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Chapter Two: The Changing Legal Emphasis

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Canada's Employment Law Framework

- **constitutional law**
 - Charter of Rights and Freedoms
- **legislated Acts of Parliament**
 - Income Tax Act.....
- **regulations** (for legislated Acts)
 - rules to aid interpretation of laws
- **common law**
 - judicial precedents
- **contract law**
 - collective agreements/employment contracts

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Multiple Legal Jurisdictions for Employment/Labour Law

- **provincial/territorial** laws govern **90%** of workers
- **federal laws** govern **10%** of workers in federal civil service, Crown corporations and agencies, transportation, banking, communications...

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Employment/Labour Standards Legislation

- provides **minimum entitlements** for employees
 - minimum **wage**
 - **holidays** and vacation
 - **maternity/parental** leave
- provides **maximum obligations** e.g. hours of work
- requires **equal pay for equal work** (male and female workers)

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Human Rights Legislation

- based on **Charter of Rights and Freedoms (1982)**, which provides fundamental **freedoms**:
 - conscience and religion
 - thought, belief, opinion and expression
 - peaceful assembly
 - association
- Section **15** provides **equality rights**

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Discrimination

- **distinction, exclusion or preference based on a prohibited ground nullifies or impairs an employee's rights to:**
 - **full and equal recognition**
 - **exercise of human rights and freedoms**

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Prohibited Grounds of Discrimination

- race
- colour
- age
- sex
- marital/family status

- religion/creed
- physical and mental handicap
- ethnic/national origin

(grounds vary across jurisdictions)

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Types of Discrimination Prohibited

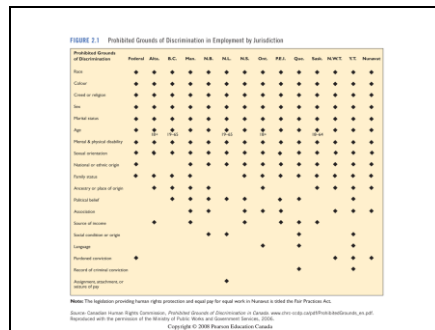
Intentional

- direct
- differential/unequal treatment
- indirect
- based on association

Unintentional (constructive/systemic)

- apparently neutral policies have adverse impact on protected groups

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Reasonable Accommodation of Differences

- adjustment of employment policies/practices so that no individual is:
 - denied benefits
 - disadvantaged in employment
 - prevented from carrying out a job
- based on prohibited grounds
- e.g. work station redesign for wheelchair

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Undue Hardship

- employers must accommodate to the point of 'undue hardship'
- = point where cost or health and safety risks make accommodation impossible

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Bona Fide Occupational Requirement (BFOR)

- a justifiable reason for discrimination
- based on business necessity for safe and efficient operations
- intrinsically required by job tasks eg. must have
- e.g. sight to drive a truck

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Harassment

- **physical** assault
- unnecessary physical contact
- **verbal abuse**/threats
- unwelcome invitation/requests
- **unwelcome** remarks, jokes, innuendo
- leering
- displaying pornographic/racist pictures
- practical jokes causing embarrassment
- condescension/paternalism undermining self-respect

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Sexual Harassment

- *sexual annoyance*
 - harassment with **no direct link to job benefits**
- *sexual coercion*
 - harassment with **direct consequences to job benefits**

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Harassment Policies

1. have a clear workplace **harassment policy**
2. provide company-wide **harassment training**
3. require **signed documentation** of:
 - receipt of harassment training
 - familiarity with harassment policy
4. **investigate** all harassment complaints thoroughly
5. consider all relevant factors before taking action:
 - when harassment is proven
 - when a false allegation of harassment is filed
6. provide **support/counseling for harassment victims**
7. **monitor** the workplace for **signs** of harassment
8. retaliation against complainant is a criminal offence

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Remedies for Human Rights Violations

- compensation for:
 - lost wages
 - general damages and expenses
 - pain and humiliation
- restoration of rights denied
- written letter of apology
- mandatory training sessions/workshops
- required employment equity program

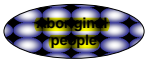
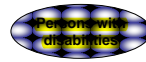
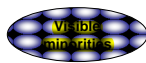
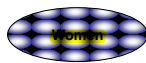
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Employment Equity

- federal Employment Equity Act
- based on Charter of Rights
- proclaimed in 1987, amended in 1995
- protects women, visible minorities, persons with disabilities, Aboriginal peoples
 - removes employment barriers
 - promotes equality

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Employment Equity Designated Groups



