

**ANTI-DISCRIMINATION LAWS COMPARATIVE MEMO: THE NEED FOR COMPREHENSIVE ANTI-DISCRIMINATION LAWS IN JAPAN, AND A COMPARATIVE REVIEW OF ANTI-DISCRIMINATION LAWS IN THE UNITED KINGDOM, NEW ZEALAND AND CANADA**

## **INTRODUCTION**

This memo gives an overview of the current anti-discrimination laws in Japan and illustrates notable discrimination issues in Japanese society which reflect the necessity to reform the legal framework and create comprehensive anti-discrimination laws. This memo then provides an overview and analysis of anti-discrimination laws of the United Kingdom, New Zealand and Canada which have developed more comprehensive and organized anti-discrimination laws as reference for Japanese legislators to reform current legislation. Finally, this memo identifies potential additional actions that may be taken in Japan to improve the current situation.

## **AN OVERVIEW OF THE CURRENT ANTI-DISCRIMINATION LAWS AND NOTABLE ISSUES TO BE ADDRESSED IN JAPAN**

### **I. SUMMARY OF CURRENT ANTI-DISCRIMINATION LAWS IN JAPAN**

This section briefly describes notable discrimination issues in Japan and the relevant anti-discrimination laws which attempt to address these issues, particularly where discrimination issues are most common.

#### **1. *Overview***

In Japan, discrimination remains a pressing issue that affects various marginalized groups, including members of the LGBTQ community, ethnic minorities, individuals with disabilities, and women. Despite being a liberal democracy, Japan lacks comprehensive laws effectively prohibiting discrimination based on race, ethnicity, sexual orientation, or gender identity, which perpetuates inequalities in Japanese society.

For instance, the lack of legal recognition of same-sex marriage limits the protections of the LGBTQ community. Ethnic minorities, in particular Koreans, encounter deep-rooted discrimination, compounded by societal stigma and historical grievances. Individuals with disabilities also face numerous challenges, notably regarding accessibility and employment opportunity, with many still relegated to non-regular jobs that offer lower wages and fewer benefits.<sup>1</sup> Furthermore, women continue to encounter significant obstacles in the workplace, such as a persistent gender wage gap and underrepresentation in leadership roles.<sup>2</sup> These ongoing challenges underscore the urgent need for comprehensive legal reforms and societal changes to foster equality and safeguard the rights of all individuals in Japan.

#### **2. *Current Anti-Discrimination Laws in Japan***

In Japan, the landscape of anti-discrimination laws is evolving, but significant gaps remain across various areas. There is not a single anti-discrimination law that covers all aspects of discrimination in Japan. Instead, various discrimination issues are addressed by separate laws in different acts which will be briefly introduced below and further discussed in the following section.

##### ***LGBTQ Rights***

Japan does not have a comprehensive legal framework to protect individuals from discrimination based on sexual orientation and gender identity, but efforts to improve this situation are in progress. In June 2023, the Japanese Diet enacted its first law focusing on fostering the understanding of LGBTQ individuals.<sup>3</sup> In October 2023, the Supreme Court of Japan ruled that the stipulation under the Special Law on Gender Identity Disorder which mandates transgender individuals to undergo surgical sterilization as a pre-requisite for legal gender recognition, is unconstitutional.<sup>4</sup> Furthermore, in October 2024, the Tokyo High Court

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<sup>1</sup> See “Japan: Freedom in the World 2024 Country Report” at <https://freedomhouse.org/country/japan/freedom-world/2024>.

<sup>2</sup> *Ibid.*

<sup>3</sup> See “World Report 2023: Japan” at <https://www.hrw.org/world-report/2024/country-chapters/japan>.

<sup>4</sup> See “Japan: Transgender rights progress as court rules surgery not required for legal gender change” October 25, 2023 at <https://www.amnesty.org/en/latest/news/2023/10/japan-ruling-gender-surgery-lgbtqi-rights/>.

ruled that Japan's ban on same-sex marriage was unconstitutional as it violates Article 14(1) and Article 24(2) of the constitution.<sup>5</sup> While these recent developments mark positive steps forward, there is still a long way to go in reforming laws to provide specific legal recourse and comprehensive protection for the LGBTQ community facing discrimination.

### *Hate Speech*

In Japan, hate speech is mainly regulated by the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons with Countries of Origin other than Japan (the “Hate Speech Elimination Act”), the first national legislation against hate speech in Japan, which came into effect in June 2016.<sup>6</sup> It aims to promote awareness and education about hate speech, but lacks penalties or sanctions for engaging in hate speech which is one of its significant shortcomings. Furthermore, the Hate Speech Elimination Act defines hate speech narrowly, focusing mainly on discriminatory speech against foreigners, which leaves many other forms of hate speech unaddressed. In making further progress in this regard, some local governments have enacted their own ordinances to remedy the lack of penalties and combat hate speech<sup>7</sup>, but these vary widely in terms of definitions and enforcement mechanisms, leading to inconsistencies across the country. As such, the effectiveness of the current regulations to end hate speech in Japan is still quite limited.

### *Disability Rights*

Discrimination against persons with disabilities is another significant issue in Japan which is mainly governed by the Act for Eliminating Discrimination against Persons with Disabilities which was enacted in 2013 (the “Disabilities Act”).<sup>8</sup> It prohibits discrimination in various areas, including employment and access to services, and mandates reasonable accommodations to ensure people with disabilities can more fully participate in society. However, the Disabilities Act has also been criticized for its lack of effective enforcement mechanisms and penalties for violations, meaning that effectively, discrimination against persons with disabilities continues to widely exist in Japan.

### *Gender Discrimination*

To prevent gender discrimination, especially discrimination in the workplace, Japan has enacted various laws, including the Equal Employment Opportunity Law (1985) and the Act on the Promotion of Women’s Participation and Advancement in the Workplace (2016). These laws attempt to address gender discrimination in employment practices, but without robust enforcement provisions imposing penalties for non-compliance, their effectiveness has been diminished. Additionally, the laws focus more on discrimination related specifically to employment without systematically covering other areas where gender discrimination may occur, such as education, healthcare, and social services.

## **3. Necessity To Reform Comprehensive Anti-Discrimination Laws**

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<sup>5</sup> See Amnesty International, “Japan: Momentum for Marriage Equality Grows with Tokyo High Court Ruling” October 30, 2024, at <https://www.amnesty.org/en/latest/news/2024/10/japan-momentum-for-marriage-equality-grows-with-tokyo-high-court-ruling/>.

<sup>6</sup> See Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons with Countries of Origin other than Japan, English translation available at <https://www.japaneselawtranslation.go.jp/en/laws/view/4081/en>.

<sup>7</sup> See Junko Ito, “Why Japan is failing to curb hate speech” June 13, 2024, at <https://eastasiaforum.org/2024/06/13/why-japan-is-failing-to-curb-hate-speech/>.

<sup>8</sup> See Act for Eliminating Discrimination against Persons with Disabilities, English translation at <https://www.japaneselawtranslation.go.jp/en/laws/view/3052/en>.

As introduced above, reforming anti-discrimination laws in Japan is crucial to more fully address the inequality faced by various marginalized groups. Despite some legislative progress, some typical shortcomings exist across nearly all of the current anti-discrimination laws, namely a lack of specific penalties for non-compliance, weakness of enforcement mechanisms and inconsistent regulations among local governments, which reflect the necessity to organize and reform various laws into a more systematic and comprehensive anti-discrimination law or set of laws in Japan in order to create a more inclusive society that respects and upholds the rights of all individuals, regardless of their background or identity.

## II. NOTABLE DISCRIMINATION ISSUES FOR JAPAN TO ADDRESS

This section briefly discusses some typical and notable discrimination issues that currently exist in Japan, and potential challenges in reforming anti-discrimination laws in each of these respective areas.

### 1. *Discrimination against the LGBTQ Community*

In June 2023, Japan made crucial progress with respect to the protection of the LGBTQ community by passing its first law aimed at promoting the understanding of LGBTQ individuals, which seeks to prevent unfair discrimination and mandates that government entities and businesses strive to create more inclusive environments.<sup>9</sup> This law benefits from the advocacy of more than 100 organizations and companies and thousands of individuals participating in the #EqualityActJapan campaign, which reflects the societal focus on this issue.<sup>10</sup> However, while it is a positive start towards improving legal protections in this regard, Japan is still the only country from within the G7 nations that does not recognize same-sex unions.<sup>11</sup> As evidence of governmental efforts to encourage more equality for the LGBTQ community, some local municipalities began to issue partnership certificates to same-sex couples as an effort to at least partially recognize same-sex unions.<sup>12</sup> However, even with such progress, marriage between LGBTQ individuals is still not legally recognized, which means that certain legal rights which accompany marriage, such as inheritance or adoption rights, are still not available to those in same-sex unions.<sup>13</sup> In 2020, the Organization for Economic Cooperation and Development (the “OECD”) ranked Japan 34<sup>th</sup> out of the total 35 OECD countries with respect to legal LGBTQ inclusivity.<sup>14</sup> Furthermore, according to a 2022 survey in Japan, around 48.1% of LGBTQ teenage respondents under 20 had entertained thoughts of suicide and 14% had actively attempted it.<sup>15</sup> It is clear that LGBTQ community in Japan is under distress which results from both a lack of societal understanding and legal protections. As such, Japan has a need to establish a more effective anti-discrimination legal framework to explicitly prohibit discrimination based on sexual orientation or gender identity, together with effectuating guarantee of enforcement.

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<sup>9</sup> See “Japan Passes Law to ‘Promote Understanding’ of LGBT People” July 12, 2023 at <https://www.hrw.org/news/2023/07/12/japan-passes-law-promote-understanding-lgbt-people>.

