

Lesson Two: Background

Laws and Challenges: A Federal 2SLGBTQI+ Legal Timeline

Before 1533	Ecclesiastical courts enforced anti-2SLGBTQI+ laws, which included torture and the death penalty.
1533	British <i>Buggery Act</i> : Britain's first anti-queer law. The "offenders being hereof convict[ed] by verdict confession or outlawry, shall suffer such pains of death." This act was enforced in Britain's colonies as well.
1841	The <i>Criminal Code</i> enacted the death penalty for all persons engaging in same-sex sexual relationships.
1859	Canada's <i>Buggery Act</i> : Canada repatriated the British law using the same language as the British Act.
1861	The British <i>Buggery Act</i> was amended so instead of the death penalty, queer people could be sentenced to between ten years in jail and life imprisonment.
1866	British <i>Naval Discipline Act</i> : "If he shall be guilty of sodomy with man or beast, he shall suffer penal servitude," and "if he shall be guilty of indecent assaults, he shall suffer penal servitude, or other such punishment as is hereinafter mentioned." This act was adopted by the Royal Canadian Navy.
1869	The death penalty for being queer was removed in Canada and instead, one would be given life imprisonment. "Unnatural offences" were subject to life in prison.
1885	The British "Labouchere Amendment" of the <i>Criminal Law Amendment Act</i> introduced "gross indecency": "Any male person who, in public or private, commits, or is a party to the commission of, or procures, or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof."
1892	<i>Gross Indecency Act</i> : "Every male person is guilty of an indictable offence and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person."

1910

Canada's *Naval Service Act*: Canada repatriated the British law using the same language as the British act.

1952

The *Immigration Act* included homosexuals as a reason to prohibit admission into Canada. "No person...shall be admitted to Canada if he is a member of any of the following classes of person: ... e) prostitutes, homosexuals or persons on the avails of prostitution or homosexuality... f) persons who attempt to bring into Canada or procure... homosexuality."

1953

The *Gross Indecency Act* was amended to include women and exclude whipping. "Everyone who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years."

1960

The *Canadian Bill of Rights* included freedom of speech, religion, press and the right to life, liberty and security. Being 2SLGBTQI+ was illegal in Canada at this time and was not considered a human right by governments.

1969

Bill C-150 *Criminal Law Amendment Act*: Homosexuality is partially decriminalized. This came to be partly because of the Klippert v. Canada Supreme Court ruling that allowed Everett Klippert to be imprisoned for being gay for the rest of his life. Klippert was released in 1971.

Canada also echoed the 1967 change in the *Sexual Offences Act* when the British government adopted the Wolfenden Report's recommendations. The committee had recommended that "homosexual behaviour between consenting adults in private should no longer be a criminal offence" and that the age of consent be 21 years old.

1977

Canadian Human Rights Act: Canada's first federal law to protect people from discrimination. It did not include sexual orientation, even though gay liberation groups were lobbying for its inclusion.

1977

After many protests, letter-writing campaigns and public engagements from various 2SLGBTQI+ groups around the country, the *Canada Immigration Act* was changed to allow gays and lesbians to enter the country, but only heterosexual Canadians could sponsor their spouses as family class immigrants.

1982

The *Canadian Charter of Rights and Freedoms* was signed and became part of Canada's Constitution. Many in the gay liberation movement demanded that sexual orientation be included in the list of protected rights. Sexual orientation was deliberately excluded from the list.

1987

After over a decade of 2SLGBTQI+ lobbying, the government repealed the *Gross Indecency Act*.

1992

Haig and Birch v. Canada: Captain Joshua Birch launched a human rights complaint in Ontario after he was discharged from the Canadian Armed Forces for being gay. He successfully argued that the omission of sexual orientation in the *Canadian Human Rights Act* was discriminatory under the *Canadian Charter of Rights and Freedoms*. The Ontario Court of Appeal decided that the *Canadian Human Rights Act* be interpreted to include sexual orientation.

1995

Egan v. Canada: John Norris Nesbit applied to the Department of National Health and Welfare for a spousal allowance. He was refused on the basis that “spouse” did not include same-sex couples. Jim Egan sued the government. They lost but the Supreme Court of Canada concluded that that *Canadian Charter of Rights and Freedoms* be interpreted to include sexual orientation.

1996

Since 1971, 2SLGBTQI+ groups have been demanding the inclusion of sexual orientation in human rights codes across the country. Bill C-33, *An act to amend the Canadian Human Rights Act* was enacted to include “sexual orientation” as prohibited grounds of discrimination.

1998

Vriend v. Alberta: Delwin Vriend was fired from his job for being gay. The Supreme Court of Canada ruled that sexual orientation is a protected right under the *Canadian Charter of Rights and Freedoms* and therefore must be included in provincial human rights codes.

1999

Canada’s Parliament voted 216 to 55 in favour that marriage is a “union of a man and a woman.” This was in response to the M. v. H. Supreme Court of Canada decision that ruled that same-sex couples should have the same legal benefits and obligations as opposite-sex common-law couples and equal access to benefits from social programs to which they contribute.

2000

Bill C-23 *Modernization of Benefits and Obligations Act*, in response to the M. v. H. ruling: The bill affected 68 federal statutes relating to a wide range of issues such as old age security, income tax, bankruptcy, and the *Criminal Code of Canada*. The act gave same-sex couples living together for more than a year the same benefits and obligations as common-law couples.

2002

Immigration and Refugee Protection Act: This act expanded the family class to allow conjugal, common-law and married spouses to apply for immigration. The law included gay and lesbian couples.

2002

Chamberlain v. Surrey School District No. 36: The Supreme Court of Canada ruled that not allowing books in schools about gay and lesbian lives was unreasonable.

2003

Halpern v. Canada: The Supreme Court of Canada found that current marriage laws discriminated against same-sex couples.

2005

Bill C-38 *Civil Marriage Act*: Same-sex marriage became legal in Canada.

2005	Board of School Trustees of School District No. 44 v. Azmi Jubran: The Supreme Court of Canada found that the school board had a duty to provide a learning environment free from discriminatory bullying.
2012	S.L. v. Commission scolaire des Chênes: The Supreme Court of Canada found that “a state-organized, multi-faith, ethics and religious class did not infringe the right to freedom of conscience and religion.”
2017	Gender identity and gender expression are included in the <i>Canadian Human Rights Act</i> .
2017	The federal government officially apologized for the LGBT Purge. Prime Minister Justin Trudeau: “Mr. Speaker, today we acknowledge an often-overlooked part of Canada’s history. Today, we finally talk about Canada’s role in the systemic oppression, criminalization, and violence against the lesbian, gay, bisexual, transgender, queer, and two-spirit communities.”
2019	Bill C-75: <i>An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts</i> : Since 1971, 2SLGBTQI+ groups have been demanding the age of consent be the same for both heterosexual and homosexual acts. The age of consent was changed to 16 years old for both heterosexual and homosexual acts.