



CANADA/ONTARIO – SOGI LEGISLATION COUNTRY REPORT
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Please note: This document was prepared by law students and highlights publicly-accessible information about legislation available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto Faculty of Law cannot provide such advice or assistance.

Summary

Jurisdiction in Canada is divided between Federal and Provincial levels of government. The examples of Ontario legislation provided are illustrative, and not necessarily representative of Provincial legislation across the country.

Federal

Section 15 of the Canadian [Charter of Rights and Freedoms](#) lists a number of prohibited grounds of discrimination (section 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”). While section 15 does not explicitly include sexual orientation, the Supreme Court of Canada has held that sexual orientation is an “analogous ground” akin to the enumerated ones ([Egan v Canada](#) [1995] 2 SCR 513).

“Sexual orientation” is explicitly listed as a prohibited ground of discrimination under federal human rights legislation ([Canadian Human Rights Act](#)).

Speech that wilfully promotes hatred based on sexual orientation is criminalized ([Criminal Code](#)).

Proof that an offence was motivated by bias based on sexual orientation is an aggravating factor at sentencing ([Criminal Code](#)).

Consensual same-sex sexual activity was decriminalized in 1969 with the passing of Bill C-150, the *Criminal Law Amendment Act*.

The age of consent for anal sex is higher than for other kinds of sexual activity (regardless of the sex of the participants; section 159 of the [Criminal Code](#)). However, this law has been declared unconstitutional in the province of Ontario on the grounds that it violates the Constitution, namely, the [Charter of Rights and Freedoms](#) (*R v CM* [1995] OJ No 1432).

In *M v H* ([1999] 2 SCR 3), the Supreme Court of Canada ruled that the exclusion of same-sex partners from the definition of common-law spouse under section 29 of the Ontario *Family Law Act* (which defines spouses entitled to spousal support obligations) violates the equality provision (section 15(1)) of the [Charter of Rights and Freedoms](#).

The [Modernization of Benefits and Obligations Act](#) recognizes same-sex common law partners, and extends them the same rights and obligations as unmarried opposite-sex couples for federal income tax, pension, *et cetera*.

The [Civil Marriage Act](#) grants legal recognition to same-sex marriages throughout the country, in all provinces.

Canadian citizens and permanent residents can sponsor same-sex partners for immigration to Canada under the federal [Immigration and Refugee Protection Act](#) and the [Immigration and Refugee Protection Regulations](#).

Same-sex couples have equal access to assisted human reproductive technologies under the federal [Assisted Human Reproduction Act](#).

Provincial (Ontario)

“Gender identity” and “sexual orientation” are listed as protected grounds under provincial human rights legislation (Ontario [Human Rights Code](#)).

Same-sex couples can jointly adopt children in the province of Ontario ([Child and Family Services Act](#)).

Laws recognizing change of gender vary among provinces. In Ontario, the Human Rights Tribunal found the provision of the [Vital Statistics Act](#) (1990) requiring “transsexual surgery” for official sex change violates the Ontario [Human Rights Code](#) (*XY v Ontario* [2012] OHRTD No 715). As of October 2012, individuals in Ontario can apply to change the sex on their birth certificates without sex reassignment surgery. A letter from a physician or psychologist is required.

Legal Provisions

ANTI-DISCRIMINATION

FEDERAL

[Canadian Human Rights Act](#), RSC 1985: “Sexual orientation” was added in 1996 as grounds for protection against discrimination:

Section 3(1): For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

<http://laws-lois.justice.gc.ca/PDF/H-6.pdf>

PROVINCIAL (ONTARIO)

[Human Rights Code](#), R.S.O 1990: Ontario’s Human Rights Code identifies “gender identity” and “sexual orientation” as grounds for protection against discrimination and harassment in the provision of services, goods and facilities, including accommodation, contracts, employment and access to unions and professional associations:

Section 1: Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of [...]sexual orientation, gender identity, gender expression [...]

Section 2(1): Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of [...] sexual orientation, gender identity, gender expression [...]

Section 2(2): Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of [...] sexual orientation, gender identity, gender expression [...]

Section 3: Every person having legal capacity has a right to contract on equal terms without discrimination because of [...] sexual orientation, gender identity, gender expression [...]

Section 5(1): Every person has a right to equal treatment with respect to employment without discrimination because [...] sexual orientation, gender identity, gender expression [...]

Section 5(2): Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because [...] sexual orientation, gender identity, gender expression [...]

Section 6: Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of [...] sexual orientation, gender identity, gender expression [...]

