

Anti-Racism and the Employment Relationship: Discrimination Cases Everyone Should Know

Dan Wilband, JD/BCL, MA

November 24, 2025



What is “workplace discrimination”?

“**Discrimination**” was defined by the Supreme Court of Canada in *Andrews* as:

- “..a distinction, **whether intentional or not** but based on grounds relating to **personal characteristics** of the individual or group, which has the **effect** of imposing burdens, obligations or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available other members of society”.

Andrews v Law Society of British Columbia, [1989] 1 SCR 143, at para 19.

What “personal characteristics” matter to human rights law?



What is “workplace discrimination”?

Human Rights Legislation in Canada.

- Enforced by Human Rights Commissions (provincial and federal)
- Generally applies to employment, housing, services/facilities, purchase/sale of property, membership in professional or trade associations, etc. (Scope varies amongst provinces.)

Addresses “Prohibited Grounds” of Discrimination:

Nova Scotia: Race; Colour; Ethnic, national or aboriginal origin; Religion; Creed; Age; Sex (including pregnancy and pay equity); Sexual orientation; Physical disability; Mental disability; Family status; Marital status; Source of income; Harassment (and sexual harassment); Irrational fear of contracting an illness or disease; Association with protected groups or individuals; Political belief, affiliation or activity; Gender Identity; Gender Expression’ Retaliation

New Brunswick: Race; Colour; National Origin; Ancestry; Place of Origin; Creed of religion; Age; Physical disability; Mental disability; Marital status; Family status; Sex (including pregnancy); Sexual orientation; Gender identity or expression; Social condition; Political belief or activity



Discrimination based on “Race” and “Colour”

- **All jurisdictions** in Canada prohibit discrimination with respect to employment on the basis of race and colour.
- Typically, the “fact” of race is taken as given in human rights legislation. In fact, in this context racial identity is a social construction.
- ***Lobzun v. Dover Arms Neighbourhood Public House Ltd., (B.C., 1996):***
 - Complainant appeared to the adjudicator to be a fair-skinned Caucasian, but testified that she had been born to Black parents in Jamaica.
 - Employer submitted that “the question is whether the complainant is a *bona fide* offspring of parents that are of West Indian Extraction and African descent, coupled with skin colour synonymous with those of *bona fide* African descent”.



Discrimination based on “Race” and “Colour”

- In response, the Board wrote:
 - “In my view, the issue is not whether the complainant is black or white but rather how the respondent perceived her racially; whether the respondent knew of her black parentage and Jamaican ancestry and, if so, whether it discriminated against her on the basis of those characteristics.”
 - Whether the complainant is “black,” “African” or “Jamaican” is a specious semantic argument. I agree with the conclusion reached by Walter Tarnopolsky who, in discussing race and colour in the context of human rights legislation, stated the following at pp. 5–11 of his book, *Discrimination and the Law* (1985):

“... In a way, all this attempt to define ‘race’ and ‘colour’ is somewhat irrelevant ... as the real concern is not with ‘race’, or ‘colour’ or other hereditary origin of the individual who has been discriminated against, but rather with **what the Respondent perceives the Complainant to be.**”



Discrimination based on “Race” and “Colour”

- **Key point:**
- “... discrimination can be based on a person’s actual or perceived characteristic.”
- In that case, the board found that racial racially derogatory epithets about Black people were persistently used in the workplace, and this was discrimination against the complainant.



Discrimination based on “Race” and “Colour”

- It can also be more subtle:
- *Bitonti v. British Columbia (Ministry of Health) (No. 3) (B.C., 1999)*:
- Discrimination on the basis of **race, colour and place of origin** was also found where foreign-trained doctors in B.C. were subjected to a requirement of the College of Physicians and Surgeons of British Columbia that they complete two years of post-graduate training, one year of which had to be a rotating internship and one year of which had to be in Canada.
- However, foreign-trained doctors were forced to compete with graduates of Canadian medical schools for limited internship positions and were invariably unsuccessful.
- The Council member concluded that **the rule was not reasonably necessary to ensure that foreign-trained doctors had sufficient training or that the onerous and inflexible requirements were reasonably necessary.**



Discrimination based on “Ethnic Origin”

- **Ethnic background** or **ethnic origin** is a prohibited ground of discrimination in employment in all Canadian jurisdictions except British Columbia, Alberta, New Brunswick and Saskatchewan.
- The Supreme Court of Canada has defined “ethnic” as: “pertaining to race; peculiar to a race or nation”. (See *Narine-Singh v. Canada (Attorney-General)*, [1955] S.C.R. 395, at p. 397.)
- The relationship between **race**, **ethnic origin** and **language** is discussed at length in: *Espinoza v. Coldmatic Refrigeration of Canada* (1995), 29 C.H.R.R. D/35 (Ont. Bd. Inq., Hartman)
 - Being born in Ecuador was enough to establish ethnicity, without evidence on the complainant’s ‘race’, ‘ancestry’ or ‘colour’.



Discrimination based on “Ethnic Origin”

- **2023 Newfoundland case: *Dicker and Joe’s Bakery***, (N.L. H.R. Bd. of Inquiry)
- Co-worker approaching the Inuit complainant and referring to her son by using the “N-word” did not amount to harassment (needed a series of comments)
- BUT the employer’s **failure to address the poisoned work environment** created by the co-worker’s conduct and its **lack of adequate corrective action** to address it constituted discrimination on the basis of **ethnic origin**.
- Board held the employer’s investigation erred by focusing on the employer’s intent rather than on the impact it had on the complainant.



