

Quebec (AG) v A (2013): Rights and Obligations of Quebec Common Law Partners

Introduction

On January 25, 2013 the Supreme Court of Canada ruled^[1] that the exclusion of common law partners from the *Civil Code of Quebec*^[2] does not violate the right to equality guaranteed under section 15 of the *Canadian Charter of Rights and Freedoms (Charter)*.^[3] The *Civil Code of Quebec* governs the legal duties and rights of married and civil union spouses^[4] upon their separation.^[5] In *Quebec (AG) v A*, the Supreme Court did not extend the benefits and obligations of the *Civil Code of Quebec* to common law partners in order to respect their freedom to choose not to marry.^[6] The following Featured Court Ruling summarizes the judgment, and it highlights the ongoing evolution of the section 15 test used by courts to analyze discrimination claims.

Facts

The Parties

A and B were in a common law relationship from 1995 to 2002.^[7] They met in A's home country, Brazil, in 1992. At that time, A was a 17 year old student, and B was a wealthy 32 year old business owner. In 1995, A moved to Canada to continue a relationship with B. During the seven years A and B cohabitated, A had three children. On at least two occasions, A told B that she wanted to be married, but B refused because he did not believe in the institution of marriage. The relationship ended in 2002, and A began proceedings seeking custody of the children, spousal support, a lump sum support payment, and use of the family home. A also notified the Quebec Attorney General that she intended to challenge several provisions in the *Civil Code of Quebec*.^[8] A claimed that some of the provisions were discriminatory because they did not give the same benefits and obligations to common law partners as those given to married and civil union spouses.^[9] *Quebec (AG) v A* only deals with the constitutional challenges to the *Civil Code of Quebec*.^[10]

The *Civil Code of Quebec*

The *Civil Code of Quebec* governs the legal duties and rights of married and civil union spouses upon their separation, but the legislation completely excludes common law couples.^[11] A argued that the outright exclusion of common law couples from the legislation violated the *Charter* right to equality guaranteed under section 15.^[12] She challenged the *Civil Code of Quebec* provisions relating to three separate issues: (1) spousal support, (2) division of property, and (3) compensatory allowance.^[13]

Article 585 of the *Civil Code of Quebec* states: “Married and civil union spouses...owe each other support.”[\[14\]](#) The Quebec legislature introduced this article to acknowledge that people who marry or enter into a civil union create a social and economic partnership. When couples breakup, one spouse may require support from the other to maintain a comfortable lifestyle.[\[15\]](#) Spousal support is not available to common law spouses under the *Civil Code of Quebec*.[\[16\]](#)

Article 414 of the *Civil Code of Quebec* states: “Marriage entails the establishment of a family patrimony consisting of certain property of the spouses regardless of which of them holds a right of ownership in that property.”[\[17\]](#) According to this article, both spouses in a marriage or a civil union have a right to the family property, even if one spouse has the legal title. In common law relationships, however, each spouse only has a right to property that he or she can prove is his or her own.[\[18\]](#)

Article 427 of the *Civil Code of Quebec* defines compensatory allowance as money or property given to one spouse by the other as compensation for increasing the value of the spouse or the property during a marriage or civil union.[\[19\]](#) Common law couples are not eligible for compensatory allowance under the *Civil Code of Quebec*.[\[20\]](#)

Procedural History

In 2009, a Quebec Superior Court judge dismissed A’s constitutional challenge to the *Civil Code of Quebec*.[\[21\]](#) The trial judge ruled that the legislation did not discriminate against common law partners. For the discrimination claim, A had to prove (1) the legislation drew a distinction between common law partners and married or civil union spouses, and (2) the distinction deprived A of a benefit or imposed a burden that was a result of stereotypical or prejudicial attitudes.[\[22\]](#) The judge ruled that the legislation did draw a distinction between common law partners and married or civil union spouses. However, this distinction protected people’s freedom of choice, and this did not impose a burden or deny a benefit to common law couples.[\[23\]](#) A appealed this decision to the Quebec Court of Appeal, claiming her right to equality under section 15 of the *Charter* had been violated.[\[24\]](#)