<sup>10</sup> *Ibid.*

<sup>11</sup> See The Asahi Shimbun, “Japan enacts watered-down LGBT understanding law” June 16, 2023, at <https://www.asahi.com/ajw/articles/14934302>.

<sup>12</sup> See “Same-sex partnerships in Japan” at <https://www.marriageforall.jp/en/marriage-equality/japan/>.

<sup>13</sup> See “Tokyo begins issuing same-sex couples partnership certificates” November 2022, at <https://www.bbc.com/news/world-asia-63468752>.

<sup>14</sup> See “Over the Rainbow? The Road to LGBTI Inclusion” at [https://www.oecd-ilibrary.org/sites/8d2fd1a8-en/1/3/3/index.html?itemId=/content/publication/8d2fd1a8-en&\\_csp\\_=08ffc7de174b956fd7b0b0d5b75479ab&itemIGO=oecd&itemContentType=book#figure-d1e9771](https://www.oecd-ilibrary.org/sites/8d2fd1a8-en/1/3/3/index.html?itemId=/content/publication/8d2fd1a8-en&_csp_=08ffc7de174b956fd7b0b0d5b75479ab&itemIGO=oecd&itemContentType=book#figure-d1e9771).

<sup>15</sup> See “Nearly half of LGBTQ teens in Japan thought about suicide in past year: survey” October 24, 2022, at <https://mainichi.jp/english/articles/20221021/p2a/00m/0na/019000c>.

However, the need for a more effective anti-discrimination legal framework may be a challenging one. For example, there could be many barriers and challenges towards adopting such a framework, including more traditional attitudes towards the LGBTQ community and a lack of legislative support. A cultural shift needs to continue and push legislation forward as well, in particular given the current lack of recognition of same-sex marriage in the Civil Code of Japan (the “Civil Code”) as a result of how marriage is defined. The Civil Code currently defines marriage as a union between a man and a woman, which creates a potential barrier for courts to be able to legally recognize same-sex unions.<sup>16</sup> However, with reference to the Japanese constitution, it is encouraging to see recent court rulings legally recognizing same-sex unions.

In March 2024, the Sapporo High Court, for the first time in Japan, ruled that the current legislation which does not recognize same-sex marriage is unconstitutional.<sup>17</sup> This is a significant step towards pushing Japanese legislative bodies to recognize same-sex marriage. As stated in the opinion of the court, while the constitution of Japan guarantees same protections to same-sex marriage as heterosexual marriage, certain provisions of the Civil Code protect only heterosexual marriage, arguably constituting discriminatory treatment,<sup>18</sup> and as such, in order to eliminate such discrimination, Japanese legislators should push to follow these recent rulings and introduce legislative protections or amendments to legalize same-sex marriage. By doing so, Japan would progress towards consistency between the fundamental principles under the constitution as well what is included in legislation.

In addition, what cannot be ignored is the traditional beliefs about family structures and gender roles in Japan, making it difficult to advocate for change. As such, implementing educational programs surrounding LGBTQ rights and increasing the visibility of LGBTQ issues in public campaigns organized by public figures could be helpful to promote acceptance and understanding of the LGBTQ community and potentially reduce discrimination.

Only with national comprehensive anti-discrimination laws protecting the rights of the LGBTQ community, can local authorities introduce even more robust legislation, which as a whole, will better align Japan with other G7 nations in terms of LGBTQ protection.

## 2. *Hate Speech Discrimination*

The issue of hate speech is another heated topic in Japan which frequently draws public attention. A notable incident occurred in 2022 in which a man, radicalized by certain online anti-Korean speech, set fire to buildings in an ethnic Korean district, intending to make Koreans fearful of living in Japan.<sup>19</sup> Incidents like this should highlight the need for national legislation defining and penalizing hate speech.

Although Japan has taken a positive first step with national regulations on hate speech, such as the Hate Speech Elimination Act, such legislation still has certain deficiencies. For example, the definition of hate speech under the Hate Speech Elimination Act is narrow. Hate speech is defined as “unfair discriminatory speech and behavior against persons originating from

<sup>16</sup> See Civil Code (Act No. 89 of 1896), Article 731 and Article 733. English translation available at <https://www.japaneselawtranslation.go.jp/en/laws/view/4275>.

<sup>17</sup> See “Japan: Groundbreaking same-sex marriage rulings a long-awaited victory for LGBTI rights” March 14, 2024, at <https://www.amnesty.org/en/latest/news/2024/03/japan-groundbreaking-same-sex-marriage-rulings-a-long-awaited-victory-for-lgbti-rights/>.

<sup>18</sup> See “Statement Calling for the Immediate Legislation to Recognize Marriage between Parties of the Same Sex Following the Sapporo High Court’s Ruling” April 10, 2024, at <https://www.nichibenren.or.jp/en/document/statements/240410.html>.

<sup>19</sup> See “Online Platforms Like Twitter Are Missing a Brutal Wave of Hate Speech in Japan” September 1, 2022, at <https://time.com/6210117/hate-speech-social-media-zainichi-japan/>.

outside Japan.”<sup>20</sup> This definition only targets hate speech directed at foreigners and therefore does not fully cover discrimination and hate speech directed at other domestic marginalized groups. Furthermore, the Hate Speech Elimination Act largely relies on voluntary adherence by individuals and organizations and does not impose penalties for hate speech, leading to a toothless implementation of the legislation.<sup>21</sup>

Some local governments, including in Osaka and Tokyo, have enacted ordinances to address hate speech more robustly.<sup>22</sup> For example, the Kawasaki Hate Speech Ordinance, which came into effect in July 2020, is notable as it included criminal penalties for those who engage in hate speech, showing a more progressive type of legislative approach.<sup>23</sup> However, in the absence of national legislation which imposes penalties to offenders, there is no nationwide protection and regional inconsistencies continue to exist.

Therefore, while Japan has made progress in regulating hate speech through the Hate Speech Elimination Act and various local ordinances, the overall approach to addressing hate speech remains largely non-punitive, focusing on varying degrees of inconsistent forms of education and awareness rather than strict penalties. Ongoing discussions within Japan about potentially introducing further legislative measures to address hate speech more effectively together with the fact that Japan is starting to accept more foreign workers which allows for a potentially more diverse Japanese society, there appears to be a growing societal recognition of the need to reform and create comprehensive anti-discrimination laws in Japan.<sup>24</sup>

However, Japanese legislators should keep in mind that, as a country which has a strong cultural emphasis on freedom of expression, special attention should be paid to clearly define hate speech in order to clearly delineate hate speech from legitimate free expression. The definition of hate speech should focus on speech that incites violence, discrimination, or hostility against individuals or groups based on attributes such as race, ethnicity, or nationality, while explicitly excluding opinions or criticisms that do not incite violence or harm. By framing hate speech in terms of its potential to cause real-world harm, Japan could create a legal framework that addresses the issue and preempt any potential resistance to restrictions on hate speech for the sake of preserving freedom of speech.<sup>25</sup>

### **3. Discrimination against Persons with Disabilities**

According to a 2022 survey, nearly 90% of Japanese people believe discrimination against people with disabilities continues to exist in Japan, an increase from around 84% surveyed in 2017, suggesting a growing recognition of this issue among the Japanese public.<sup>26</sup>

The Disabilities Act symbolizes Japan’s efforts to strengthen regulations in this regard. However, pursuant to a survey conducted in 2022, only 24% of the survey respondents indicated that they are aware of the Disabilities Act.<sup>27</sup> In 2024, amendments to the Disabilities Act came

<sup>20</sup> See Article 2 of the Hate Speech Elimination Act at <https://www.japaneselawtranslation.go.jp/en/laws/view/4081/en>.

<sup>21</sup> See “The Future of Free Speech”, November 15, 2024 at <https://futurefreespeech.org/japan/>.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> See “Freedom on the Net 2023 Japan Report” at <https://freedomhouse.org/country/japan/freedom-net/2023>.

<sup>25</sup> See “Striking the Right Balance: Hate Speech Laws in Japan, the United States, and Canada”, Hastings Constitutional Law Quarterly, Vol. 45, No. 3, 2018.

<sup>26</sup> See “90% in Japan feel discrimination against disabled exists: survey”, May 11, 2024, at <https://english.kyodonews.net/news/2023/03/fbe7198bb919-90-in-japan-feel-discrimination-against-disabled-exists-survey.html>.

<sup>27</sup> *Ibid.*

into effect which strengthened the regulation from previously focusing mainly on government agencies and the recruitment process, to mandating that business operators provide reasonable accommodations to people with disabilities, including employees, clients, and business partners.<sup>28</sup>

However, there is still plenty room for Japan to further reform the current legislation, as currently, laws primarily focus on physical disabilities, excluding individuals with intellectual and mental disabilities from enjoying protected status. Furthermore, the Disabilities Act does not impose significant penalties for violations, which in turn diminishes its effectiveness. There is also a certain level of ambiguity in the Disabilities Act, which can create issues surrounding enforcement. The Disabilities Act requires administrative organizations and companies to provide “reasonable accommodation” to individuals with physical disabilities.<sup>29</sup> However, the standard of reasonableness is vague and subject to interpretation, which shows the necessity to further reform the laws with clearer definitions of what encompasses appropriate accommodation and also broaden the scope of the definition of a disability.

Certain practical challenges could prevent further reform of legislation, including resource constraints. Local governments may lack adequate financial resources necessary to enforce the laws effectively, which may lead to inconsistent implementation across different regions in Japan. It is worth advocating for increased government funding specifically allocated for disability rights initiatives, as well as encouraging collaboration between government entities and private organizations to pool resources and expertise. Establishing systems monitoring the effectiveness of any reforms or amendments to existing legislation, including by creating channels for ongoing feedback from individuals with disabilities, may also help give credibility to any funding requests and demonstrate meaningful impacts of investment in disability services and rights.

