Supreme Court Judgments

Law v. Canada (Minister of Employment and Immigration)

Collection:	Supreme Court Judgments
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Report:	[1999] 1 SCR 497
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Judges:	Lamer, Antonio; L'Heureux-Dubé, Claire; Gonthier, Charles Doherty; McLachlin, Beverley; Iacobucci, Frank; Major, John C.; Bastarache, Michel
On appeal from:	Federal Court of Appeal
Subjects:	Constitutional law
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Law *v.* Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497

Nancy Law *Appellant*

v.

Minister of Human Resources Development *Respondent*

Indexed as: Law *v.* Canada (Minister of Employment and Immigration)

File No.: 25374.

Hearing: January 20, 1998.

Present: Lamer C.J. and L'Heureux-Dubé, Gonthier, McLachlin, Iacobucci, Major and Bastarache JJ.

Re-hearing ordered: December 3, 1998.

Present: Lamer C.J. and L'Heureux-Dubé, Gonthier, Cory, McLachlin, Iacobucci, Major, Bastarache and Binnie

Judgment: March 25, 1999.

on appeal from the federal court of appeal

Constitutional law -- Charter of Rights -- Equality rights -- Canada Pension Plan gradually discou survivor's benefits for able-bodied claimants without dependent children until threshold minimum age of 35 re and delaying those benefits until retirement age -- Survivors benefits delayed to retirement age -- Appellant bodied, under 35 and without dependent children -- Whether denial of benefits discrimination on basis of Whether denial of benefits an infringement of Charter's equality provision -- Canadian Charter of Right Freedoms, s. 15 -- Canada Pension Plan, R.S.C., 1985, c. C-8, ss. 44(1)(d), 58.

The appellant, a 30-year-old woman without dependent children or disability, was denied surv benefits under the Canadian Pension Plan (CPP). The CPP gradually reduces the survivor's pension for able-b surviving spouses without dependent children who are between the ages of 35 and 45 by 1/120th of the full ra each month that the claimant's age is less than 45 years at the time of the contributor's death so that the thresho to receive benefits is age 35. The appellant unsuccessfully appealed first to the Minister of National Healt Welfare and then to the Pension Plan Review Tribunal, arguing that these age distinctions discriminated against l the basis of age contrary to s. 15(1) of the *Canadian Charter of Rights and Freedoms*. A further appeal was ma the Pension Appeals Board, which, in a trial *de novo*, concluded that the impugned age distinctions did not viola appellant's equality rights. The majority of the Board also found that, even if the distinctions did infringe s. 15 the *Charter*, they could be justified under s. 1. A subsequent appeal to the Federal Court of Appeal was disn largely for the reasons of the Pension Appeals Board. The constitutional questions here queried whether ss. 44 and 58 of the *Canada Pension Plan* infringe s. 15(1) of the *Charter* on the ground that they discriminate on the of age against widows and widowers under the age of 45, and if so, whether this infringement is demons justified in a free and democratic society under s. 1.

Held: The appeal should be dismissed. The first constitutional question should be answered i negative; the second constitutional question did not need to be answered.

In the brief history of this Court's interpretation of s. 15(1) of the *Charter*, there have been s important substantive developments in equality law. Throughout these developments, although there have differences of opinion among the members of this Court as to the appropriate interpretation of s. 15(1), there has and continues to be general consensus regarding the basic principles relating to the purpose of s. 15(1) and the p approach to equality analysis. The present case is a useful juncture at which to summarize and comment upon basic principles, in order to provide a set of guidelines for courts that are called upon to analyze a discrimination under the *Charter*.

It is sensible to articulate the basic principles under s. 15(1) as guidelines for analysis, and not as a test which might risk being mechanically applied. Equality analysis under the *Charter* must be purposiv contextual. The guidelines set out here are just that -- points of reference which are designed to assist a co identifying the relevant contextual factors in a particular discrimination claim, and in evaluating the effect of factors in light of the purpose of s. 15(1). Inevitably, the guidelines summarized here will need to be supplemen practice by the explanation of these guidelines in these reasons and those of previous cases, and by a full apprec of the context surrounding the specific s. 15(1) claim at issue. As s. 15 jurisprudence evolves it may well b further elaborations and modifications will emerge.

General Approach

(1) It is inappropriate to attempt to confine analysis under s. 15(1) of the *Charter* to a fixed and li formula. A purposive and contextual approach to discrimination analysis is to be preferred, in order to perm realization of the strong remedial purpose of the equality guarantee, and to avoid the pitfalls of a formalis mechanical approach.

(2) The approach adopted and regularly applied by this Court to the interpretation of s. 15(1) focuses three central issues: (A) whether a law imposes differential treatment between the claimant and others, in purp effect; (B) whether one or more enumerated or analogous grounds of discrimination are the basis for the differ treatment; and (C) whether the law in question has a purpose or effect that is discriminatory within the meaning equality guarantee. The first issue is concerned with the question of whether the law causes differential treat The second and third issues are concerned with whether the differential treatment constitutes discrimination substantive sense intended by s. 15(1).

(3) Accordingly, a court that is called upon to determine a discrimination claim under s. 15(1) should the following three broad inquiries:

A. Does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Can society resulting in substantively differential treatment between the claimant and others on the basis of one or personal characteristics?

B. Is the claimant subject to differential treatment based on one or more enumerated and analogous grounds?

and

C. Does the differential treatment discriminate, by imposing a burden upon or withholding a benefit from the cla in a manner which reflects the stereotypical application of presumed group or personal characteristics, or otherwise has the effect of perpetuating or promoting the view that the individual is less capable or wort recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respec consideration?

Purpose

(4) In general terms, the purpose of s. 15(1) is to prevent the violation of essential human dignit freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a s in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, e capable and equally deserving of concern, respect and consideration.

(5) The existence of a conflict between the purpose or effect of an impugned law and the purp s. 15(1) is essential in order to found a discrimination claim. The determination of whether such a conflict exist be made through an analysis of the full context surrounding the claim and the claimant.

Comparative Approach

(6) The equality guarantee is a comparative concept, which ultimately requires a court to establish c more relevant comparators. The claimant generally chooses the person, group, or groups with whom he or she w to be compared for the purpose of the discrimination inquiry. However, where the claimant's characterization comparison is insufficient, a court may, within the scope of the ground or grounds pleaded, refine the compa presented by the claimant where warranted. Locating the relevant comparison group requires an examination subject-matter of the legislation and its effects, as well as a full appreciation of context.

Context

(7) The contextual factors which determine whether legislation has the effect of demeaning a clain dignity must be construed and examined from the perspective of the claimant. The focus of the inquiry is subjective and objective. The relevant point of view is that of the reasonable person, in circumstances similar to of the claimant, who takes into account the contextual factors relevant to the claim.

(8) There is a variety of factors which may be referred to by a s. 15(1) claimant in order to demon that legislation demeans his or her dignity. The list of factors is not closed. Guidance as to these factors may be in the jurisprudence of this Court, and by analogy to recognized factors.

(9) Some important contextual factors influencing the determination of whether s. 15(1) has infringed are, among others:

(A) Pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the individ group at issue.

The effects of a law as they relate to the important purpose of s. 15(1) in protecting individuals or g who are vulnerable, disadvantaged, or members of "discrete and insular minorities" should always be a c consideration. Although the claimant's association with a historically more advantaged or disadvantaged gro groups is not *per se* determinative of an infringement, the existence of these pre-existing factors will favour a fi that s. 15(1) has been infringed.

(B) The correspondence, or lack thereof, between the ground or grounds on which the claim is base the actual need, capacity, or circumstances of the claimant or others.

Although the mere fact that the impugned legislation takes into account the claimant's tra circumstances will not necessarily be sufficient to defeat a s. 15(1) claim, it will generally be more diffic establish discrimination to the extent that the law takes into account the claimant's actual situation in a manne respects his or her value as a human being or member of Canadian society, and less difficult to do so where th fails to take into account the claimant's actual situation.

(C) The ameliorative purpose or effects of the impugned law upon a more disadvantaged person or in society.

An ameliorative purpose or effect which accords with the purpose of s. 15(1) of the *Charter* will like violate the human dignity of more advantaged individuals where the exclusion of these more advantaged indiv largely corresponds to the greater need or the different circumstances experienced by the disadvantaged group targeted by the legislation. This factor is more relevant where the s. 15(1) claim is brought by a more advan member of society.

and

(D) The nature and scope of the interest affected by the impugned law.

The more severe and localized the consequences of the legislation for the affected group, the more that the differential treatment responsible for these consequences is discriminatory within the meaning of s. 15(1)

(10) Although the s. 15(1) claimant bears the onus of establishing an infringement of his or her eq rights in a purposive sense through reference to one or more contextual factors, it is not necessarily the case th claimant must adduce evidence in order to show a violation of human dignity or freedom. Frequently, differential treatment is based on one or more enumerated or analogous grounds, this will be sufficient to fou infringement of s. 15(1) in the sense that it will be evident on the basis of judicial notice and logical reasoning th distinction is discriminatory within the meaning of the provision.

As a result of the ages specified under the CPP, a clear distinction is drawn between the appellan others on the basis of age. Both the delay in the receipt of benefits and the reduced entitlement to benefits consti denial of equal benefit of the law under the first step of the equality analysis.

Even if entitlement to a survivor's pension benefit were dependent upon the interplay of age, disa and parental status, this interplay would not preclude the appellant from establishing that a distinction had been on one or more of the grounds in s. 15(1) of the *Charter*. A claimant can articulate a discrimination claim under than one of the enumerated and analogous grounds. Such an approach to the grounds of discrimination accords the essential purposive and contextual nature of equality analysis under s. 15(1) of the *Charter*. Where a party a discrimination claim on the basis of a newly postulated analogous ground, or on the basis of a combinati different grounds, this part of the discrimination inquiry must focus upon whether and why a ground or conflue grounds is analogous to those listed in s. 15(1). This determination is made on the basis of a complete analysis purpose of s. 15(1), the nature and situation of the individual or group at issue, and the social, political and history of Canadian society's treatment of the group. A ground or grounds will not be considered analogous s. 15(1) unless it can be shown that differential treatment premised on the ground or grounds has the potential to into play human dignity. If the court determines that recognition of a ground or confluence of grounds as anal would serve to advance the fundamental purpose of s. 15(1), the ground or grounds will then be so recognized.

