



Section 15 Equality Rights

Religion

Student Material: on pages 14

Unlike many other nations, Canada does not have an official religion.ⁱ As a multicultural country, Canada prides itself on including many religious traditions.

The Charter provides two separate sections addressing religious rights. Section 15 provides equality for all religions, which means that the government cannot create any laws that discriminate against religious groups or individuals based upon their religious beliefs. In addition, Section 2(a) prevents the government from establishing a national religion, as well as favouring one religious group over another. Section 2(a) often works together with section 15. Based on these values, the federal and provincial governments now all include religion as a protected characteristic in human rights laws.

Laws can directly or indirectly affect the equality rights of religious individuals. Direct discrimination occurs where a law singles out a particular group, for instance a law stating that all religious groups are allowed to pray in public except Christians. Indirect discrimination occurs when a law is ‘neutral’, meaning it doesn’t specifically discriminate against any religion but it still has a negative effect on a particular religion. For example, a law that says all persons in a courtroom must remove hats can have a negative effect on some Sikh men, Muslim women, and Jewish men who wear head coverings as part of their religion. Do you think it makes a difference whether a person is facing direct or indirect discrimination?ⁱⁱ

There are some Canadians who follow religions that allow polygamy (a marriage between more than two partners). Canadian law currently restricts marriage and common law relationships to only two partners. Is this discriminatory? Should Canada expand the definition to include multiple spouses such as polygamous marriage?ⁱⁱⁱ

Some school boards have guidelines for accommodation of dietary considerations and fasting. Does your school provide a separate space for fasting students other than a cafeteria during lunch hours?^{iv}

ⁱ In as early as 1877, the Ontario Court of Appeal noted that Ontario has no ‘official’ religion; by contrast, England had an official state religion under the Anglican Church.

ⁱⁱ This question asks the students to think about the differences between direct and indirect discrimination. Another possible way of framing the discussion is the purpose and the effects of the legislation. If the purpose of the legislation is to single out against a particular religious group, then it is more likely going to be considered discriminatory. If it is indirect, or simply an effect of a neutral law, then should the court take into consideration that there was no ‘bad faith’ – or bad intentions – behind the law? One conclusion may be that whether it is direct or indirect, the both types of discrimination have the same *effect* in that they both negatively impact an individual or group with a protected characteristic – ie, religion.



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iii Is there a difference between religious practices that are *mandatory* and those that are not? Should governments be allowed to discriminate in cases where the religious obligation is optional?

iv http://www.ddsb.ca/AboutUs/EquityInclusiveEducation/Documents/Guidelines_Procedures_for_Religious_Accom.pdf

An additional question on this point: Most schools have policies allowing students to take tests and exams on a different day if they are scheduled on their religious holiday. It typically requires the student to apply for accommodation. What can be done to ensure a more accessible accommodation policy?