In 2010, the Quebec Court of Appeal unanimously ruled[\[25\]](#) that article 585 (spousal support) of the *Civil Code of Quebec*[\[26\]](#) violated section 15 of the *Charter* (right to equality), and that it was not justified under section 1 of the *Charter*.[\[27\]](#) The Court of Appeal justices disagreed about the appropriate remedy. Justices Dutil and Giroux ordered a declaration of invalidity for article 585, but stated that the declaration should be suspended for 12 months without an exemption for A.[\[28\]](#) Justice Beauregard stated that article 585 should be applied immediately to common law spouses.[\[29\]](#) The Court ruled that the other sections of the *Civil Code of Quebec*, relating to the division of property and compensatory allowance, did not violate section 15 because the legislature wanted to preserve people’s freedom to choose to marry or to enter into a civil union.[\[30\]](#) In other words, if a couple chooses to live in a common law relationship, obligations associated with division of property and compensatory allowance should not be imposed upon common law couples as if they were married or in a civil union.

A appealed the Quebec Court of Appeal decision to the Supreme Court of Canada for two reasons: (1) A wanted multiple articles of the *Civil Code of Quebec* declared unconstitutional, and (2) A wanted an immediate remedy - that is, A wanted article 585 (spousal support) to apply immediately to common law couples.^[31] B and the Attorney General of Quebec also appealed the decision to the Supreme Court, arguing that the provisions in the *Civil Code of Quebec* dealing with spousal support, division of property, and compensatory allowance were constitutional.^[32]

Issues

The Supreme Court of Canada considered the following issues:

1. Does the exclusion of common law spouses from the *Civil Code of Quebec* violate the right to equality guaranteed under section 15 of the *Charter*?^[33]
2. If so, is the violation justified under section 1 of the *Charter*?^[34]
3. If the violation is not justified under section 1 of the *Charter*, what is the legal remedy for the claimant?^[35]

Decision

1. A 5-4 majority of justices on the Supreme Court of Canada (Justices Abella, Deschamps, Cromwell, Karakatsanis, and Chief Justice McLachlin) ruled that the *Civil Code of Quebec* violated the right to equality guaranteed in section 15 of the *Charter*.^[36] Justice LeBel (writing for himself, and Justices Fish, Rothstein, and Moldaver) wrote the dissent, and determined there was no violation of section 15. In other words, the dissent determined that the *Civil Code of Quebec* was constitutional.^[37]
2. Even though a majority of justices ruled that the *Civil Code of Quebec* violated section 15 of the *Charter*, Chief Justice McLachlin ruled that the violations were justified under section 1 of the *Charter*.^[38] As a result of the Chief Justice's ruling, the majority of the Supreme Court of Canada (Justices LeBel, Fish, Rothstein, and Moldaver and Chief Justice McLachlin) determined that the *Civil Code of Quebec* was constitutional.^[39] Justice Abella ruled that none of the *Civil Code of Quebec* provisions in question were justified under section 1 of the *Charter*.^[40] Justices Deschamps, Cromwell, and Karakatsanis ruled that article 585 of the *Civil Code of Quebec* was not justified under section 1 of the *Charter*, but the remaining provisions in question were justified.^[41]
3. A's appeal was dismissed, and no remedy was necessary.

Court's Analysis

Issue 1: Does the exclusion of common law spouses from the *Civil Code of Quebec* violate section 15 of the *Charter*?

Section 15 in *Withler v Canada (AG)*

In 2011, the Supreme Court of Canada modified the test used to establish a violation of section 15 of the *Charter*.^[42] *Withler v Canada (AG)* involved a challenge by spouses of deceased members of the Civil Service and the Canadian Armed forces.^[43] The claimants alleged that specific legislative provisions governing survivor benefits violated their right to equal treatment under section 15 of the *Charter*.^[44] The Supreme Court ruled that a section 15 claim requires two steps:

1. The legislation must create a distinction based on enumerated or analogous grounds, and
2. The distinction must create a disadvantage by perpetuating prejudice or stereotyping.^[45]

