

Landmark Case

EQUALITY RIGHTS AND THE CANADIAN PENSION PLAN *LAW v. CANADA*

Prepared for the Ontario Justice Education Network by Counsel for the Department of Justice Canada.

Law v. Canada (Minister of Employment and Immigration), [1999]

Facts

The **Canada Pension Plan** (the “CPP”) is a social insurance scheme created by the Parliament of Canada in 1965. The purpose of the CPP is to provide pensions to wage-earners who have contributed into the CPP and to their families when the wage-earner retires, becomes disabled, or dies. Not everyone is eligible for pensions under the CPP; these benefits are only available to applicants who meet certain criteria. This case challenged whether some of these **eligibility criteria** were discriminatory.

Nancy Law was thirty years old when her husband passed away. She applied for a pension as the surviving spouse of a wage-earner who had died. However, her application was denied because she did not meet the eligibility criteria. Under section 44(1) of the CPP, a surviving spouse is entitled to a pension when his or her spouse dies only if a number of conditions have been met. First, the spouse who has died must have made sufficient **contributions** to the CPP during his or her lifetime. Second, the surviving spouse must be either a) over thirty-five years of age; b) have dependent children to support; or c) be disabled.

Nancy Law was denied a survivor’s pension under the CPP because she did not meet any of these three criteria: a) she was *under* thirty-five years of age; b) she did not have any dependent children to support; and c) she was not disabled.

Nancy Law felt that she was being unfairly treated, specifically, because of her age: a fifty-year-old who was otherwise in the exact same situation as Ms. Law would have qualified for a survivor’s pension. She challenged this denial as constituting **discrimination** on the basis of age, contrary to s. 15(1) of the *Canadian Charter of Rights and Freedoms*.

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.

Nancy Law maintained that she had owned and operated a business with her spouse, her spouse had made sufficient contributions to the CPP during his lifetime and that business had failed. Therefore, she was entitled to receive some of her husband's retirement benefits.

When this benefit was denied to her on the basis of her age, she appealed the denial to the Minister of National Health and Welfare. The Minister rejected her request in May 1992. Ms. Law then appealed the Minister's decision to the Pension Plan Review Tribunal.

The Pension Plan Review Tribunal found that the CPP discriminated against the equality right of those who, at the time of their contributing spouse's death, were under the age of 35, did not have children and were not disabled. However, the majority of the **Tribunal** found that this discrimination was justified under section 1 of the *Charter*, because it allowed the CPP to provide benefits to those in greatest need. Therefore, the CPP provisions under attack were upheld as **constitutional**. The minority of the Tribunal, in contrast, decided that the provisions were unconstitutional because the age distinction was **arbitrary** and Parliament should have established a test based on need, not just on an age limit.

Ms. Law appealed the decision. After a new hearing, the Pension Appeal Board concluded that the age distinction did not infringe s. 15(1), but that, even if it did, the alleged discrimination on the basis of age was justified under s. 1 of the *Charter* because the CPP's benefit scheme is complex and Parliament's choice of measures should be respected.

Nancy Law appealed the decision to the Federal Court of Appeal, which decided not to overturn the decision.

Finally, Nancy Law appealed to the highest court in the country, the Supreme Court of Canada. The approach that the Supreme Court of Canada adopted in this case remains the analysis that the Court applies to every equality case to this day.

Justice Iacobucci wrote the judgment for the unanimous Supreme Court of Canada. The Court found that the provisions of the CPP did not violate Nancy Law's section 15 **equality rights**. Even though the CPP makes distinctions between individuals on the basis of age, these distinctions are not discriminatory. They are not discriminatory because they are not made in such a way that affects the dignity of the individual.

Justice Iacobucci established a three-part test to determine whether an individual's section 15 rights have been violated:

1. Does the challenged law draw a distinction between the person claiming a violation of her rights and other individuals on the basis of a personal characteristic of the claimant?
2. Has the claimant been treated differently on the basis of one or more of the grounds **enumerated** (listed) in section 15 such as "race", "age", "sex", "colour", or any of the other **analogous grounds**?