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Designated Group Experiences

- lower pay
- occupational segregation
- glass ceiling
- underutilization
- higher rates of unemployment
- underemployment
- low status jobs with little career growth potential

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Employment Equity Program Implementation Steps

- Step 1: Obtaining Senior Management Commitment and Support
- Step 2: Data Collection and Analysis
- Step 3: Employment Systems Review
- Step 4: Plan Development
- Step 5: Implementation
- Step 6: Monitoring, Evaluation, Revising

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Pay Equity

- equal pay for:
 - male-dominated job classes
 - female-dominated job classesof equal value to the organization
- value determined by job evaluation procedure

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Diversity Management

- broader/more inclusive than employment equity
- a set of activities designed to:
 - integrate all employees in multicultural workforce
 - use diversity to enhance organization's effectiveness

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Characteristics of Effective Diversity Programs

- celebrate diversity
- diversity training
- top management commitment
- support groups/mentoring programs
- diversity audits
- management responsibility and accountability
- inclusive and representative communications

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FIGURE 2.5 Manitoba Hydro Employment Equity Policy

Our Commitment to Employment Equity

At Manitoba Hydro, we value the background, experience, perspective and talents of each individual. We strive to create a workforce that reflects the diverse populations of the communities in which we serve.

We are committed to the practice of employment equity and we encourage applications from qualified men, women, people of Aboriginal ancestry, persons with disabilities, and members of visible minority groups.

Source: Commitment to Employment Equity, Manitoba Hydro.
www.hydro.mb.ca/careers/overview_equity.shtml. Reproduced with permission.
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FIGURE 2.2 Examples of Systemic Discrimination

- Minimum height and weight requirements, which screen out disproportionate numbers of women and people from Asia, who tend to be shorter in stature.
- Internal hiring policies or word-of-mouth hiring in workplaces that have not embraced diversity.
- Limited accessibility to company premises, which poses a barrier to persons with mobility limitations.
- Culturally biased or non-job-related employment tests, which discriminate against specific groups.
- Job evaluation systems that are not gender-neutral; that is, they undervalue traditional female-dominated jobs.
- Promotions based exclusively on seniority or experience in firms that have a history of being white-male-dominated.
- Lack of a harassment policy or guidelines, or an organizational climate in which certain groups feel unwelcome and uncomfortable.

Source: Based on material provided by the Ontario Women's Directorate and the Canadian Human Rights Commission.

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FIGURE 2.3 Examples of Harassment

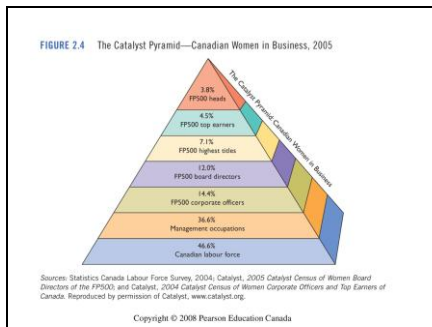
Some examples of harassment include:

- unwelcome remarks, slurs, jokes, taunts, or suggestions about a person's body, clothing, race, national or ethnic origin, colour, religion, age, sex, marital status, family status, physical or mental disability, sexual orientation, pardoned conviction, or other personal characteristics;
- unwelcome sexual remarks, invitations, or requests (including persistent, unwanted contact after the end of a relationship);
- display of sexually explicit, sexist, racist, or other offensive or derogatory material;
- written or verbal abuse or threats;
- practical jokes that embarrass or insult someone;
- leering (suggestive staring) or other offensive gestures;
- unwelcome physical contact, such as patting, touching, pinching, hitting;
- patronizing or condescending behaviour;
- humiliating an employee in front of co-workers;
- abuse of authority that undermines someone's performance or threatens his or her career;
- vandalism of personal property; and
- physical or sexual assault.

Source: Canadian Human Rights Commission, *Anti-Harassment Policies for the Workplace: An Employer's Guide*, www.chrc-ccrb.ca/pdf/AHPoliciesWorkplace_en.pdf. Reproduced with permission of the Ministry of Public Works and Government Services, 2006.

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TABLE 2.1 Representation of Women on Corporate Boards of Canada's FP500

Year	Total Number of Seats	Number of Seats Held by Women	Percentage of Seats Held by Women
2005	4225	508	12.0
2003	4247	476	11.2
2001	4421	431	9.8

Source: Catalyst, 2005 Catalyst Census of Women Board Directors of the FP500. Reproduced by permission of Catalyst, www.catalyst.org.
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