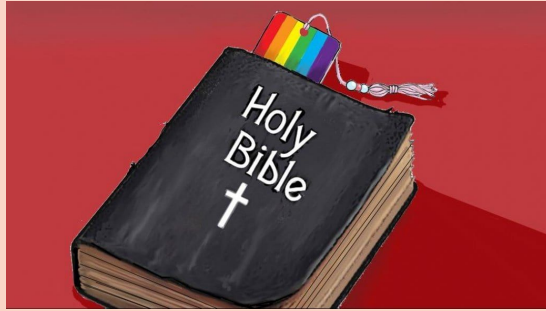
# Trinity Western University v. British Columbia College of Teachers

- The case of Trinity Western University v. College of Teachers, [2001] 1 S.C.R. 772, 2001 SCC 31, involved a dispute between Trinity Western University (TWU), a private evangelical Christian university, and the British Columbia College of Teachers. TWU sought accreditation for its proposed teacher education program, but the College of Teachers denied accreditation based on TWU's community standards that required students and faculty to adhere to a code of conduct consistent with traditional Christian beliefs, including abstaining from homosexual behavior.
- The College of Teachers contended that TWU's community standards discriminated against LGBTQ+ individuals and that accrediting the teacher education program would perpetuate such discrimination. TWU, on the other hand, argued that its religious freedom and autonomy as a religious institution should be respected and that the denial of accreditation violated its constitutional rights.

- The case was heard by the Supreme Court of Canada, and in its decision, the Court ruled in favor of Trinity Western University. The majority of the Court held that the College of Teachers' decision to deny accreditation to TWU's teacher education program because of its community standards interfered with TWU's religious freedom and autonomy as a religious institution.
- In an eight to one decision, the Court held that the College "acted unfairly" in rejecting Trinity Western's application. The Court concurred with the lower provincial courts, stating that "[i]n considering the religious precepts of TWU instead of the actual impact of these beliefs on the public school environment, the BCCT acted on the basis of irrelevant considerations."
- The Court further observed that there is nothing in the TWU Community Standards, which are limited to prescribing conduct of members while at TWU, that indicates that graduates of TWU will not treat homosexuals fairly and respectfully. The evidence to date is that graduates from the joint TWU-SFU teacher education program have become competent public school teachers, and there is no evidence before this Court of discriminatory conduct."

- In 2018, there was a significant decision involving Trinity Western University, but it was related to its proposed law school. The Supreme Court of Canada delivered a decision on *Trinity Western University v. Law Society of Upper Canada* and a companion case involving the Law Society of British Columbia.
- The Supreme Court of Canada ultimately dismissed the appeal and upheld the BCCT's decision to deny accreditation to TWU's teacher education program. The majority of the Court held that the BCCT had jurisdiction to consider discriminatory practices when evaluating TWU's application for accreditation.
- The Court emphasized the importance of reconciling religious freedom with equality rights.
- The Court upheld the BCCT's conclusion that the TWU Community Standards constituted discriminatory practices.
- The majority of the Court determined that the BCCT's decision was reasonable and that it aimed to ensure a welcoming and supportive classroom environment for all students. They found that their decision was justifiable under the Canadian Charter of Rights and Freedoms.

# Trinity Western University v. BC College of Teachers: Impact on Canadian Education



- Accreditation of educational programs based on academic and professional merits.
- Balancing religious freedom with professional standards in education.
- Influence on development of professional conduct standards for teachers.
- Policy development to respect diversity and religious freedom.

# Examples of Initiatives post Trinity Western University v. BC College of Teachers decision

- Ontario College of Teachers ensures members respect diversity and equality (Ontario College of Teachers, 2020).
- Legal precedents influencing rights of religious institutions in education.
- Dialogue and policy development on religious freedom in public education.


'Bullying': B.C. leaders back inclusive education material as anti-2SLTBQIA+ rallies planned (Posted September 19, 2023)







**Chamberlain  
v. Surrey  
School  
District No. 36**



# James Chamberlain Vs The board of Trustees of School district . 36 (Surrey)

- Dispute was related to introduction of three books which gives knowledge about same sex parents for teaching family life education curriculum.
- The school Act in British Columbia gives the Minister of Education the power to approve basic educational resource materials, and school boards have the authority to approve supplementary materials.
- School Board refused due to some religious facts and parents objections and believes.
- The Supreme Court allowed the appeal and concluded that the School Board's decision was unreasonable in the context of the educational scheme defined by the legislature. It emphasized the School Act's requirement of secularism and non-discrimination and stated that the Board had not acted in a way that promoted respect and tolerance for all diverse groups in society. The Board had violated the principles of secularism and tolerance, departed from its own regulations, and applied the wrong criteria.

