



## Section 15 Equality Rights

### Aboriginal Rights

**Student Material:** on pages 12 and 13

Before the European explorers came to Canada, there were people living on the land. They are known as the Aboriginal Peoples of Canada. At first the explorers needed the help of the Aboriginal people to learn how to live, hunt, and grow food on the land. They shared knowledge and protected each other from enemies.<sup>i</sup>

However, the relationship began to spoil and the Europeans settlers began to regulate the lives of the Aboriginal people. Before the Charter, Canada's Constitution Act, 1867, gave the federal government power to control Aboriginal people and their land.<sup>ii</sup> They used this power to isolate Aboriginal communities, prohibit Aboriginal people from leaving the isolated lands, and gave the government the power to take Aboriginal children from their families and place them in Residential Schools where they were treated very badly.<sup>iii</sup>

The purpose of Section 15 is to protect equality rights among individuals, and it is written in such a way that the Canadian courts and government must apply the law to Aboriginal persons while considering their personal and collective history.<sup>iv</sup> Section 15 works together with section 35 of the Constitution Act of 1982, which recognizes and affirms Aboriginal treaty rights and land claims.<sup>v</sup>

Section 15 not only protects every individual from discrimination, but it also allows the government to pass special laws that favour Aboriginal peoples (and other disadvantaged people) and encourages the development of social programs that help improve the quality of life for Aboriginal peoples (and other disadvantaged peoples). This is highlighted by the harmonized purposes of Section 15(1) and Section 15(2) described in the introduction of the handbook.

An example of a social program that improves the quality of life for Aboriginal people is special privileges for fishing rights. In British Columbia, for example, Aboriginal persons are allowed to fish on their ancestral lands at times when all other people cannot fish at that location. The purpose of the exception for Aboriginal persons is to positively help them retain their historical and cultural practices.<sup>vi</sup>

However, Canada has a long way to go before Aboriginal people begin to receive the same rights as non-aboriginal people. Every year, there are new reports that focus on the continued unequal treatment of Aboriginal people in our society and the long-term damage caused by the government of Canada.<sup>vii</sup>

Based on what you know about the Government of Canada's attempts to help Aboriginal groups, what do you think has worked? What do you think has not worked?



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Is it appropriate to allow Aboriginal students living in Aboriginal communities on reserve lands to study Canadian history using their own unique textbooks written by Aboriginal educators? What if the retelling of certain historical events was fundamentally different from how teachers in your region taught you?<sup>viii</sup>

**Aboriginal People:** First Nations, Métis, Inuit.

**Reserve Lands:** A piece of land owned by the government and inhabited by Aboriginal people. Aboriginal people cannot own these lands themselves and must ask for permission from the federal government when they want to make improvements to it.<sup>ix</sup>

**Residential School:** A school system used to remove children from their homes, families, traditions and cultures with the intention of forcing the children adopt the more dominant ways of living in Canadian society. They were created because the Canadian government believed that their ways of thinking and living were better than the way Aboriginal people think and live.

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<sup>i</sup> Students across the country will have a different starting point in their understanding of Aboriginal issues based on their provincial curriculum and their personal exposure to Aboriginal persons. If you are unsure how much your students already know, it may be helpful to ask:

1. What have you learned about Aboriginal people in your course studies?
2. Have you heard of Residential schools? Can you explain what they are?
3. Have you ever visited an Aboriginal reserve? Do you know why they were created? What were your impressions?

<sup>ii</sup> [Constitution Act, 1867](#), Section 91(24).

<sup>iii</sup> See Erin Hanson, "[The Residential School System](#)"; and Wendy Moss and Elaine Gardner-O'Toole, BP-175E, "[Aboriginal People: History Of Discriminatory Laws](#)"

<sup>iv</sup> See for example the [Gladue Report](#), which puts an obligation on criminal trial judges to consider an Aboriginal person's Aboriginality and personal experiences for sentencing.

<sup>v</sup> Section 35 of the *Constitution Act of 1982* is technically not a part of the Charter, though it is the first section of the 1982 Act after the Charter. It states:

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.



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(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

<sup>vi</sup> [\*R v Kapp\*](#), which is decided on Section 15(2) but heavily references Section 35.

<sup>vii</sup> Prime Minister Stephen Harper, [Official Apology](#), (Ottawa 11 June 2008). See the [video](#) of Prime Minister Harper delivering the apology in both English and French. The content of the apology discusses the Residential School system and some thoughts on moving forward.

<sup>viii</sup> Students can discuss the question of how two different systems of education can benefit or deter mutual understanding and integration. Ask the students to articulate the values of section 15(1) and section 15(2). Are the values compatible with a policy that allows reservation and non-reservation students to learn very different retellings of history?

<sup>ix</sup> Erin Hanson, "[Reserves](#)".