A discrimination claim positing an intersection of grounds can be understood as analogous to, o synthesis of, the grounds listed in s. 15(1). If the CPP had based entitlement on a combination of factors, the app would still have been able to establish the requisite distinction, whether on the basis of age alone, or based combination of grounds.

Relatively speaking, adults under the age of 45 have not been consistently and routinely subjected sorts of discrimination faced by some of Canada's discrete and insular minorities. It is accordingly more difficu practical matter for this Court to reason, from facts of which the Court may appropriately take judicial notice, th legislative distinction at issue violates the human dignity of the appellant.

Neither the purpose nor the effect of the impugned legislative provisions was demonstrated to viola appellant's human dignity so as to constitute discrimination even though reference was made to government r and other sources which favour extending survivor's pensions to younger spouses on the basis that they immediate financial need. The purpose and function of the impugned CPP provisions is not to remedy the imm financial need experienced by widows and widowers, but rather to enable older widows and widowers to meet basic needs during the longer term. The notion that young persons experience fewer impediments to long-term l force participation and are generally in a better position than older persons to replace independently the incom deceased spouse over the long run as a working member of Canadian society is reflected in the survivor's pe provision of the CPP. The increasing difficulty with which one can find and maintain employment as one grows is a matter of which a court may appropriately take judicial notice.

Although the law imposes a disadvantage on younger spouses in this class, it is unlikely to substantive disadvantage, viewed in the long term. The differential treatment of younger people does not refl promote the notion that they are less capable or less deserving of concern, respect, and consideration, when th perspectives of long-term security and the greater opportunity of youth are considered. Nor does the differ treatment perpetuate the view that people in this class are less capable or less worthy of recognition or value as h beings or as members of Canadian society. Given the contemporary and historical context of the differential trea and those affected by it, the legislation does not stereotype, exclude, or devalue adults under 45. The law fun not by the device of stereotype, but by distinctions corresponding to the actual situation of individuals it affects being young, the appellant, *a fortiori*, has greater prospect of long-term income replacement.

The clear ameliorative purpose of the pension scheme for older surviving spouses is another supporting the view that the impugned CPP provisions do not violate essential human dignity. Parliament's int enacting a survivor's pension scheme with benefits allocated according to age appears to have been to allocate to those persons whose ability to overcome need was weakest. The concern was to enhance personal dignit freedom by ensuring a basic level of long-term financial security to persons whose personal situation makes unable to achieve this goal which is so important to life and dignity. This legislative purpose accords well wi fundamental purposes of s. 15(1) of the *Charter*.

Legislation need not always correspond perfectly with social reality in order to comply with s. 15(1) *Charter*. The determination of whether a legislative provision infringes a claimant's dignity must in every ca considered in the full context of the claim. In the present case, the appellant is more advantaged by virtue young age. The legislation has an egalitarian purpose and function and its provisions correspond to a very degree with the needs and circumstances of the persons whom the legislation targets. No other factors suggest th appellant's dignity as a younger adult is demeaned by the legislation, either in its purpose or in its effects.

The fact that the legislation is premised upon informed statistical generalizations which ma correspond perfectly with the long-term financial need of all surviving spouses does not affect the ultimate concl that the legislation is consonant with the human dignity and freedom of the appellant. Parliament is entitled, these limited circumstances at least, to premise remedial legislation upon informed generalizations without ru afoul of s. 15(1) of the *Charter* and being required to justify its position under s. 1. Under other circumstances a precise correspondence would undoubtedly be required in order to comply with s. 15(1). In particular, a more p correspondence will likely be important where the individual or group which is excluded by the legislation is al disadvantaged or vulnerable within Canadian society. The availability of the pension to the appellant at a strengthens the conclusion that the law does not reflect a view of the appellant that suggests she is undeserving o worthy as a person, only that the distribution of the benefit to her will be delayed until she is at a different point life cycle, when she reaches retirement age.

Cases Cited

Considered: *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143; *R. v. Turpin*, [19 S.C.R. 1296; *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229; *Tétreault-Gadoury v. Canada (Employmen Immigration Commission)*, [1991] 2 S.C.R. 22; *Egan v. Canada*, [1995] 2 S.C.R. 513; *Miron v. Trudel*, [19 S.C.R. 418; *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241; *Vriend v. Alberta*, [1998] 1 S.C.R *Weatherall v. Canada (Attorney General)*, [1993] 2 S.C.R. 872; **referred to:** *R. v. Swain*, [1991] 1 S.C.R. 933 *Hess; R. v. Nguyen*, [1990] 2 S.C.R. 906; *Symes v. Canada*, [1993] 4 S.C.R. 695; *Thibaudeau v. Canada*, [19 S.C.R. 627; *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358; *Eldridge v. British Columbia (Att General)*, [1997] 3 S.C.R. 624; *Haig v. Canada*, [1993] 2 S.C.R. 995; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 1 *v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *Kask v. Shimizu*, [1986] 4 W.W.R. 154; *Rodriguez v. British Colu (Attorney General)*, [1993] 3 S.C.R. 519; *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219; *R. v. Oakes*, [19 S.C.R. 103; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713; *Machtinger v. HOJ Industries Ltd.*, [19 S.C.R. 986; *Moge v. Moge*, [1992] 3 S.C.R. 813.

Statutes and Regulations Cited

Canada Pension Plan, R.S.C., 1985, c. C-8, ss. 44(1)(*d*) [am. c. 30 (2nd Supp.), s. 13], 58(1)(*a*) [am. *idem*., s. 26]

Canadian Charter of Rights and Freedoms, ss. 1, 15(1), (2).

Authors Cited

Canada. *House of Commons Debates*, vol. VI, 2nd Sess., 26th Parl., August 10, 1964, p. 6636.

Canada. *House of Commons Debates*, vol. IX, 2nd Sess., 26th Parl., November 16, 1964, p. 10122.

Sopinka, John, Sidney N. Lederman and Alan W. Bryant. *The Law of Evidence in Canada*. Toronto: Butterw 1992.

APPEAL from a judgment of the Federal Court of Appeal (1996), 135 D.L.R. (4th) 293, 196 N.I [1996] F.C.J. No. 511 (QL), dismissing an application to set aside a decision of the Pension Appeals Board (1 C.E.B. & P.G.R. 8574, finding certain age distinctions in the Canada Pension Plan to be constitutional. A dismissed.

James Sayre, for the appellant.

Susan L. Van Der Hout, *Virginia McRae* and *Julie Lalonde-Goldenberg*, for the respondent.

The judgment of the Court was delivered by

//*Iacobucci J.*//

IACOBUCCI J.--

I. Introduction and Overview

1 This appeal concerns the constitutionality of ss. 44(1)(*d*) and 58 of the *Canada Pension Plan*, R 1985, c. C-8, which draw distinctions on the basis of age with regard to entitlement to survivor's pensions. The is whether the provisions infringe s. 15(1) of the *Canadian Charter of Rights and Freedoms* on the ground tha discriminate against persons under the age of 45 on the basis of age and, if so, whether the infringement is jus under s. 1 of the *Charter*. In my view, a purposive reading and application of s. 15(1) results in the conclusion th appellant has not established discrimination within the meaning of the *Charter*.

2 Section 15 of the *Charter* guarantees to every individual the right to equal treatment by the state w discrimination. It is perhaps the *Charter*'s most conceptually difficult provision. In this Court's first s. 15 *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R 143, at p. 164, McIntyre J. noted that, as embodie 15(1) of the *Charter*, the concept of equality is "an elusive concept", and that "more than any of the other righ freedoms guaranteed in the *Charter*, it lacks precise definition". Part of the difficulty in defining the conc equality stems from its exalted status. The quest for equality expresses some of humanity's highest ideal aspirations, which are by their nature abstract and subject to differing articulations. The challenge for the judici interpreting and applying s. 15(1) of the *Charter* is to transform these ideals and aspirations into practice in a m which is meaningful to Canadians and which accords with the purpose of the provision.

3 In *Andrews*, McIntyre J., who delivered the unanimous reasons of the Court on the issue of the p approach to s. 15(1), cautioned at p. 168 that it would be inappropriate to attempt to confine analysis under s. 15 a "fixed and limited formula". This sentiment has been echoed in subsequent decisions: see, e.g., *R. v. Turpin*, [1 S.C.R. 1296, at p. 1326, *per* Wilson J., and *R. v. Swain*, [1991] 1 S.C.R. 933, at pp. 991-92, *per* Lamer McIntyre J. advocated a contextual and purposive approach to discrimination analysis under the *Charter* contrasted this preferred approach to the rigid formalism which had characterized this Court's approach und equality provision in the *Canadian Bill of Rights*. As he suggested, a flexible and nuanced analysis under s. 15 preferable because it permits evolution and adaptation of equality analysis over time in order to accommodate n different understandings of equality as well as new issues raised by varying fact situations. Such an approach accords far better with the strong remedial purpose of s. 15, permitting the realization of that purpose.

4 Indeed, in the brief history of this Court's interpretation of s. 15(1) of the *Charter*, there have several important substantive developments in equality law, relating to, among other things, the meaning of ad effects discrimination, the role of context in identifying discrimination more generally, and the *indicia* of an anal ground. All of these developments have been guided by the Court's evolving understanding of the purpose of eq protection under s. 15(1). All have augmented and enriched anti-discrimination jurisprudence under the *Charter*.