The first step of a section 15 analysis is largely a comparative exercise.^[46] Claimants assert that they are being deprived a benefit or forced to incur a burden based on an enumerated or [analogous ground](#).^[47] Enumerated grounds are the personal characteristics listed in section 15 of the *Charter*, such as age, sex, and religion.^[48] Analogous grounds are not written in section 15 of the *Charter* but they may arise over the course of time.^[49] They are similar to those grounds that are enumerated because analogous grounds are also based on personal characteristics that people cannot change or are “changeable only at an unacceptable personal cost.”^[50]

Prior to *Withler v Canada (AG)*, claimants were required to find a group to be compared to in order to establish that there was a distinction in the way that the claimant group and the other group were treated.^[51] This group was referred to as the “comparator group.” The *Withler v Canada (AG)* judgment noted that there were problems with the comparator group analysis and therefore concluded that it is “unnecessary to pinpoint a particular group that precisely corresponds to the claimant.”^[52] Following the ruling in *Withler v Canada (AG)*, the first step of the section 15 analysis no longer requires a comparator group analysis. It is satisfied if a distinction has been established based on an enumerated or analogous ground.^[53]

The Supreme Court lessened the emphasis on “comparator groups” because such a rigid analysis does little to achieve substantive equality.^[54] Section 15 of the *Charter* has long been recognized as a tool to achieve substantive equality as opposed to formal equality.^[55] Whereas formal equality refers to the idea that persons who are similarly situated should be treated the same, substantive equality acknowledges that “identical treatment may frequently produce serious inequality.”^[56] As a result, substantive equality requires the courts to examine the impact of a law on the claimants rather than to engage in a comparative exercise that might deny them the opportunity to address that impact.^[57]

The second step of the section 15 analysis requires an examination of the “social, political, economic and historical factors concerning the group.”^[58] This is to assist with determining the impact of the alleged discriminatory act on that group. In *R v Law*, a Supreme Court judgment dealing with a discrimination claim under section 15 of the *Charter*, four contextual factors were identified: (1) pre-existing disadvantage, (2) correspondence with actual characteristics, (3) impact on other groups, and (4) the nature of the interest affected. ^[59] *R v Kapp*, another case dealing with section 15 of the *Charter*,

came after *R v Law* and addressed the issue of whether all or only some of the contextual factors needed to be addressed.^[60] *R v Kapp* did not eliminate the contextual factors but it made clear that not all of the factors must be considered. This decision was arrived at because it became too difficult for claimants to address all of the contextual factors.^[61] The Court in *Withler v Canada (AG)* followed the *R v Kapp* decision and noted that the contextual factors used to examine the alleged discrimination are varied with every case, making it easier for complainants to argue their case.^[62]

Majority's Analysis of Section 15 in *Quebec (AG) v A*

Justice Abella, Justice Deschamps (writing for herself and Justices Cromwell and Karakatsanis), and Chief Justice McLachlin wrote separate judgments, but they all agreed that the *Civil Code of Quebec* violated A's right to equality as guaranteed under section 15 of the *Charter*.^[63] The exclusion of common law partners from the spousal support provisions of the *Civil Code of Quebec* was discriminatory.^[64]

The first step in the section 15 test established in *Withler v Canada (AG)* was followed by the majority. The majority ruled that the *Civil Code of Quebec* creates a distinction between married or civil union spouses and common law partners by providing economic protection for individuals in formal unions but not for common law spouses.^[65] The distinction is based on marital status, a recognized analogous ground.^[66]

However, the majority and the dissent interpreted the second step of the section 15 analysis differently. Justice Abella noted that for a law to be discriminatory, it does not have to perpetuate prejudice or stereotypes.^[67] For Justice Abella, prejudice and stereotypes are examples of discriminatory attitudes. If a section 15 analysis is focused solely on *attitudes*, it may fail to catch a law that has discriminatory *effects*.^[68] For instance, Justice Abella acknowledged that unmarried persons were historically considered to have adopted a lifestyle less worthy of respect than that of married persons, and this is clearly a discriminatory attitude based on prejudice and stereotypes. Evidence offered to the Court, however, suggests that public opinion has changed, such that common law couples are no longer viewed negatively. Nonetheless, the legislation has discriminatory effects because it does not provide the same benefits and obligations to common law partners as those given to married and civil union couples. Justice Abella's interpretation of the second step of the section 15 test is less concerned with discriminatory attitudes (i.e. prejudice and stereotypes) and more focused on examining the negative effects of the law on the group.^[69]