3. Did the law discriminate against the claimant in a **substantive** sense, contrary to the very purpose of section 15, which is to address problems like prejudice, stereotyping, and historical disadvantage?

Justice Iacobucci stated that the purpose of section 15 was to:

prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving respect and consideration.

Justice Iacobucci then applied these principles to Nancy Law's circumstances. In the first and second parts of the test, he found that the CPP did draw a distinction on the basis of age, by denying benefits to individuals who are under the age of 35, have no dependent children to support and are able-bodied.

However, in applying the third part of the test, the Supreme Court of Canada found that the age distinction did not violate Ms. Law's rights, because the CPP did not violate her **human dignity**. Justice Iacobucci held that the purpose of the survivor's pension was to provide long-term financial security to Canadians who had lost a spouse, by aiming to help older surviving spouses, those with dependent children to support or the disabled, each group being more economically vulnerable and less able to overcome financial difficulties. The CPP aims to enhance the personal dignity and freedom of individuals by providing long-term financial support to these disadvantaged groups. A person under the age of 35, such as Ms. Law, is more capable of finding work and becoming financially independent than someone older or someone who is disabled. Nancy Law's human dignity was not violated and the provisions of the CPP did not infringe section 15. Therefore, the denial of Ms. Law's application for a survivor's pension under the CPP did not violate the *Charter*.



Classroom Discussion Questions

1. What was the issue Nancy Law brought before Minister of National Health and Welfare?
2. Why did Nancy Law feel discriminated against?
3. What do you think s.15 of the *Charter* aims to protect?
4. In Nancy Law's case, what did the Tribunal consider to reach their conclusion?
5. Who does s. 1 benefit – the government or the person bringing the *Charter* claim?
6. Why is s. 1 an important part of the *Charter*? What is the purpose of s. 15 as outlined in the Law case?
7. Notice the judicial history of Nancy Law's appeal process. What do you think this says about our justice system?
8. What does the Supreme Court of Canada mean when it refers to "human dignity?"
9. Outline Justice Iacobucci's three-part test to determine whether a person's s.15 rights have been violated.
 - a. Do you think this is a fair test to apply?
 - b. How did the Supreme Court of Canada apply the three-part test to Nancy Law's situation?
 - c. What types of proof do you think a person could use to show a violation of his or her s.15 rights under this three-part test?
10. The Supreme Court of Canada decision was unanimous. Do you think it is important to have a unanimous decision in an important area of the law? Why or why not?
11. How would you have decided the issue? Why?
12. Do you think government should have the ability to treat some people differently? Why or why not? Can you think of situations where it would be appropriate for the government to treat people differently? Offer some examples.



Law v. Canada: Worksheet 1

Using your textbook, a dictionary or an online word search, define the following terms. They are in **bold** typeface in the case summary.

Canadian Pension Plan _____

Eligibility Criteria _____

Contributions _____

Discrimination _____

Tribunal _____

Constitutional _____

Arbitrary _____

Equality Rights _____

Enumerated Grounds _____

Analogous Grounds _____

Substantive _____

Human Dignity _____



Law v. Canada: Worksheet 2

Judicial History

Chart the judicial history of Nancy Law's case:

Name of Tribunal or Court:	What did the Tribunal or Court consider:	The decision of the Tribunal or Court:
1.		
2.		
3.		
4.		
5.		



Law v. Canada: Worksheet 3

Understanding the Law Test

The Supreme Court of Canada decision produced a three-part test known as, the *Law Test*. This test is applied in all s.15 *Charter* cases. In the top part of each section, state the test. In the bottom half of each section, explain what this part of the *Law Test* aims to protect.

Part I:

Part II:

Part III:

Applying the Law Test

Using the Law Test, outline how a judge might decide the following cases.