5 Throughout these developments, although there have been differences of opinion among the memb this Court as to the appropriate interpretation of s. 15(1), I believe it is fair to say that there has been and contin be general consensus regarding the basic principles relating to the purpose of s. 15(1) and the proper approa equality analysis. In my view, the present case is a useful juncture at which to summarize and comment upon basic principles, in order to provide a set of guidelines for courts that are called upon to analyze a discrimination under the *Charter*.

6 In accordance with McIntyre J.'s caution in *Andrews*, *supra*, I think it is sensible to articulate the principles under s. 15(1) as guidelines for analysis, and not as a rigid test which might risk being mechan applied. Equality analysis under the *Charter* must be purposive and contextual. The guidelines which I review l are just that -- points of reference which are designed to assist a court in identifying the relevant contextual factor particular discrimination claim, and in evaluating the effect of those factors in light of the purpose of s. 15(1).

7 The analysis in these reasons proceeds from the general to the more specific. I begin, after desc the background of the case, with a review of general principles regarding the proper approach to be follow analyzing a discrimination claim. This portion of the reasons is concerned with outlining elements or stag analysis, whose content and application I then develop. The second portion of my analysis is a discussion of the principles which this Court has articulated in past jurisprudence regarding the purpose of s. 15(1), an fundamentally purposive nature of each stage of analysis under the provision. Next, on the basis of previous ca review some of the contextual factors which may assist a court in determining whether the purpose of s. 15(been engaged within the context of a particular case. A summary of the elements of a discrimination clai purpose of s. 15(1), and the contextual factors then follows. Finally, I apply the principles articulated in this an to the case at bar.

II. Background

A. *The Legislation*

8 The Canada Pension Plan (the "CPP") is a compulsory social insurance scheme which was enac 1965 in order to provide contributors and their families with reasonable minimum levels of income upo retirement, disability or death of the wage earner: see *House of Commons Debates*, vol. VI, 2nd Sess., 26th August 10, 1964, at p. 6636. Among the benefits available under the CPP is the survivor's pension. This mo benefit is paid to a surviving spouse whose deceased partner has made sufficient contributions to the CPP, and meets the eligibility criteria specified in s. 44(1)(*d*), namely, an age threshold, responsibility for dependent child disability.

9 A claimant who is over the age of 45 at the time of the contributor's death, or is maintaining depe children of the deceased contributor, or is (or becomes) disabled, is entitled to receive the survivor's pension at th rate. However, s. 58 gradually reduces that pension for able-bodied surviving spouses without dependent ch who are between the ages of 35 and 45 by 1/120th of the full rate for each month that the claimant's age is less th years at the time of the contributor's death. Pursuant to s. 44(1)(*d*), unless they should become disabled, able-b surviving spouses without dependent children who are under 35 at the time of the death of the contributo precluded from receiving a survivor's pension until they reach the age of 65.

B. *Facts*

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10 The appellant, Nancy Law, married Jason Law in 1980. Mr. Law died in 1991, at the age of 50, h contributed to the CPP for 22 years. At the time of his death, the appellant was 30 years old. Prior to Mr. Law's the couple had co-owned a small business. The appellant was responsible for business operations and her husban the requisite technical knowledge and expertise. The business failed soon after Mr. Law's death.

11 The appellant applied to receive survivor's benefits under the CPP. Her husband had made suff contributions under the CPP such that she would qualify for survivor benefits if she came within the class of pe entitled to receive them. However, her application was refused because she was under 35 years of age at the ti her husband's death, she was not disabled, and she did not have dependent children.

12 The appellant appealed this decision to the Minister of National Health and Welfare, who rejecte appeal in May, 1992. She then appealed to the Pension Plan Review Tribunal, arguing that the age distinctions 44(1)(*d*) and 58 of the CPP discriminate against her on the basis of age contrary to s. 15(1) of the *Charter*. tribunal found that the legislation discriminates against those who, at the time of the contributor's death, hav reached age 35, have no dependent children and are not disabled. However, the tribunal was unable to re consensus regarding s. 1 of the *Charter*. The majority concluded that the discrimination was justified under s. although a more precise test of need could have been crafted, the measures adopted were a reasonable attem Parliament to achieve the objective of the CPP. The dissenting member of the tribunal found that the age distin in the impugned provisions were arbitrary and that Parliament could have targeted needy dependents w discrimination by legislating a test to determine need.

13 The appellant then appealed to the Pension Appeals Board, which, in a trial *de novo*, concluded th impugned age distinctions do not violate the appellant's equality rights. The majority of the board also found even if the distinctions did infringe s. 15(1) of the *Charter*, they would be justified under s. 1. A subsequent app the Federal Court of Appeal was dismissed largely for the reasons of the Pension Appeals Board.

III. Relevant Statutory and Constitutional Provisions

14 *Canada Pension Plan*, R.S.C., 1985, c. C-8

44. (1) Subject to this Part,

. . .

(*d*) a survivor's pension shall be paid to the surviving spouse, as determined pursuant to this Ac deceased contributor who has made contributions for not less than the minimum qualifying per the surviving spouse

(i) has reached sixty-five years of age, or

(ii) in the case of a surviving spouse who has not reached sixty-five years of age,

(A) had at the time of the death of the contributor reached thirty-five years of age,

(B) was at the time of the death of the contributor a surviving spouse with dependent chi or

(C) is disabled;

. . .

58. (1) Subject to this section, a survivor's pension payable to the surviving spouse of a contribu a basic monthly amount as follows:

(*a*) in the case of a surviving spouse who has not reached sixty-five years of age and to who retirement pension is payable under this Act or a provincial pension plan, a basic monthly a consisting of

(i) a flat rate benefit, calculated as provided in subsection (1.1), and

(ii) 37½ per cent of the amount of the contributor's retirement pension, calculated as provi subsection (3),

reduced, unless the surviving spouse was at the time of the death of the contributor a surviving s with dependent children or unless he is disabled, by 1/120 for each month by which the age surviving spouse at the time of the death of the contributor is less than forty-five years, and reduc at any time after the death of the contributor the surviving spouse ceases to be

(iii) a surviving spouse with dependent children and is not at that time disabled, or

(iv) disabled and is not at that time a surviving spouse with dependent children,

by 1/120 for each month by which the age of the surviving spouse at that time is less than fort years; . . .

Canadian Charter of Rights and Freedoms

15. (1) Every individual is equal before and under the law and has the right to the equal protectio equal benefit of the law without discrimination and, in particular, without discrimination based on national or ethnic origin, colour, religion, sex, age or mental or physical disability.

IV. Judicial History

A. Pension Appeals Board (1995), C.E.B. & P.G.R. 8574

(1) Rutherford J., Dureault J. concurring

15 Following an extensive extract from the respondent's expert report, adduced at the trial *de novo* b the Pension Appeals Board, Rutherford J. stated that, although many laws create legal distinctions, not all amo discrimination within the meaning of s. 15(1) of the *Charter*. He went on to find that although age is a fac determining eligibility for survivor's benefits under the CPP, it is not the sole criterion. Rather, it is a combinat age, healthful employability, and freedom from the responsibility of dependent children which may lead to excl from benefits. Moreover, he held that, to the extent that age is a factor in the denial of benefits, ss. 44(1)(*d*)(ii)(A 58 do not create the kind of distinction that has been characterized as "discrimination" in the constitutional sense.

16 Rutherford J. noted that the Supreme Court of Canada has used s. 15(1) of the *Charter* as a mea protecting discrete and insular minorities and of shielding vulnerable groups against stigmatization, stereotypin prejudice. Quoting with approval from the remarks of Wilson J. in *McKinney v. University of Guelph*, [1990] 3 S 229, he found that none of the evidence in the present case suggested that the appellant is a member of a grou suffers "discrimination" in *Charter* terms. Nor, he observed, did the evidence suggest that able-bodied and y surviving spouses without responsibility for children are treated differently, on the basis of an irrelevant per characteristic, from those who do receive survivor's pension benefits. Rather, Rutherford J. found that age is a relevant characteristic to be considered in determining relative need for survivor's benefits. He also noted th appellant is not a member of a traditionally disadvantaged group, an insular minority or a segment of society tha may be stigmatized, stereotyped or subjected to prejudice. Accordingly, he concluded that, even though the impu provisions draw a distinction based on age, this does not constitute discrimination within the meaning of s. 15 the *Charter*.

17 Although it was not necessary to do so in order to dispose of the appeal, Rutherford J. went on t that even if the impugned provisions of the CPP did infringe s. 15(1) of the *Charter*, the infringement wou justified under s. 1 of the *Charter*. He acknowledged that the extension of benefits to widowers and the eliminat remarriage as a bar to continuing survivor's benefits had diluted the original legislative objective, making it di for ss. 44(1)(*d*)(ii)(A) and 58 to pass the justificatory test under s. 1 of the *Charter* without being found vulneral one point or another. However, in his view, the complexity of the CPP, its status as an over-arching federal-prov benefits system, and its onerous amendment requirements justify deference to Parliament's choice of measures.

(2) Angers J.A.

18 Angers J.A. agreed with his colleagues' reasons regarding discrimination on the basis of ag preferred not to comment on the effect of s. 1 of the *Charter*.

B. *Federal Court of Appeal* (1996), 135 D.L.R. (4th) 293

19 Isaac C.J., delivering judgment on behalf of a unanimous court, was not convinced that the Pe Appeals Board had committed a reviewable error. He stated that the court substantially agreed with the reasons board that neither s. 44(1)(*d*) nor s. 58 of the CPP infringes upon the appellant's equality rights guaranteed by s. of the *Charter*. The Court of Appeal was also in substantial agreement with the majority opinion that, even if provisions do infringe s. 15(1) of the *Charter*, they constitute a reasonable limit under s. 1 of the *Ch* Accordingly, the appeal was dismissed.

V. Issues

20 By order of the Chief Justice dated March 26, 1997, the following constitutional questions were for this Court's consideration:

1. Do ss. 44(1)(*d*) and 58 of the *Canada Pension Plan*, R.S.C., 1985, c. C-8, infringe on s. 15(1) *Canadian Charter of Rights and Freedoms* on the ground that they discriminate against widow widowers under the age of 45 on the basis of age?