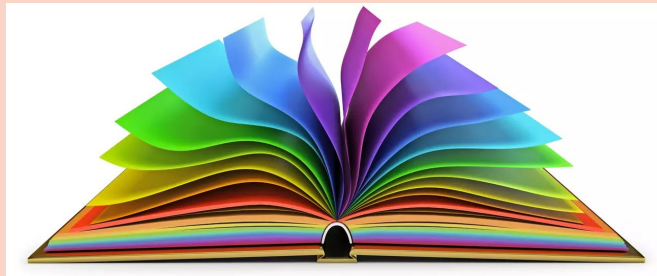
- The dissenting opinion argued that the School Board's decision was reasonable, in line with the Charter, and respected the rights of parents to make decisions regarding their children's moral upbringing. They believed that the Board's discretion in this matter should be upheld.
- Justice McLachlin argument focuses on the appropriate standard of review, emphasizing that reasonableness is the correct standard and discussing the various factors that support this choice. This sets the stage for the examination of the School Board's decision in light of this standard.
- The Court found that the Board had departed from its own guidelines, which required the curriculum to reflect the experience of its students. It had not considered the relevance of the materials in question to the curriculum or the needs of children from same-sex parented families. The Board failed to meet its mandate, and applied a criterion of necessity rather than the mandated criterion of enrichment, diversity, and tolerance.

# Chamberlain v. Surrey School District No. 36: Impact on Canadian Education

Supreme Court's stance on inclusion of diverse family structures in curriculum.

Influence on educational material approval and policy-making.

Emphasis on teacher training for diversity and acceptance.



# Examples of initiatives post Chamberlain v. Surrey School District No. 36

- BC's curriculum reflects diverse family structures post-Chamberlain case (British Columbia Ministry of Education, n.d.).

Diversity in BC Schools A Framework

- Teacher education programs at UBC include diversity and inclusivity components (University of British Columbia, n.d.).

Equity, Diversity, Inclusivity and Decolonization (EDI-D) Cohort in Secondary Education | 2022/23 BEd Program





**Vriend v.  
Alberta**

# **Delwin Vriend, Gala-Gay and Lesbian Awareness Society of Edmonton, Gay and Lesbian Community Centre of Edmonton Society and Dignity Canada Dignité for Gay Catholics and Supporters Appellants Vs Her Majesty The Queen in Right of Alberta and Her Majesty's Attorney General in and for the Province of Alberta**

- Delwin Vriend was a teacher in Alberta who was dismissed from his job because of his sexual orientation. He was a gay man, and the Alberta Human Rights Act did not explicitly protect individuals from discrimination on the basis of sexual orientation at the time. Vriend and several advocacy organizations, including the Gala-Gay and Lesbian Awareness Society of Edmonton, the Gay and Lesbian Community Centre of Edmonton Society, and Dignity Canada Dignité for Gay Catholics and Supporters, challenged the constitutionality of the Alberta Human Rights Act as it failed to include sexual orientation as a prohibited ground of discrimination.

- The omission of sexual orientation from the Alberta Human Rights Act violated the equality rights protected under the Canadian Charter of Rights and Freedoms.
- The Court ruled in favor of Delwin Vriend and the appellants, finding that the exclusion of sexual orientation from the Alberta Human Rights Act violated the equality rights guaranteed under Section 15 of the Canadian Charter of Rights and Freedoms. The Court held that discrimination based on sexual orientation was a form of discrimination that was unjust and violated the Charter.



- The Supreme Court of Canada declared that the Alberta Human Rights Act was unconstitutional to the extent that it excluded sexual orientation from its protections. As a result, the Court effectively "read in" sexual orientation as a prohibited ground of discrimination, extending protection to LGBTQ+ individuals in Alberta.

- The sole dissenting opinion was written by Justice John C. Major. He argued that "reading in" a sexual orientation provision in the Individual Rights Protection Act was not necessarily more "desirable" than simply dismissing the entire IRPA as unconstitutional, since the Alberta legislature had repeatedly indicated they specifically did not wish to include such rights in the document. Major wrote that the IRPA should in fact be overturned. He then suggested that the legislature may in turn wish to use the notwithstanding clause to pass a new IRPA that would be capable of excluding protection for homosexuals.