Justice Deschamps, agreeing with Justice Abella, ruled that prejudice and stereotyping are not necessary for a section 15 analysis. Specifically, Justice Deschamps agreed that common law couples have suffered historical disadvantage, but society has largely changed its attitude towards common law relationships. Additionally, there is no evidence that the legislature intended to discriminate against common law couples; however, intention is irrelevant because discrimination can result from the effect of a law or practice rather than from the deliberate intention to discriminate. In this case, the *Civil Code of Quebec* does in fact discriminate because it perpetuates the historic disadvantage suffered by common law

spouses.[70]

Chief Justice McLachlin also agreed with Justice Abella's section 15 analysis. Specifically, the Chief Justice ruled that perpetuating prejudice and stereotyping are not necessary for a discrimination claim because a section 15 analysis requires a broader contextual approach.[71] The focus of the analysis needs to be on establishing negative effects on the complainant group.

Dissent's Analysis of Section 15 in *Quebec (AG) v A*

Justice LeBel (writing for himself and Justices Fish, Rothstein, and Moldaver) dissented on the section 15 analysis by finding that the *Civil Code of Quebec* did not violate A's right to equality. The dissent agreed with the majority that the *Civil Code of Quebec* draws a distinction based on marital status, a recognized analogous ground. However, contrary to the majority judgment, the dissent argued that the distinction drawn by the legislation did not violate the guarantee of substantive equality because the distinction is neither prejudicial nor stereotypical.[72]

Justice LeBel ruled that prejudice can exist in two ways: (1) if a law promotes a view that an individual is less capable or worthy of recognition as a human being or (2) if a law establishes a hierarchy between different groups of people.[73]

Addressing the first point, Justice LeBel noted that common law couples were historically viewed negatively and as less deserving of recognition; however, establishing a past history of discrimination is insufficient. The dissent ruled that a claimant must also show that the prejudicial attitude continues. Common law couples in Quebec are not currently viewed negatively by the public or legislation. As a result, the *Civil Code of Quebec* is not prejudicial because it does not promote the view that common law spouses are less worthy of respect. Addressing the second requirement for establishing prejudice, Justice LeBel determined that the *Civil Code of Quebec* does not favour one type of union over another. Everyone, including common law spouses, can be subject to the benefits and obligations in the *Civil Code of Quebec* provided they consent to marriage or a civil union. This fact demonstrates that the legislation does not prioritize one type of relationship.[74]

Justice LeBel ruled that a law discriminates based on stereotypes if the law is premised on personal traits or circumstances that do not correspond to the individual needs, capacities, or merits of the claimant.[75] In this case, the *Civil Code of Quebec* is premised on the belief that people have free will, and can therefore choose to be married or enter into civil unions. If free will and autonomy were shown to be non-existent, then the *Civil Code of Quebec* would discriminate based on stereotypes. Justice LeBel noted that there was no evidence suggesting that freedom of choice did not correspond to the reality of the claimant. As a result, the *Civil Code of Quebec* does not stereotype.[76]

Issue 2: Is the violation of section 15 justified under section 1 of the *Charter*?