2. If so, can this infringement be demonstrably justified in a free and democratic society under s. 1 *Canadian Charter of Rights and Freedoms*?

VI. Analysis

A. *Approach to s. 15(1)*

21 Subsection 15(1) of the *Charter* states as follows:

> **15.** (1) Every individual is equal before and under the law and has the right to the equal protectio equal benefit of the law without discrimination and, in particular, without discrimination based on national or ethnic origin, colour, religion, sex, age or mental or physical disability.

22 On its face, s. 15(1) guarantees the equal treatment of individuals by the state without discrimina The concepts of "equality" and "discrimination" lie at the heart of the provision. What do these concepts mea how are they to be established? An excellent starting point in answering these questions is the *Andrews* dec *supra*, which articulates many of the basic principles which continue to guide s. 15(1) analysis to the present day.

(1) *Andrews* Revisited

23 McIntyre J. in *Andrews* adopted an approach to s. 15(1) which focuses upon three central elemen whether a law imposes differential treatment between the claimant and others; (2) whether an enumerat analogous ground of discrimination is the basis for the differential treatment; and (3) whether the law in question "discriminatory" purpose or effect. In these reasons, for the sake of convenience, I will refer only to discrimi laws, and not to the various other forms of potentially discriminatory state action. The first element -- differ treatment -- relates to, but is not determinative of, the issue of equality for the purpose of s. 15(1). The secon third elements in McIntyre J.'s approach determine whether the differential treatment in question const discrimination within the meaning of s. 15(1) of the *Charter*. In his detailed discussion of these three elen McIntyre J. made clear that the analysis of each element is to be undertaken in a purposive and contextualized ma taking into account the "large remedial component" (p. 171) of s. 15(1), and the purpose of the provision in fig the evil of discrimination.

24 McIntyre J. began his discussion of the requirement of differential treatment by noting, at p. 164 equality is a comparative concept, "the condition of which may only be attained or discerned by comparison wi condition of others in the social and political setting in which the question arises". It is impossible to evaluat 15(1) claim without identifying specific personal characteristics or circumstances of the individual or group bri the claim, and comparing the treatment of that person or group to the treatment accorded to a relevant compa This comparison determines whether the s. 15(1) claimant may be said to experience differential treatment, wh the first step in determining whether there is discriminatory inequality for the purpose of s. 15(1).

25 At the same time, McIntyre J. emphasized that true equality does not necessarily result from ide treatment. Formal distinctions in treatment will be necessary in some contexts in order to accommodat differences between individuals and thus to produce equal treatment in a substantive sense: see pp. 16 Correspondingly, a law which applies uniformly to all may still violate a claimant's equality rights. The consideration, McIntyre J. stated, at p. 165, must be the impact of the law upon the individual or group to wh applies, as well as upon those whom it excludes from its application. He explained that the determination impact of legislation, by its nature, must be undertaken in a contextual manner, taking into account the content law, its purpose, and the characteristics and circumstances of the claimant, among other things. Hence, equality 15 must be viewed as a substantive concept. Differential treatment, in a substantive sense, can be brought about by a formal legislative distinction, or by a failure to take into account the underlying differences between indiv in society.

26 Moving on to discuss the requirement that a s. 15(1) claimant show that differential treatm discriminatory in order to establish a *Charter* violation, McIntyre J. defined "discrimination" in the following ter pp. 174-75:

> . . . discrimination may be described as a distinction, whether intentional or not but based on gr relating to personal characteristics of the individual or group, which has the effect of imposing bu obligations, or disadvantages on such individual or group not imposed upon others, or which withho limits access to opportunities, benefits, and advantages available to other members of society. Distin based on personal characteristics attributed to an individual solely on the basis of association with a will rarely escape the charge of discrimination, while those based on an individual's merits and capa will rarely be so classed.

27 Importantly, McIntyre J. explained that the determination of whether a distinction in treatment imp burden or withholds a benefit so as to constitute "discrimination" within the meaning of s. 15(1) is to be undertal a purposive way. As he stated, at pp. 180-81, "[t]he words 'without discrimination' require more than a mere fi of distinction between the treatment of groups or individuals". Moreover, "in assessing whether a complainant's have been infringed under s. 15(1), it is not enough to focus only on the alleged ground of discrimination and c whether or not it is an enumerated or analogous ground" (p. 182). Rather, "a role must be assigned to s. 15(1) goes beyond the mere recognition of a legal distinction" on such a ground. The protection of equality rig concerned with distinctions which are truly discriminatory. A discriminatory burden or denial of a benefit, McInt stated, is to be understood in a substantive sense and in the context of the historical development of Canadian discrimination law, notably the human rights codes: "The words 'without discrimination' . . . are a form of qu built into s. 15 itself and limit those distinctions which are forbidden by the section to those which involve prejud disadvantage" (pp. 180-81).

28 Further discussion of McIntyre J.'s statements regarding the purpose of s. 15(1) in remedying pre and disadvantage occurs below, where I discuss the purpose of s. 15(1) in more detail. At this point, it is suffici note that the Court in *Andrews* held that the fact that a distinction is drawn on the basis of a ground exp enumerated in s. 15(1) or one analogous thereto, although generally sufficient to establish discrimination, doe automatically give rise to this conclusion. In some circumstances a distinction based upon an enumerat analogous ground will not be discriminatory. As mentioned, McIntyre J. in *Andrews* gave an indication as to one type of permissible distinction, namely a distinction which takes into account the actual differences in characte or circumstances between individuals in a manner which respects and values their dignity and difference.

29 Finally, regarding the role of the various grounds of discrimination expressly listed in s. 15(1), Mc J. stated, at p. 175, that they "reflect the most common and probably the most socially destructive and histor practised bases of discrimination", but noted that a s. 15(1) claim may also be brought on an analogous grou accordance with the provision's wording and with a proper interpretation of its remedial purpose. In her ma reasons elaborating on the specific issue of analogous grounds, Wilson J. explained, at p. 152, that a groun qualify as analogous to those listed in s. 15(1) if persons characterized by the trait in question are, among other t "lacking in political power", "vulnerable to having their interests overlooked and their rights to equal concer respect violated", and "vulnerab[le] to becoming a disadvantaged group" on the basis of the trait. Just as for the two elements of the s. 15(1) analysis outlined by McIntyre J., Wilson J. emphasized at p. 152 that the determinat whether a ground qualifies as analogous under s. 15(1) is to be undertaken in a contextual manner:

> . . . this is a determination which is not to be made only in the context of the law which is subj challenge but rather in the context of the place of the group in the entire social, political and legal fab our society. While legislatures must inevitably draw distinctions among the governed, such distin should not bring about or reinforce the disadvantage of certain groups and individuals by denying the rights freely accorded to others.

30 In summary, then, the *Andrews* decision established that there are three key elements to a discrimi claim under s. 15(1) of the *Charter*: differential treatment, an enumerated or analogous ground, and discriminatio substantive sense involving factors such as prejudice, stereotyping, and disadvantage. Of fundamental importan stressed repeatedly by all of the judges who wrote, the determination of whether each of these elements exist particular case is always to be undertaken in a purposive manner, taking into account the full social, political, and context of the claim.

(2) Post-*Andrews* Jurisprudence

31 The general approach adopted in *Andrews* was regularly applied in subsequent decisions of the C

see, e.g., *Turpin*, *supra*; *R. v. Hess*; *R. v. Nguyen*, [1990] 2 S.C.R. 906; *McKinney*, *supra*; *Tétreault-Gadoury v. Ca*

(Employment and Immigration Commission), [1991] 2 S.C.R. 22; *Swain*, *supra*; *Symes v. Canada*, [1993] 4 S

695; *Egan v. Canada*, [1995] 2 S.C.R. 513; *Miron v. Trudel*, [1995] 2 S.C.R. 418; *Thibaudeau v. Canada*, [19

S.C.R. 627; *Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358; *Eaton v. Brant County Board of Educ*

[1997] 1 S.C.R. 241; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Vriend v. Alberta*, [

1 S.C.R. 493.

32 In *Egan*, *supra*, at paras. 130-31, Cory J., for himself and Iacobucci J., summarized the approach s

in *Andrews*, *supra*, as a two-step analysis with two components to the second step, in the following terms:

> In *Andrews*, *supra*, and *Turpin*, *supra*, a two-step analysis was formulated to determine whethe
> 15(1) right to equality had been violated. The first step is to determine whether, due to a distin
> created by the questioned law, a claimant's right to equality before the law, equality under the law,
> protection of the law or equal benefit of the law has been denied. During this first step, the inquiry s
> focus upon whether the challenged law has drawn a distinction between the claimant and others, bas
> personal characteristics.
>
> Not every distinction created by legislation gives rise to discrimination. Therefore, the secon
> must be to determine whether the distinction created by the law results in discrimination. In order to
> this determination, it is necessary to consider first, whether the equality right was denied on the basi
> personal characteristic which is either enumerated in s. 15(1) or which is analogous to those enume
> and second, whether that distinction has the effect on the claimant of imposing a burden, obligati
> disadvantage not imposed upon others or of withholding or limiting access to benefits or advan
> which are available to others.

33 In *Miron*, *supra*, McLachlin J. (Sopinka, Cory and Iacobucci JJ. concurring) outlined a similar s.

framework as follows, at para. 128:

> The analysis under s. 15(1) involves two steps. First, the claimant must show a denial of ' protection" or "equal benefit" of the law, as compared with some other person. Second, the claimant show that the denial constitutes discrimination. At this second stage, in order for discrimination made out, the claimant must show that the denial rests on one of the grounds enumerated in s. 15(1) analogous ground and that the unequal treatment is based on the stereotypical application of pres group or personal characteristics. If the claimant meets the onus under this analysis, violation of s. is established.