# Vriend v. Alberta: Impact on Canadian Education



- The Supreme Court's ruling on sexual orientation inclusion.
- Mandatory anti-discrimination policies in educational institutions.
- Curriculum revisions to include human rights and diversity education.
- Enhanced support systems for LGBTQ+ students, staff, and faculty (Ex: Office of Safe Disclosure & Human Rights)
- Professional development for educators on inclusivity and non-discrimination

# Examples of Initiatives Post-Friend Decision

**Alberta Teachers' Association provides workshops on inclusivity**

(Alberta Teachers' Association, n.d.)

**Toronto District School Board's guidelines support LGBTQ+ students**

(Toronto District School Board, n.d.)

**Ontario's curriculum includes LGBTQ+ issues from Grade 1-12**

(Government of Ontario, 2019)



# Human Rights of Transgender People: Saskatchewan Human Rights Commission



# Human Rights of Transgender People

“Discrimination because of gender identity or gender expression is any action, intentional or not, that imposes burdens on an individual or group and not on others, or that withholds or limits access to benefits available to other members of society. Under The Saskatchewan Human Rights Code, discrimination because of gender identity or gender expression is against the law in Saskatchewan.”

(Saskatchewan Human Rights Commission, 2023)

# Discrimination and Harassment Based on Gender Identity

## Overview:

Discrimination and harassment based on gender identity encompass a range of behaviors and practices that unfairly target individuals due to their gender identity or expression. This can manifest in various settings, including workplaces, educational institutions, housing, and public services

## Types of Discrimination:

**Direct Discrimination:** This is overt and explicit discrimination, such as denying a transgender person access to the appropriate washroom.

**Indirect Discrimination:** This includes systemic discrimination resulting from seemingly neutral policies that disproportionately affect certain groups. For example, a dress code that restricts gender expression.

(Saskatchewan Human Rights Commission, 2023).

# Discrimination and Harassment Based on Gender Identity contd.

## Harassment:

Harassment is a form of discrimination that includes behaviors like offensive jokes, name-calling, or displaying insulting images, specifically targeting an individual's gender identity

## Examples of Discrimination and Harassment:

- A transgender woman being denied access to a women's washroom at work.
- A qualified transgender individual being falsely informed that a job position is filled.
- An employee being excluded from promotions due to cross-dressing.

(Saskatchewan Human Rights Commission, 2023).

# Discrimination and Harassment Based on Gender Identity contd.

## Key Definitions:

- Gender Identity: An individual's internal and inherent sense of gender, which may or may not align with their assigned sex at birth.
- Gender Expression: The external manifestation of one's gender identity, often reflected in behavior, clothing, hairstyle, and voice.
- Transgender: A broad term encompassing individuals whose gender identity or expression differs from societal norms related to gender

(Saskatchewan Human Rights Commission, 2023).

## Legal Framework:

The Saskatchewan Human Rights Code protects individuals from discrimination based on gender identity. It applies to various areas such as employment, education, and housing. The duty to accommodate requires adjustments in policies and practices to support diverse needs up to the point of undue hardship (Saskatchewan Human Rights Commission, 2023).



# Discrimination and Harassment Based on Gender Identity contd.

## Undue Hardship:

This concept refers to the limits of accommodation, where accommodating an individual's needs would cause significant difficulty or expense to the employer or service provider (Saskatchewan Human Rights Commission, 2023).

## Confidentiality:

Employers and service providers must protect the privacy of individuals regarding gender identity information, ensuring confidentiality and respect for the individual's dignity (Saskatchewan Human Rights Commission, 2023).

## Conclusion:

Understanding and addressing discrimination and harassment based on gender identity are crucial for fostering inclusive environments. It requires a commitment to respecting individual identities and expressions, as well as adapting policies and practices to accommodate diverse needs (Saskatchewan Human Rights Commission, 2023).



# CANADIAN CHARTER OF RIGHTS AND FREEDOMS



Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

## Guarantee of Rights and Freedoms

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.

## Fundamental Freedoms

2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

## Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. (1) The House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members. (2) In case of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be. (3) There shall be a sitting of Parliament and of each legislature at least once every twelve months.

