

CITIZENSHIP/MEMBERSHIP ISSUE

Canadian Human Rights Law

Since 2008, the *Canadian Human Rights Act (CHRA)* has applied to the *Indian Act*. Today, people who are being discriminated against under Band Membership Rules or a Citizenship Code can file a complaint of discrimination against the First Nation. Grounds for discrimination in the *CHRA* include: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, pardoned or suspended conviction. The following grounds are especially relevant to membership & citizenship.



Sex

Note, the Government of Canada is the worst offender when it comes to discriminating against Indigenous women. To this day, the Government of Canada has not fully fixed the discriminatory membership rules in the *Indian Act*. However, the Government of Canada must now meet the human rights requirements in the *CHRA* when amending

First Nations also must follow the *CHRA* and cannot discriminate against Indigenous women in their membership laws.

In 1985, the Sawridge First Nation tried to enact a Membership Code that excluded women and their decedents who had their Indian status reinstated under Bill C-31. The Judge found that denying membership to people that are otherwise eligible for membership is discriminatory.



Marital Status

A First Nation cannot treat a person differently or deny a member benefits based on their marital status or who they marry.

Member who Marries a Non-Indigenous Person
In *Miller c Mohawk Council of Kahnawà:ke*, the judge found the Membership Law to be discriminatory. The Law required members who marry a non-Indigenous person to leave the Kahnawà:ke reserve and not receive membership benefits.

This law was originally designed to preserve Mohawk culture & ensure members are given priority to use the land and receive benefits. These goals were important. However, the judge found the law was too broad and did not have a minimal impact. Further, there was no way children of mixed marriages could regain membership when they turned 18.

Same-Sex Marriage
A First Nation cannot discriminate against or deny a member benefits for marrying a person of the same sex.



Family Status

Adoption is the most common example of discrimination based on family status. However, there is a significant difference between child adoption and adult adoption.

Child Adoption
A First Nation cannot discriminate against and/or deny membership to a child who is adopted. This is especially true if the child is raised in the community, and actively participates in the culture of the community.

Adult Adoption
Adult adoption is quite different. A First Nation's law on adult adoption is often upheld by judges, even if the law is discriminatory. This is especially true if the person applying for membership is already a member of another band.

In *Grismer v Squamish First Nation*, the judge affirmed the age limit of 18 years for adoption. The judge noted that allowing adoption is a compromise to comply with modern realities, the age limit ensures those adopted have a "sufficient cultural tie to the Squamish."



LGBTQ2I+

A First Nation cannot treat a person differently or deny a member benefits based on their:

- (1) sexual orientation
ex. lesbian, gay etc.
- (2) gender identity or expression
ex. transgender, two spirit etc.

Sexual Orientation
This includes discrimination because of a member's same-sex sexual attraction, sexual behaviour and/or relationships.

Sexual orientation has been recognized as a ground for discrimination since 1998 and the *Vriend v Alberta* decision.

Gender Identity or Expression
Gender identity or expression is a new human right in Canadian law. In 2017, it became a ground for discrimination under the *CHRA*.

First Nation's must ensure they do not treat transgender or two-spirit people differently. This may include asking people to identify strictly as male or female on a survey.

WAHKOHTOWIN