34 As was noted by Iacobucci J. for the full Court in *Benner*, *supra*, at para. 62, the approaches adopt Cory J. in *Egan* and by McLachlin J. in *Miron* are “essentially alike”. Although Cory J. did not, in the passag quoted from the *Egan* decision, specifically advert to the role of factors such as stereotyping, prejudice, and hist disadvantage in the second step of the discrimination analysis, the remainder of his analysis in that case clearly re the fundamental importance of such factors, in accordance with the framework established in *Andrews*.

35 Each of the elements of the approach to s. 15(1) articulated by the Court in *Andrews* and confirn later cases has developed and been enriched by the subsequent jurisprudence.

36 In *Eaton*, *supra*, at paras. 66-67, Sopinka J. for the full Court elaborated upon the point ma McIntyre J. in *Andrews* that, although in many cases a claimant will be able to establish substantively differ treatment by pointing to a formal distinction drawn by the impugned legislation, there are other ways to est differential treatment. In particular, Sopinka J. noted that an approach which requires proof of an express legis distinction is not necessarily applicable where a claim of "adverse effects" discrimination is made. In such case the legislation's failure to take into account the true characteristics of a disadvantaged person or group v Canadian society (i.e., by treating all persons in a formally identical manner), and not the express drawing distinction, which triggers s. 15(1). Sopinka J.'s statements to this effect in *Eaton* were echoed in the subsequent of *Eldridge*, *supra*, at paras. 60-80, and *Vriend*, *supra*, at para. 72, *per* Cory and Iacobucci JJ.

37 In a similar vein, relating to the issue of enumerated and analogous grounds, the Court has ha opportunity to develop the principles relating to the *indicia* of an analogous ground in such cases as *Turpin*, *s Miron*, *supra*, and *Egan*, *supra*, among several others. Notably, in *Symes*, *supra*, this Court recognized that, alt *Andrews* spoke of differential treatment being based upon one enumerated or analogous ground, it is open to a s. claimant to articulate a discrimination claim on the basis of more than one ground. As is discussed in more below, the claimant may place the evidentiary focus of the claim upon a person or subgroup identified by s grounds: see *Symes*, *supra*, at paras. 138 *et seq*., *per* Iacobucci J.

38 In the same way, the jurisprudence of the Court has affirmed and clarified McIntyre J.'s empha *Andrews* upon the necessity of establishing discrimination in a substantive or purposive sense, beyond mere proo distinction on enumerated or analogous grounds: see *Hess*, *supra*, at pp. 927-28; *per* Wilson J.; *McKinney*, *sup* pp. 392-93, *per* Wilson J.; *Swain*, *supra*, at p. 992, *per* Lamer C.J.; *Weatherall v. Canada (Attorney General)*, [19 S.C.R. 872; *Haig v. Canada*, [1993] 2 S.C.R. 995, at pp. 1043-44, *per* L'Heureux-Dubé J.; *Benner*, *supra*, at par *Eaton*, *supra*, at para. 66. In *Miron*, *supra*, at para. 132, McLachlin J. confirmed that "distinctions ma enumerated or analogous grounds may prove to be, upon examination, non-discriminatory". She explained distinction "may be found not to engage the purpose of the *Charter* guarantee", or it may "not have the eff imposing a real disadvantage in the social and political context of the claim".

39 In my view, the proper approach to analyzing a claim of discrimination under s. 15(1) of the *C* involves a synthesis of these various articulations. Following upon the analysis in *Andrews*, *supra*, and the tw framework set out in *Egan*, *supra*, and *Miron*, *supra*, among other cases, a court that is called upon to deter discrimination claim under s. 15(1) should make the following three broad inquiries. First, does the impugned l draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, fail to take into account the claimant's already disadvantaged position within Canadian society resulti substantively differential treatment between the claimant and others on the basis of one or more pe characteristics? If so, there is differential treatment for the purpose of s. 15(1). Second, was the claimant subj differential treatment on the basis of one or more of the enumerated and analogous grounds? And third, do differential treatment discriminate in a substantive sense, bringing into play the purpose of s. 15(1) of the *Cha* remedying such ills as prejudice, stereotyping, and historical disadvantage? The second and third inquiri concerned with whether the differential treatment constitutes discrimination in the substantive sense intended 15(1).

B. *The Purpose of s. 15(1)*

40 As was emphasized in early *Charter* decisions such as *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 14 *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, and reiterated by McIntyre J. in *Andrews*, *supra*, the proper app to the definition of rights guaranteed by the *Charter* is a purposive one. The purpose of s. 15(1) is to be sought, words of Dickson J. (as he then was) in *Big M*, *supra*, at p. 344, "by reference to the character and the larger obje the *Charter* itself, to the language chosen to articulate the specific right or freedom, to the historical origins concepts enshrined, and . . . to the meaning and purpose of the other specific rights and freedoms with whic associated within the text of the *Charter*".

41 Since the beginning of its s. 15(1) jurisprudence, this Court has recognized that the existenc conflict between an impugned law and the purpose of s. 15(1) is essential in order to found a discrimination c This principle holds true with respect to each element of a discrimination claim. The determination of wh legislation fails to take into account existing disadvantage, or whether a claimant falls within one or more enumerated and analogous grounds, or whether differential treatment may be said to constitute discrimination the meaning of s. 15(1), must all be undertaken in a purposive and contextual manner.

42 What is the purpose of the s. 15(1) equality guarantee? There is great continuity in the jurisprude this Court on this issue. In *Andrews*, *supra*, all judges who wrote advanced largely the same view. McIntyre J. s at p. 171, that the purpose of s. 15 is to promote "a society in which all are secure in the knowledge that the recognized at law as human beings equally deserving of concern, respect and consideration". The provisio guarantee against the evil of oppression, he explained at pp. 180-81, designed to remedy the imposition of limitations upon opportunities, particularly for those persons or groups who have been subject to hist disadvantage, prejudice, and stereotyping.

43 Similarly, La Forest J., concurring with respect to the proper approach to s. 15(1), stated th equality guarantee was designed to prevent the imposition of differential treatment that was likely to "inhibit the of those who are discriminated against that Canadian society is not free or democratic as far as they are concer and that was likely to decrease their "confidence that they can freely and without obstruction by the state pursue and their families' hopes and expectations of vocational and personal development" (p. 197, quoting from *K Shimizu*, [1986] 4 W.W.R. 154 (Alta. Q.B.), at p. 161, *per* McDonald J.). As discussed above, Wilson J. focussed issues of powerlessness and vulnerability within Canadian society, and emphasized the importance of examinin surrounding social, political, and legal context in order to determine whether discrimination exists within the me of s. 15(1).

44 The principles expressed in *Andrews* were echoed in subsequent cases, dealing with all three pr elements of the discrimination analysis. For example, Wilson J., writing for a unanimous Court in *Turpin*, *s* engaged in a purposive analysis of s. 15(1) in order to determine whether it was appropriate to consider "provin residence" (p. 1333) as an analogous ground of discrimination in the circumstances of the particular case. appellants in that case, both charged with murder in Ontario, argued that they were denied their right to treatment because, unlike persons accused of murder in Alberta, they were denied the right to elect to be tried judge alone, without a jury. Wilson J. stated that some of the central *indicia* of discrimination within the meaning 15(1) were stereotyping, historical disadvantage, and vulnerability to political and social prejudice. Finding th such *indicia* were present, Wilson J. dismissed the appeal, stating, at p. 1333: "Differentiating for mode o purposes between those accused of s. 427 offences in Alberta and those accused of the same offences elsewh Canada would not, in my view, advance the purposes of s. 15 in remedying or preventing discrimination a groups suffering social, political and legal disadvantage in our society."

45 A similar purposive approach was applied by La Forest J., writing for a unanimous Court in *Weath* *supra*, dealing with the question of whether a formal distinction in treatment on an enumerated ground could be s qualify as discrimination within the meaning of the *Charter*. The appellant, a male inmate at a federal penite challenged the practices of frisk searching and patrolling of cell ranges by female guards as, *inter alia*, a violat his right to equal treatment on the basis of sex under s. 15(1) of the *Charter*. In suggesting that these practices d violate s. 15(1), La Forest J. explained, at pp. 877-78, that an examination of the larger historical, biologica sociological context made clear that the practices in question had a different, more threatening impact on women that it was not discriminatory in a substantive or purposive sense to treat men and women differently in this regar

46 Similarly, in *Eaton*, *supra*, Sopinka J. applied a purposive approach to the determination of wheth state's failure to take into account the underlying difference of the disabled qualified as differential treatm inequality within the meaning of s. 15(1). Sopinka J. stated, at para. 66, that in light of the underlying c surrounding disabled persons in Canadian society, avoidance of discrimination on the ground of disability frequently require formal distinctions in treatment to be made in order to effect substantive equality. He explaine "[t]his emphasizes that the purpose of s. 15(1) of the *Charter* is not only to prevent discrimination by the attribut stereotypical characteristics to individuals, but also to ameliorate the position of groups within Canadian societ have suffered disadvantage by exclusion from mainstream society as has been the case with disabled persons".

47 The purpose of s. 15(1) has been variously expressed by the members of this Court. In *McK* *supra*, Wilson J., writing in dissent, described the purpose of the section as both protection "against the e discrimination by the state whatever form it takes" (p. 385) and the "promotion of human dignity" (p. 391). In *S* *supra*, Lamer C.J. stated, at p. 992, that the overall purpose of the section is "to remedy or prevent discrimi against groups subject to stereotyping, historical disadvantage and political and social prejudice in Canadian soci In *Tétreault-Gadoury*, *supra*, at pp. 40-41, La Forest J. referred to the stigmatizing effect of discriminatory treat and to the role of s. 15(1) in preventing the imposition of such stigma and the perpetuation of negative stereotype vulnerability.