#### 4. *Gender Discrimination*

In Japan, gender discrimination remains another persistent and significant issue, impacting various aspects of life, including employment, wages, and social roles. According to an annual report by The World Economic Forum in 2024, Japan was ranked 118<sup>th</sup> out of 146 countries in terms of gender equality on the gender gap index, and although this marked a slight improvement from 2023, it still leaves Japan far behind other G7 nations.<sup>30</sup> Gender inequality is particularly evident in the context of the workplace. As of August 2024, the gender wage gap in Japan highlights a 32% difference between male and female wages, which is the highest among G7 nations and double the average of OECD countries.<sup>31</sup> Furthermore, the increase of suicide rates among women in Japan, particularly during the pandemic, also highlights the mental health crisis linked to gender discrimination and economic instability.<sup>32</sup> Although there have been some societal efforts and legislative progress to increase the participation of women in the workforce, many women are still relegated to “irregular worker” employment, characterized by short-term

<sup>28</sup> See “Japan: Amendments to the Act for Eliminating Discrimination against Persons with Disabilities entered into force”, May 2024, at <https://industrialrelationsnews.ioe-emp.org/industrial-relations-and-labour-law-may-2024/news/article/japan-amendments-to-the-act-for-eliminating-discrimination-against-persons-with-disabilities-entered-into-force>.

<sup>29</sup> See Article 5 of the Act for Eliminating Discrimination against Persons with Disabilities, English translation at <https://www.japaneselawtranslation.go.jp/en/laws/view/3052/en>

<sup>30</sup> See “Japan Rises Slightly in 2024 Gender Gap Ranking”, June 21, 2024, at <https://www.nippon.com/en/japan-data/h02024/>.

<sup>31</sup> See “Japan’s Gender Pay Gap Seen Higher Than OECD Peers Through 2054”, September 9, 2024, at <https://www.bloomberg.com/news/articles/2024-09-09/japan-s-gender-pay-gap-seen-higher-than-oecd-peers-through-2054>.

<sup>32</sup> *Ibid.*

and low-paying contracts, which limits their economic independence and career growth<sup>33</sup> and emphasizes the limited effectiveness of the current laws attempting to address gender discrimination.

Although many women in Japan face challenges in balancing career and family responsibilities, leading to relatively higher rates of part-time and non-regular employment, the current laws primarily focus on formal employment discrimination, neglecting potential discrimination that could be faced by women and other individuals in non-regular employment specifically, such as unjust termination or unfair wage discrepancies, since non-regular employees are not afforded the same legal status and protections as regular employment.<sup>34</sup> This narrow focus fails to address the broader spectrum of gender discrimination that women encounter. In addition, the current laws addressing gender discrimination impose only a duty of effort rather than a requirement for measurable outcomes, which leads to lack of accountability for employers to implement meaningful changes.<sup>35</sup>

However, to reduce gender discrimination in Japan, cultural resistance would likely be a challenge. Traditional gender roles and societal norms are deeply ingrained in Japanese culture. Many people still hold conservative views about gender roles, expecting men to be the primary breadwinners and women to be caregivers focusing on managing households and raising children. Such a traditional societal view may hinder progress toward gender equality and the acceptance of reforms aimed at reducing gender discrimination. There may also be insufficient political will to push for comprehensive reforms. Political leaders may prioritize other issues or fear backlash from conservative constituents, leading to stagnation in advancing gender equality legislation. Nonetheless, it is encouraging to see Japan taking steps to address gender inequality through the implementation of several initiatives aimed at increasing the number of women in managerial positions, known as “*kanrishoku*.” One of the key measures requires companies with over 301 employees to create action plans that set specific targets for advancement of women in the workplace, which enhanced transparency and accountability by mandating companies to disclose their progress in achieving these targets.<sup>36</sup>

Developing comprehensive anti-discrimination laws that clearly define and encompass all forms of gender discrimination with strict enforcement mechanisms can potentially provide more legal support in changing public view in this regard. In addition, implementing educational campaigns and encouraging open dialogue about gender roles in public forums can also contribute to raising public awareness about gender discrimination. It is also important to improve channels to support services for victims of gender discrimination ensuring that they have adequate legal recourse.<sup>37</sup>

In short, gender discrimination in Japan is a multifaceted issue that affects women’s economic opportunities, representation in leadership, and overall well-being. Despite some legislative efforts to promote increased gender equality, significant discrimination issues remain,

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<sup>33</sup> See “Gender Inequality Is Driving a Mental Health Crisis in Japan”, July 10, 2023, at <https://www.thenation.com/article/world/loneliness-women-japan-gender-inequality/>.

<sup>34</sup> See “Systemic changes necessary to achieve gender equality in Japan”, March 26, 2024, at [https://www.u-tokyo.ac.jp/focus/en/features/z0405\\_00015.html](https://www.u-tokyo.ac.jp/focus/en/features/z0405_00015.html).

<sup>35</sup> See “HRN Submits Report on Women’s Rights Issues in Japan”, September 16, 2024, at <https://hrn.or.jp/eng/news/2024/09/16/cedaw-japan-review-report/>.

<sup>36</sup> See “Japan: Gender pay gap disclosure requirement introduced”, August 30, 2022, at <https://www.wtco.com/en-jo/insights/2022/08/japan-gender-pay-gap-disclosure-requirement-introduced>.

<sup>37</sup> *Ibid.*

necessitating continued advocacy and reform of comprehensive anti-discrimination laws, which may in turn help overcome these barriers and help Japan move toward to a more equitable society.

### **III. CONCLUSION**

As discussed above, the path towards reducing discrimination in Japan may be particularly challenging as a result of traditional cultural and societal barriers, including views about gender roles as well as public attitudes towards the LGBTQ community and ethnic minorities. Although progress in Japan has been slower than other G7 nations, it is encouraging to see that nevertheless Japan has made steady and continued progress towards expanding rights and reducing discrimination. Even so, there is more work to be done going forward, and enacting comprehensive anti-discrimination legislation can help keep Japan on the path of progress.

To gradually address and attempt to change these more traditional viewpoints, reforming the legal framework alongside educational campaigns which share positive examples of multiculturalism and the successful integration of foreign residents and minority groups in Japan, highlighting the importance of diversity and inclusion, are likely an important aspect of progressive steps forward. Additionally, reformation of anti-discrimination laws may need to take place gradually in order to allow society to adapt and minimize resistance to change. With sufficient measures utilized to supplement the reformation of actual laws, creating more comprehensive and robust anti-discrimination laws could further create a culture of equality and respect for diversity in Japan. In particular, as Japan becomes more diverse and attracts more foreign workers to help address a persistently shrinking population, especially in metropolitan areas, maintaining cultural diversity through robust anti-discrimination legislation is key to progressing and ensuring the future stability of Japanese society as a whole.

## **AN OVERVIEW OF THE CURRENT LEGISLATION IN THE UNITED KINGDOM**

### **I. SUMMARY OF THE LEGISLATIVE HISTORY, MODEL STATUTES REFERENCED AND WHEN/HOW ADOPTED**

This section details the development of policies and laws relating to acts of discrimination in the United Kingdom (the “UK”), including both statute and case law. Via observations of the UK’s approach, it seeks to provide helpful points of intervention that the Japanese government might consider in addressing national challenges surrounding discrimination.

#### ***1. Background***

As a diverse and multicultural society, the UK has faced, and continues to face, challenges in tackling discrimination including, in one context, on racial grounds. A study by the University of Oxford Migration Observatory noted that UK employers discriminate against job applicants with ethnic minority backgrounds, even when they have identical qualifications to White British applicants<sup>38</sup>. It is examples such as this that require robust protections to provide individuals with as equal a footing as possible in their lives. The UK has a history of confronting discrimination from a legal context, beginning a journey in the mid-20<sup>th</sup> century that has culminated in the Equality Act 2010 (the “Act”) which is the current key piece of anti-discrimination legislation. Prior to 2010 several pieces of legislation were applied in tackling this matter, each targeting specific examples of discrimination:

- **Race Relations Act 1965:** The first legislation in the UK to address racial discrimination.
- **Sexual Discrimination Act 1975:** Addressed gender discrimination in employment and education.
- **Race Relations Act 1976:** Extended protection against racial discrimination and introduced the concept of indirect discrimination.
- **Disability Discrimination Act 1995:** Introduced protections for disabled individuals.
- **Race Relations (Amendment) Act 2000:** Extended protections against racial discrimination and imposed a positive duty on public authorities to promote race equality.

This growing trail of anti-discrimination legislation was a large step forward in protecting individual’s rights, but the manner in which each act legislated basic principles of anti-discrimination was not entirely aligned. Implementation of the Act sought to consolidate, harmonise and simplify the then existing scope of anti-discrimination legislation, thereby making the law more consistent and clearer for individuals to employ.

#### ***2. Legislation and Policy in the United Kingdom***

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<sup>38</sup> Migrants and discrimination in the UK: <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-and-discrimination-in-the-uk/>.

