



## CASE 6

### *Law v. Canada (Minister of Employment and Immigration)*

[1999] 1 S.C.R. 497 Supreme Court of Canada

#### ■ Introduction

The appellant in this case against the Minister of Employment and Immigration maintained that her Section 15 rights under the *Charter* were being violated, that she was being discriminated against on the basis of her age. After the death of her husband, Ms Law was deemed too *young* to receive survivor benefits under the Canada Pension Plan. As it stood, the survivor benefits scheme reflected the belief that younger persons are generally better able themselves to replace the lost income resulting from their spouses' deaths. After her initial appeals regarding her disentitlement were dismissed, Ms Law appealed to the Supreme Court of Canada. The Supreme Court's benchmark decision in this case established important criteria for the approach that courts could use in Section 15 cases, as well as setting out the core elements of the meaning of discrimination.

#### ■ Facts

Nancy Law was a 30-year-old widow who was denied survivor benefits under the Canada Pension Plan (CPP) because of her age. Under the CPP, the survivor pension payable to an able-bodied, surviving spouse without dependent children, who is between 35 and 45 years of age, is gradually reduced by 1/120th of the full rate for each month that the claimant's age was less than 45 at the time of the spouse's death. According to the pension plan, the youngest age at which a person in Ms Law's position could receive such a benefit is age 65. Ms Law appealed her dis-entitlement to the Minister of National Health and Welfare and then the Pension Plan Review Board. She argued that the CPP's terms discriminated against her on the basis of age, contrary to Section 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*). The Review Board disagreed that her Section 15 rights were being violated and held that, even if they were, the CPP's provisions were reasonably justified under Section 1 of the *Charter*. Her appeal to the Federal Court of Appeal was dismissed. Ms Law then appealed to the Supreme Court of Canada.

#### ■ Issues

Does the CPP infringe Section 15(1) of the *Charter* by discriminating on the basis of age? If so, is the discrimination demonstrably justified in a free and democratic society?

#### ■ Held

First question answered in the negative: CPP did not infringe Ms Law's Section 15 rights on the basis of age. Second question therefore does not require answering. Appeal dismissed.

#### ■ Judicial Reasoning

At this point in the short history of Section 15 *Charter* jurisprudence, it is appropriate to establish a set of guidelines for analyzing discrimination claims under Section 15(1). A purposive and contextual approach should be used to give effect to the remedial purpose of Section 15 and to avoid problems that arise when rigid tests are applied. Analysis of Section



15(1) generally addresses three central issues:

1. whether a law imposes differential treatment between the claimant and others either in purpose or effect
2. whether **enumerated or analogous grounds** are the basis of the differential treatment
3. whether the law's purpose or effect is discriminatory

This framework, in turn, requires a court to make three broad inquiries:

1. Does the law in question draw a *formal distinction* between the claimant and others on the basis of one or more personal characteristics, or fail to take into account the claimant's *pre-existing disadvantaged position* in society so that the claimant receives substantively different treatment from others on the basis of personal characteristics?
2. Is the differential treatment based on one or more enumerated or analogous grounds?
3. Does the differential treatment discriminate by *imposing burdens or denying benefits* in a way that involves the application of *stereotypical assumptions* about group or personal characteristics, or that otherwise perpetuates or promotes "the view that the individual is *less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration?*"

A purposive approach to Section 15(1) means that differential treatment must be considered in conjunction with the purpose of Section 15, which, broadly speaking, is to *protect essential human dignity and freedom* from violation by disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all enjoy equal recognition at law as human beings and members of society who are equally capable and equally deserving of respect and consideration. So, a discrimination claim will succeed only if there is a conflict between the purpose or effect of a law and the purpose of Section 15(1).

The factors that determine whether a law demeans dignity must be examined from the perspective of a reasonable person in the same circumstances as the person claiming discrimination. While the list of factors is always open, a few are listed below:

- Is there pre-existing disadvantage, stereotyping, prejudice or vulnerability, or membership in a discrete, insular minority?
- Is there a correspondence (or lack thereof) between the grounds of discrimination (e.g., disability or age) and the actual needs, capacity, and circumstances of the claimant?
- Does the law have a remedial purpose or effect related to a person or group more disadvantaged than the claimant?
- What is the nature and scope of the interest affected by the law (how severe and localized are the law's consequences for the affected group)?

It is not necessary for a claimant to lead evidence proving a violation of human dignity. The court may draw such a conclusion on the basis of **judicial notice** and logical reasoning.

In the present case the CPP draws a clear distinction between Ms Law and others on the basis of age. This constitutes a denial of equal benefit of the law, thus satisfying the first step of the analytical test for Section 15(1) violation. Even if her disenfranchisement to benefits might be said to be based on a combination of characteristics (age, (dis)ability, and parental status) rather than age alone, this combination of characteristics can comprise an analogous ground if it meets the test of having the potential to have an impact on human dignity.

The essential question in this case is whether the claimant suffered discrimination in the sense of the third step of the test. In general, adults under the age of 45 have not consistently suffered the sort of discrimination historically experienced by discrete and insular minorities. It has not been proven that the CPP's provisions, in either their purpose or effect, violated Ms Law's human dignity. Their purpose is not to provide for the *immediate* financial needs of widows (and widowers) but rather to look after their basic needs over the longer term. The survivor benefits scheme reflects the belief that younger persons are generally better able themselves to replace the lost income resulting from their spouses' death. For one thing, they face fewer problems gaining access to the workforce than older people face.

The differential treatment of younger people does not reflect or promote any belief that they are less capable; less deserving of concern, respect, and consideration; or that they are less worthy of recognition as valued human beings or members of Canadian society. The law does not function by stereotyping but rather by addressing the actual situation of the individuals it affects. It also has a clearly ameliorative purpose serving the interests of older survivors. Its concern is not to erode personal dignity but to enhance it by looking after those who, in general, tend to be the most needy. Moreover, the fact that Ms Law will be eligible for the pension at age 65 strengthens the argument that the law does not reflect or promote the view that she is undeserving or less worthy as a person, only the view that the benefit should be delayed.