48 Similar observations were made in *Miron*, *supra*, by McLachlin J. and in *Egan*, *supra*, by L'Heu Dubé J. and Cory J., all of whom found that the fundamental purpose of s. 15(1) is the protection of human dig Cory J. stated in *Egan*, *supra*, at para. 128, that the equality guarantee "recognizes and cherishes the innate h dignity of every individual". As he explained, at para. 179, "the existence of discrimination is determin assessing the prejudicial effect of the distinction against s. 15(1)'s fundamental purpose of preventing the infring of essential human dignity". Similarly, in *Miron*, *supra*, at para. 131, McLachlin J. stated the overarching purp s. 15(1) as being "to prevent the violation of human dignity and freedom by imposing limitations, disadvantag burdens through the stereotypical application of presumed group characteristics rather than on the basis of capacity, or circumstance".

49 In *Egan*, *supra*, at para. 39, L'Heureux-Dubé J. stated in a similar vein:

> . . . at the heart of s. 15 is the promotion of a society in which all are secure in the knowledge that th recognized at law as equal human beings, equally capable, and equally deserving. A person or gro persons has been discriminated against within the meaning of s. 15 of the *Charter* when members o group have been made to feel, by virtue of the impugned legislative distinction, that they are less ca or less worthy of recognition or value as human beings or as members of Canadian society, e deserving of concern, respect, and consideration.

50 Most recently, in *Vriend*, *supra*, at para. 67, Cory and Iacobucci JJ. stated the purpose of s. 15 being to take "a further step in the recognition of the fundamental importance and the innate dignity of the indivi and in the recognition of "the intrinsic worthiness and importance of every individual . . . regardless of the age colour, origins, or other characteristics of the person".

51 All of these statements share several key elements. It may be said that the purpose of s. 15(1) prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotypi political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as h beings or as members of Canadian society, equally capable and equally deserving of concern, respec consideration. Legislation which effects differential treatment between individuals or groups will violat fundamental purpose where those who are subject to differential treatment fall within one or more enumerat analogous grounds, and where the differential treatment reflects the stereotypical application of presumed gro personal characteristics, or otherwise has the effect of perpetuating or promoting the view that the individual i capable, or less worthy of recognition or value as a human being or as a member of Canadian society. Alternat differential treatment will not likely constitute discrimination within the purpose of s. 15(1) where it does not v the human dignity or freedom of a person or group in this way, and in particular where the differential treatmen assists in ameliorating the position of the disadvantaged within Canadian society.

52 As noted above, one of the difficulties in defining the concepts of "equality" and "discrimination" abstract nature of the words and the similarly abstract nature of words used to explain them. No single word or p can fully describe the content and purpose of s. 15(1). However, in the articulation of the purpose of s. 15(1 provided on the basis of past cases, a focus is quite properly placed upon the goal of assuring human dignity b remedying of discriminatory treatment.

53 What is human dignity? There can be different conceptions of what human dignity means. F purpose of analysis under s. 15(1) of the *Charter*, however, the jurisprudence of this Court reflects a specific, non-exhaustive, definition. As noted by Lamer C.J. in *Rodriguez v. British Columbia (Attorney General)*, [19 S.C.R. 519, at p. 554, the equality guarantee in s. 15(1) is concerned with the realization of personal autonom self-determination. Human dignity means that an individual or group feels self-respect and self-worth. It is conc with physical and psychological integrity and empowerment. Human dignity is harmed by unfair treatment pre upon personal traits or circumstances which do not relate to individual needs, capacities, or merits. It is enhanc laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the co underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignor devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian so Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individ society *per se*, but rather concerns the manner in which a person legitimately feels when confronted with a part law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the indiv affected and excluded by the law?

54 The equality guarantee in s. 15(1) of the *Charter* must be understood and applied in light of the understanding of its purpose. The overriding concern with protecting and promoting human dignity in the sens described infuses all elements of the discrimination analysis.

55 In order to determine whether the fundamental purpose of s. 15(1) is brought into play in a part claim, it is essential to engage in a comparative analysis which takes into consideration the surrounding context claim and the claimant. I now propose to comment briefly on the nature of the comparative approach, and th examine some of the contextual factors that a court should consider in determining whether s. 15(1) has infringed. Each factor may be more or less relevant depending upon the circumstances of the case.

C. *The Comparative Approach*

56 As discussed above, McIntyre J. emphasized in *Andrews*, *supra*, that the equality guarante comparative concept. Ultimately, a court must identify differential treatment as compared to one or more persons or groups. Locating the appropriate comparator is necessary in identifying differential treatment ar grounds of the distinction. Identifying the appropriate comparator will be relevant when considering many contextual factors in the discrimination analysis.

57 To locate the appropriate comparator, we must consider a variety of factors, including the subject-r of the legislation. The object of a s. 15(1) analysis is not to determine equality in the abstract; it is to dete whether the impugned legislation creates differential treatment between the claimant and others on the ba enumerated or analogous grounds, which results in discrimination. Both the purpose and the effect of the legis must be considered in determining the appropriate comparison group or groups. Other contextual factors may a relevant. The biological, historical, and sociological similarities or dissimilarities may be relevant in establishi relevant comparator in particular, and whether the legislation effects discrimination in a substantive sense generally: see *Weatherall*, *supra*, at pp. 877-78.

58 When identifying the relevant comparator, the natural starting point is to consider the claimant's vi is the claimant who generally chooses the person, group, or groups with whom he or she wishes to be compar the purpose of the discrimination inquiry, thus setting the parameters of the alleged differential treatment that he wishes to challenge. However, the claimant's characterization of the comparison may not always be sufficient. be that the differential treatment is not between the groups identified by the claimant, but rather between other gr Clearly a court cannot, *ex proprio motu*, evaluate a ground of discrimination not pleaded by the parties and in re to which no evidence has been adduced: see *Symes*, *supra*, at p. 762. However, within the scope of the grou grounds pleaded, I would not close the door on the power of a court to refine the comparison presented b claimant where warranted.

D. *Establishing Discrimination in a Purposive Sense: Contextual Factors*

(1) The Appropriate Perspective

59 The determination of the appropriate comparator, and the evaluation of the contextual factors w determine whether legislation has the effect of demeaning a claimant's dignity must be conducted from the persp of the claimant. As applied in practice in several of this Court's equality decisions, and as neatly discuss L'Heureux-Dubé J. in *Egan*, *supra*, at para. 56, the focus of the discrimination inquiry is both subjectiv objective: subjective in so far as the right to equal treatment is an individual right, asserted by a specific claiman particular traits and circumstances; and objective in so far as it is possible to determine whether the indiv claimant's equality rights have been infringed only by considering the larger context of the legislation in questio society's past and present treatment of the claimant and of other persons or groups with similar characterist circumstances. The objective component means that it is not sufficient, in order to ground a s. 15(1) claim, claimant simply to assert, without more, that his or her dignity has been adversely affected by a law.

60 As stated by L'Heureux-Dubé J. in *Egan*, *supra*, at para. 56, the relevant point of view is that reasonable person, dispassionate and fully apprised of the circumstances, possessed of similar attributes to, and similar circumstances as, the claimant. Although I stress that the inquiry into whether legislation demean claimant's dignity must be undertaken from the perspective of the claimant and from no other perspective, a must be satisfied that the claimant's assertion that differential treatment imposed by legislation demeans his d dignity is supported by an objective assessment of the situation. All of that individual's or that group's traits, hi and circumstances must be considered in evaluating whether a reasonable person in circumstances similar to th the claimant would find that the legislation which imposes differential treatment has the effect of demeaning his dignity.

61 I should like to emphasize that I in no way endorse or contemplate an application of the perspective which would have the effect of subverting the purpose of s. 15(1). I am aware of the controvers exists regarding the biases implicit in some applications of the "reasonable person" standard. It is essential to that the appropriate perspective is not solely that of a "reasonable person" -- a perspective which could, th misapplication, serve as a vehicle for the imposition of community prejudices. The appropriate perspect subjective-objective. Equality analysis under the *Charter* is concerned with the perspective of a pers circumstances similar to those of the claimant, who is informed of and rationally takes into account the va contextual factors which determine whether an impugned law infringes human dignity, as that concept is under for the purpose of s. 15(1).

(2) Contextual Factors

62 There is a variety of factors which may be referred to by a s. 15(1) claimant in order to demonstrat legislation has the effect of demeaning his or her dignity, as dignity is understood for the purpose of the *C* equality guarantee. In these reasons I discuss four such factors in particular, although, as I discuss below, the undoubtedly others, and not all four factors will necessarily be relevant in every case.

(a) *Pre-existing Disadvantage*

63 As has been consistently recognized throughout this Court's jurisprudence, probably the compelling factor favouring a conclusion that differential treatment imposed by legislation is truly discriminator be, where it exists, pre-existing disadvantage, vulnerability, stereotyping, or prejudice experienced by the individ group: see, e.g., *Andrews*, *supra*, at pp. 151-53, *per* Wilson J., p. 183, *per* McIntyre J., pp. 195-97, *per* La For *Turpin*, *supra*, at pp. 1331-33; *Swain*, *supra*, at p. 992, *per* Lamer C.J.; *Miron*, *supra*, at paras. 147-48, *per* McL J.; *Eaton*, *supra*, at para. 66. These factors are relevant because, to the extent that the claimant is already subj unfair circumstances or treatment in society by virtue of personal characteristics or circumstances, persons like h her have often not been given equal concern, respect, and consideration. It is logical to conclude that, in most further differential treatment will contribute to the perpetuation or promotion of their unfair social characteriz and will have a more severe impact upon them, since they are already vulnerable.