#### *A. Equality Act 2010*

This section provides further detail on the Act and how it is employed in the UK. As noted above, the Act consolidated decades of anti-discrimination legislation to achieve its aim of safeguarding individuals from direct and indirect discrimination, harassment, and victimization. The Act protects nine specific “Protected Characteristics” (as defined below), casting a wide net that looks to capture as many areas susceptible to discrimination as possible. These characteristics are:

1. **Age** – Protecting individuals being discriminated against based on their age;
2. **Disability** – Protecting individuals being discriminated against based on their disability (which is defined in the Act as a physical or mental impairment which has a substantial and long-term adverse effect on a person’s ability to carry out normal day-to-day activities);
3. **Gender reassignment** – Protecting those who have undergone, or are undergoing, gender reassignment;
4. **Marriage and Civil Partnership** – Protecting married couples or couples in a civil partnership;
5. **Pregnancy and maternity** – Protecting those who are pregnant or are on, or who have been, on maternity leave;
6. **Race** – Protecting against racial discrimination, harassment, and victimization;
7. **Religion or belief** – Protecting against discrimination based on a person’s religion or belief;
8. **Sex** – Protecting against gender discrimination; and
9. **Sexual orientation** – Protecting against discrimination based on sexual orientation, each, a “Protected Characteristic” and together, the “Protected Characteristics”.<sup>39</sup>

When employing the Act, these Protected Characteristics are considered in the context of different forms of discrimination, including<sup>40</sup>:

- **Direct Discrimination** – occurring when a person treats someone less favorably because of a Protected Characteristic (e.g. a landlord refuses to rent a property to an individual after finding out that person was gay).
- **Indirect Discrimination** – occurring where a provision, criteria, or practice is applied to all but disproportionately disadvantages a group with a Protected Characteristic (e.g.

<sup>39</sup> Section 4, Equality Act 2010: <https://www.legislation.gov.uk/ukpga/2010/15/part/2/chapter/1>.

<sup>40</sup> Citizens advice (Check how you’ve been discriminated against): <https://www.citizensadvice.org.uk/law-and-courts/discrimination/check-what-type-of-discrimination-youve-experienced/check-how-youve-been-discriminated-against/#:~:text=For%20example%2C%20you%20might%20have,than%20a%20younger%20person%20was>.

a manager stating that all employees must work between 9 a.m. and 5 p.m. might disproportionately disadvantage parents with childcare responsibilities).

- **Harassment** – caused by unwanted behavior linked to a Protected Characteristic that creates an offensive environment (e.g. a person racially abusing someone).
- **Victimization** – unfair treatment against an individual that has complained or supported others in their complaints regarding discrimination (e.g. a manager unfairly treating an employee who gave evidence in support of their colleague's discrimination complaint).

Individuals that experience a form of discrimination relating to a Protected Characteristic can seek enforcement under the Act against such discrimination. Additional examples might include (i) not recruiting an individual due to their disability or race or (ii) promoting or demoting individuals based on their age, sex, or sexual orientation.

### *B. Enforcement Mechanisms*

The UK has various enforcement mechanisms which intertwine with an individual's ability to bring a claim under the Act itself. These consist of organizations such as the Equality and Human Rights Commission (the “EHRC”) that acts as an independent body with the purpose of both promoting equality and enforcing the provisions of the Act. The EHRC is able to conduct investigations, issue compliance notices, and provide legal assistance to individuals facing discrimination claims.<sup>41</sup>

For individuals that are victims of discrimination, the manner of enforcing their rights can be displayed in several key steps:

1. **The individual identifies unlawful discrimination** – Any individual wishing to make a claim must be able to properly identify both the form of discrimination and the Protected Characteristic that such discrimination harmed. Evidence should be collected to support the individual's report of events.
2. **Ensuring a claim is made within the statutory time limit for enforcement** – Most discrimination claims must be filed within 6 months of the discriminatory act. Employment related claims have a shorter time limit of 3 months.<sup>42</sup>
3. **Proceedings:**
  - a. Once a claim is made, civil proceedings can begin and individuals that are successful in their claim have access to several remedies in the UK. The guidance under the Act notes that there are powers under the Act “to grant any remedy that the High Court or Court of Session in Scotland can grant in proceedings in tort or in a claim for judicial review. The main remedies available are damages (including compensation for injuries to feelings), an

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<sup>41</sup> Equality and Human Rights Commission (About us): <https://www.equalityhumanrights.com/about-us/who-we-are>.

<sup>42</sup> Section 118, Equality Act 2010 Explanatory Notes: <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/9>.

injunction, and a declaration. In cases based on indirect discrimination, if the respondent proves that he or she did not intend to treat the claimant unfavorably, then the award of damages cannot be considered until a court has looked at the other remedies available to it".<sup>43</sup> As an example, dismissals from the workplace on discriminatory grounds are not subject to any limit on compensation and there is no requirement for any period of continuous service. Any award would consist of an uncapped compensatory award for past and future losses as well as a banded injury to feelings award, with the upper band limited to £58,700 (being reserved for the most serious cases of discrimination).<sup>44</sup>

- b. As noted above, the EHRC is also able to provide legal assistance in proceedings including legal representation of individuals or bringing legal proceedings in the name of the EHRC relevant to a matter in which it has a function. This enables areas of discrimination to be under the protection of the Act without the need for an individual to expend funds and energy in pursuing a claim. If the EHRC believes that a public body has acted in breach of the Equality Act, then it can apply for a judicial review of such action.<sup>45</sup>

### *C. Public Sector Equality Duty*

The Act also introduced the Public Sector Equality Duty (the "PSED"), which requires public bodies to consider how their decisions and policies affect individuals with different Protected Characteristics. The PSED aims to:

1. Eliminate unlawful discrimination, harassment, and victimization;
2. Advance equality of opportunity between those who have Protected Characteristics and those who do not; and
3. Foster good relations between those who have Protected Characteristics and those who do not.<sup>46</sup>

Public bodies must publish equality objectives every four years and information that demonstrates their compliance with the PSED. This proactive approach aims to prevent discrimination before it occurs and promote equality more broadly in society.

### *D. Case Examples*

The past 14 years have provided numerous opportunities for the Act to be tested within the UK judicial system. The below examples display the wide-ranging scenarios in which action can

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<sup>43</sup> Section 119, Equality Act 2010 Explanatory Notes: <https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/9>.

<sup>44</sup> Citizens advice (Work out how much compensation you could get for discrimination): <https://www.citizensadvice.org.uk/work/discrimination-at-work/dealing-with-discrimination-at-work/taking-action-work-discrimination/work-out-how-much-compensation-you-could-get-for-discrimination-work/>.

<sup>45</sup> Equality and Human Rights Commission (Our litigation powers: taking cases to court): <https://www.equalityhumanrights.com/our-work/our-legal-work/our-legal-powers/our-litigation-and-enforcement-policy-2022-2025/our/>.

<sup>46</sup> Equality and Human Rights Commission (The Public Sector Equality Duty): <https://www.equalityhumanrights.com/guidance/public-sector-equality-duty-psed>.

be brought under the Act and how consolidation of discrimination legislation protects a wider proportion of the population:

*Pnaiser v NHS England and Coventry City Council*<sup>47</sup>

The claimant was successful in claiming disability discrimination. The claimant suffered from a medical condition that caused her to have significant periods of absence from work. She was made redundant by a current employer but received a new job offer which was subject to satisfactory reference. The claimants previous employer provided a negative reference stating that the claimant was unsuitable for the new role based upon her disability-related absences. The claimant was able to prove under the Act that she had been directly discriminated due to her disability.

*Forstater v CGD Europe*<sup>48</sup>

The claimant was a consultant that had posted tweets relating to transgender issues. The claimant brought proceedings on the basis of direct discrimination and harassment after they were not offered further work by a party as that party alleged the tweets to be transphobic. The claimant was able to argue that their belief that sex rather than gender identity of an individual was fundamentally important was a “philosophical belief” and therefore protected under the Act.

*British Airways plc v Rollett and Others*<sup>49</sup>

The claimants were mostly non-British nationals who experienced a change in shift patterns and flexible working arrangements imposed by their employer, British Airways plc, as part of a restructuring. The claimants asserted that the changes were indirectly discriminating against certain groups of employees including those who lived abroad and commuted to work (racial discrimination) and those who had caring responsibilities (gender discrimination as more women had childcare responsibilities). In the judgment, it was found that individuals were not required to share the relevant Protected Characteristic if they suffered the same disadvantage (using the previous example, a British employee commuting from overseas would suffer the same disadvantage, as would a male employee with childcare responsibilities). This case further broadened the scope of discrimination claims within the UK.

#### *E. Weaknesses of the UK's Anti-discrimination Framework*

Whilst the UK has made progress in the consolidation and simplification of its anti-discrimination framework, there are certain weaknesses to note.

**Individual Enforcement Model:** One such weakness is reliance on individuals having to initiate legal action under the Act. The House of Commons Women and Equalities Committee reported that the difficulties facing individuals in enforcing their rights include: poor knowledge of rights; unwillingness to bring claims against a large organization with many more resources; complexity of the law; a lack of specialist legal support; the high cost of legal action; and very

<sup>47</sup> Pnaiser v NHS England [2015] 12 WLUK 178: [https://www.bailii.org/uk/cases/UKEAT/2015/0137\\_15\\_0412.html](https://www.bailii.org/uk/cases/UKEAT/2015/0137_15_0412.html).

<sup>48</sup> Forstater v CGD Europe [2022] ICR 1: [https://www.bailii.org/uk/cases/UKEAT/2021/0105\\_20\\_1006.html](https://www.bailii.org/uk/cases/UKEAT/2021/0105_20_1006.html).

<sup>49</sup> British Airways plc v Rollett and Others [2024] EAT 131: <http://www.bailii.org/uk/cases/UKEAT/2024/131.html>.

limited access to legal aid.<sup>50</sup> Any framework should consider the barriers to entry for individuals to actively employ the rights afforded to them. This would help to avoid legislation that seeks to protect against discrimination from a policy perspective, but makes it excessively difficult to actually protect individuals in practice.