Section 7 (1): Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building.

Section 7 (2): Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee.

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm

Note: Gender identity is not defined in the Code, but the Ontario Human Rights Commission defines the term on its website as “linked to an individual’s intrinsic sense of self and, particularly the sense of being male or female. Gender identity may or may not conform to a person’s birth assigned sex. The personal characteristics that are associated with gender identity include self-image, physical and biological appearance, expression, behaviour and conduct, as they relate to gender”.

<http://www.ohrc.on.ca/en/tag/code-grounds/gender-identity?page=3>

Education Act, R.S.O 1990: The *Education Act* was amended in 2012 to discourage bullying based on sexual orientation or gender identity; it also removes schools’ veto power over the establishments of activities or organizations that promote awareness and understanding of sexual orientation and gender identity. The Act applies to all publicly-funded schools, including Roman Catholic schools (in Ontario, Roman Catholic schools are the only religious schools which receive public funding).

Section 1(1): “bullying” means aggressive and typically repeated behaviour by a pupil where, (b) the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as [...] sexual orientation [...] gender, gender identity, gender expression [...]

Section 301(6): The Minister [of Education and Training] shall establish policies and guidelines with respect to disciplining pupils, which must include policies and guidelines respecting (a) the use of disciplinary measures within a framework that, (i) identifies pupil behaviours that are inappropriate and that, without excluding less serious behaviour, include bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia and biphobia

Section 303.1(1): Every board shall support pupils who want to establish and lead activities and organizations that promote a safe and inclusive learning environment, the acceptance of and respect for others and the creation of a positive school climate, including, [...] (d) activities or organizations that promote the awareness and understanding of, and respect for, people of all sexual orientations and gender identities, including organizations with the name gay-straight alliance or another name

Section 303.1(2): For greater certainty, neither the board nor the principal shall refuse to allow a pupil to use the name gay-straight alliance or a similar name for an organization described in clause (1) (d)

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e02_e.htm

HATE CRIMES

Criminal Code, RSC 1985: Evidence that the offence is motivated by bias based on sexual orientation “or any other similar factor” is an aggravating factor at sentencing:

Section 718.2: A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
- (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,

<http://laws-lois.justice.gc.ca/PDF/C-46.pdf>

Criminal Code, RSC 1985: Criminalizes speech that wilfully promotes hatred based on sexual orientation:

Section 319(2): Everyone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of:
(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

Section 319(7): “identifiable group” has the same meaning as in section 318

Section 318(4): In this section, “identifiable group” means any section of the public distinguished by colour, race, religion, ethnic origin or sexual orientation.

<http://laws-lois.justice.gc.ca/PDF/C-46.pdf>

SEXUAL ACTIVITY AND AGE OF CONSENT

FEDERAL

Criminal Code, RSC 1985: The age of consent for anal-sex (18 years) is higher than for other sexual activities (16 years)

Section 151: Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years (a) is guilty of an indictable offence [...]; or (b) is guilty of an offence punishable on summary conviction [...]

Section 159(1): Every person who engages in an act of anal intercourse is guilty of an indictable offence [...]

Section 159(2): Subsection (1) does not apply to any act engaged in, in private, between [...] (b) any two persons, each of whom is eighteen years of age or more, both of whom consent to the act

<http://laws-lois.justice.gc.ca/PDF/C-46.pdf>

Note: In R v CM ([1995] OJ No 1432), the Ontario Court of Appeal declared Section 159 of the [Criminal Code](#) unconstitutional on the grounds that it “arbitrarily disadvantages gay men and therefore violates s. 15 of the Charter on the grounds of sexual orientation” (paragraph 22).

MARRIAGE

FEDERAL

Civil Marriage Act, SC 2005: The Act was amended in 2005 to extend the definition of marriage to include same-sex couples; it also extends full legal benefits and obligations of marriage to same-sex couples

Preamble: “WHEREAS the courts in a majority of the provinces and in one territory have recognized that the right to equality without discrimination requires that couples of the same sex and couples of the opposite sex have equal access to marriage for civil purposes”

Preamble: “WHEREAS, in light of those considerations, the Parliament of Canada’s commitment to uphold the right to equality without discrimination precludes the use of section 33 of the Canadian Charter of Rights and Freedoms to deny the right of couples of the same sex to equal access to marriage for civil purposes;”

Section 2: Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others

Section 4: For greater certainty, a marriage is not void or voidable by reason only that the spouses are of the same sex

<http://laws-lois.justice.gc.ca/PDF/C-31.5.pdf>

Divorce Act, R.S.C 1985: The Act includes same-sex couples within its definition of “spouse.” As the Act includes laws regarding child support and spousal support, as well as orders about the care and control of children, these laws apply equally to both same-sex and opposite-sex couples.