64 One consideration which the Court has frequently referred to with respect to the issue of pre-ex disadvantage is the role of stereotypes. A stereotype may be described as a misconception whereby a person or, often, a group is unfairly portrayed as possessing undesirable traits, or traits which the group, or at least some members, do not possess. In my view, probably the most prevalent reason that a given legislative provision m found to infringe s. 15(1) is that it reflects and reinforces existing inaccurate understandings of the merits, capab and worth of a particular person or group within Canadian society, resulting in further stigmatization of that pers the members of the group or otherwise in their unfair treatment. This view accords with the emphasis placed b Court ever since *Andrews*, *supra*, upon the role of s. 15(1) in overcoming prejudicial stereotypes in society. Hov proof of the existence of a stereotype in society regarding a particular person or group is not an indispensable el of a successful claim under s. 15(1). Such a restriction would unduly constrain discrimination analysis, when th more than one way to demonstrate a violation of human dignity. I emphasize, then, that any demonstration claimant that a legislative provision or other state action has the effect of perpetuating or promoting the view th individual is less capable, or less worthy of recognition or value as a human being or as a member of Canadian s (whether or not it involves a demonstration that the provision or other state action corroborates or exacerba existing prejudicial stereotype), will suffice to establish an infringement of s. 15(1).

65 It should be stressed that, while it is helpful to demonstrate the existence of historic disadvantage of course not necessary to show such disadvantage in order to establish a s. 15(1) violation, for at least two di reasons. On the one hand, this Court has stated several times that, although a distinction drawn on such a basis important *indicium* of discrimination, it is not determinative: see, e.g., *Hess*, *supra*, at pp. 943-44, *per* McLach *Miron*, *supra*, at para. 15, *per* Gonthier J. and at para. 149, *per* McLachlin J.; *Egan*, *supra*, at paras. 59-6 L'Heureux-Dubé J.; and *Eldridge*, *supra*, at para. 54. A member of any of the more advantaged groups in soci clearly entitled to bring a s. 15(1) claim which, in appropriate cases, will be successful.

66 On the other hand, it may be misleading or inappropriate in some cases to speak about "membe within a group for the purpose of a s. 15(1) claim. The *Charter* guarantees equality rights to individuals. I respect, it must be made clear that the s. 15(1) claimant is not required to establish membership in a sociolog recognized group in order to be successful. It will always be helpful to the claimant to be able to identify a patt discrimination against a class of persons with traits similar to the claimant, i.e., a group, of which the claiman consider herself or himself a member. Nonetheless, an infringement of s. 15(1) may be established by other m and may exist even if there is no one similar to the claimant who is experiencing the same unfair treatment.

67 At the same time, I also do not wish to suggest that the claimant's association with a group whic historically been more disadvantaged will be conclusive of a violation under s. 15(1), where differential treatme been established. This may be the result, but whether or not it is the result will depend upon the circumstances case and, in particular, upon whether or not the distinction truly affects the dignity of the claimant. There principle or evidentiary presumption that differential treatment for historically disadvantaged perso discriminatory.

68 Moreover, in line with my earlier comment, in referring to groups which, historically, have been m less disadvantaged, I do not wish to imply the existence of a strict dichotomy of advantaged and disadvan groups, within which each claimant must be classified. I mean to identify simply the social reality that a membe group which historically has been more disadvantaged in Canadian society is less likely to have difficu demonstrating discrimination. Since *Andrews*, it has been recognized in the jurisprudence of this Court th important, though not exclusive, purpose of s. 15(1) is the protection of individuals and groups who are vulne disadvantaged, or members of "discrete and insular minorities". The effects of a law as they relate to this pu should always be a central consideration in the contextual s. 15(1) analysis.

(b) *Relationship Between Grounds and the Claimant's Characteristics or Circumstances*

69 What are some factors other than an individual's or a group's pre-existing disadvantage which ma referred to by a s. 15(1) claimant in order to demonstrate a negative effect upon the claimant's dignity? One fact some circumstances may be the relationship between the ground upon which the claim is based and the nature o differential treatment. Some of the enumerated and analogous grounds have the potential to correspond with r capacity, or circumstances. As was recognized in *Eaton*, *supra*, and in *Eldridge*, *supra*, one of these groun disability, where the avoidance of discrimination will frequently require that distinctions* be made to take into acc the actual personal characteristics of disabled persons. Another ground is sex, as was recognized by this Cou *Weatherall*, *supra*, and, in the context of a statutory human rights code, in *Brooks v. Canada Safeway Ltd.*, [198 S.C.R. 1219. A further such ground is age, where need, capacity, or circumstances may again correspond witl ground.

70 It is thus necessary to analyze in a purposive manner the ground upon which the s. 15(1) claim is b when determining whether discrimination has been established. As a general matter, as stated by McIntyre *Andrews*, *supra*, and by Sopinka J. in *Eaton*, *supra*, and referred to above, legislation which takes into accoun actual needs, capacity, or circumstances of the claimant and others with similar traits in a manner that respects value as human beings and members of Canadian society will be less likely to have a negative effect on hu dignity. This is not to say that the mere fact of impugned legislation's having to some degree taken into accoun actual situation of persons like the claimant will be sufficient to defeat a s. 15(1) claim. The focus must always re upon the central question of whether, viewed from the perspective of the claimant, the differential treatment imp by the legislation has the effect of violating human dignity. The fact that the impugned legislation may achieve a social purpose for one group of individuals cannot function to deny an equality claim where the effects o legislation upon another person or group conflict with the purpose of the s. 15(1) guarantee. In line with the rea of McIntyre J. and Sopinka J., I mean simply to state that it will be easier to establish discrimination to the extent impugned legislation fails to take into account a claimant's actual situation, and more difficult to esta discrimination to the extent that legislation properly accommodates the claimant's needs, capacities, circumstances.

71 Examples are prevalent in the jurisprudence of this Court of legislation or other state action which failed to take into account the actual situation of a claimant, or alternatively quite properly treated a cl differently on the basis of actual personal differences between individuals. In *Eldridge*, *supra*, for exan provincial government's failure to provide limited funding for sign language interpreters for deaf persons receiving medical services was found to violate s. 15(1), in part on the basis that the government's failure to ta account the actual needs of deaf persons infringed their human dignity. Conversely, in *Weatherall*, *supra*, it was that the decision to permit cross-gender prison searches of male prisoners but not of female prisoners likely violate s. 15(1), because such a difference in treatment was appropriate in light of the historical, biologic sociological differences between men and women.

(c) *Ameliorative Purpose or Effects*

72 Another possibly important factor will be the ameliorative purpose or effects of impugned legisla other state action upon a more disadvantaged person or group in society. As stated by Sopinka J. in *Eaton*, *su* para. 66: "the purpose of s. 15(1) of the *Charter* is not only to prevent discrimination by the attribution of stereo characteristics to individuals, but also to ameliorate the position of groups within Canadian society who have s disadvantage by exclusion from mainstream society". An ameliorative purpose or effect which accords w purpose of s. 15(1) of the *Charter* will likely not violate the human dignity of more advantaged individuals wh exclusion of these more advantaged individuals largely corresponds to the greater need or the different circums experienced by the disadvantaged group being targeted by the legislation. I emphasize that this factor will like be relevant where the person or group that is excluded from the scope of ameliorative legislation or other state is more advantaged in a relative sense. Underinclusive ameliorative legislation that excludes from its sco members of a historically disadvantaged group will rarely escape the charge of discrimination: see *Vriend*, *su* paras. 94-104, *per* Cory J.

73 At the same time, I would not wish to be taken as foreclosing the possibility that a member of could be discriminated against by laws aimed at ameliorating the situation of others, requiring the court to co justification under s. 1, or the operation of s. 15(2). The possibility of new forms of discrimination denying es human worth cannot be foreclosed. This said, the ameliorative aim and effect of the law is a factor to be consid determining whether discrimination is present. Conversely, where the impugned legislation does not have a p or effect which is ameliorative in s. 15(1) terms, this factor may be of some assistance, depending up circumstances, in establishing a s. 15(1) infringement.

(d) *Nature of the Interest Affected*

74 A further contextual factor which may be relevant in appropriate cases in determining whet claimant's dignity has been violated will be the nature and scope of the interest affected by the legislation. Thi was well explained by L'Heureux-Dubé J. in *Egan*, *supra*, at paras. 63-64. As she noted, at para. 63, "[i]f al things are equal, the more severe and localized the . . . consequences on the affected group, the more likely t distinction responsible for these consequences is discriminatory within the meaning of s. 15 of the *Ch* L'Heureux-Dubé J. explained, at para. 64, that the discriminatory calibre of differential treatment cannot b appreciated without evaluating not only the economic but also the constitutional and societal significance attrib the interest or interests adversely affected by the legislation in question. Moreover, it is relevant to consider w the distinction restricts access to a fundamental social institution, or affects "a basic aspect of full member Canadian society", or "constitute[s] a complete non-recognition of a particular group".

75 There are other factors which may be referred to by a s. 15(1) claimant in order to estab infringement of equality rights in a purposive sense, but they are not directly relevant to the inquiry in the appeal. Guidance as to these other factors may be found in previous decisions of this Court, and through ana the factors listed above. The general theme, though, may be simply stated. An infringement of s. 15(1) of the C exists if it can be demonstrated that, from the perspective of a reasonable person in circumstances similar to t the claimant who takes into account the contextual factors relevant to the claim, the legislative imposi differential treatment has the effect of demeaning his or her dignity: see *Egan*, *supra*, at para. 56, *per* L'Heureu J. Demonstrating the existence of discrimination in this purposive sense will require a claimant to advert to capable of supporting an inference that the purpose of s. 15(1) of the *Charter* has been infringed by the legislati

(3) The Nature and Extent of the Claimant's Burden under s. 15(1)

76 Having emphasized the importance of a claimant demonstrating that impugned legislation infri 15(1) in a purposive sense, it will be useful at this point to review the nature of the claimant's burden as a pr matter. There are three points which should be addressed.

77 First, I should underline that none of the foregoing discussion implies that the claimant must s
data, or other social science evidence not generally available, in order to show a violation of the claimant's dig
freedom. Such materials may be adduced by the parties, and may be of great assistance to a court in deter
whether a claimant has demonstrated that the legislation in question is discriminatory. However, they a
required. A court may often, where appropriate, determine on the basis of judicial notice and logical reasoning
whether the impugned legislation infringes s. 15(1). It is well established that a court may take judicial no
notorious and undisputed facts, or of facts which are capable of immediate and accurate demonstration, by reso
readily accessible sources of indisputable accuracy: see J. Sopinka, S. N. Lederman and A. W. Bryant, *The*
Evidence in Canada (1992), at p. 976. There will frequently be instances in which a court may appropriate
judicial notice of some or all of the facts necessary to underpin a discrimination claim, and in which the court
engage in a process of logical reasoning from those facts to arrive at a finding that s. 15(1) has been infringe
matter of law.