Scenario One: While living in Province A, Jill applied for a fulltime job with the government of Province B. An Act had been passed in Province B saying only residents of Province B may fill government positions. Since Jill was from Province A, she was excluded from the selection pool. Jill felt she was being discriminated against because of her province of residence and felt this Act was against section 15 of the *Charter*.

Scenario Two: In an effort to promote physical activity among children under the age of 18, a provincial government introduced a child recreation benefit whereby 2% of the cost of any aquatics program would be refunded to parents. Alejandra suffers from a physical disability and is in a specialized aquatics class that promotes physical fitness. When her parents applied for the benefit, they were refused the refund. These specialized classes were not included in the list of aquatics programs recognized by the government because the government funded other forms of treatment for Alejandra's disability. Alejandra's parents feel the government, contrary to s.15(1), has discriminated against their child and have denied her a benefit under the law.

Scenario Three: Jun has been working as an engineer for the municipal government for 8 years. His job performance has always been excellent and he has received outstanding performance evaluations. During an office party Jun got into a heated argument with his supervisor, David, because David made derogatory comments about homosexuals. In the heat of the moment, Jun, for the first time, told the people at his office that he is gay. In the following weeks, Jun started to receive poor performance evaluations from David and was eventually fired. Jun is bringing an action against the municipal government for discrimination based on section 15 of the *Charter*.



Law v. Canada: Worksheet 3 Answer Key

Understanding the Law Test

Part I: Does the challenged law draw a distinction between the person claiming a violation of her rights and other individuals on the basis of a personal characteristic of the claimant?

This part of the test seeks to establish whether the challenged law does impose differential treatment on the claimant based on a personal characteristic of that claimant. A Court considers whether the law imposes differential treatment in purpose (the intent of the law) or in effect (the result of the law). This first part of the test is not yet concerned with whether there has been discrimination. Rather, it is an initial inquiry into whether differential treatment does indeed exist in law.

Discussion Questions: Why is it important to show that the law treats someone differently? If differential treatment exists, why does the claimant not win the case right away? Why is it important to allow government the ability to create laws that do treat people differently?

Part II: Has the claimant been treated differently on the basis of one or more of the grounds enumerated in section 15 such as “race” “age”, “sex”, “colour”, or any of the other analogous grounds?

This part of the test provides a list of grounds that government *cannot* use to discriminate against or draw distinctions between individuals. The enumerated grounds are stated in the *Charter*, whereas the analogous grounds are not. The analogous grounds have been established through case law. They are known to the courts and are considered to be equal to the listed grounds. In either case, government cannot discriminate based on enumerated or analogous grounds. Since analogous grounds can be recognized, (if properly established by the claimant), it suggests that the initial list for s.15(1) was not meant to be a final list. The ability to respond to society's needs was contemplated when s.15 was drafted. In addition, the ability for this section of the *Charter* to adapt signals an overall recognition that the *Constitution* is a “living tree,” capable of being interpreted in such a way that adapts to society's changing values and needs.

Discussion Questions: What benefits or disadvantages are there to having a *Constitution* that can be read as a “living tree?” In Nancy Law's case, the Supreme Court of Canada agreed that the government had drawn a distinction based on her age and treated her differently as a result. She proved that Parts 1 and 2 of the test were met. Why did she not win her case? What does this tell us about the roles of Parts 1 and 2?

Part III: Did the law discriminate against the claimant in a substantive sense, contrary to the very purpose of section 15, which is to address problems like prejudice, stereotyping, and historical disadvantage?

This part of the test addresses the purpose of s.15(1). As Justice Iacobucci stated, the purpose of s.15(1) is to “*prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving respect and consideration.*” The final part of test allows the Court to consider the broader remedial purpose of s.15(1), rather than limit s.15(1) to a narrow test.