Section 2: “spouse” means either of two persons who are married to each other

<http://laws-lois.justice.gc.ca/PDF/D-3.4.pdf>

PARTNERSHIP RECOGNITION AND BENEFITS

Modernization of Benefits and Obligations Act, S.C. 2000: Recognizes common law partners as “two persons who are cohabiting in a conjugal relationship for at least one year”; Extends same rights and obligations as unmarried opposite-sex couples for federal income tax, pension, *et cetera*.

Section 91: Section 2 of the [Criminal Code](#) is amended by adding the following in alphabetical order: “common-law partner”, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year

Section 95: The Act is amended by replacing “spouse” with “spouse or common-law” partner

<http://laws-lois.justice.gc.ca/PDF/M-8.6.pdf>

ACCESS TO REPRODUCTIVE TECHNOLOGY, ADOPTION, AND PARENTING

FEDERAL

[Assisted Human Reproduction Act](#), S.C. 2004: Bars discrimination against persons undergoing assisted reproduction procedures on the basis of sexual orientation

Section 2: The Parliament of Canada recognizes and declares that [...] (e) persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their sexual orientation or marital status

<http://laws-lois.justice.gc.ca/PDF/A-13.4.pdf>

PROVINCIAL (ONTARIO)

[Child and Family Services Act](#), R.S.O 1990 (Ontario): By defining “spouse” to include same-sex couples, the Act extends the rights and obligations to adoption enjoyed by opposite-sex couples to same-sex couples

Section 136(1): “Spouse” has the same meaning as in Parts I and II of the Human Rights Code - which defines “spouse” as the person to whom a person is married or with whom the person is living in a conjugal relationship outside marriage

Section 146(4): An application under this section may only be made, (b) jointly, by two individuals who are spouses of one another

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

Note: Adoption in Canada is governed by provincial laws; therefore, laws regarding same-sex adoption vary between provinces.

GENDER IDENTITY RECOGNITION

PROVINCIAL (ONTARIO)

[Vital Statistics Act](#), R.S.O 1990: In Ontario, a person can officially and legally change his or her sex marker as recorded on his or her birth certificate without having to first undergo sex change surgery. The [Vital Statistics Act](#) formerly required proof of “transsexual surgery” for official sex change, but the Ontario Human Rights Tribunal found that this requirement was discriminatory and in violation of the Ontario [Human Rights Code](#) (*XY v Ontario* [2012] OHRTD No 715). Following this decision, the Ontario Government changed the rules so that a person can apply for a new birth certificate with a letter from a physician or psychologist.

The [Vital Statistics Act](#) formerly read:

Section 36(1): Where the anatomical sex structure of a person is changed to a sex other than that which appears on the registration of birth, the person may apply to the Registrar General to have the designation of sex on the registration of birth changed so that the designation will be consistent with the results of the transsexual surgery.

Section 36(2): An application made under subsection (1) shall be accompanied by, (a) a certificate signed by a medical practitioner legally qualified to practise medicine in the jurisdiction in which the transsexual surgery was performed upon the applicant, certifying that,

- (i) he or she performed transsexual surgery on the applicant, and
- (ii) as a result of the transsexual surgery, the designation of sex of the applicant should be changed on the registration of birth of the applicant;

(b) a certificate of a medical practitioner who did not perform the transsexual surgery but who is qualified and licensed to practise medicine in Canada certifying that,

- (i) he or she has examined the applicant, (ii) the results of the examination substantiate that transsexual surgery was performed upon the applicant, and
- (iii) as a result of the transsexual surgery, the description of the sex of the applicant should be changed on the registration of birth of the applicant; and

(c) evidence satisfactory to the Registrar General as to the identity of the applicant.

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_901094_e.htm#BK5

According to the Service Ontario website, now:

To change your sex designation you will need:

- An Application for Change of Sex Designation on a Birth Registration
- A Statutory Declaration by a Person for a Change of Sex Designation on a Birth Registration
- A Letter signed by a practicing physician or psychologist (including a psychological associate) authorized to practice in Canada that includes the statements necessary to support your request (see cover sheet for instructions).
- All previously issued birth certificates and certified copies of your birth registration.
- An application form for a birth certificate.