## Mobility Rights

4. (1) Every citizen of Canada has the right to enter, remain in and leave Canada. (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province. (3) The rights specified in subsection (2) are subject to any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and (4) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services. (5) Subsections (2) and (3) do not provide any law, program or activity that is in respect of the redistribution in a province of the resources of that province which are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

## Legal Rights

5. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. (1) Everyone has the right to be secure against unreasonable search or seizure. (2) Everyone has the right not to be arbitrarily detained or imprisoned. (3) Everyone has the right to reasonable bail unless just cause is shown. (4) A person charged with an offence has the right (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay and to be informed of that right; and (c) to have the ability of the detentions determined by way of fair and open proceedings if the detention is not lawful. (5) Any person charged with an offence has the right (a) to be informed without unreasonable delay of the specific offence; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of the offence; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (e) not to be denied reasonable bail without just cause; (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is

imprisonment for five years or a more severe punishment; (g) if found guilty on a conviction or summary conviction of an offence, to be sentenced by a court of law recognized by the community of justice; (h) if found guilty of the offence, not to be tried or punished for it a second time; and (i) to be tried by a jury if the offence has been committed in the province of Ontario, Quebec or New Brunswick. (6) The states, records and journals of the courts shall be printed and published in English and French and both languages shall be equally authoritative. (7) Either English or French may be used by any pleading in or before any court or tribunal established by Parliament. (8) Other English or French may be used by any pleading in or before any court or tribunal established by Parliament. (9) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any head or central office of the Parliament or government of Canada in English or French. (10) The same right with respect to any other office of any such institution shall exist in a province. (11) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (12) The same right with respect to any other office of any such institution shall exist in a province. (13) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (14) The same right with respect to any other office of any such institution shall exist in a province.

6. (1) Every individual whose rights or freedoms as guaranteed by this Charter have been infringed or denied has the right to a fair and public hearing by an independent and impartial tribunal. (2) The states, records and journals of the courts shall be printed and published in English and French and both languages shall be equally authoritative. (3) Either English or French may be used by any pleading in or before any court or tribunal established by Parliament. (4) Other English or French may be used by any pleading in or before any court or tribunal established by Parliament. (5) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any head or central office of the Parliament or government of Canada in English or French. (6) The same right with respect to any other office of any such institution shall exist in a province. (7) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (8) The same right with respect to any other office of any such institution shall exist in a province.

7. (1) English and French are the official languages of Canada and have equal status and equal rights and privileges as to institutions of government and government communications. (2) English and French are the official languages of the Parliament and government of Canada. (3) English and French are the official languages of every province and every municipality. (4) Every institution of the Parliament and government of Canada and every institution of a province and every municipality shall have equality of status and of treatment and parity of rights and obligations in the legislature and in the courts. (5) Nothing in this Charter limits the authority of Parliament or of a province to advance the equality of status or use of English and French. (6) Everyone has the right to use English or French in any proceedings before Parliament. (7) Everyone has the right to use English or French in any proceedings before any court or tribunal established by Parliament. (8) The states, records and journals of the courts shall be printed and published in English and French and both languages shall be equally authoritative. (9) Either English or French may be used by any pleading in or before any court or tribunal established by Parliament. (10) Other English or French may be used by any pleading in or before any court or tribunal established by Parliament. (11) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (12) The same right with respect to any other office of any such institution shall exist in a province. (13) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (14) The same right with respect to any other office of any such institution shall exist in a province.

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# SECTION 33 notwithstanding clause

Minority Language Educational Rights  
10. (1) In a province where the number of children of school age of the English or French linguistic minority population of the province is sufficient to warrant the establishment of separate educational institutions to provide instruction in English or French, the state of that province shall provide such institutions. (2) The right of citizens of Canada to have their children receive primary and secondary school instruction in the language of their choice shall not be denied by any province. (3) The right of citizens of Canada to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of the province in which they reside shall not be denied by any province. (4) Children whose first language is neither English nor French and who are children of citizens who have such a right in respect of their children in the province in which they reside shall not be denied by any province the right to have their children receive primary and secondary school instruction in the language of their choice. (5) The states, records and journals of the courts shall be printed and published in English and French and both languages shall be equally authoritative. (6) Either English or French may be used by any pleading in or before any court or tribunal established by Parliament. (7) Other English or French may be used by any pleading in or before any court or tribunal established by Parliament. (8) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (9) The same right with respect to any other office of any such institution shall exist in a province. (10) Any member of the public in Canada has the right to communicate with, to receive available services from, and to be served by any office of an institution established by or under the authority of the Parliament or government of Canada in English or French. (11) The same right with respect to any other office of any such institution shall exist in a province.

