



**Canada**  
and the *Optional Protocol*  
to the *Convention on the Elimination*  
of *All Forms of Discrimination*  
against *Women*

**Canada**

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## Canada and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Canada is a party to the **Optional Protocol** to the United Nations (UN) *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* which is an important demonstration of Canada's commitment to the promotion of gender equality and women's human rights both domestically and internationally.

### What is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)?

*A "State Party" is UN terminology to mean a country that has become bound by the obligations of a treaty. This occurs when a country either signs and ratifies a treaty, or alternatively accedes to the treaty.*

CEDAW is an essential component of the UN human rights regime as it is the only UN human rights Convention that brings together in a single treaty human rights standards for women and girls in public and private life. Canada has been a party to CEDAW since 1981. Countries that are parties to CEDAW are required to take all appropriate measures to eliminate discrimination against women and ensure the full development and advancement of women in all aspects of society, including in the civil, cultural, economic, political and social areas; this is to ensure that women exercise and enjoy human rights and fundamental freedoms on an equal basis with men.

CEDAW also requires that States parties undertake specific measures to enable women to achieve equal enjoyment of their



human rights in private and public life. For example, States parties are obliged to take appropriate measures to eliminate discrimination against women in the political and public life of the country, including participation in formulating and implementing government policy.

CEDAW also creates a committee, known as the **CEDAW Committee**, which monitors progress made in the implementation of CEDAW.

## What is the Optional Protocol to CEDAW?

*An “Optional Protocol” is a treaty in its own right and supplements the provisions of an existing UN instrument. It is “optional” in the sense that countries that are parties to the original instrument are not required to become parties to the Optional Protocol, although this is encouraged.*

The Optional Protocol to CEDAW (“The Optional Protocol”) is a human rights treaty that creates two new procedures to enhance oversight of compliance with CEDAW. It supplements efforts by the international community to “ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms...”

The Optional Protocol contains a “communications procedure” that allows individuals or groups of individuals to petition the CEDAW Committee about alleged violations of CEDAW by their country. The Optional Protocol also

contains a second procedure that allows the CEDAW Committee to make an inquiry where it receives reliable information that grave or systematic violations of CEDAW are occurring in a country that is a party to the Optional Protocol.



## When Can a Petition (“Communication”) under the Optional Protocol Be Made?

There are a number of requirements that must be met before a petition is accepted for consideration by the CEDAW Committee. For example:

- The country about which the communication is made must be a party to both CEDAW and the Optional Protocol;
- The communication can only be submitted by:
  1. An individual or group of individuals under the jurisdiction of a State party who allege that they are victims of a violation of a right set out in CEDAW;
  2. A representative designated by the individual or group of individuals who are alleging that they are victims, for example a lawyer; or
  3. Others, for example a non-governmental organization, acting on behalf of an individual or group of individuals, where this individual or group of individuals provide consent. An exception to this requirement for consent can be made when the person or group petitioning the Committee can justify acting without it. This exception could apply, for example, if the person to be represented is a missing person;
- Communications cannot be anonymous and so the individual or group of individuals about whom the petition is being brought must be identified in the communication;
- Communications must be in writing. So, a communication submitted solely in the form of an audio or videotape would not be accepted;



- The communication must be “sufficiently substantiated.” This is to ensure that the Committee has enough detail supporting the petition in order to proceed to examine it;
- Those submitting the communication must have first exhausted all avenues of redress within their own country (“domestic remedies”) before submitting their petition. There is a narrow exception to this requirement for cases in which the domestic redress mechanisms are unreasonably prolonged or are unlikely to bring effective relief to the victim or victims. In Canada, this means that the individual or group of individuals alleging a violation of CEDAW under the Optional Protocol must have pursued remedies for the alleged violation through Canadian mechanisms, such as filing a human rights complaint with a human rights commission or bringing a court action alleging a violation of the *Canadian Charter of Rights and Freedoms* (“the Charter”). All possible Canadian appeals must be exhausted before a petition can be brought under the Optional Protocol;
- The same matter cannot have been previously considered by the CEDAW Committee or have been or be simultaneously examined under another international procedure. For example, a communication will not be considered under the Optional Protocol if the exact same matter has already been or is concurrently being considered under the *Optional Protocol to the International Covenant on Civil and Political Rights*; and
- The facts relevant to the alleged violation must have occurred **after** the country became a party to the Optional Protocol. This rule does not apply when the acts giving rise to the violation were not a one-time event but continued past the date a country became a party to the Optional Protocol.



