**Canada’s Response to Call for Inputs for the United Nations Report on Freedom of Religion or Belief and Freedom from Violence and Discrimination Based on**

**Sexual Orientation and Gender Identity (January 2023)**

As a federal State, Canada’s legislative powers are distributed between two orders of governments: the federal government and provincial/territorial governments. More information about the constitutional distribution of legislation powers can be found here: [The constitutional distribution of legislative powers - Canada.ca](https://www.canada.ca/en/intergovernmental-affairs/services/federation/distribution-legislative-powers.html).

Of note, the responses to this questionnaire are not a consolidated and definitive response from Canada given federal and provincial/territorial jurisdictions. The federal government provided answers to questions #3, 8 and 9 as well as additional information about the Criminal Code which protects 2SLGBTQI+[[1]](#footnote-1) persons. Although all provinces and territories in Canada were consulted for their input, Alberta was the only province with the opportunity to respond.

| **Question** | **Input** |
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| 1. What are the actual or perceived points of tensions (if any) between the right to manifest one`s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Are there any areas in which they are mutually exclusive?
 | **Response from the Province of Alberta*** The *Alberta Human Rights Act* prohibits discrimination in areas like employment, goods and services available to the public, tenancy and others based on protected grounds, including religious beliefs, sexual orientation, gender identity, and gender expression. Religious beliefs may come into tension with freedom from discrimination based on sexual orientation and gender identity in instances when religious doctrines do not affirm individuals in the 2SLGBTQ+ community.
* It is difficult to untangle the connection between colonial violence towards 2SLGBTQI+ people and the religious institutions that facilitated and reinforced that violence. In understanding the trauma resulting from Residential Schools, family dislocation, forced adoptions, Sixties and Millennial scoop, and more broadly legislated rooted in the principles of the Papal Bulls, manifest destiny and terra nullius – religious institutions have been involved in (and in many cases, leading) the systems causing trauma. The outcomes of much of these systems include higher rates of violence, incarceration, and suicide for Indigenous peoples, with much higher rates of violence against 2SLGBTQI+ peoples.
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| 1. Are there any ways in which the right to freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity are mutually reinforcing?
 | **Response from the Province of Alberta*** The *Alberta Human Rights Act* equally prohibits discrimination based on religious beliefs and discrimination based on sexual orientation and gender identity. The Act recognizes the legitimacy of individuals’ identities and inherent protections individuals should be afforded based on their identity. These rights can be mutually reinforcing that rights are upheld for all. These identity markers can make individuals vulnerable to discrimination hate, and violence, and so upholding individual rights for one group can reinforce the parallel rights of others. Reducing hate and discrimination for one group generally has the effect of reducing hate and discrimination for all.
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| 1. Are there examples where gender and sexual diversity has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of LGBT+ individuals, or protects LGBT+ individuals from violence and discrimination? Has this informed any legal interventions or public policies?
 | **Response from the Province of Alberta*** Some Cree have teachings of eight genders, which all have sacred and important ceremonial roles. From 1882 to the 1940s, Indigenous nations in Alberta were banned from practicing the ceremonies such as Sun Dance and Sweat Lodge. This disruption in continuity of cultural teachings and the imposition of western gender roles negatively affected the acceptance and safety of 2SLGBTQI+ peoples. Prior to the imposition of western gender roles, 2SLGBTQI+ people played integral roles in their communities, including their ceremonies.
* Many of these roles are being reclaimed. For example, Indigenous Relations is supporting Edmonton 2 Spirit Society’s Wellness and Justice Project, which will identify the safety and wellness needs of Indigenous 2SLGBTQI+ peoples across Alberta.