Discussion Questions: What does this part of the Law Test say about the purpose of s.15(1)? What does it tell us about Canadian values and Canadian laws? What does this tell us about what we expect from governments? Or from our Courts? Why is human dignity such an important aspect of s.15(1)?



Lawv. Canada: Worksheet 3 Answer Key

Applying the Law Test

Scenario One:

1. *Does the challenged law draw a distinction between the person claiming a violation of her rights and other individuals on the basis of a personal characteristic of the claimant?* The law does draw a distinction between those who live in Province A and those who live in Province B. The key issue is whether the province of residence is a personal characteristic.
2. *Has the claimant been treated differently on the basis of one or more of the grounds enumerated in section 15 such as "race" "age", "sex", "colour", or any of the other analogous grounds?* Province of residence is not an enumerated ground of discrimination under section 15 of the *Charter*, therefore Part II of the Law Test is not satisfied.

Scenario Two:

1. *Does the challenged law draw a distinction between the person claiming a violation of her rights and other individuals on the basis of a personal characteristic of the claimant?* The government action to deny a refund has drawn a distinction between Alejandra's aquatics program and other aquatics programs. The government has decided not to provide a refund because it funds other forms of treatment for that disability. In this sense, the government's decision to spend is discretionary. However, the purpose for this initial policy was to promote physical fitness and the law did not draw distinctions as to whom it would fund. The criterion seems broad and therefore Alejandra's aquatics class meets that criterion. The only difference is that the program is specialized to accommodate her needs. Taken together, it seems that the government has drawn a distinction between Alejandra and other individuals based on a personal characteristic.
2. *Has the claimant been treated differently on the basis of one or more of the grounds enumerated in section 15 such as "race" "age", "sex", "colour", or any of the other analogous grounds?* Physical disability is an enumerated ground, which satisfies part II of the Law Test.
3. *Does the law discriminate against the claimant in a substantive sense, contrary to the very purpose of section 15, which is to address problems like prejudice, stereotyping, and historical advantage?* To answer this part of the Law Test, one must look to the purpose of s.15(1), which is to "prevent the violation of human dignity..." The argument would examine whether the government, in its denial of this benefit to Alejandra, has affected her human dignity and has denied her equal recognition at law. It is likely a court would find that the government arbitrarily denied her a benefit under law based on a personal characteristic. The fact that the policy that provides the benefit does not specify restrictions would support this conclusion.

Note: this scenario raises interesting policy debates. Questions are raised about government's ability to decide what programs to fund and what programs not to fund, which programs are governed by statute and policy mandates, and when, if ever, should a court interfere with a government's funding decision. Also see OJEN's Landmark Case package, *Auton v. B.C.*, which contains legal issues relating to s.15(1), the denial of a benefit, and government's discretionary power to fund "non-core" services, whether that service is medically required or not. This case is available for free download from the *Resources* section of the OJEN website, www.ojen.ca.

Scenario Three:

1. *Does the challenged law draw a distinction between the person claiming a violation of her rights and other individuals on the basis of a personal characteristic of the claimant?* In this scenario, no specific law is being challenged. Instead, an action by a government agent is being challenged. Section 32 of the *Charter* sets out when the provisions of the *Charter* apply. Because Jun is employed by the municipal government, and the municipal government is within the authority of the legislature of the province, Jun can raise a s.15(1) *Charter* challenge. In Jun's case, he will need to show the decision to terminate him had nothing to do with his job performance, but was instead based on his sexual orientation. *Note:* it is likely that a *Charter* challenge would be made in conjunction with a wrongful dismissal action. For the purposes of this exercise, only s.15(1) will be discussed.
2. *Has the claimant been treated differently on the basis of one or more of the grounds enumerated in section 15 such as "race" "age", "sex", "colour", or any of the other analogous grounds?* Sexual orientation is not an enumerated ground in section 15. The case of *Vriend v. Alberta* (1998) established that sexual orientation is an analogous ground. As a result, the courts have made clear that discrimination of this kind by government or any of its agents is prohibited.