## **What is the Inquiry Procedure under the Optional Protocol?**

In addition to the communications procedure, the Optional Protocol also creates an “inquiry” or investigation procedure. When the Committee receives reliable information indicating “grave or systematic violations” of CEDAW by a country, it may decide to initiate an inquiry into the matter. Such inquiries are confidential and the cooperation of the country involved is requested at all stages of the proceeding.

## **What Does it Mean when the CEDAW Committee Issues Views and Recommendations under the Optional Protocol?**

After examining a communication, the CEDAW Committee issues its views, and sometimes recommendations, on the matter. Similarly, after an inquiry is conducted, the Committee may issue comments and recommendations to the country involved. The views, comments and recommendations issued by the Committee under the Optional Protocol are not legally binding on a country in the way that a decision from the domestic courts or tribunals of that country would be. These UN Committee decisions, however, are often morally persuasive.



## What are the Canadian Domestic Human Rights Instruments for the Protection of Gender Equality and Women's Human Rights?

Two of the most important domestic instruments through which women's equality and human rights are protected in Canada are the Charter and human rights legislation.

As part of Canada's Constitution, the Charter is Canada's supreme law. All laws passed by provincial and territorial legislatures, as well as by the Parliament of Canada, must comply with it. Section 15(1) of the Charter is the general equality rights provision and guarantees the right to equality without discrimination. This section also lists a number of grounds, such as "sex", upon which discrimination is specifically prohibited. Section 28 of the Charter confirms that all of the rights and freedoms set out in the Charter are guaranteed to both men and women on an equal basis. The Charter recognizes that rights are not absolute and provides that Charter rights may be limited by governments. Such a limitation can only occur, however, where it is reasonable and can be shown to be justified in a free and democratic society.

*Section 15, the Equality Rights section of the Charter, states that:*

*(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular; without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

*(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*





In addition to the Charter, there are several types of legislation in Canada that assist in promoting women's equality. One of the most important of these is human rights legislation, which has a different scope of application than the Charter. Human rights legislation covers private sector activities in addition to actions by government in particular fields (e.g., employment, services and accommodation). In Canada, human rights legislation exists in each of the provinces and territories. At the federal level, the human rights legislation is entitled the *Canadian Human Rights Act*.



## In addition:

1. Please see *Canada and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): An Overview* for more detailed information on Canada and the Optional Protocol. It is available at:  
<http://www.swc-cfc.gc.ca/pube.html>

2. For more information on women's human rights and equality at the UN, you may wish to contact the UN Division for the Advancement of Women:

United Nations Division for the Advancement of Women  
2 UN Plaza, DC2-12th Floor  
New York, NY 10017  
USA  
Fax: (212) 963-3463  
E-mail address: [daw@un.org](mailto:daw@un.org)  
Website: <http://www.un.org/womenwatch/daw>

3. For information on women's equality and human rights, you may wish to contact Status of Women Canada:

Status of Women Canada  
123 Slater Street  
Ottawa, Ontario  
K1P 1H9  
Telephone: (613) 995-7835  
Facsimile: (613) 957-3359  
TDD: (613) 996-1322  
Website: <http://www.swc-cfc.gc.ca/>



4. For information on both domestic and international human rights and Canada, you may wish to contact the Human Rights Program at the Department of Canadian Heritage:

The Human Rights Program  
Aboriginal Peoples' and Human Rights Programs Directorate  
Department of Canadian Heritage  
Hull, Québec K1A 0M5  
Telephone: (819) 994-3458  
Fax: (819) 994-5252  
E-mail: [rights-droits@pch.gc.ca](mailto:rights-droits@pch.gc.ca)  
Website: <http://www.pch.gc.ca/ddp-hrd>

5. For information on human rights, the human rights procedure under the *Canadian Human Rights Act*, and contact information for the provincial and territorial commissions, you may wish to contact the Canadian Human Rights Commission:

The Canadian Human Rights Commission  
344 Slater Street, 8th Floor  
Ottawa, Ontario K1A 1E1  
Phone: (613) 995-1151  
Toll Free: 1-888-214-1090  
TTY: 1-888-643-3304  
Fax: (613) 996-9661  
Website: <http://www.chrc-ccdp.ca/>