**Response from the Federal Government of Canada*** The area of equal access to civil marriage for 2SLGBTQI+ individuals is an example of where issues concerning gender and sexual diversity in religious and traditional narratives were used in Canada to promote the acceptance of 2SLGBTQI+ individuals. The major religious groups were at the forefront of the public debate on this change, and intervened in the Reference case before the Supreme Court of Canada on both sides ([https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2196/index.do](https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fscc-csc.lexum.com%2Fscc-csc%2Fscc-csc%2Fen%2Fitem%2F2196%2Findex.do&data=05%7C01%7CAlexandre.Clement%40justice.gc.ca%7C12d688b76fe043356f8308dafd585f33%7C44c0b27bbb8b4284829c8ad96d3b40e5%7C0%7C0%7C638100853234272961%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=x%2Feso%2FtAtFFIgszTHhjY1O84NQ9F4BE%2FTNJcIORHeA0%3D&reserved=0)). The outcome of the Supreme Court decision, which addressed specific questions concerning a Proposal for an Act to open equal access to civil marriage to 2SLGBTQI+ individuals, was incorporated into the resulting *Civil Marriage Act*.
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| 1. What are the key trends or significant instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere against LGBT+ and gender-diverse persons that rely on religious narratives?
 | **Response from the Province of Alberta*** In the 2021-22 fiscal year, the Alberta Human Rights Commission received 54 complaints citing the protected ground of gender expression, 44 complaints citing the protected ground of gender identity, and 41 complaints citing the protected ground of sexual orientation. Of the total number of complaints the Commission received (2,028) in the 2021-22 fiscal year, 25% were in the area of goods, services, accommodation, or facilities. The Commission does not have data on how many of these instances of discriminatory or abusive practices by individual providers of goods or services in the public sphere were against 2SLGBTQI+ and gender-diverse persons or whether these instances relied on religious narratives.
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| 1. Has your Province or Territory adopted, in public policy, legislation or jurisprudence, norms purportedly based on protection freedom of religion or belief that promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity? If so, please give examples, with commentary as needed to explain context, scope and application.
 | **Response from the Province of Alberta*** The *Alberta Human Rights Act* prohibits discrimination based on both religious beliefs and sexual orientation, gender identity and gender expression. These parallel protections do not promote, enable and/or condone violence and discrimination against individuals based on sexual orientation or gender identity.
* For example, In Landry v Vegreville Autobody (1993) Ltd., 2017 AHRC 19 an employer refused to employ a gay applicant in part because of the teachings of his faith. The Tribunal did not expressly address whether religious beliefs could create an undue hardship defence, but rather focused on other issues related to *bona fide* occupational requirement. The Tribunal found discrimination.
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| 1. Has there been any legal challenge to these policies/provisions under any domestic, regional, or international human rights provisions? If so, state the outcome and rationale of the case. If not, provide your opinions as to why such a challenge has not yet been brought.
 | **Response from the Province of Alberta**Alberta Human Rights Commission* In 1991, Alberta human rights legislation did not include a provision prohibiting discrimination on the ground of sexual orientation. Delwin Vriend (a teacher in Edmonton, Alberta) unsuccessfully attempted to make a human rights complaint to the Commission after he was terminated by a Catholic school for being gay. He later filed a Charter challenge to the Supreme Court of Canada because sexual orientation was not covered in Alberta’s human rights legislation. Vriend won the Supreme Court case in 1998 and “sexual orientation" was subsequently read into Human Rights, Citizenship and Multiculturalism Act (now *the Alberta Human Rights Act*).
* In 2012, Stephen Boissoin wrote a letter to the editor of *The Red Deer Advocate* with derogatory references to individuals who are gay. The Red Deer Advocate published the letter entitled "Homosexual Agenda Wicked." Dr. Darren Lund saw the article in the newspaper and filed a human rights complaint, stating that the letter contravened section 3 of the Human Rights, Citizenship and Multiculturalism Act (now *the Alberta Human Rights Act*). The case applied section 3 of the Act, which addresses hate speech. It did not consider discrimination based on sexual orientation, except for determining if there was hate speech. The complaint was ultimately heard by a human rights tribunal that held there was discrimination pursuant to the Act. A lower court overturned the tribunal's ruling and quashed the finding of discrimination. Dr. Lund appealed the lower court's decision to the Alberta Court of Appeal. The Alberta Court of Appeal later dismissed the appeal and held that although the letter was “course, crude and insensitive”, it was not hate speech.
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| 1. Are there any examples of State restrictions based on preventing violence and/or discrimination against LGBT+ persons that prohibit or limit practices undertaken in the name of the religion or spirituality, such as public accommodation non-discrimination protections? If so, have they been legally challenged on the basis of freedom of religion or belief? If yes, explain the outcome and rationale of the case (s).
 | **Response from the Province of Alberta*** The *Alberta Human Rights Act* prohibits discrimination in protected areas, which deal with participation in public life, including public notices, goods and services available to the public, tenancy, employment, membership in trade unions or professional associations.
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| 1. What role (if any) has the concept of conscientious objection played in liming the full enjoyment of the right to freedom from violence and discrimination on the basis of sexual orientation and gender identity?
 | **Response from the Province of Alberta*** Though individuals have the right to freedom of religious belief, they cannot discriminate against another person based on the protected grounds of sexual orientation, gender expression or gender identity, unless their conduct is reasonable and justifiable in the circumstances.

