

# Law v. Canada (Minister of Employment and Immigration) (1999) - Equality Rights Framework

In March 1999, the Supreme Court of Canada released its judgment in a landmark equality case.<sup>[1]</sup> After a series of divided judgments, the Court unanimously agreed on an approach to discrimination claims. The case concerned whether the survivor's pension benefits provided under the Canada Pension Plan violate the *Charter* by discriminating on the basis of age.

The survivor's pension is a monthly benefit that is paid to a surviving spouse of deceased partner if that partner made sufficient contributions to the pension plan.<sup>[2]</sup> In order to qualify for the survivor's pension, the surviving spouse must meet one of three criteria: a minimum age requirement, disability, or responsibility for dependent children.<sup>[3]</sup> A surviving spouse who is not disabled and does not have dependent children must be at least 45 years old to receive the full benefit.<sup>[4]</sup> Surviving spouses between 35 and 45 years of age receive a reduced benefit. A surviving spouse below the age of 35 does not qualify for the benefit until the age of 65.<sup>[5]</sup> Nancy Law's husband died when she was 30 years old. She was able-bodied and did not have dependent children so she did not qualify for the survivor's benefit.<sup>[6]</sup> She argued that the pension plan discriminated on the basis of age. In rejecting this argument, the Court took the opportunity to review its previous judgments and develop a comprehensive approach to discrimination cases under the *Charter*.

## Basic Framework for Analysis

The Court first established a three-step test for determining whether [section 15\(1\)](#) equality rights have been infringed. Section 15(1) provides: 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. The Supreme Court stated that in order to determine whether this right has been infringed, a court must ask three questions.<sup>[7]</sup> First, the court must ask whether there is differential treatment.<sup>[8]</sup> This can be established either by showing that the law draws a formal distinction between the claimant (the person claiming their rights have been infringed) and others on the basis of a personal characteristic, or by showing that the law fails to take into account the claimant's already disadvantaged position in Canadian society.<sup>[9]</sup> Either will amount to differential treatment for the purpose of this analysis. If there has been differential treatment, the second question a court must ask is whether it is on the basis of any the grounds listed in section 15 (race, national or ethnic origin, colour, religion, sex, age, or disability) or an

analogous ground. Third, the court must ask whether the differential treatment amounts to discrimination.<sup>[10]</sup> This analysis involves considering the purpose of the equality guarantee, the difference in treatment between the claimant and a comparator group, and the context in which the distinction is drawn.

## **Purpose of Equality Rights**

After reviewing previous equality cases, the Court summarized the purpose of the equality rights as assuring *human dignity*: [T]he purpose of [section] 15(1) is to prevent the violation of essential 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 of concern, respect and consideration.<sup>[11]</sup> According to the Court, differential treatment violates this fundamental purpose if the people affected by the difference in treatment are in one of the recognized groups, and the difference in treatment reflects stereotyping of the group or otherwise suggests that the individual is less capable or less worthy of being recognized or valued.<sup>[12]</sup> Human dignity, according to the Court, means that individuals and groups feel self-respect and self-worth. Dignity is concerned with “physical and psychological integrity and empowerment.”<sup>[13]</sup> Human dignity is harmed by unfair treatment based on personal characteristics that are unrelated to an individual’s actual needs, capacities and merits.<sup>[14]</sup> On the other hand, laws that are sensitive to the needs, capacities and merits of different individuals enhance human dignity.<sup>[15]</sup> Human dignity is not related to the *status* or position of a person in society, but rather it concerns the way a person legitimately *feels* when confronted with a given law.<sup>[16]</sup> Having outlined the underlying purpose of the equality rights, the Court turned its attention to fleshing out how courts should decide whether a difference in treatment amounts to discrimination. This analysis involves establishing the appropriate comparator group, adopting the appropriate perspective for assessing the impact of the law, and considering several contextual factors.