**Limited Access to Legal Aid:** Due to repeated austerity policies and budgetary cuts by successive governments, the availability of legal aid for discrimination has diminished since implementation of the Act, making it challenging for individuals to seek justice. This can create an imbalance of power between the parties in a discrimination case, particularly when individuals are facing well-resourced organizations.<sup>51</sup>

**Evolving Challenges:** The Act also struggles to keep pace with emerging areas that could fall within the remit of discrimination. One example of this is the evolution of gender identity. As a UK legal charity explains, although section 7 of the Act extends Protected Characteristics to include gender reassignment, “those who are transgender fall within the definition in s7, those who are gender-fluid, non-binary or intersex do not readily fit within that definition, nor would they find protection in any other part of the Act.”<sup>52</sup> The growth of AI and its ability to cause and proliferate discriminatory harm also poses a major challenge for static legislation, including the Act. One UK Human Rights Hub highlighted the difficulty in application of the Act where AI is involved noting several issues including that “AI has limited capability to engage with human diversity.”<sup>53</sup> It would be far more prudent to consider that the arenas in which discrimination may flourish are continually evolving when implementing a framework similar to that of the Act. The challenges the Act faces in terms of staying current are constantly evolving, and legislators face the ongoing task of staying informed of social changes which may cause further discrimination and prejudice, including the risk of bias within AI which could result in new forms of discrimination or further proliferation of discriminatory content.

## II. LESSONS FOR JAPANESE LEGISLATION / POLICY MAKING

### 1. *Simplification of legal process*

Japan lacks consolidated legislation in the context of discrimination placing individuals in a similar position to a UK claimant’s pre-implementation of the Act (i.e. individuals must work through various laws to determine if they can bring a claim). The Japanese government might consider producing a single piece of legislation with the sole purpose of tackling discrimination, similar to the Act.

### 2. *Comprehensive protection for individuals*

Legislation similar to the Act would not only simplify the Japanese system but also provide individuals in Japan with a more comprehensive package of protections against discrimination. It is noted that Japan has various laws addressing specific forms of discrimination (e.g. the Labor

<sup>50</sup> Enforcing the Equality Act: the law and the role of the Equality and Human Rights Commission: <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>.

<sup>51</sup> Access to legal aid for discrimination cases: <https://www.equalityhumanrights.com/sites/default/files/2021/inquiry-access-to-legal-aid-for-discrimination-cases-june-2019-executive-summary.pdf>.

<sup>52</sup> Legal Action Group (The Equality Act 2010 a decade on): <https://www.lag.org.uk/article/207717/the-equality-act-2010-a-decade-on>.

<sup>53</sup> Oxford Human Rights Hub: <https://ohrh.law.ox.ac.uk/artificial-intelligence-the-need-to-update-the-equality-act-2010/>.

Standards Act or Equal Opportunity Act) but these primarily focus on gender and disability discrimination without encompassing a wide range of characteristics such as sexual orientation or age. The Japanese legislative landscape also lacks clear definitions for categories of discrimination. This results in the current structure in Japan leaving the opportunity for various instances of discrimination to go unchallenged (as individuals locate no legislative basis to claim against the discrimination that they experienced). In order to comprehensively tackle this issue, the Japanese government should broaden the scope of what is protected. In doing so, it would be prudent to consider the ever-changing scope of discriminatory behavior, as highlighted above.

### ***3. Strengthening of Enforcement Mechanisms***

Even where an individual can find grounds for a claim under the Japanese system, the mechanisms enabling them to enforce such claims lack strength. The Japanese court system has historically been conservative in interpreting cases of discrimination and even where claims have been proven, there are no penalties under the existing framework.<sup>54</sup> The Japanese government might consider creating an institution similar to the EHRC. Doing so would remove some of the burden from individuals in bringing claims, especially in areas of systemic discrimination. This could provide a more authoritative way to create wider and longer lasting changes.

### ***4. Promotion of Equality***

Japan's anti-discrimination framework appears to contradict its political position on human rights and equality on the world stage. At its core, implementation of a framework similar to the UK should be viewed as being in the best interest of all individuals in Japan in order to further promote equality within the country. This is a core and basic human right as ascribed by Article 1 of the Universal Declaration of Human Rights, to which Japan is a signatory and to which it recommitted itself as recently as 2020.<sup>55</sup> It is clear from recent case law (including the recent ruling in the High Court on October 30<sup>th</sup> that a ban on same-sex marriage is unconstitutional) that the tide is turning in Japan and if the Japanese government wishes to align with such values then it should consider building a framework robust enough to achieve these goals.

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<sup>54</sup> Employment Discrimination Law in Japan: Human Rights or Employment Policy?: [https://www.jil.go.jp/english/events/documents/clls08\\_sakuraba.pdf](https://www.jil.go.jp/english/events/documents/clls08_sakuraba.pdf)

<sup>55</sup> Joint Statement on the Universal Declaration of Human Rights: <https://usun.usmission.gov/joint-statement-on-the-universal-declaration-of-human-rights/>

## **AN OVERVIEW OF THE CURRENT LEGISLATION IN NEW ZEALAND**

### **I. OVERVIEW**

In New Zealand, civil and political rights are mainly protected under the Bill of Rights Act 1990 (“NZ-BORA”) and the Human Rights Act 1993 (“NZ-HRA”), while economic, social and cultural rights are protected through legislation and government policy.<sup>56</sup> In particular, the NZ-HRA offers comprehensive protection against unlawful discrimination and therefore is perhaps most instructive for Japan with respect to the development of a comprehensive anti-discrimination law.

The NZ-HRA prohibits unlawful discrimination, directly or indirectly, based on various grounds, such as sex, marital status, race, ethnicity, and disability, among others. The NZ-HRA permits certain measures, which could otherwise be considered discriminatory, if such measures are intended to help disadvantaged or under-represented persons achieve equality. The primary enforcement mechanism with respect to the NZ-HRA is through individual claims to an independent commission or a tribunal. The NZ-HRA establishes a multi-tiered adjudicatory structure, including the Human Rights Commission and the Human Rights Review Tribunal.

### **II. LEGISLATIVE BACKGROUND**

After New Zealand ratified the International Convention on the Elimination of Racial Discrimination, the Race Relations Act (the first piece of human rights legislation in New Zealand) was passed in 1971 and went into effect on April 1, 1972.<sup>57</sup> The scope of the original Race Relations Act covered discrimination based on the grounds of race, nationality or ethnic origin, and was later extended to cover discrimination based on the grounds of marital status, sex, religious, or ethical belief.<sup>58</sup> The Race Relations Act also created the Race Relations Conciliator role, and established a conciliation process to address racial discrimination complaints.<sup>59</sup> Subsequently, the Human Rights Commission Act 1977 was passed to promote the equality of women and to establish the Human Rights Commission as an institutional mechanism to enforce the right to non-discrimination.<sup>60</sup> The Human Rights Commission mainly provides information, expert problem-solving support, mediation and other assistance in resolving discrimination complaints.<sup>61</sup>

Since the 1990s, New Zealand has increasingly accepted international human rights principles as an integral part of its law and practice. The beginning of this period marked the passage of the two most important pieces of domestic legislation with respect to human rights in New Zealand, namely the NZ-BORA and the NZ-HRA. In particular, the NZ-HRA expanded the scope of prohibited forms of discrimination and the power of the Human Rights Commission,

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<sup>56</sup> See July McGregor, Silvia Bell and Margaret Wilson, “Fault Lines: Human Rights in New Zealand” 139-140 (2015), [https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011\\_38\\_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf](https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011_38_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf).

<sup>57</sup> See Te Kāhui Tika Tangata Human Rights Commission, “Celebrating 50 Years of the Race Relations Act,” April 4, 2022 at <https://tikatangata.org.nz/news/celebrating-50-years-of-the-race-relations-act>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* In 2001, the Race Relations Conciliator role was replaced with the Race Relations Commissioner role, who is one of the four Commissioners of New Zealand’s Human Rights Commission. This reflects the practical approach of resolving disputes related to racial discrimination through conciliation, mediation and negotiation, rather than an adversarial litigation process administered by ordinary courts.

<sup>60</sup> See July McGregor, Silvia Bell and Margaret Wilson, *Fault Lines: Human Rights in New Zealand* 15-16 (2015), [https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011\\_38\\_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf](https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011_38_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf).

<sup>61</sup> Human Rights Act 1993, No. 82, § 76 (N.Z.).

among other legislative improvements.<sup>62</sup> In 2001, the NZ-HRA was amended to restructure the Human Rights Commission, emphasizing its role as a human rights advocate, and to transfer the complaints process to the Human Rights Review Tribunal, which is a specialist body that considers and adjudicates upon proceedings brought under the NZ-HRA, among other statutes.<sup>63</sup> As a result, the Human Rights Commission reoriented its role towards anti-discrimination advocacy and mediation, while the Human Rights Review Tribunal is focused on the adjudication of discrimination claims.<sup>64</sup> Since the 2001 amendment, the Human Rights Commission undertook a more proactive role in human rights advocacy reporting.<sup>65</sup> Meanwhile, the Office of Human Rights Proceedings (which is part of the Human Rights Commission) and the Human Rights Review Tribunal's role has also further developed. In fiscal year 2023, the Human Rights Commission completed 5,730 human rights inquiries and complaints and completed 150 mediations.<sup>66</sup> A noticeable aspect of the system in New Zealand is that, although its legislative body has not conceded power to the courts, a cabinet-level manual requires all policy papers to include a statement as to whether or not it is consistent with the NZ-BORA and the NZ-HRA, representing an attempt to introduce an awareness of human rights issues into the broader policy-making process.<sup>67</sup>

### III. KEY ASPECTS UNDER THE NEW ZEALAND HUMAN RIGHTS ACT

#### 1. *Prohibition of Discrimination*

Part 2 of the NZ-NRA sets out the various prohibitions against unlawful discrimination. The NZ-HRA follows a grounds-based approach and prohibits discrimination based on:<sup>68</sup> sex (including pregnancy and childbirth); marital status; religious belief; ethical belief; skin color, race, and ethnic or national origin; disability; age (from 16 years and older); political opinion; employment status; family status; and sexual orientation. Notably, the list of grounds is exhaustive, which generally can be extended through legislation, but not through the judiciary. NZ-HRA does not cover all grounds of non-discrimination suggested by the Office of the United Nations High Commissioner for Human Rights, such as health status, refugee or asylum status, and sex characteristics.<sup>69</sup>

The NZ-HRA comprehensively covers discrimination in various areas of public life: in employment matters;<sup>70</sup> in business partnerships;<sup>71</sup> by industrial and professional associations, qualifying bodies, and vocational training bodies;<sup>72</sup> in access to places, vehicles, and facilities;<sup>73</sup>

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<sup>62</sup> See *July McGregor, Silvia Bell and Margaret Wilson, Fault Lines: Human Rights in New Zealand* 15-16 (2015), [https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011\\_38\\_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf](https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011_38_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf) at 16-17.