Like all *Charter* rights, the right to equality is not absolute. Section 1 of the *Charter* allows

rights to be limited.[77] Once a court finds that a *Charter* right or freedom is violated by a piece of legislation, as in this case, it must then consider the arguments put forward by the Government about the reasonable and justifiable nature of that legislation. To determine whether the *Civil Code of Quebec* reasonably violated the right to equality, the five justice majority performed a [section 1 analysis](#).[78] Justices Abella and Deschamps and Chief Justice McLachlin each wrote a separate judgment. The dissent, finding no violation of section 15, did not perform a section 1 analysis.[79]

A section 1 analysis asks two questions:

1. Is the objective sufficiently important?

The objective served by the legislation must be sufficiently important to infringe a constitutionally guaranteed right or freedom. To prove that the objective is sufficiently important, the Government must demonstrate that the objective relates to concerns which are pressing and substantial in a free and democratic society.[80] The objective of the *Civil Code of Quebec* is to preserve people's freedom to choose to marry, to enter into a civil union, or to live as a common law couple.[81] The five justice majority agreed that preserving freedom of choice is a sufficiently important objective to limit the constitutional right to equality.[82]

2. Is the limit proportional to the objective?

The limit on the freedom must be proportional to the objective of the legislation. Three questions are asked to determine proportionality: (A) Is the legislation rationally connected to the legislation's objective? (B) Does the legislation limit the constitutional right or freedom as little as possible? (C) Do the benefits of the objective outweigh the negative effects of limiting a constitutionally protected freedom?[83]

A. Rational Connection

The five justice majority agreed that the legislation was rationally connected to the objective of preserving people's freedom of choice. The *Civil Code of Quebec*, and all the benefits and obligations associated with it, only governs people if they choose to marry or enter into civil unions. The legislation requires people to make an active choice, and this is consistent with the objective of enhancing autonomy.[84]

B. Minimal Impairment

The minimal impairment requirement of the proportionality test requires the legislation to only minimally limit the right to equality while still achieving its objective. Justice Abella ruled that the *Civil Code of Quebec* fails the minimal impairment part of the proportionality test because of the outright exclusion of common law couples.[85] Under the minimal impairment branch, the government must "explain why a significantly less intrusive and equally effective measure was not chosen." [86] Justice Abella ruled that a suitable alternative to the current *Civil Code of Quebec* would be a presumptively protective scheme.[87] Under this alternative, common law couples would automatically have the same

benefits as married and civil union couples. If common law couples did not want these benefits and obligations, they would have the ability to opt-out of the scheme. A presumptively protective scheme protects economically vulnerable partners and preserves freedom of choice.[\[88\]](#)

Justice Deschamps agreed with Justice Abella, and she ruled that article 585 (spousal support) of the *Civil Code of Quebec* is not minimally impairing.[\[89\]](#) Specifically, Justice Deschamps noted that because common law couples are completely excluded from the spousal support provisions, without any exceptions, this is sufficient to rule that the legislation fails the minimal impairment test.[\[90\]](#)

Unlike Justice Abella, Justice Deschamps distinguished between article 585 (spousal support) and the articles dealing with the division of property.[\[91\]](#) For Justice Deschamps, spousal support is granted to one spouse as recognition that people in common law relationships become dependent on one another. Common law couples often have “no real control” over this interdependence; it is something that simply occurs with time.[\[92\]](#) On the other hand, couples who acquire property together must do it deliberately. Justice Deschamps argued that it would be unfair for the Government to impose laws that demand common law couples to share property when that was clearly not their intention.[\[93\]](#) Because of this, Justice Deschamps ruled that the provisions dealing with division of property were minimally impairing.

Chief Justice McLachlin ruled that all of the articles in question satisfy the minimal impairment test. A presumptively protective scheme would not achieve the government’s objective. A presumptive scheme makes decisions for people, regardless of their individual choices. Free will and autonomy would not be respected if a presumptively protective scheme was to be applied to common law couples.[\[94\]](#)

C. Benefits of the Objective and Negative Effects

Under a presumptively protective scheme, Justice Abella determined that freedom of choice would be preserved without any violation of the right to equality. As a result, Justice Abella ruled that preserving freedom of choice did not outweigh the negative effects of exposing economically vulnerable people to serious harm.[\[95\]](#)

With respect to article 585, Justice Deschamps agreed with Justice Abella. For the remaining provisions, however, Justice Deschamps ruled that the benefits of the objective do outweigh the negative effects. Legal measures exist for common law partners to divide property, such as making a claim for unjust enrichment and entering into a formal union, such as marriage or a civil union. Because other options exist, preserving choice outweighs the violation of the right to equality.[\[96\]](#)

Chief Justice McLachlin determined that the legislature’s decision should be respected when it enacts laws that address social and policy concerns. That being noted, the negative effects of the legislation did not outweigh the benefits of the objective such that the *Civil Code of Quebec* should be ruled unconstitutional.[\[97\]](#)

Issue 3: What is the remedy for the claimant?