**Response from the Federal Government of Canada*** The concept of conscientious objection has mostly been addressed under Canadian law in terms of balancing the fundamental rights of religious freedom and the protection from discrimination on the basis of sexual orientation and gender identity in instances concerning access to marriage services. This balance must be sought on a case-by-case basis. In general terms, the Civil Marriage Act sets out two provisions addressing the guarantee of religious freedom in s. 3 and s. 3.1 ([https://laws-lois.justice.gc.ca/eng/acts/C-31.5/page-1.html#h-85522](https://can01.safelinks.protection.outlook.com/?url=https%3A%2F%2Flaws-lois.justice.gc.ca%2Feng%2Facts%2FC-31.5%2Fpage-1.html%23h-85522&data=05%7C01%7CAlexandre.Clement%40justice.gc.ca%7C12d688b76fe043356f8308dafd585f33%7C44c0b27bbb8b4284829c8ad96d3b40e5%7C0%7C0%7C638100853234272961%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=CzCRqOP0W8lBSS6Mr79CjNDAX5VfpqfPiQYSjUTXszQ%3D&reserved=0)). These protections would apply to religious officiants who celebrate marriages (s. 3), and to individuals and organizations that express their beliefs (s. 3.1). Note that these provisions do not apply to government civil marriage services, which must be made available. Provinces and territories, which have the constitutional responsibility over the solemnization of marriage in Canada, have adopted different approaches to the provision of government civil marriage services, with the result that there are different methods to accommodate religious beliefs of civil marriage officials in the different jurisdictions. For example, some provinces, such as New Brunswick, have added the accommodation of religious belief for marriage celebrants to their Marriage Acts, while others have required all officiants who offer civil marriage to do so for 2SLGBTQI+ individuals as well. The latter approach has been upheld by the courts in several provinces. In all instances, however, civil marriage services must be made available on demand, even if there is a need for provision of an alternate celebrant.
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| 1. Has the scope and application of conscientious objection been sufficiently defined, limited, and/or regulated so as to strike a fair balance between manifestation of one’s freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity? Where the doctrine is invoked to permit the withholding of goods or services to members of the LGBT+ community (such as in the context of sexual and reproductive healthcare, provision of marriage licenses, access to consumer goods, etc.), do provincial/territorial laws provide alternative access to goods or services?
 | **Response from the Province of Alberta*** The *Alberta Human Rights Act* protects against discrimination based on protected grounds, including religious beliefs, sexual orientation, gender identity, and gender expression in protected areas like goods and services, employment, and accommodation. Neither the *Act* nor the jurisprudence expressly refer to the concept of “conscientious objection”. Human rights jurisprudence uses the language of “reasonable accommodation”, “undue hardship”, and “bona fide occupational requirement” when addressing the refusal of services or other covered area. These concepts overlap in purpose with those of conscientious objection principles, but there is not an express definition or link in the language of human rights legislation.