## Enforcement

11. (1) Anyone whose rights or freedoms as guaranteed by this Charter have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

## General

12. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, including (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 4, 1960; and (b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims agreements. (2) The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada. (3) The Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. (4) Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons. (5) Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denization, naturalization or citizenship. (6) A reference in this Charter to a province or to the legislature or government of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be. (7) Nothing in this Charter extends the legislative powers of any body or authority.

## Application of Charter

13. (1) This Charter applies to the Parliament and government of Canada in respect of all matters within the authority of Parliament, including all matters relating to the Yukon Territory and Northwest Territories; and (2) in the legislature and government of each province in respect of all matters within the authority of the legislature of each province. (3) Notwithstanding subsection (1), section 33 shall not have effect three years after this section comes into force. (4) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act in question shall apply in force to the extent that section 33 of this Charter does not apply, and section 33 shall not have effect in respect of that Act or provision of an Act in respect of which a declaration under this section is in effect although such operation as it would have but for the provision of this Charter referred to in the declaration. (5) A declaration made under subsection (4) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (6) Parliament or a legislature of a province may re-issue a declaration made under subsection (4). (7) Subsection (4) applies in respect of a re-issuance under subsection (6).

## Citation

14. This Part may be cited as the Canadian Charter of Rights and Freedoms.

"We must ever cherish the basic principles, the basic values and beliefs which hold us together as Canadians: the belief in equal rights before the law; the belief in a unity of all and a spirit of openness which unites all people of the country that has grown so rich in freedom and such immeasurable joy."  
  
B. Trudeau 1981

# Summary of Section 33 – Notwithstanding Clause

- Section 33 of the Canadian Charter of Rights and Freedoms, known as the "notwithstanding clause," allows Parliament or a provincial legislature to declare that an Act or a provision thereof shall operate notwithstanding sections 2, 7 to 15 of the Charter. This means these legislative bodies can pass laws that override certain Charter rights.
- A declaration under section 33 is effective for five years unless specified otherwise. It can be re-enacted after this period.
- The clause is unique in constitutional democracies and is similar to limited notwithstanding clauses in certain international human rights conventions.

(Department of Justice, Government of Canada, 2023)

# Summary of Section 33 – Notwithstanding Clause; Application and Analysis:

- Section 33 permits derogation from sections of the Charter concerning fundamental freedoms, legal rights, and equality rights. It does not apply to democratic rights, mobility rights, or language rights.
- Once invoked, it precludes judicial review of the legislation under the listed Charter sections for the duration of its effect.
- The legislature does not need to provide a substantive justification for using the override or identify specific infringing provisions of the Act. The clause has been interpreted as permitting prospective derogation only, not retroactive or retrospective operation.
- Provincial governments, including Quebec, Saskatchewan, Yukon, Ontario, and Alberta, have invoked it. Quebec was the first to use it in 1982, re-enacting pre-Charter legislation with a standard clause to operate notwithstanding the Charter.

(Department of Justice, Government of Canada, 2023)

# Looking at the ground: Resignation of Saskatchewan Human Rights Commissioner in Protest of New School Pronoun Policy

Heather Kuttai, after serving nine years as a Saskatchewan human rights commissioner, resigned in response to the province's new policy requiring teachers to inform parents if a child wishes to use different gender expressions at school. Kuttai, a former Paralympian, author, and disability advocate, expressed strong disagreement with the legislation, viewing it as an attack on the rights of trans, non-binary, and gender-diverse children. Her decision was influenced by conversations with her transgender son and a desire to be accountable to her children and the people of the province. Despite her resignation, Justice Minister Bronwyn Eyre acknowledged differing views on the policy, while Opposition NDP Leader Carla Beck called for the government to reconsider its stance.

[Link to News Item- Sask. human rights commissioner resigns, calls pronoun policy 'an attack' on gender-diverse kids](#)

[Heather Kuttai resignation letter Original Document \(PDF\) »](#)  
[Contributed by Alexander Quon \(Alexander Quon, Independent Journalist\)](#)



# Resignation of Saskatchewan Human Rights Commissioner in Protest of New School Pronoun Policy

In the context of the situation involving the Saskatchewan Human Rights Commissioner's resignation over the new school pronoun policy, the notwithstanding clause could be invoked by the Saskatchewan government to uphold the policy even if it is found to infringe upon Charter rights. This could include rights related to equality (Section 15 of the Charter) or freedom of expression (Section 2(b)).

