



Section 15 Equality Rights

Race

Student Material: on pages 8 and 9

When a Canadian experienced discrimination based on race before the Charter, he or she would rely on human rights laws written by each province. These laws, also known as codes, contained similar language to section 15 of the Charter and explicitly prohibited racial discrimination. However, because each province created its own human rights law the wording of the law varied slightly from province to province. This meant that there was no consistency in human rights law across Canada. At the time, if an employer regularly refused to hire people of certain races or nationality, the employer might not be answerable for this discriminatory practice. It would depend on the wording of the province's human rights law.

The Charter protects every individual from discrimination based on race. However, since the creation of the Charter, section 15 has rarely been used to launch a complaint of racial discrimination. Why do you think that is?

Also, the Charter does not apply retroactively.ⁱ This means that someone making a claim of racial discrimination using section 15 of the Charter cannot use it to address government action that occurred before the Charter was created.

Although the Charter was established in 1982, section 15 did not come into force until 1985. The purpose of this three-year delay was to give the federal and provincial governments time to review their laws and policies and ensure they complied with this section. As a result of this extension of time, many of our governments' laws and policies were changed to meet the racial equality requirements of section 15. Today, each province has substantially similar protections for racial discrimination in their provincial human rights codes.

Do you think government employers should take into consideration an individual's race when hiring? What if the job applicant is a visible minority or an Aboriginal individual? Can section 15 be a useful tool in addressing discrimination in the workplace?ⁱⁱ

Furthermore, some have said that while other forms of discrimination still exist, racism is no longer a problem in Canada. Would you agree or disagree? Can you think of any examples from the news or from your personal experience that might indicate that some forms of racism still exist in Canada?ⁱⁱⁱ

ⁱ *Mack v Canada* – Claimants challenged the failure of the government to provide redress in respect of the imposition of the head tax and/or the outright exclusion of Chinese immigrants to Canada from 1885-1945. Both the Superior Court and the Ontario Court of Appeal dismissed the claim on a preliminary motion to strike. With respect to the *Charter* issues, both courts found that



Section 15 Equality Rights

the predominant effects of the impugned legislation or government action occurred well before the passage of the *Charter*. As the *Charter* has no retroactive application, the courts concluded that the claimants could not have recourse to its protections. The courts therefore dismissed the claim without needing to conduct a substantive analysis under section 15.

ⁱⁱ This exercise can help students understand the public/private divide. This is an opportunity to ask students to consider the difference between the *Charter* protection of equality, which puts restrictions and obligations on government, and the role of Provincial human rights codes in upholding private discrimination. An example may be that if an employer refuses to hire minorities, this would be a purely private form of discrimination and the Charter would not apply. However, if the provincial government made a law stating that an employer must hire a certain number of persons from each race, and an employer made decisions based on that law, the Charter would apply.

ⁱⁱⁱ This discussion hinges on a student's own perception of racism in Canada. This question provides an opportunity to discuss current events, statistics on racism, and student's personal stories (if they choose to share). It is highly recommended to steer the discussion towards questions of law. Is the fact-pattern mentioned by the students something that the Charter can help fix? If not, can the government actively do anything to neutralize the racism? If so, what?

Additional Resources:

Anti-racism lesson plans and activities can be found here:

<http://www.safeatschool.ca/resources/resources-on-equity-and-inclusion/index.php?q=resources/resources-on-equity-and-inclusion/racism/tool-kits-and-activities>