<sup>63</sup> *Id.* at 17; Human Rights Act 1993, No. 82, § 84 (N.Z.).

<sup>64</sup> See *July McGregor, Silvia Bell and Margaret Wilson, Fault Lines: Human Rights in New Zealand* 15-16 (2015), [https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011\\_38\\_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf](https://www.lawfoundation.org.nz/wp-content/uploads/2015/04/2011_38_17-Public-version-of-Research-Report-embargoed-till-2.4.15.pdf) at 17.

<sup>65</sup> *Id.* at 18.

<sup>66</sup> Te Kāhui Tika Tangata Human Rights Commission, “Annual Report for the Year Ended 30 June 2023,” at <https://tikatangata.org.nz/about-us/corporate-publications/annual-reports>.

<sup>67</sup> *Id.*

<sup>68</sup> Human Rights Act 1993, No. 82, § 21 (N.Z.).

<sup>69</sup> Office of the U.N. High Commissioner for Human Rights, “Protecting Minority Rights: A Practical Guide to Developing Anti-Discrimination Legislation” 19 (2022).

<sup>70</sup> Human Rights Act 1993, No. 82, § 22-35 (N.Z.).

<sup>71</sup> Human Rights Act 1993, No. 82, § 36 (N.Z.).

<sup>72</sup> Human Rights Act 1993, No. 82, § 37-41 (N.Z.).

<sup>73</sup> Human Rights Act 1993, No. 82, § 42-43 (N.Z.).

in the provision of goods and services;<sup>74</sup> in the provision of land, housing, and other accommodation;<sup>75</sup> and in access to educational establishments.<sup>76</sup> The NZ-HRA also prohibits other enumerated forms of discrimination, such as racial disharmony, sexual harassment, adverse treatment in employment of people affected by family violence, and racial harassment.<sup>77</sup>

With respect to each of the enumerated forms of discrimination, the NZ-HRA sets forth specific definitions, prohibitions and exceptions to help clarify and contextualize discriminatory conduct. For example, with respect to racial harassment, the definition covers a wide range of discriminatory conduct, including “use language (whether written or spoken), or visual material, or physical behavior that (a) expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the [skin] color, race, or ethnic or national origins of that person; (b) is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and (c) is either repeated, or of such a significant nature, that it has a detrimental effect on that other person.”<sup>78</sup> The prohibition against racial discrimination broadly applies to employment, business partnerships, vocational training and education, as well as access to goods, services, places, vehicles, facilities, land, housing, or other accommodation.<sup>79</sup>

In addition, the NZ-HRA prohibits indirect discrimination, i.e., conduct that has the effect of disparate treatment on a prohibited ground.<sup>80</sup> Such prohibition against indirect discrimination is essential to addressing subtle, systemic forms of discrimination and giving affected individuals the right to seek recourse. The NZ-HRA also prohibits victimization of any whistleblower or person exercising their rights as enumerated.<sup>81</sup>

With respect to each prohibited ground, the NZ-HRA allows for justifications of certain forms of discrimination pursuant to a legitimate objective that is appropriate, necessary, and proportionate to the objective. For example, with respect to work involving the national security of New Zealand, the NZ-HRA allows for employment restrictions based on religious or ethical belief, political opinion, disability, family status, and national origin.<sup>82</sup> Further, with respect to disability access, the NZ-HRA provides a reasonableness standard to justify certain differential access to places, vehicles, and facilities (i.e., different treatment based on disability may be justifiable if such disability involves an unreasonable level of risk of harm, unless such risk could, without unreasonable disruption, be reduced to a normal level by taking reasonable measures).<sup>83</sup>

## 2. *Special Measures*

While the NZ-HRA prohibits discrimination, it does not impose an explicit obligation to take affirmative action to address inequality. However, the NZ-HRA permits certain measures,

<sup>74</sup> Human Rights Act 1993, No. 82, § 44-52 (N.Z.).

<sup>75</sup> Human Rights Act 1993, No. 82, § 53-56 (N.Z.).

<sup>76</sup> Human Rights Act 1993, No. 82, § 57-60 (N.Z.).

<sup>77</sup> Human Rights Act 1993, No. 82, § 61-63 (N.Z.).

<sup>78</sup> Human Rights Act 1993, No. 82, § 63 (N.Z.).

<sup>79</sup> *Id.*

<sup>80</sup> “Where any conduct, practice, requirement, or condition that is **not apparently in contravention of any provision** of this Part has the **effect of treating a person or group of persons differently** on 1 of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.” (Emphasis added.) Human Rights Act 1993, No. 82, § 65 (N.Z.).

<sup>81</sup> Human Rights Act 1993, No. 82, § 66 (N.Z.).

<sup>82</sup> Human Rights Act 1993, No. 82, § 25(1) (N.Z.).

<sup>83</sup> Human Rights Act 1993, No. 82, § 42(4)-(5) (N.Z.).

which could otherwise be considered discriminatory, to ensure equality if such measures are designed to help disadvantaged or under-represented persons achieve equality, including preferential treatment based on pregnancy, childbirth, or family responsibilities.<sup>84</sup> Such measures can support redress for historical injustices as well as structural or systemic representation.<sup>85</sup>

The Human Rights Commission provides further guidance on the use of special measures, including that such measures must (i) be in good faith, i.e., honesty of purpose or with genuine intention, (ii) assist a disadvantaged group that is disadvantaged as a result of discrimination, (iii) be targeted to address a specific issue, (iv) be temporary, i.e., remain in place until the objectives of the measures are achieved, and (v) be proportionate to the degree of under-representation or disadvantage and extend no further than necessary with respect to the objectives set out.<sup>86</sup>

### **3. *Enforcement***

The primary enforcement mechanism with respect to the NZ-HRA is through individual claims brought to a court or a tribunal. The NZ-HRA establishes a multi-tiered adjudicatory structure, including both the Human Rights Commission and the Human Rights Review Tribunal.<sup>87</sup> Although the Human Rights Commission and Human Rights Review Tribunal function independently, a complaint must be made to the Human Rights Commission for mediation before the same discrimination claim is brought before the Human Rights Review Tribunal.<sup>88</sup> The NZ-HRA is administered by New Zealand’s Ministry of Justice. It is worth noting that the Human Rights Commission lacks the power to investigate and penalize entities for violations of the NZ-HRA. However, the Human Rights Review Tribunal may award monetary damages up to NZ\$350,000.<sup>89</sup> Legal representation is not required for bringing claims before the Human Rights Review Tribunal.<sup>90</sup>

### **4. *Remedies***

When violations occur, the NZ-HRA provides for a variety of remedies, including declaring a violation of law, issuing a restraining order, granting damages, ordering the defendant to redress losses or damages, declaring a contract to be illegal and ordering the defendant to undertake training or implement policies or programs, as well as “any other relief the Tribunal thinks fit,”<sup>91</sup> subject to the monetary limit on the remedies that the Human Rights Review Tribunal may grant.

## **IV. LESSONS FOR JAPANESE LEGISLATION / POLICY MAKING**

### **1. *Enumeration of types of harassment***

As the NZ-HRA sets forth specific definitions, prohibitions and exceptions to help clarify and contextualize discriminatory conduct for each of the enumerated forms of discrimination, this

<sup>84</sup> Human Rights Act 1993, No. 82, § 73-74 (N.Z.); Human Rights Act 1990, No. 109, § 19 (N.Z.).

<sup>85</sup> See Te Kāhui Tika Tangata Human Rights Commission, “Guidelines on Special Measures,” February 8, 2024 at <https://tikatangata.org.nz/resources-and-support/guidelines-on-special-measures>.

<sup>86</sup> *Ibid.*

<sup>87</sup> Human Rights Act 1993, No. 82, § 76, 84 (N.Z.).

<sup>88</sup> Te Kāhui Tika Tangata Human Rights Commission, “About Us,” at <https://tikatangata.org.nz/about-us/office-of-human-rights-proceedings>.

<sup>89</sup> New Zealand Ministry of Justice, “Human Rights Review Tribunal,” May 20, 2024, at <https://www.justice.govt.nz/tribunals/human-rights/>.

<sup>90</sup> Te Kāhui Tika Tangata Human Rights Commission, “About Us,” at <https://tikatangata.org.nz/about-us/office-of-human-rights-proceedings>.

<sup>91</sup> Human Rights Act 1993, No. 82, § 92I (N.Z.).

is a point that Japanese lawmakers should also adopt in order to strengthen and expand the existing protections against discrimination. The definitions for each form of discriminatory conduct also cover a wide range of activities and behaviors with examples of the types of acts which would fall under discriminatory and therefore be violations of the law.<sup>92</sup> Japanese lawmakers should enlist experts across various fields to help develop comprehensive definitions for the types of discrimination that are violations of the law, including representatives from a broad range of disadvantaged groups, in order to make the law as clear and comprehensive as possible.