**Response from the Federal Government of Canada*** For the provision of government civil marriage services, including marriage licences, see Canada’s response to question 8 above. There are very few anecdotal instances of private businesses refusing access to consumer goods in connection with the marriage of 2SLGBTQI+ individuals, but no court decisions could be found. These refusals would be subject to review under the provincial and territorial Human Rights Acts.
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| 1. Where provincial/territorial legislation or policy requires the reasonable accommodation of religious beliefs, practices, and/or institutions, are there instances where such laws or policies limit freedom from violence and discrimination against LGBT+ and gender-diverse persons? There may include but are not limited to exemptions from non-discrimination legislation, and/or accommodations within the workplace, educational institutions, healthcare-settings, the justice system, etc. Are there reports of violence, spiritual abuse, and/or forms of discrimination against LGBT+ and gender-diverse persons because of these practices?
 | NIL |
| 1. A) Provide any examples of good practice – at the provincial/territorial or local level – where State and non-State actors (including faith leaders, groups and organizations, international organizations, civil society organizations and the UN human rights system) have taken effective measures to protect and promote freedom of religion or belief of LGBT+ and gender-diverse persons, and made efforts to prevent, mitigate and respond to any violence and/or discrimination justified in the name of religion
 | **Response from the Province of Alberta*** [Affirming Connections](https://affirmingconnections.com/) is an Alberta-based alliance that seeks to “strengthen and amplify the affirming voice and actions of fully inclusive faith and spiritual communities in Central and Southern Alberta, and beyond.” They have a variety of supportive 2SLGBTQI+/faith [resources](https://affirmingconnections.com/resources), share affirming ministries in Southern Alberta, and play a big role in coordinating national Affirming/[PIE (Public, Intentional, and Explicit) Day](https://pieday.ca/) events and advocacy.
* [Affirm!](https://www.facebook.com/groups/717811001610391) Is an Edmonton-based grassroots initiative that seeks to affirm the spirituality of sexual minorities and members of groups that are typically excluded from houses of worship.
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| B) Provide any examples of measures taken by the provincial/territorial government or non-State actors to ensure effective participation of people with diverse gender identities and sexual orientations in religious, cultural, social and public life. Please provide relevant examples where LGBT+ people have asserted their individual or collective rights to access (or establish) religious or spiritual frameworks and institutions. | **Response from the Province of Alberta*** Section 10.1 of the *Alberta Human Rights Act* allows for ameliorative policies, programs, and activities that:
1. Has as its objective the amelioration of the conditions of disadvantaged persons, including those who are disadvantaged because of their race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status or sexual orientation, and
2. Achieves or is reasonably likely to achieve that objective.
* Indigenous Relations has provided funding to the Edmonton 2 Spirit Society for an Alberta-wide Wellness and Justice Project that will help identify what is needed to improve the safety and economic security of Indigenous 2SLGBTQI+. Additionally, the Alberta Missing and Murdered Indigenous Women and Girls Road Map has specific actions geared to addressing the violence and increasing safety and economic security of Indigenous 2SLGBTQI+ people.
* The Premier’s Council on Missing and Murdered Indigenous Women and Girls also has Indigenous 2SLGBTQI+ participation providing expertise and a 2LGBTQI+ lens.

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**Additional input on Canada Federal’s Criminal Code protecting 2SLGBTQI+ persons**

In Canada, the *Criminal Code* protects all people from violence through offences of general application, such as assault, sexual assault, uttering threats and criminal harassment. Moreover, evidence that an offence was motivated by bias, prejudice or hate based on a number of enumerated factors, including sexual orientation, gender identity or gender expression, must be considered as an aggravating factor for sentencing purposes (paragraph 718.2(a)(i)).

Canada’s *Criminal Code* also contains four hate propaganda offences that prohibit: advocating genocide against an identifiable group; inciting hatred against an identifiable group in a public place that is likely to lead to a beach of the peace; wilfully (that is, intentionally) promoting hatred against an identifiable group; or wilfully (that is, intentionally) promoting antisemitism by denying, condoning or downplaying the Holocaust (sections 318 and 319). “Identifiable group” is defined as any portion of the public identifiable on the basisofan exhaustive list of criteria, including sex, sexual orientation, gender identity or expression (subsection 318(4)). In addition, a specific crime of mischief (or vandalism) applies where the mischief is committed against certain kinds of property and is motivated by hatred, bias or prejudice against an identifiable group (subsection 430(4.1)). This offence aims to prevent mischief against property, such as a building or part of a building that is primarily used by an identifiable group as an educational institution, or for social, cultural or sports events.

Canada has recently strengthened its protection of members of 2SLGBTQI+ communities through former Bill C-4, *An Act to amend the Criminal Code (conversion therapy),* which came into force on January 7, 2022. Former Bill C-4 created new *Criminal Code* offences that prohibit causing another person to undergo conversion therapy, regardless of age or consent (section320.102); removing a child from Canada to subject them to conversion therapy abroad (paragraph 273.3(1)(c)); promoting or advertising conversion therapy (section 320.103); and receiving a financial or other material benefit from the provision of conversion therapy (section 320.104). It also amended the *Criminal Code* to authorize courts to order that advertisements for conversion therapy be disposed of or deleted (sections 164 and 164.1). Conversion therapy is defined as any practice, treatment or service designed to make a person conform to heteronormative or cisnormative standards (section 320.101). The definition further clarifies that interventions that help a person explore or develop their identity are not conversion therapy unless they are based on the false assumption that a particular sexual orientation, gender identity or gender expression is preferable to another.

Canada is committed to continued work to protect the freedoms and the safety of all groups, including members of 2SLGBTQI+ communities.

1. The Government of Canada uses the abbreviation 2SLGBTQI+, which stands for Indigenous Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional sexually and gender diverse people. [↑](#footnote-ref-1)