

# Analogous Grounds

The equal rights guarantee under section 15 of the *Canadian Charter of Rights and Freedoms* is an inclusive one, in the sense that equality is guaranteed not only on the enumerated grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, but also on ‘analogous grounds’ of discrimination. In its decision in *Miron v. Trudel* ([1995] 2 S.C.R. 418), the Supreme Court of Canada identified a number of factors to consider in determining whether a group or personal characteristic is analogous to those enumerated under section 15, and so deserving of *Charter* protection.

Such factors include whether the group sharing the characteristic has been the object of historical stereotyping, prejudice or disadvantage; whether the group constitutes a “discrete and insular minority” which is lacking in political power or influence; whether the characteristic is beyond an individual’s control or “changeable only at unacceptable personal cost”; and whether the characteristic is recognized as a prohibited ground of discrimination under other human rights laws, or is similar in any other way to the grounds explicitly included under section 15.

Among the analogous grounds of discrimination recognized by the Supreme Court are citizenship status (see *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, *Lavoie v. Canada*, [2002] S.C.J. No. 24), sexual orientation (see *Egan v. Canada*, [1995] 2 S.C.R. 513, *Vriend v. Alberta*, [1998] 1 S.C.R. 493), marital status (see *Miron v. Trudel*, above) and off-reserve band member status (*Corbiere v. Canada*, [1999] 2 S.C.R. 203).

Sources:

- R.J. Sharpe & K.E. Swinton, “Equality” in R.J. Sharpe & K.E. Swinton, *The Charter of Rights and Freedoms* (Toronto: Irwin Law, 1998) 184.