Five justices (Justices LeBel, Fish, Rothstein, and Moldaver and Chief Justice McLachlin) ruled that the *Civil Code of Quebec* was constitutional, and therefore, A's right to equality under section 15 was not violated. A's appeal was dismissed.

Significance of the Ruling

The Supreme Court of Canada has struggled with establishing a framework for assessing discrimination claims since its first case on section 15 of the *Charter* in 1989, *Andrews v Law Society of British Columbia*.^[98] Courts must address claims of discrimination in a uniform manner while avoiding an overly rigid test that can produce injustice. While earlier Supreme Court judgments tried to create a unified approach,^[99] the *Quebec (AG) v A* case clearly demonstrates that the Court remains divided because the individual justices applied the section 15 test differently.^[100] Specifically, it is unclear whether a claimant must prove prejudice or stereotyping in order to prove that a distinction based on a protected ground is discriminatory. If the test were more clearly stated, there would be greater clarity and unanimity from the Court. As a result of *Quebec (AG) v A*, lower courts do not have a clear guiding principle for section 15 claims, and, most likely, the Supreme Court will be asked in the future to explain and modify the test for discrimination yet again.^[101]

The 5-4 majority of the Supreme Court ruled that the *Civil Code of Quebec* was constitutional because it did not unjustifiably discriminate against common law couples.^[102] Considering that the Court did not think it appropriate to extend the benefits of the *Civil Code of Quebec* to common law partners, it always remains within the power of the Quebec legislature to amend the legislation. Following the release of the *Quebec (AG) v A* decision, Quebec Justice Minister Bertrand St-Arnaud said the Quebec Government was not ruling out legislative reform.^[103]

Additionally, this judgment may prompt other provincial legislatures to reconsider the common law benefits currently being offered in their own provinces. British Columbia, for example, recently amended its family law legislation.^[104] Under the new legislation, British Columbia couples who live together for two years now have all of the same legal rights as married spouses.^[105] Quebec's and British Columbia's legislation relating to common law spouses represents two extremes. On the one hand, Quebec has totally excluded common law partners from the rights given to married couples. On the other hand, British Columbia has given identical rights to common law and married couples. As of right now, Alberta has adopted a middle of the road approach. For example, common law partners in Alberta who separate have rights similar to married couples concerning spousal support, but the same is not true for division of property. Upon separation, common law spouses are only entitled to the property that he or she owns, whereas married couples' property is divided equally between the partners.^[106] As society's perception of what constitutes a traditional family continues to evolve, changes in the legislation seem inevitable.

[1] *Quebec (AG) v A*, 2013 SCC 5 .

[2] Arts 401-30, 432-33, 448-84, 585 *Civil Code of Quebec* [CCQ].

[3] *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act, 1982*, being

Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (“[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability,” s 15(1)).

[4] A civil union is a legal contract between partners that is recognized by the government as conferring all or some of the rights conferred by marriage, but without the implicit historical and religious meaning associated with marriage. Individuals who wish to form a civil union are subject to the same rules as people who wish to marry.

[5] CCQ, *supra* note 2.

[6] *Ibid*; *Quebec*, *supra* note 1 at paras 358, 438, 449; A common law relationship is where two people live together as a couple without being married or in a civil union.

[7] As is typical in family law cases, the parties were not referred to by their real names.

[8] CCQ, *supra* note 2.

[9] *Ibid*.

[10] *Quebec*, *supra* note 1; CCQ, *supra* note 2.

[11] *Ibid*.

[12] *Charter*, *supra* note 3.

[13] CCQ, *supra* note 2.

[14] *Ibid*, art 585.