The use of the notwithstanding clause in such situations is often controversial, as it involves the deliberate suspension of fundamental rights and freedoms guaranteed by the Charter. Critics argue that it can be used to undermine minority rights or to avoid judicial scrutiny, while proponents see it as a necessary tool to balance the power between the judiciary and the legislature.



# SOGI

Example of an inclusive approach that aims to create safe and accepting school environments for students of all sexual orientations, gender identities, and expressions.

[SOGI: 5 things to know | Vancouver Sun](#)



# #3: What is

## SOGI 123?

sexual  
orientation  
gender  
identity

IN 2016, THE CANADIAN HUMAN RIGHTS ACT WAS AMENDED TO INCLUDE "GENDER IDENTITY OR EXPRESSION" AS A PROTECTED GROUNDS.

AS SUCH, THE BC MINISTRY OF EDUCATION INTRODUCED THE SOGI 123 POLICY TO REFLECT THIS IMPORTANT CHANGE. ALL 60 SCHOOL DISTRICTS IN BC HAVE IMPLEMENTED THE POLICY.

**1. Policy:** schools and districts must have policies that are inclusive and reflective of our diverse population. For example: access to gender neutral washrooms; the ability to play on sports teams that align with one's gender; the right to self-identify & be called by one's preferred name and pronouns, etc.

**2. Environment:** schools and districts must actively foster environments that are safe and supportive for all sexual orientations (gay, straight, bisexual, etc.) and gender identities (cisgender, transgender, Two Spirit, etc.).

**3. Teaching:** schools must educate in a way that includes and celebrates diversity. For example: having literature that features LGBTQ+ content or authors; reflecting diversity in word problems, talking about historical contributions of the LGBTQ+ population.

(Greater Victoria School District, 2023)



# SOGI

SEXUAL ORIENTATION  
GENDER IDENTITY

All individuals have a unique sexual orientation and gender identity (SOGI), which encompasses a range of identities including, but not limited to, lesbian, gay, bisexual, transgender, queer, two-spirit, straight, and cisgender. For educational environments, it is crucial to foster inclusivity and ensure safety for students across this spectrum of identities. Creating a SOGI-inclusive school involves:

- Discussing SOGI in ways that affirm the sense of belonging for every student.
- Avoiding constraints on someone's abilities or opportunities based on their sex at birth or their personal gender identity and expression.
- Ensuring a welcoming atmosphere that is free from discrimination for all, irrespective of how they identify or whom they love.

(British Columbia Ministry of Education, n.d.)



**Part 3**  
**The Boundaries of**  
**Inclusion: Evaluating**  
**the Efficacy of Case**  
**Law in Guiding**  
**Educational Leaders**

# Limitations

- Persistent Homophobia and Transphobia-· Despite legal advancements, schools across Canada continue to struggle with homophobia and transphobia, which can lead to bullying, discrimination, and a hostile learning environment for LGBTQ+ students (Taylor et al., 2015).
- Lack of Comprehensive Curriculum-· There is an absence of a consistent, comprehensive curriculum addressing sexual orientation and gender identity across all provinces, leading to a patchwork approach that varies significantly in quality and inclusivity (Kosciw et al., 2013).

- Inadequate Teacher Training-Many educators feel unprepared to address LGBTQ+ issues due to inadequate training on sexual orientation and gender identity in their teacher education programs (Meyer et al., 2016).
- Limited Support for LGBTQ+ Staff- LGBTQ+ educators often lack the same level of institutional support as their students, facing barriers to being open about their identities within the school community (Grace & Wells, 2016).
- Inconsistent Policies: School policies regarding LGBTQ+ inclusivity are inconsistent and sometimes non-existent, leaving students without clear protections or recourse against discrimination (Grossman & Park, 2016).

- Exclusion from School Events: LGBTQ+ students may feel excluded from traditional school events, such as proms or sports, where policies and practices do not always accommodate diverse gender identities and relationships (Gowen & Wings-Yanez, 2014).
- · Mental Health Challenges: LGBTQ+ students face higher rates of mental health challenges due to the stress of navigating an education system that does not fully embrace their identity, leading to higher rates of absenteeism and dropout (Russell & Fish, 2016).

# Thanks!!

## Q&A

**Considering the laws and policies regarding sexual orientation in the education system of Canada, how do these compare with the legal stance and educational policies in your home country? What are the potential challenges or opportunities for implementing inclusive education policies for diverse sexual orientations in your country's schools?**



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