

# Equality Rights 101

## *Canadian Charter of Rights and Freedoms*

15.(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.

## What does it mean?

**15.(1):** Everyone has the right to equality, to be free from **discrimination**, and to be free from laws and government action that put particular people at a disadvantage.

Section 15 of the *Charter* makes it very clear that every person in Canada is equal under the law.

The courts have had a hard time coming up with one clear and obvious explanation for equality and discrimination. That's because the law sometimes does treat people differently, and this is not always discrimination. For example, the government gives driver's licenses to people who pass the driving test, but not to those who fail it; it provides certain benefits to people who lose their jobs, but those same benefits are not available to those who are employed – each of these scenarios is an example of different treatment – but are they examples of discrimination?

### Definition and explanation

*Case: Quebec (Attorney General) v. A, 2013 SCC 5*

A government law or action is considered discrimination, if it does two things:

1. It sets out a difference that disadvantages a group based on such **grounds** as race, religion, nationality, ethnic origin, colour, religion, sex, age or mental or physical disability.  
OR the difference is based on some other personal characteristic that is hard to change, such as sexual orientation, citizenship, marital status, and Indigenous residence.  
OR the different treatment could be based on a combination or **intersection** of any of these grounds.
2. The disadvantage reinforces stereotypes, **or** it makes the person or group's situation even worse. In other words, a government law or action is discriminatory if it adds (in a negative way) to the discrimination or disadvantage that a group may already be facing.
  - Discrimination is not just about bad intentions or bad attitudes. It does not matter if the government did not intend any harm. If the government law or action has a **discriminatory impact** on a person or group, this still counts as discrimination.

- We know that certain groups have faced discrimination in the past (for example: Black and Indigenous people, women, LGBTQI people have all faced **historic discrimination**.) This is something we should be aware of. A government law or action that makes things worse for these groups may well be discriminatory.
- *Case: Andrews v. Law Society of British Columbia*, [1989] 1 SCR 143  
Just as treating people differently is not always discrimination, treating people the same, does not always achieve equality. There are some situations where treating everyone the same might lead to unfair results. For example, suppose you broke your arm and could no longer write with your dominant right hand. If a school gave everyone the same amount of time to write a test and did not give you extra time or an alternate way to provide your answers, you would not be getting a real chance to finish the test like the other students. Providing **accommodation** in this way for students with different needs would give everyone equal access to education.  
This understanding of equality is known in some places as **equity**, but the Supreme Court of Canada simply refers to it as **equality** or **substantive (meaning real) equality**.

**15(2):** Subsection 2 of *Charter* section 15 allows the government to create laws or programs that treat people differently if they are doing so to *improve* the conditions of people who have been disadvantaged. This is called **affirmative action**.

An example of affirmative action might be a program that aims at improving employment opportunities for individuals who have experienced historical disadvantages in the job market, such as women, Indigenous peoples, visible minorities, or those with mental or physical disabilities.

## Why is it important?

*Case: Vriend v. Alberta*, [1998] 1 SCR 493, 1998 CanLII 816 (SCC)

The right to equality is fundamental to Canada. This right reflects “the fondest dreams, the highest hopes and finest aspirations of Canadian society.” The idea of equality is almost intuitively understood and cherished by all, and is the foundation for a just society which permits every individual to live in dignity and in harmony with all.

*Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497, 1999 CanLII 675 (SCC)

Equality rights are very important because every person is entitled to dignity and worth as a human being, equally deserving of concern, respect and consideration. Discrimination has the effect of perpetuating or promoting the view that the individual is less capable, or less worthy of recognition or value. And every person is entitled to freedom, and to be free from disadvantage, stereotyping, prejudice or discrimination.

*Case: Quebec (Attorney General) v. A*, 2013 SCC 5

The purpose of s. 15 is to eliminate barriers faced by certain individuals, allowing them to gain real access to what is generally available to others. Equality rights ensure that each person is entitled to equality, human dignity, to reach our full potential and to live our lives freely.