[15] *Quebec*, *supra* note 1 at paras 80, 86.

[16] CCQ.

[17] *Ibid*, art 414.

[18] Justice Quebec, *De facto spouses*, online: Justice Quebec.

[19] Art 427 CCQ.

[20] CCQ.

- [21] CCQ, *supra* note 2; *A v B*, 2009 QCCS 3210, 67 RFL (6th) 315 <<http://www.canlii.org/en/qc/qccs/doc/2009/2009qccs3210/2009qccs3210.html>>.
- [22] *Ibid* at para 211.
- [23] *Ibid* at paras 222, 272, 283.
- [24] *Charter*, *supra* note 3.
- [25] *A v B*, 2010 QCCA 1978 <<http://www.canlii.org/en/qc/qcca/doc/2010/2010qcca1978/2010qcca1978.html>>.
- [26] Art 585 CCQ.
- [27] *Charter*, *supra* note 3, ss 1, 15(1).
- [28] *A v B*, *supra* note 21 at para 155.
- [29] *Ibid* at para 199.
- [30] *Ibid* at para 60; CCQ, *supra* note 2; *Charter*, *supra* note 3.
- [31] CCQ, *supra* note 2.
- [32] *Ibid*.
- [33] *Ibid*; *Charter*, *supra* note 3.
- [34] *Ibid*, s 1 (“[t]he *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society,” s 1).
- [35] *Ibid*.
- [36] CCQ, *supra* note 2; *Charter*, *supra* note 3; *Quebec*, *supra* note 1 at paras 357, 382, 415.
- [37] *Ibid* at para 281; *Charter*, *supra* note 3; CCQ, *supra* note 2.
- [38] *Ibid*; *Charter*, *supra* note 3, ss 1, 15; *Quebec*, *supra* note 1 at para 415.
- [39] *Ibid* at paras 281, 415; CCQ, *supra* note 2.
- [40] *Ibid*; *Quebec*, *supra* note 1 at para 380; *Charter*, *supra* note 3, s 1.
- [41] Art 585 CCQ; *Quebec*, *supra* note 1 at para 383; *Charter*, *supra* note 3, s 1.
- [42] *Ibid*, s 15.
- [43] *Withler v Canada (AG)*, 2011 SCC 12, [2011] 1 SCR 396 <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/7925/index.do>>.

[44] *Charter*, *supra* note 3; *Withler*, *supra* note 44 at para 1.

[45] *Ibid* at para 30; *Charter*, *supra* note 3.

[46] *Withler*, *supra* note 44 at para 62.

[47] *Ibid*; Constitutional Keywords, *Analogous grounds*, Centre for Constitutional Studies.

[48] *Charter*, *supra* note 3.

[49] *Ibid*; *Miron v Trudel*, [1995] 2 SCR 418 <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1264/index.do>> (marital status is an analogous ground); *Egan v Canada*, [1995] 2 SCR 513 <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1265/index.do>> (sexual orientation is an analogous ground).

[50] *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 60 <<http://csc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1704/index.do>>.

[51] See especially *Auton (Guardian ad litem of) v British Columbia (AG)*, 2004 SCC 78, [2004] 3 SCR 657 <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2195/index.do>>.

[52] *Withler*, *supra* note 44 at para 63.

[53] *Ibid*.

[54] *Ibid* at para 55.

[55] See *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 <<http://www.canlii.org/en/ca/scc/doc/1989/1989canlii2/1989canlii2.html>>; *Charter*, *supra* note 3.

[56] *Andrews*, *supra* note 56 at 164.

[57] See *Lovelace v Ontario*, 2000 SCC 37 at para 53, [2000] 1 SCR 950 <<http://www.canlii.org/en/ca/scc/doc/2000/2000scc37/2000scc37.html>>.

[58] *Withler*, *supra* note 44 at para 39.

[59] *Charter*, *supra* note 3; *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497 <<http://www.canlii.org/en/ca/scc/doc/1999/1999canlii675/1999canlii675.html>> (the four contextual factors were first articulated in this case).

