

Human Rights and the Charter

Questions Used by a Court to Decide what is an Analogous Ground under s. 15 –

1. Does the ground describe a group that has experienced and/or is now experiencing a social, legal, or economic disadvantage?
2. Does the ground describe a group that is vulnerable to prejudice or stereotyping?
3. Does the ground describe a group that is vulnerable to being mistreated or having its needs/conditions overlooked?
4. Does the ground describe a group that has or is being prevented from participating fully in society?
5. Does the ground describe a minority community within the broader Canadian society?

Yes to all is not required to decide that an analogous ground exists.

*The questions were developed in Yriend v. Alberta, [1998] 1 S.C.R. 493.

Supreme Court of Canada guidelines to determine whether an action offends s. 15 of the Charter –

1. Does the action deny an equal benefit or impose an unequal burden on an individual or group?
2. Is the action discriminatory (discrimination must be captured under an enumerated or analogous ground)?
3. Is the action discriminatory on the FACTS of the case?

*Once these questions are answered in the positive – the Crown is given a chance to defend its action (policy, law, etc.) based on s. 1 of the Charter as being a reasonable limit in a free and democratic society.