Furthermore, just as the NZ-HRA prohibits indirect discrimination, or discrimination that is as a result of disparate treatment,<sup>93</sup> Japanese lawmakers should similarly consider including indirect discrimination as part of any definitions of discrimination that are incorporated into revised legislation.

## ***2. Permitted discrimination for a legitimate purpose***

Because the NZ-HRA allows for certain forms of discrimination pursuant to legitimate objectives which are appropriate, necessary, and proportionate to the objective of assisting disadvantaged groups or addressing past instances of discrimination, this is a key feature that Japanese lawmakers may also want to consider as anti-discrimination legislation is amended or revised.<sup>94</sup> This type of clarification on when “discrimination” is important to help resolve past injustices or to assist disadvantaged groups that would otherwise not be on equal footing without such positively “discriminatory” treatment is also a key aspect of creating a more equitable society.

## ***3. Dedicated body to consider claims of discrimination***

One of the key features of the NZ-HRA is that it establishes a multi-tiered adjudicatory structure, including the Human Rights Commission<sup>95</sup> and the Human Rights Review Tribunal, to consider and adjudicate any claims brought under the anti-discrimination legislation.<sup>96</sup> This is an important aspect for Japanese lawmakers to consider, as it can help ease the burden on the general judicial system and also ensure that human rights and discrimination law specialists are overseeing any claims brought under the statutes for equal application of the laws. This can also make the system easier to access for those who may face discrimination and potentially reduce barriers to fair process.

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<sup>92</sup> Human Rights Act 1993, No. 82, § 63 (N.Z.).

<sup>93</sup> “Where any conduct, practice, requirement, or condition that is **not apparently in contravention of any provision** of this Part has the **effect of treating a person or group of persons differently** on 1 of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.” (Emphasis added.) Human Rights Act 1993, No. 82, § 65 (N.Z.).

<sup>94</sup> Human Rights Act 1993, No. 82, § 25(1) (N.Z.).

<sup>95</sup> Human Rights Act 1993, No. 82, § 76 (N.Z.).

<sup>96</sup> Human Rights Act 1993, No. 82, § 84 (N.Z.).

## AN OVERVIEW OF THE CURRENT LEGISLATION IN CANADA

### **I. SUMMARY OF HISTORY, AMENDMENTS, INSTITUTIONS AND DEVELOPMENT**

This section gives an overview of the Canadian Human Rights Act (the “Canadian Act”)<sup>97</sup>, including its history, milestone amendments, human rights institutions, and recent developments.

#### **1. Legislative History**

The Canadian Act was enacted by the Parliament of Canada in 1977 and is known as one of the world’s first comprehensive human rights laws. This was an effort by Canadian legislators to transpose the principles of international human rights law<sup>98</sup> into the domestic legal order, and at the same time, to raise awareness of the anti-discrimination laws that existed in each province<sup>99</sup> to federally regulated activities.

Unlike the Canadian Charter of Rights and Freedoms, which is a part of Canada’s Constitution and provides for a broad range of rights, the Canadian Act covers only equality rights. However, in light of the situation in Japan, where the Constitution has not been amended even once since it came into force in 1947, the Canadian Act may serve as a good model presenting a new framework for equality rights outside the Constitution.<sup>100</sup> Additionally, the Japanese government may gain valuable insights into policy implications from such Canadian legislation that has been evolving for the last 50 years.

#### **2. Milestone Amendments to the Canadian Act to Add Prohibited Grounds of Discrimination**

When it was introduced in 1977, the Canadian Act prohibited discrimination on the basis of race, religion, and national origin as well as relatively newer grounds of discrimination, such as sex, ethnic origin, age, marital status, physical disability, and pardoned conviction.

Over time, the Canadian Act was amended to add protections for several types of protected categories. Currently, the prohibited grounds of discrimination are race, national or ethnic origin, [skin] color, religion, age, sex, sexual orientation,<sup>101</sup><sup>102</sup> gender identity or expression,<sup>103</sup> marital status, family status, genetic characteristics, disability, political belief or activity,<sup>104</sup> or conviction

<sup>97</sup> Original citation: S.C. 1976-77, c. 33, s. 1; current citation: R.S.C. 1985, c. H-6.

<sup>98</sup> The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948 was known to be principally authored by a Canadian legal scholar and human rights advocate, John Humphrey.

<sup>99</sup> Before the Canadian Act, two provinces had enacted their own anti-discrimination laws including Ontario’s Racial Discrimination Act in 1944 and Saskatchewan’s Bill of Rights in 1947.

<sup>100</sup> “As part of the Constitution, the Charter is the highest law of the land. It can only be changed with the agreement of Parliament and the legislatures of seven provinces representing at least 50 per cent of Canada’s population. The Canadian Human Rights Act, on the other hand, is a federal statute. As such, it can be changed through parliamentary vote,” at <https://www.thecanadianencyclopedia.ca/en/article/canadian-human-rights-act>.

<sup>101</sup> Haig and Birch v. Canada et al., (1992) 57 O.A.C. 272 (CA): In 1992, Captain Joshua Birch launched a complaint after being discharged from the Canadian Forces for disclosing he was gay. He successfully argued that the omission of sexual orientation from the Canadian Human Rights Act constituted discrimination under the equality rights guarantee set out in section 15 of the Canadian Charter of Rights and Freedoms.

<sup>102</sup> Bill C-33: In 1996, Parliament added sexual orientation as a protected ground in the Canadian Act.

<sup>103</sup> An Act to amend the Canadian Human Rights Act and the Criminal Code (S.C. 2017, c. 13): Gender identity and gender expression were added to the list of prohibited grounds. The enactment also amends the Criminal Code to extend the protection against hate propaganda set out in that Act to any section of the public that is distinguished by gender identity or expression and to clearly set out that evidence that an offence was motivated by bias, prejudice or hate based on gender identity or expression constitutes an aggravating circumstance that a court must take into consideration when it imposes a sentence.

<sup>104</sup> Bill C-257: The Canadian Act was amended in November 2022 to specifically include political belief or activity as one of the prohibited grounds of discrimination.

for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

### ***3. Establishment of Canadian Human Rights Commission and Canadian Human Rights Tribunal***

The Canadian Act established the Canadian Human Rights Commission<sup>105</sup> as well as the Canadian Human Rights Tribunal.<sup>106</sup> A human rights claim is first brought to the Canadian Human Rights Commission for investigation and remediation processes. If the parties are not satisfied after these remediation processes have been completed, the case may be moved forward for a judgement by the Canadian Human Rights Tribunal. The Canadian Human Rights Tribunal may decide on the case brought before them and order compensation for damages from discrimination and also order the implementation of structural measures to cease the discriminatory practice at issue.<sup>107</sup>

There has long been a demand for the establishment of a national human rights institution separate from the judicial court systems, to promote human rights protections and provide remedies for human rights violations in Japan.<sup>108</sup><sup>109</sup> In this regard, the “Principles relating to the Status of National Institutions” (the “Paris Principles”) adopted by the United Nations General Assembly on December 20, 1993<sup>110</sup> provide a benchmark for international human rights standards in terms of the elements, functions, and roles that national human rights institutions should have.

These examples of Canadian human rights institutions, which were started 15 years before the Paris Principles were adopted, can provide inspiration for institutional relief and reformation and adoption of human rights legislation in Japan.<sup>111</sup>

### ***3. Recent Developments in Canada: Analysis and application of theories of indirect discrimination, multiple or intersecting discrimination, harassment and abuse, and complicity in discrimination***

It is important that comprehensive anti-discrimination legislation include a wide variety of grounds for prohibiting discrimination, rather than being limited to highly specific attributes, and that the forms of prohibited discrimination are not limited to only direct discrimination, but also take into account a variety of forms, including indirect discrimination, multiple or intersecting discrimination, harassment and abuse, and complicity in discrimination.<sup>112</sup> This type of broad

<sup>105</sup> R.S., 1985, c. H-6, s. 26; 2018, c. 27, s. 419; 2018, c. 27, s. 439; 2019, c. 10, s. 148.

<sup>106</sup> R.S., 1985, c. 31 (1st Supp.), s. 65; 1998, c. 9, s. 27; 2018, c. 27, s. 426.

<sup>107</sup> See Annual Report 2023 of Canadian Human Rights Tribunal at <https://www.chrt-tcdp.gc.ca/en/about-us/publications/annual-report-2023#toc-id-4>.

<sup>108</sup> See Ishida, Mami, “Why we need a national human rights institution,” Kokusai Jinken Hiroba No.169 (May 2023) of HURIGHTS OSAKA at <https://www.hurights.or.jp/archives/newsletter/section4/2023/05/post-201956.html>.

<sup>109</sup> Japan served as the chair of the G7 in 2023, but Japan is the only country in the G7 that does not have either a comprehensive anti-discrimination law or a national human rights institution.

<sup>110</sup> General Assembly resolution 48/134.

<sup>111</sup> The Paris Principles addresses, among others, “(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.” at <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>.

<sup>112</sup> Page xxii, PROTECTING MINORITY RIGHTS A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation: “...human rights bodies have increasingly recognized States’ obligations to prohibit intersectional discrimination – that is, discrimination which occurs because of the interaction between two or more different characteristics – something that can only be achieved through comprehensive anti-discrimination laws.”

legislation has the most significant impact and can achieve the broadest objectives in terms of human rights principles. The experience of discrimination is compounded by the interlocking realities of specific individuals, and if comprehensive measures are not given, effective protection and relief are denied.<sup>113</sup> It is important for lawmakers to understand these nuances with respect to discrimination and for a constant dialogue to be in place when policy is being considered in order to create the most comprehensive anti-discrimination legislation possible.