[60] *Ibid*; *R v Kapp*, 2008 SCC 41 <<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/5696/index.do>>; *Charter*, *supra* note 3.

- [61] *Kapp*, *supra* note 61.
- [62] *Ibid*; *Withler*, *supra* note 44 at para 43.
- [63] *Quebec*, *supra* note 1 at paras 357, 382, 415; *CCQ*, *supra* note 2; *Charter*, *supra* note 3.
- [64] *CCQ*, *supra* note 2.
- [65] *Ibid*; *Quebec*, *supra* note 1 at para 357.
- [66] *Miron*, *supra* note 50.
- [67] *Quebec*, *supra* note 1 at 325.
- [68] *Ibid* at para 327.
- [69] *Ibid* at para 357.
- [70] *Ibid* at paras 382, 385; *CCQ*, *supra* note 2.
- [71] *Quebec*, *supra* note 1 at paras 416, 418.
- [72] *Ibid* at para 281; *CCQ*, *supra* note 2; *Charter*, *supra* note 3.
- [73] *Quebec*, *supra* note 1 at para 243.
- [74] *Ibid* at paras 244, 248-49, 255-56; *CCQ*, *supra* note 2.
- [75] *Quebec*, *supra* note 1 para 201.
- [76] *Ibid* at paras 269, 271-72; *CCQ*, *supra* note 2.
- [77] *Charter*, *supra* note 3, s 1.
- [78] *R v Oakes*, [1986] 1 SCR 103, 26 DLR (4th) 200 <<http://www.canlii.org/en/ca/scc/doc/1986/1986canlii46/1986canlii46.html>> (established the test for a section 1 analysis); Constitutional Keywords, *Balancing rights (section 1)*, Centre for Constitutional Studies.
- [79] *Quebec*, *supra* note 1 at para 281.
- [80] *Oakes*, *supra* note 79.
- [81] *CCQ*, *supra* note 2.
- [82] *Quebec*, *supra* note 1 at paras 358, 394, 435.
- [83] *Oakes*, *supra* note 79.
- [84] *Quebec*, *supra* note 1 at paras 359, 394, 400, 438.

- [85] CCQ, *supra* note 2; *Quebec*, *supra* note 1 at para 360.
- [86] *Ibid* at para 362.
- [87] CCQ, *supra* note 2; *Quebec*, *supra* note 1 at para 360.
- [88] *Ibid*.
- [89] CCQ, *supra* note 2; *Quebec*, *supra* note 1 at para 395.
- [90] *Ibid* at para 399.
- [91] *Ibid* at para 382.
- [92] *Ibid* at para 403.
- [93] *Ibid* at para 403.
- [94] *Ibid*.
- [95] *Ibid* at para 379.
- [96] *Ibid* at paras 401-06.
- [97] *Ibid* at para 449.
- [98] *Law*, *supra* note 60; *Charter*, *supra* note 3.
- [99] *Andrews*, *supra* note 56; *Law*, *supra* note 60; *Kapp*, *supra* note 61; *Withler*, *supra* note 44.
- [100] *Quebec*, *supra* note 1.
- [101] *Ibid*; *Charter*, *supra* note 3.
- [102] *Quebec*, *supra* note 1; CCQ, *supra* note 2.
- [103] Rhéal Séguin, "Despite top court ruling, Quebec open to changing spousal-support law" *The Globe and Mail* (25 January 2013), online: The Globe and Mail <<http://www.theglobeandmail.com/news/national/despite-top-court-ruling-quebec-open-to-changing-spousal-support-law/article7858974/>>.
- [104] Justine Ma & Jesara Sinclair, "Common-law couples as good as married in B.C." *CBC News* (19 March 2013), online: CBC News <<http://www.cbc.ca/news/canada/british-columbia/story/2013/03/18/bc-common-law-property-rules.html>>.
- [105] *Family Law Act*, SBC 2011, c 25.
- [106] Alberta Human Services, *Alberta's Adult Interdependent Relationships Act and you*,

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<<http://humanservices.alberta.ca/guardianship-trusteeship/opt-adult-interdependent-relationships-act-and-you.html>>.