[...]

To change your sex designation:

- Your birth must have been registered in Ontario.
- You must be at least 18 years of age.

What you need to know:

The Human Rights Tribunal of Ontario ordered the Government to cease requiring transgendered persons to have “transsexual surgery” in order to obtain a change of sex designation on their birth registration. In accordance with the Tribunal’s order, the criteria for changing sex designation on a birth registration have been revised and there is no longer a requirement for “transsexual surgery”.

Delivery

6 to 8 weeks to deliver your new birth certificate by mail.

Cost

- Changing your sex designation: \$37
- A birth certificate (short form): \$25
- A certified copy of your birth registration (long form): \$35

IMMIGRATION AND ASYLUM

FEDERAL

[Immigration and Refugee Protection Regulations, SOR/2002-227](#): employs gender-neutral terms to define “marriage”, “common-law partner,” and “conjugal partner” for the purposes of the **[Immigration and Refugee Protection Act](#)**.

Section 1:

(1) “common-law partner” means, in relation to a person, an individual who is cohabiting with the person in a conjugal relationship, having so cohabited for a period of at least one year.

[...]

(2) For the purposes of the [Immigration and Refugee Protection] Act and these Regulations, an individual who has been in a conjugal relationship with a person for at least one year but is unable to cohabit with the person, due to persecution or any form of penal control, shall be considered a common-law partner of the person.

Section 2: “conjugal partner” means, in relation to a sponsor, a foreign national residing outside Canada who is in a conjugal relationship with the sponsor and has been in that relationship for a period of at least one year.

Section 2: “marriage”, in respect of a marriage that took place outside Canada, means a marriage that is valid both under the laws of the jurisdiction where it took place and under Canadian law.

Section 117(1): A foreign national is a member of the family class if, with respect to a sponsor, the foreign national is (a) the sponsor's spouse, common-law partner or conjugal partner

<http://laws-lois.justice.gc.ca/PDF/SOR-2002-227.pdf>

[Immigration and Refugee Protection Act](#), S.C. 2001: In combination with the [Immigration and Refugee Protection Regulation](#), the Act permits Canadian citizens or permanent residents to sponsor members of the family class (including same-sex spouses, common-law partners, and conjugal partners, as per the *Immigration and Refugee Protection Regulations*) who are foreign nationals for immigration. Same-sex spouses and common-law partners (but not conjugal partners) are also considered “family members,” and so can be eligible for permanent residency as dependents of an individual applying to immigrate to Canada (see Nicole LaViolette, “Coming Out to Canada: The Immigration of Same-Sex Couples Under the *Immigration and Refugee Protection Act*” (2004) 49 *McGill LJ* 969 at 985: <http://lawjournal.mcgill.ca/documents/LaViolette.pdf>).

Section 13(1): A Canadian citizen or permanent resident may, subject to the regulations, sponsor a foreign national who is a member of the family class.

<http://laws-lois.justice.gc.ca/PDF/I-2.5.pdf>

[Immigration and Refugee Protection Act](#), S.C. 2001: Designates fear of persecution based on “membership in a particular social group” a grounds for protection as a refugee. According to Citizenship and Immigration Canada’s website, “membership in a particular social group” includes being of “a particular sexual orientation” (<http://www.cic.gc.ca/english/refugees/inside/apply-who.asp>).

Section 96: A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

[Extradition Act](#), S.C. 1999: A person shall not be extradited where extradition is for the purposes of persecuting or punishing that person on the basis of their sexual orientation

Section 44(1): The Minister [of Justice] shall refuse to make a surrender order if the Minister is satisfied that [...] (b) the request for extradition is made for the purpose of prosecuting or punishing the person by reason of their race, religion, nationality, ethnic origin, language, colour, political opinion, sex, sexual orientation, age, mental or physical disability or status or that the person's position may be prejudiced for any of those reasons.

<http://laws-lois.justice.gc.ca/PDF/E-23.01.pdf>

Mutual Legal Assistance in Criminal Matters Act, R.S.C 1985 : Bars the Minister of Justice from authorizing the enforcement of orders made by foreign States for the forfeiture of property located in Canada, if the purpose of the order is persecution of an individual for their sexual orientation.

Section 9.4(2): The Minister [of Justice] shall refuse the request if he or she (a) has reasonable grounds to believe that the request has been made for the purpose of punishing a person by reason of their race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, mental or physical disability or political opinion

<http://laws-lois.justice.gc.ca/PDF/M-13.6.pdf>