Note: Please see OJEN's Landmark Case, *Vriend v. Alberta*, available for free download from the *Resources* section of the OJEN website, www.ojen.ca. Discussion could also focus on the concept of precedent in Canadian law and the role that precedent plays in the Canadian legal system.

3. *Does the law discriminate against the claimant in a substantive sense, contrary to the very purpose of section 15, which is to address problems like prejudice, stereotyping, and historical advantage?* The Law case specifically highlights the importance of human dignity. In this case, it is likely that a court would hold that Jun's human dignity was greatly affected because he was discriminated against and fired because of his sexual orientation.

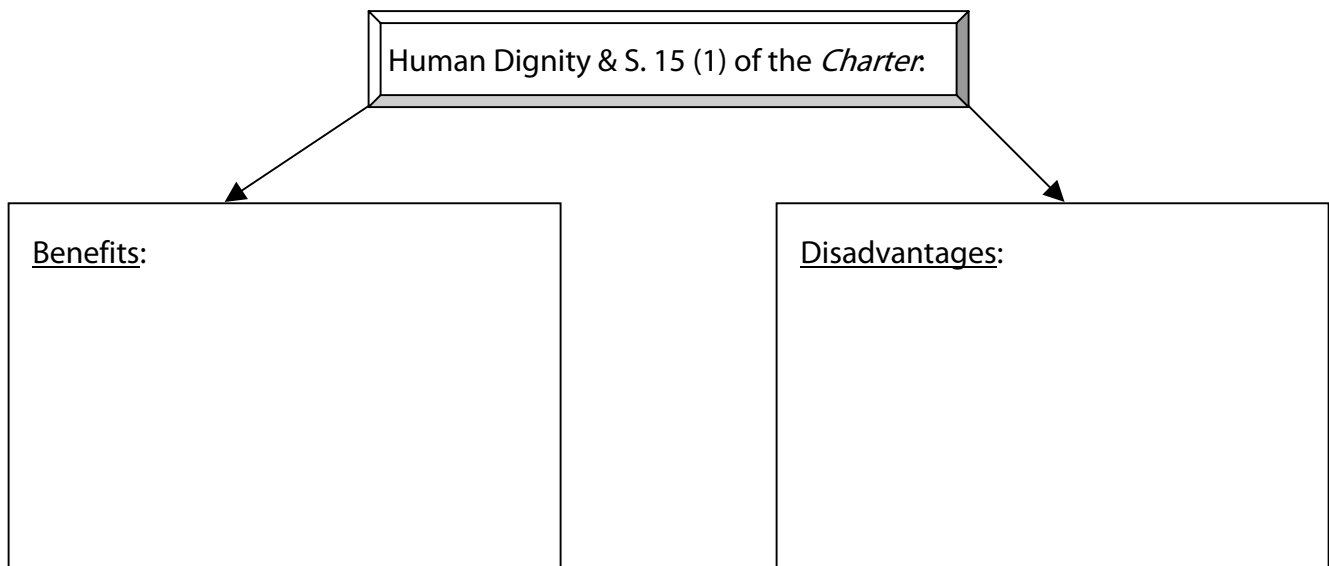


Law v. Canada: Worksheet 4

Human Dignity and the Law Test

- How would you define human dignity?
- How do you think the courts define human dignity? How does this compare to your definition?
- How is human dignity relevant to the *Law v. Canada* case?
- Do you think human dignity is something that courts can measure? Explain.
- How has the element of human dignity affected s.15 (1) of the *Charter*?

In groups, brainstorm the benefits and disadvantages of requiring a claimant to show a breach of human dignity as an element of their argument. Record your thoughts below and discuss your answers as a class.



Do You Think Human Dignity Helps or Hinders s. 15 (1) Claims? Explain:

A large, empty rounded rectangular box with a thin black border, intended for students to write their explanations regarding whether human dignity helps or hinders s. 15 (1) claims.