



Section 15 Equality Rights

Gender

Student Material: on page 7

For a long time, men and women had very different legal rights. For example, women could not vote or run for political office.ⁱ When change came, it came slowly - the first women were allowed to vote in 1917, but it wasn't until 1960 that all women could vote. This type of gender discrimination was also reflected in private life, where women faced discrimination through laws that restricted access to unemployment insurance for pregnancy,ⁱⁱ and where women were not treated equally with men when splitting property in a divorce.ⁱⁱⁱ

The Charter protects every individual from discrimination based on gender. Section 28 of the Charter reinforces the purpose of gender equality by stating that all of the rights in the Charter apply equally to men and women.^{iv} This means that the government cannot make laws that distinguish between men and women.^v

What about where men and women are inherently different?^{vi} For instance, women are capable of becoming pregnant whereas men are not. Can the law differentiate between pregnant women and men? Or pregnant women and other women?^{vii}

Does your school have different rules for men and women? Some schools have different dress codes for male and female students. Is this differentiation justifiable, or is it discriminatory?^{viii}

ⁱ While students may be familiar with the women's suffrage and the early Feminist movement from History class, they may not know the legal aspect of that movement. In [*Edwards v Canada*](#), the Privy Council (then, the top court in the country above the Supreme Court of Canada) held that the word 'person', which formerly only included 'male persons' could also mean 'female persons'. This new definition allowed women to sit on the Senate.

ⁱⁱ [*Bliss v Canada*](#) - The *Unemployment Insurance Act* denied benefits for women for the six weeks after their pregnancy. Ms. Bliss claimed this law discriminated against women and should be struck down. The Court held that the law did not discriminate against women because pregnancy was a natural occurrence, and therefore the law could create a distinction based on pregnancy.

ⁱⁱⁱ [*Murdoch v Murdoch*](#) and [*Pettkus v Becker*](#) – Both cases included the dissolution of a relationship where the female partner had to fight for an equal share of the family property after separation. Although both women eventually won in court, it took years for them to get a final judgment, which came with an immense emotional cost and legal



Section 15 Equality Rights

fees. In Ms. Petkus' case, Mr. Becker did not follow the court order to pay Ms. Petkus, which eventually led to Ms. Petkus' suicide.

^{iv} Section 28 of the Charter reads: Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

^v There have been very few cases brought on Gender Equality grounds, and most have failed. This is similar to Race claims. It may be noted that many of these claims are handled by provincial Human Rights Codes, particularly for discrimination in the workplace. See [Symes v Canada](#) regarding tax deductions for childcare, and [Newfoundland v NAPE](#) regarding pay cuts for female employees.

Students may not be aware of the public-private divide. If appropriate, ask students if they can describe the difference between public law and private law. What is the significance of this divide? And, what interest do Canadians have in keeping Government accountable under the Charter and all other people (including large corporations) accountable under Human Rights Codes? Are they similar concerns, or different concerns?

^{vi} Note that this question assumes that men and women are inherently different. It also uses a gender binary, which some students may not be comfortable with. The question is designed to highlight biological differences, particularly with the following question regarding pregnancy. Students may want to discuss this point with reference to sexual orientation or transgendered identity. A natural question may be:

- Based on what we know about protections for Gender and Sexual Orientation, are transgendered persons already protected? In what ways? The law is still largely unclear in this area.

^{vii} [Brooks v Safeway Canada](#) A case decided after the *Charter* that effectively overturns *Bliss v Canada*, holding that discrimination against pregnant women is sex discrimination regardless of the fact that men cannot become pregnant because it singles out one gender for unfair treatment.

- Note: *Brooks* was not decided under Section 15 of the *Charter*, but the court used the equality values from Section 15 to inform their decision.

^{viii} Your students will likely be acutely attuned to gender issues in their school. Guide the discussion by asking students:

- Whether there is a *school policy* or rule that creates the inequality.
- Whether the school can do anything better to improve equality.

Lesson plans on gender equality and preventing gender based violence can be found here: <http://www.safeatschool.ca/resources/resources-on-equity-and-inclusion/sexism/tool-kits-and-activities>