## **Determining the Appropriate Comparator Group**

The Court pointed out that discrimination is a comparative concept. In other words, the treatment must be different *as compared to* the treatment of another person or group of people.<sup>[17]</sup> Therefore courts must identify the appropriate group for comparison in each case - “the comparator group.”<sup>[18]</sup> This involves looking at the subject-matter of the legislation, its purpose, and its effects.<sup>[19]</sup> Other factors, such as the biological, historical, and sociological similarities and differences between the claimant and the group, may be relevant in choosing the comparator group.<sup>[20]</sup> While the natural starting point for this analysis is the group that the claimant wishes to be compared to, the Court also accepted that in some cases a court may need to refine the comparison that the claimant presents.<sup>[21]</sup>

## **The Appropriate Perspective**

The Court also clarified the perspective from which equality claims must be examined. Both for determining the appropriate comparator group and for assessing the effect on the

claimant's dignity, the assessment must be from the claimant's perspective.<sup>[22]</sup> This does not mean that it is sufficient for the claimant to simply assert that his or her dignity has been harmed by the law, however. There is also an objective component to the test. The Court stated that "the relevant point of view is that of the reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to, and under similar circumstances as, the claimant."<sup>[23]</sup> This combined subjective-objective determination, the Court stated, must take into consideration the individual's or group's traits, history, and circumstances.<sup>[24]</sup>

## **Contextual Factors**

The Court said that to assess whether the claimant's dignity has been demeaned, a court must look at the context in a given case.<sup>[25]</sup> In particular, there are four contextual factors that should be considered: pre-existing disadvantage; the relationship between the grounds of discrimination and the claimant's characteristics or circumstances; whether the law has an ameliorative purpose or effect; and the nature of the interest affected.<sup>[26]</sup> The most compelling factor will be "pre-existing disadvantage, vulnerability, stereotyping, or prejudice experienced by the individual or group."<sup>[27]</sup> When a claimant is already subject to unfair circumstances or treatment in society, further differential treatment will perpetuate or promote that unfairness. As a result, differential treatment has a greater impact on those who are already vulnerable.<sup>[28]</sup> Showing that the claimant suffers from stereotyping and that a law reinforces that stereotype is sufficient to establish discrimination. But the Court also made it clear that it will not always be necessary to establish discrimination.<sup>[29]</sup> Membership in a group that has been historically disadvantaged is an important indicator of discrimination, but the Court pointed out that it may not be present in all cases of discrimination and it is not necessary for the claimant to establish membership in a sociologically recognized group.<sup>[30]</sup> Similarly, the Court pointed out that association with a historically disadvantaged group that is subject to differential treatment does not always amount to discrimination. It is simply one factor in assessing the impact on the claimant's dignity.<sup>[31]</sup> The second contextual factor the Court discussed is the relationship between the ground on which the claim is based and the differential treatment. Here the Court observed that some of the grounds - such as disability, sex, and age - may actually correspond with need, capacity, or circumstances.<sup>[32]</sup> As a result, the Court stated that it is important to consider whether the legislation draws a distinction in order to recognize the *actual* needs, capacities, or circumstances of the claimant in a way that respects that person's value as human being.<sup>[33]</sup> The Court was careful to point out, however, that a law may achieve a valid social purpose for one group of people while still discriminating against another person or group.<sup>[34]</sup> The third factor the Court discussed was whether the law has an ameliorative purpose or effect upon a more disadvantaged person or group in society. The Court made it clear that a law that accounts for the greater need or different circumstances of a disadvantaged group - an ameliorative law - will not violate the human dignity of the more advantaged group that is excluded.<sup>[35]</sup> However, the Court pointed out that an ameliorative law may be discriminatory if it excludes the members of historically disadvantaged groups from its scope.<sup>[36]</sup> The final factor discussed by the Court was the nature and scope of the interest affected by the legislation. The Court pointed out that

assessing this factor involves considering the constitutional and societal significance of the interests affected by the legislation, as well as whether it restricts access to a fundamental social institution, or affects a basic aspect of membership in Canadian society, or amounts to the complete non-recognition of a particular group.<sup>[37]</sup> The Court did not rule out the possibility that other factors will be relevant in other cases.<sup>[38]</sup>