Discrimination based on “Ancestry”

- **Ancestry** is a prohibited ground of discrimination in all jurisdictions except the federal jurisdiction, Québec, Newfoundland and Labrador, Nova Scotia and Prince Edward Island.
- “Ancestry” is defined in two statutes (Manitoba and Yukon) to include “colour”, “race” and “perceived race”.
- “Ancestry” in the Ontario Human Rights Code has been interpreted to mean family descent. One's ancestry must be determined through the lineage of one's parents through their parents, and so on.



Discrimination based on “Ancestry”

- ***Matheus v. McCann*, 2023 HRTO 77** (Ont. Human Rights Trib.):
- Disparaging comments based on the prohibited grounds of ancestry place of origin and age constituted harassment contrary to the Ontario Code:
 - “The breaches of the Code in this case were serious. Discriminatory comments about the applicant’s race, ancestry, place of origin and age were repeated, and they created a poisoned work environment. The employer disregarded the applicant's December 1, 2016 attempt to assert his rights under the Code, and continued to make negative commentary about Ecuadorians.” (para. 126)



Discrimination based on “Ancestry”

- In ***Cousens v. Canadian Nurses’ Assn.*, 1981 CarswellOnt 3584** (Ont. Board of Inq.)
- Position was subject to a requirement that the candidate be bilingual and “preferably a Francophone.” Complainant could speak French competently, but was denied.
- **Board considered that “language” is not a protected ground under the Act (only so in Quebec). But it held:**
 - “This Board has concluded that “mother tongue” is, in fact, closely enough associated to ancestry that to give preference in employment to a “Francophone” could constitute a contravention of the Ontario *Human Rights Code* on the basis of ancestry..”



Discrimination based on “Ancestry”

- In ***Cousens v. Canadian Nurses’ Assn.*, 1981 CarswellOnt 3584** (Ont. Board of Inq.)
- “This Board concludes that a significant factor in the termination of Mr. Cousens’ employment was the fact that he was not a Francophone. Therefore, his termination was an act of discrimination against him, as a person of an **ancestry** which (in the absence of special social factors) **would preclude him from ever acquiring the “mother tongue” of French.**



Discrimination based on “Place of Origin”

- **Place of origin** is a prohibited ground of discrimination in employment in all jurisdictions except the federal, Québec, Manitoba, Newfoundland and Labrador, Nova Scotia, Prince Edward Island and the Yukon.
- Place of origin may not have anything to do with one’s colour, ethnic origin, citizenship, or creed. To determine “place of origin” the question to ask is “**Where did you come from originally?**”



Discrimination based on “Place of Origin”

- *Holody v. North West Redwater Partnership*, 2021 AHRC 33 (Alta. H.R.T.), at para. 14:
 - “I appreciate the complainant's concerns that one of the interviewers asked about his accent and heritage. This is not a wise thing to do in a job interview, for obvious reasons. While curiosity and interest in our diverse heritage and backgrounds is not, on its face, a violation of the Act, **employers and potential employers should be sensitive to the context of job interviews, including imbalances of power.**”
- *Pryde v. Align Fence Inc.*, 2023 AHRC 42 (Alta. H.R.T.), at para. 12:
 - “The Complaint is based on the ground of place of origin. The complainant is a Temporary Foreign Worker (TFW) from South Africa. I accept that the complainant has fulfilled the first step of the test. He is a person who is making a claim that he was discriminated against based on where he was from and his status in Canada as a TFW. **Being a TFW is inherently tied to a person’s place of origin.**”



Discrimination based on “Nationality” or “Citizenship”

- **Nationality** or **national origin** is a prohibited ground of discrimination in employment in all jurisdictions except Alberta, British Columbia, Ontario and Nunavut.
- It has been held that “nationality” is broad enough to prohibit discrimination on the basis of **citizenship**.
- Ontario and Nunavut expressly include “citizenship” as a prohibited ground of discrimination in employment. The former Ontario Code listed “nationality” as a prohibited ground of discrimination. When it was revised in 1981, “citizenship” replaced “nationality” as a prohibited ground.)



Discrimination based on “Nationality” or “Citizenship”

- *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364
- Making a distinction between job candidates on the basis of a person’s immigration status is **discrimination on the basis of citizenship**.
- Even though the applicant lied and said that he was eligible to work in Canada on a permanent basis, an Ontario Tribunal nevertheless found discrimination in employment because of citizenship.
- Imperial required that **only** Canadian citizens and permanent residents were eligible for the position. The Ontario Court of Appeal held the Tribunal was reasonable in finding this was **discrimination on the basis of citizenship**. The fact that Imperial excepted one class of non-Canadian citizens (permanent residents) did not insulate its policy from being discrimination on the basis of citizenship.
- *“Policies that discriminate on the basis of a prohibited ground are not saved on the basis that they only partially discriminate.”*



Discrimination based on “Nationality” or “Citizenship”

- *L.N. v. Ray Daniel Salon & Spa, 2024 HRTO 179 (Ont. Human Rights Trib.)*
- **Paying someone a lower wage** based on their citizenship is discrimination:
 - “I find the respondents' actions were in breach of s. 5(1) and (2) of the Code. The applicant testified to her lack of knowledge about minimum wage in Ontario, and that the respondent's told her that \$5.00 per hour was 'customary' as a starting wage. She only learned about how underpaid she was when she learned about minimum wage from her co-workers. The applicant described confronting the respondent regarding the wage differential, and the respondent telling her that he was paying her what she deserved, and that no one would hire her because she did not have status in Canada. At the time that she was employed by the respondent, the applicant had only begun her refugee claim, and did not yet have a work permit. **Paying someone a lower wage due to their Code based characteristics is a form of prima facie discrimination.**”