Canada has progressively discussed the concept of discrimination itself and worked to achieve effective relief against such newly defined concepts and grounds for prohibiting discrimination in response to changes in societal views in its legislative process and case laws.<sup>114</sup> For example, 40% of disability complaints accepted and reviewed by the Canadian Human Rights Commission in 2023 were related to mental health, and 37% of the complaints cited more than one ground of discrimination.<sup>115</sup> The Canadian approach of making full use of the “comprehensiveness” of the Canadian Act<sup>116</sup> to constantly discuss and refresh the laws<sup>117</sup> and applications of them gives thought-provoking suggestions for Japan in legislating a comprehensive anti-discrimination law.

## II. LESSONS FOR JAPANESE LEGISLATION / POLICY MAKING

This section seeks to provide lessons for the Japanese government to address its national discrimination issues and policy making in connection with comprehensive anti-discrimination legislation through observations made about Canadian approaches towards advocating for the rights of the 2SLGBTQI+ community as well as the rights of the indigenous population.

### 1. *Rights of the 2SLGBTQI+ and Same Sex Marriage*

Sexual activity between the same sex was initially a criminal offense in Canada and the proposed law legalizing sexual activity between the same sex was repeatedly abandoned due to strong opposition, mainly from religious lawmakers. Finally in 1969, sexual activity between the same sex was decriminalized.<sup>118</sup> Since then, the 2SLGBTQI+<sup>119</sup> community has seen steady gains in rights, and Canada is internationally regarded as a leader in this field.

<sup>113</sup> Footnote 922, Page 133, PROTECTING MINORITY RIGHTS A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation: “Thus, for example, in its most recent review of Japan, the Committee on the Elimination of Racial Discrimination expressed particular concern at the situation of the Ainu people, Ryukyu/Okinawa peoples, Burakumin, Koreans, comfort women, Muslims of foreign origin, migrants, foreigners and non-citizens, as well as at “intersecting forms of discrimination and violence against women.”

<sup>114</sup> See Hihara, Yukie, “..and discussions of structural discrimination and intersectionality, etc., without placing importance on the distinction between direct discrimination and indirect discrimination..”; “Development of the Concept of Substantive Equality-Oriented Discrimination and Discrimination Relief in Canada”, Japanese Journal of Labor Studies, No.751/Feb.-Mar. 2023.

<sup>115</sup> The Canadian Human Rights Commission’s 2023 Annual Report to Parliament, Page 14: “40% of disability complaints accepted by the Commission were related to mental health. This represents 19% of complaints accepted by the Commission in 2023”; “The three grounds of race, colour and national or ethnic origin are counted as one ground under the Canadian Human Rights Act.” at <https://www.chrc-ccdp.gc.ca/sites/default/files/2024-04/chrc-annual-report-2023-en-final.pdf>

<sup>116</sup> See “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders”, Government of Canada, at [https://www.international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders\\_guide\\_defenseurs\\_droits.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng).

<sup>117</sup> R.S.C. 1985, c. H-6, Amendment in May 1998, Part I, 3.1: “For greater certainty, a discriminatory practice includes a practice based on one or more prohibited grounds of discrimination or on the effect of a combination of prohibited grounds.”

<sup>118</sup> Bill C-150: Canada’s Parliament, including Justice Minister Pierre Trudeau, passed a bill decriminalizing gay sex for the first time in Canada’s history in May 1969.

<sup>119</sup> “2SLGBTQI+” is the acronym used by the Government of Canada to refer to: 2S: at the front, recognizes Two-Spirit people as the first 2SLGBTQI+ communities; L: Lesbian; G: Gay; B: Bisexual; T: Transgender; Q: Queer; I: Intersex, considers sex characteristics beyond sexual orientation, gender identity and gender expression; +: is inclusive of people who identify as part of sexual and gender diverse communities, who use additional terminologies; at <https://www.canada.ca/en/women-gender-equality/free-to-be-me/2slgthqi-plus-glossary.html>.

In 2005, the Civil Marriage Act made same-sex marriage legal at the federal level and was recognized throughout Canada. Canada was the fourth country in the world to legalize same-sex marriage.<sup>120</sup> In June 2019, the Immigration, Refugees and Citizenship Department of the Government of Canada announced that Canadian citizens and residents who do not identify exclusively as female or male can have an “X” printed on their passport, travel document, citizenship certificate, or permanent resident card.<sup>121</sup> In addition, starting from data collected for the year 2021, “Canada is the first country to provide census data on transgender and non-binary people.”<sup>122</sup>

## ***2. Rights of Indigenous Population***

Although it does not seem to be attracting as much attention in society as the recent developments of 2SLGBTQI+-related legislation, there is a deep historical connection between the legislation of anti-discrimination laws and the rights of indigenous peoples, both in Japan and Canada.

Canada’s indigenous people,<sup>123</sup> who consist of Indians (referred to as First Nations), Métis, and Inuit, are estimated to comprise approximately 1,807,250 people, or 5% of the total population of Canada, according to the latest statistics.<sup>124</sup> The Ainu people, who are Japan’s indigenous people, are estimated to comprise a population of approximately 13,118 people, or 0.01% of Japan’s total population,<sup>125</sup> according to the latest 2017 statistics. Furthermore, as a problem common to Japan, Canada and many other countries which have resident indigenous peoples around the world, there is often a sharp divide between generations that want to resist assimilation policies and those that want to conform to them, making it difficult to be united in asserting their indigenous rights.

For many decades, First Nations people were not provided with full access to human rights protection, due in part to Section 67 of the Canadian Human Rights Act, which specifically excluded providing rights to indigenous people by preserving the status of the Indian Act (a piece of legislation that consolidated a number of early colonial laws that sought to control and assimilate indigenous people into Euro-Canadian culture).<sup>126</sup> The legislation was finally repealed in 2008 and First Nations individuals are now afforded protections against discrimination and bring claims to the Canadian Human Rights Commission.<sup>127</sup>

Those processes by the Canadian Human Rights Commission and the Canadian Human Rights Tribunal have actually influenced legislation and amendments to the Canadian Act, and

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<sup>120</sup> Canada (July 20, 2005) is the fourth country after the Netherlands (April 1, 2001), Belgium (June 1, 2003) and Spain (July 3, 2005). As of November 2024, same-sex marriage has been legalized in 37 countries around the world, Equal Marriage Alliance Japan at <http://emajapan.org/promssm/world>.

<sup>121</sup> See release “Canadians can now identify as gender “X” on their passports” at <https://www.canada.ca/en/immigration-refugees-citizenship/news/notice/gender-x-documents.html>.

<sup>122</sup> See Statistics Canada release, “Canada is the first country to provide census data on transgender and non-binary people.” at <https://www150.statcan.gc.ca/n1/daily-quotidien/220427/dq220427b-eng.htm>.

<sup>123</sup> The Canadian Constitution recognizes three distinct groups of Indigenous (Aboriginal) peoples: Indians (referred to as First Nations), Métis and Inuit at <https://www.canada.ca/en/canadian-heritage/services/rights-indigenous-peoples.html>.

<sup>124</sup> Statistics Canada, Statistics on Indigenous Peoples at [https://www.statcan.gc.ca/en/subjects-start/indigenous\\_peoples](https://www.statcan.gc.ca/en/subjects-start/indigenous_peoples).

<sup>125</sup> “The total population was 126,706 thousand,” Statistics Bureau of Japan, Summary of Results - Current Population Estimates as of October 1, 2017 at <https://www.stat.go.jp/english/data/jinsui/2017np/index.html>.

<sup>126</sup> Canadian Human Rights Act (R.S.C., 1985, c. H-6), Section 67 “Nothing in this Act affects any provision of the Indian Act or any provision made under or pursuant to that Act.” at <https://laws-lois.justice.gc.ca/eng/acts/h-6/>.

<sup>127</sup> See Annual Report 2023 of Canadian Human Rights Tribunal “First Nations Band Council was the respondent in 26% of the hearings by the Canadian Human rights Tribunal in 2023.” at <https://www.chrt-tcdp.gc.ca/en/about-us/publications/annual-report-2023>.

this is a blueprint that could be referenced by lawmakers in Japan to provide lessons for the assertion of the rights of indigenous peoples in Japan as well.

## **FINAL THOUGHTS**

Although this memo does not detail all of the cultural, legal and societal issues related to the prevalence of discrimination and the challenges towards implementing progressive and comprehensive anti-discrimination legislation in Japan, it attempts to give a brief overview of the unique challenges that Japan faces in strengthening the relevant domestic legislation. By giving a more detailed account of legislation and initiatives undertaken in the United Kingdom, New Zealand and Canada to define discrimination and broaden the scope of protected characteristics, this memo attempts to identify legislative approaches that Japanese lawmakers should consider in order to revise and strengthen current laws, or else enact new and more comprehensive laws altogether. Although there are regional and cultural differences that are important to consider, such measures could help Japan to fully embrace the human rights principles that it adheres to as a signatory of the Universal Declaration of Human Rights. In light of the Ministry of Health, Labor and Welfare's recent commitment to consider amending laws to eradicate harassment in the workplace in November 2024, albeit without any specific obligations or punitive measures, this may be the perfect opportunity to advocate Japanese lawmakers to go beyond these limited reforms and more broadly adopt comprehensive anti-discrimination laws.<sup>128</sup>

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<sup>128</sup> See “ハラスメント根絶へ法改正「許されない」と理念、明記検討”, Yahoo! Japan News, at <https://news.yahoo.co.jp/pickup/6520468>.