Equality Rights

Section 15 of the *Canadian Charter of Rights and Freedoms* states:

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

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

Equality rights in section 15(1) of the *Charter*

Section 15(1) of the *Charter* is meant to promote equality and protect Canadians from laws and government actions that discriminate against them because of who they are.[2] A law or government action violates the *Charter*'s equality guarantee when it creates a distinction between people based on grounds such as sex, race, age, or disabilities (referred to as "enumerated grounds"), and causes a discriminatory impact.[3]

The Supreme Court of Canada has also stated that Canadians can be protected from discrimination on the basis of grounds other than those expressly listed in section 15(1) (referred to as "analogous grounds").[4] These grounds must be accepted by a court. Examples of analogous grounds recognized by the Supreme Court so far include sexual orientation, marital status, and citizenship status.[5]

Equality rights before the *Charter*

Prior to the *Charter*, the *Canadian Bill of Rights* included a guarantee of equality rights.[6] The Supreme Court interpreted this equality guarantee simply to mean that similarly situated people (individuals within the same distinct group) should be treated the same way.[7]

In the case of *Bliss v Canada (AG)*, the Supreme Court said that a law does not violate the *Bill*'s equality guarantee by treating one group differently from other Canadians as long as the law's objective is valid rather than discriminatory.[8]

The issue in *Bliss* was whether a law that denied unemployment benefits to a pregnant woman discriminated against women and violated the equality guarantee in the *Bill of Rights*.[9] The Court found no violation of Ms. Bliss' equality guarantee because the law that denied her unemployment benefits had a valid objective (it set out the requirements for different groups to receive unemployment benefits) and did not discriminate, as it treated all pregnant women the same way.[10] The Court said that any inequality present was created by nature rather than law.[11]

Examples of section 15(1) of the *Charter* in practice

After the *Charter* became part of the Constitution, the Supreme Court rejected the former standard for equality that focused on providing like-treatment for like-individuals – what has become known as "formal equality."[12] Instead, it interpreted section 15(1) to guarantee "substantive equality," which requires attention to "the full context of the case, including the law's real impact on the claimants and members if the group to which they belong."[13] The SCC has therefore found that a government action or law that treats all people the same can still violate the *Charter's* equality guarantee if the impact of the action or law is that someone or some group receives less protection or benefit compared to others based on their sex, race, or any other enumerated or analogous ground.[14]

In *Eldridge v British Columbia (AG)*, the Supreme Court considered whether the British Columbia government's failure to fund interpretation services for the deaf when they receive medical services violated the equality guarantee in section 15(1).[15]

Unlike hearing persons, the deaf patients who relied on sign language interpreters faced a significant communication barrier when accessing medical services if no sign language interpreter was present.[16] As a result, a visit to the doctor for a deaf patient was especially confusing, stressful, and came with a higher likelihood of misdiagnosis and ineffective treatment.[17] The Court said that the failure to fund interpretation services violated the equality guarantee in section 15(1) because it denied deaf persons equal benefit of the law and therefore, discriminated against them.[18]

The Supreme Court also found that a law that denied unemployment benefits to a woman because she was over the age of 65 violated the *Charter*'s equality guarantee in the case of *Tétreault-Gadoury v Canada (Employment and Immigration Commission)*.[19] The law had the effect of perpetuating the stereotype that people over the age of 65 are no longer part of the active working population, and should therefore not receive the same unemployment benefits as those younger than age 65.[20] Justice La Forest stated for the unanimous Court that it was irrelevant that the law did not intend to discriminate.[21]

In *Fraser v Canada (Attorney General)*, the SCC confirmed that a law may still be discriminatory even when it appears to treat everyone equally, and any negative consequences are not *explicitly* based on enumerated or analogous grounds. This is known as "adverse impact" discrimination, and its occurs when "instead of explicitly singling out those who are in the protected groups for differential treatment, the law indirectly places them at a disadvantage."[22]

In *Fraser,* three retired female RCMP officers claimed that they faced discrimination as a result of the RCMP's pension program. The three members worked reduced hours for a period during their careers through a "job-sharing" arrangement and were thus not entitled to the pension for full-time members for that period. The job share program was used exclusively by women from 2010-2014, and many of those participants cited childcare as their reason for working reduced hours.[23] Other members who were not considered full-time for other reasons were given the option to "buy back" credit towards their

pensions.[24] This option was unavailable to those women who took part in the job-sharing program. The program was designed to be "mutually beneficial," however the SCC still found that the adverse impacts on the pensions of the women in the program offended section 15(1).

The role of section 15(2)

Section 15(2) allows governments to give preferential treatment to a disadvantaged group through programs that will give the group opportunities that they would not otherwise have.[25] In this way, affirmative action programs are recognized as furthering the goal of equality in section 15 of the *Charter*.[26] For more information on section 15(2), check out our keyword on Equality Through Affirmative Action.

For more information:

- Centre for Constitutional Studies, "Equality Rights since 1985" (25 August 2010).

[1] Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 15 .

[2] *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143 at 163-164; 171-174, McIntyre J ; *R v Kapp,* 2008 SCC 41 at paras 14-18 .

[3] *Andrews, ibid* at 182. See also *Kapp, ibid* at paras 17-18; *Ontario (AG) v Fraser*, 2011 SCC 20 at para 116.

[4] See eg *Andrews, ibid* at 175, 182-183*; Egan v Canada,* [1995] 2 SCR 513*; Corbiere v Canada,* [1999] 2 SCR 203 . See generally Robert J Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 5th ed (Toronto: Irwin Law, 2013) at 351-354.

[5] *Andrews, supra* note 2*; Egan, ibid; Miron v Trudel*, [1995] 2 SCR 418.

[6] SC 1960, c 44, s 1(b).

[7] *Andrews, supra* note 2 at 165-168; *Bliss v Canada (AG)*, [1979] 1 SCR 183 ; *Canada (AG) v Lavell*, [1974] SCR 1349.

[8] *Bliss*, *ibid* at 194, citing *Prata v Minister of Manpower and Immigration*, [1976] 1 SCR 376 at 382; *The Queen v Burnshine*, [1975] 1 SCR 693 at 707-708, Martland J.

[9] *Bliss, ibid*.

[10] *Ibid* at 186, 192-194; *Andrews, supra* note 2 at 167-168.

[11] *Bliss*, *ibid* at 190.

[12] *Andrews, supra* note 2 at 165-168; Sharpe & Roach, *supra* note 4 at 332-334.

[13] *Withler v Canada (Attorney General)*, 2011 SCC 12 at para 2.

[14] *Andrews, ibid*; *McKinney v University of Guelph*, [1990] 3 SCR 229 at 279 .

[15] *Eldridge v British Columbia (AG)*, [1997] 3 SCR 624.

[16] *Ibid* at paras 5-7, 71.

[17] *Ibid* at paras 1, 5.

[18] *Ibid* at paras 80, 95.

[19] [1991] 2 SCR 22.

[20] *Ibid* at 40-41.

[21] *Ibid* at 41, citing *McKinney, supra* note 14 at 279.

[22] *Fraser v Canada (Attorney General)*, 2020 SCC 28 at para 30 .

[23] *Ibid* at para 10.

[24] *Ibid* at para 14.

[25] *Kapp, supra* note 2 at paras 33, 40-41.

[26] *Ibid* at paras 16, 37.