### **Application of the Principles to Survivor's Pension Benefits**

Having set out the general approach to claims of discrimination, the Court then considered whether the Canada Pension Plan discriminates by denying the survivor's benefits to able-bodied individuals under 35 years of age who do not have dependent children. The Court pointed out that the pension plans draws a clear distinction between people under the age of 35 and those over the age of 35, as well as those under 45 and those over 45. The first step in the analysis was satisfied: there is differential treatment.<sup>[39]</sup> Since one of the distinctions is drawn (at least in part) on the basis of age - one of the protected grounds listed in the *Charter* - the Court concluded that second step of the analysis was also satisfied.<sup>[40]</sup> The more difficult question was whether the distinction amounts to discrimination. This required the Court to consider the four contextual factors discussed above in order to assess the impact of the distinction on the human dignity of those who do not qualify for the benefit. The Court pointed out that adults under the age of 45 are not a historically disadvantaged group.<sup>[41]</sup> As well, the Court rejected Nancy Law's argument that the law operated on a false stereotype that it is easier for young people to find employment.<sup>[42]</sup> While the Court accepted that surviving spouses of all ages are vulnerable immediately after the death of a spouse, it pointed out that the pension plan is not aimed at the immediate financial needs of widows and widowers, but rather at ensuring that the long-term basic needs of older widows and widowers are met.<sup>[43]</sup> The Court accepted the government's argument that older people have more difficulty finding and maintaining employment, so they are in greater need of this long-term assistance.<sup>[44]</sup> As well, the Court stated that given the long-term security goals of the pension benefit and the greater opportunity of youth, the disadvantage that the law imposes on younger spouses neither reflects nor promotes a belief that younger spouses are less capable, nor that they are less deserving of respect, concern and consideration.<sup>[45]</sup> Instead of drawing the distinction on the basis of stereotype, the Court said that the law makes a distinction that corresponds to the actual situation of the affected individuals.<sup>[46]</sup> As well, the Court emphasized that the survivor's benefits have a clear ameliorative purpose since older people - like those with dependent children or a disability - are more economically vulnerable to the long-term effects of a spouse's death.<sup>[47]</sup> Given the relatively better position of young spouses, the Court said that the law does not violate the dignity of those who do not qualify for the benefit.<sup>[48]</sup> Instead, the Court said that it simply reflects the fact that younger people are more able to overcome the long-term economic effect of the death of a spouse: A reasonable person under the age of 45 who takes into account the contextual factors relevant to the claim would properly interpret the distinction created by the CPP as suggesting that younger people are more likely to find a new spouse, are more able to retrain or obtain new employment, and have more time to adapt to their changed financial situation before retirement.<sup>[49]</sup> The Court also pointed out that Nancy Law was not

completely excluded from receiving the survivor's benefit; rather, she will receive the benefit when she turns 65, or before then if she becomes disabled.<sup>[50]</sup> After considering all of these factors the Court concluded that there was no violation of human dignity, and so the distinction drawn by the law is not discriminatory.<sup>[51]</sup> Adam Badari (June 8, 2010).

**Further Reading** Jim Young, "[Corbiere v. Canada \(1999\)](#)" *Centre for Constitutional Studies* (22 July 2009). "[Supreme Court Approves Affirmative Action Program](#)" *Centre for Constitutional Studies* (undated). Beverley Baines, "*Law v. Canada: Formatting Equality*" (2000) 11:3 *Constitutional Forum* 65. June Ross, "A Flawed Synthesis of the Law" (2000) 11:3 *Constitutional Forum* 74.

---

[1] *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.  
[2] *Ibid* at para. 8; *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 44(1)(d). [3] *Ibid*.  
[4] *Supra* note 1 at para. 9; *Canada Pension Plan*, R.S.C., 1985, c. C-8, s. 58. [5] *Ibid*.  
[6] *Supra* note 1 at para. 11. [7] *Ibid* at para. 39. [8] *Ibid*. [9] *Ibid*. [10] *Ibid*. [11] *Ibid* at para. 51. [12] *Ibid* at para. 51. [13] *Ibid* at para. 53. [14] *Ibid*. [15] *Ibid*. [16] *Ibid*. [17] *Ibid* at para. 56. [18] *Ibid* at para. 58. [19] *Ibid* at para. 57. [20] *Ibid*. [21] *Ibid*. [22] *Ibid*. at para. 59. [23] *Ibid*. at para. 60. [24] *Ibid*. [25] *Ibid* at para. 62. [26] *Ibid* at paras. 63-75. [27] *Ibid* at para. 63. [28] *Ibid*. [29] *Ibid* at para. 64. [30] *Ibid* at paras. 65-66. [31] *Ibid* at para. 67-68. [32] *Ibid*. [33] *Ibid* at para. 70. [34] *Ibid*. [35] *Ibid* at para. 72. [36] *Ibid*. [37] *Ibid*. [38] *Ibid* at para. 75. [39] *Ibid* at para. 90. [40] *Ibid* at para. 91. [41] *Ibid* at para. 95. [42] *Ibid* at paras. 96-100. [43] *Ibid* at para. 100. [44] *Ibid* at para. 101. [45] *Ibid* at para. 102. [46] *Ibid*. [47] *Ibid* at para. 103. [48] *Ibid*. [49] *Ibid* at para. 104. [50] *Ibid* at para. 107. [51] *Ibid* at paras. 108-110.