78 I neither need nor wish to elaborate unduly in these reasons as to categories of facts of which may properly take judicial notice for the purpose of a s. 15(1) claim. I would note, though, that this Court has ro and appropriately undertaken analysis under s. 15(1) on the basis of judicial notice and logical reasoning. To one example, in *Andrews*, *supra*, the issue was whether a citizenship requirement for entry into the legal profes British Columbia infringed the right of non-citizens within Canada to equal treatment. Both the determina whether citizenship constituted an analogous ground to those enumerated in s. 15(1), and the determination of w the citizenship requirement imposed a truly discriminatory disadvantage, were accomplished on the basis of j notice and logical reasoning by all the judges of this Court who wrote. In deciding on the analogous ground iss Court took judicial notice of the fact that, "[r]elative to citizens, non-citizens are a group lacking in political pow as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated": (*per* Wilson J.). It was similarly found on the basis of reasoning alone that barring this vulnerable group from forms of employment solely on the basis of the personal characteristic of citizenship was a real disadvantage claimant, resulting in an infringement of s. 15(1). See also, e.g., *Turpin*, *supra*, at pp. 1331-33, and *Weatherall*, at pp. 877-78.

79 In making these observations regarding the use of judicial notice in equality analysis under the *C* I should not be understood as expanding the range of facts of which it is appropriate to take judicial notice exercise of a certain amount of caution is in order in taking judicial notice. In particular, although it is appropriate for the purpose of s. 15(1) to take judicial notice of certain forms of disadvantage and prejudice, other things, one should not unwittingly or otherwise use judicial notice to invent stereotypes or other phenomena which may not or do not truly exist.

80 Second, it is equally important to emphasize that the requirement that a claimant establish a s infringement in this purposive sense does not entail a requirement that the claimant prove any matters which reasonably be expected to be within his or her knowledge. As this Court has previously stated, the s. 15(1) cl is not required to establish that the intent of the legislature in enacting the impugned legislation was discrimi in the sense that, for example, the legislation was consciously premised upon a prejudicial stereotype, legislature purposely failed to take into account the social disadvantage of an individual or group in enact

15(1) claimant to establish discrimination by demonstrating a discriminatory legislative purpose, proof of legi
intent is not required in order to found a s. 15(1) claim: *Andrews*, *supra*, at p. 174. What is required is t
claimant establish that either the purpose or the effect of the legislation infringes s. 15(1), such that the onus r
satisfied by showing only a discriminatory effect.

81 There is nothing new in requiring a *Charter* claimant to establish that his or her right has been i in a manner which brings into play the purpose of the right in question. Both the principle that *Charter* rights interpreted purposively, and the principle that the *Charter* claimant bears the onus of establishing an infring his or her right before the onus shifts to the state to justify the infringement, are fundamental and well establis *Hunter v. Southam*, *supra*; *Big M*, *supra*; *R. v. Oakes*, [1986] 1 S.C.R. 103; *R. v. Edwards Books and Art Ltd.*, S.C.R. 713. In *Andrews*, *supra*, McIntyre J. specifically rejected an approach to analysis under s. 15(1) whic have seen the mere drawing of a legislative distinction as an infringement of the provision, noting tha formalistic approach to the equality guarantee did not accord with its purpose. He also rejected an approac would have seen issues of reasonableness and justification dealt with under s. 15 rather than under s. 1. In p the "enumerated and analogous grounds" approach to s. 15(1), McIntyre J. emphasized that this approach st appropriate balance between the claimant and the state, stating, at p. 178: "It must be admitted at once relationship between these two sections [s. 15 and s. 1] may well be difficult to determine on a wholly sat basis. It is, however, important to keep them analytically distinct if for no other reason than the different attrib the burden of proof. It is for the citizen to establish that his or her *Charter* right has been infringed and for th justify the infringement."

82 Third, it should be stressed that in some cases it may not be necessary as a practical matter for a to focus the purposive analysis upon more than one element of the discrimination claim. For example, in cas it is clear that a law draws a formal distinction upon enumerated or established analogous grounds, the issu case will largely be limited to that of whether the law discriminates in a sense which interferes with the cl dignity. Similarly, through the process of demonstrating that the adverse effect of a law is to produce sub inequality through formally identical treatment, a claimant will often also make clear that the law infringes th dignity of those affected, thus satisfying two elements of the s. 15(1) inquiry at once.

83 Taking these three points into account, it should be clear that in some cases it will be relatively e claimant to establish a s. 15(1) infringement, while in other cases it will be more difficult to locate a violatio purpose of the equality guarantee. In more straightforward cases, it will be clear to the court on the basis of notice and logical reasoning that an impugned law interferes with human dignity and thus constitutes discri within the meaning of the *Charter*. Often, but not always, this will be the case where a law draws a formal di in treatment on the basis of enumerated or analogous grounds, because the use of these grounds frequently correlate with need, capacity, or merit. It may be sufficient for the court simply to take judicial notice of pre disadvantage experienced by the claimant or by the group of which the claimant is a member in order for s 15(1) claim to be made out. In other cases, it will be necessary to refer to one or more other contextual fac every case, though, a court's central concern will be with whether a violation of human dignity has been esta in light of the historical, social, political, and legal context of the claim. In order to succeed under s. 15(1), it the claimant to ensure that the court is made aware of this context in the appropriate manner.

84 I should pause at this juncture to comment briefly upon an alternative method of articul approach to be taken under s. 15(1). I have reviewed in these reasons the general approach taken to s. 15(1 Court, which involves three broad elements, namely (1) the existence of differential treatment, (2) the pre enumerated or analogous grounds, and (3) discrimination which brings into play the purpose of s. 15(1). Ho is possible to understand the third element of the s. 15(1) inquiry as really being a restatement of the requiren there be substantive rather than merely formal inequality in order for an infringement of s. 15(1) to have be out. Under this alternative view, the definition of "substantive inequality" is "discrimination" within the me the *Charter*, bringing into play the claimant's human dignity. No substantive inequality would exist w claimant's human dignity was not brought into play by his or her treatment by the state.

85 I agree with the general idea that, in practice in some cases, it may well be duplicative to detern whether differential treatment exists, and then to determine whether the purpose of s. 15(1) has been brou play. As I mentioned above, this will particularly be the case where adverse effects discrimination is at issue, analysis of whether the claimant's difference has been effectively ignored by an impugned law will usually b play issues of human dignity. In such cases, there may be no real difference in analysis or result regardless of one or the other approach is used.

86 I do have some reservations, however, which lead me to prefer the approach which I have rev these reasons, involving three main elements rather than two. To take the adverse effects discrimination again, there may be cases where a law which applies identically to all fails to take into account the claimant's traits or circumstances, yet does not infringe the claimant's human dignity in so doing. In such cases, there said to be substantively differential treatment between the claimant and others, because the law has a mea different effect upon the claimant, without there being discrimination for the purpose of s. 15(1). Thus, by the formal structure of analysis under s. 15(1) from that expressed in the previous jurisprudence, the al approach referred to above might detract in practice from the importance placed by courts upon contextual fac the purpose of s. 15(1). I believe it is easier and more effective for a court to apply an approach which disti conceptually between differential treatment, on the one hand, and the discriminatory quality of that di treatment, on the other.

87 Accordingly, I have continued this Court's practice of articulating s. 15(1) analysis as having distinct elements which have been reviewed in these reasons. At the same time, I do not disagree with the idea concept of substantive inequality could be defined in terms of its discriminatory purpose or effect, nor do I suggest that a court which articulated its analysis using a different structure would err in law simply by do provided it addressed itself properly and thoroughly to the purpose of s. 15(1) and the relevant contextual facto

E. *Summary of Guidelines*

88 Before moving on to apply the principles that I have just discussed to the facts of this case, I b would be useful to summarize some of the main guidelines for analysis under s. 15(1) to be derived f jurisprudence of this Court, as reviewed in these reasons. As I stated above, these guidelines should not be s strict test, but rather should be understood as points of reference for a court that is called upon to decide w claimant's right to equality without discrimination under the *Charter* has been infringed. Inevitably, the gu summarized here will need to be supplemented in practice by the explanation of these guidelines in these rea those of previous cases, and by a full appreciation of the context surrounding the specific s. 15(1) claim at goes without saying that as our s. 15 jurisprudence evolves it may well be that further elaborations and modi will emerge.

General Approach

(1) It is inappropriate to attempt to confine analysis under s. 15(1) of the *Charter* to a fixed and formula. A purposive and contextual approach to discrimination analysis is to be preferred, in permit the realization of the strong remedial purpose of the equality guarantee, and to avoid the p a formalistic or mechanical approach.

(2) The approach adopted and regularly applied by this Court to the interpretation of s. 15(1) focu three central issues:

(A) whether a law imposes differential treatment between the claimant and others, in purpose or e

(B) whether one or more enumerated or analogous grounds of discrimination are the basis differential treatment; and

(C) whether the law in question has a purpose or effect that is discriminatory within the meanin equality guarantee.

The first issue is concerned with the question of whether the law causes differential treatment. Th and third issues are concerned with whether the differential treatment constitutes discriminatio substantive sense intended by s. 15(1).

(3) Accordingly, a court that is called upon to determine a discrimination claim under s. 15(1) shou the following three broad inquiries:

(A) Does the impugned law (a) draw a formal distinction between the claimant and others on the one or more personal characteristics, or (b) fail to take into account the claimant's disadvantaged position within Canadian society resulting in substantively differential t between the claimant and others on the basis of one or more personal characteristics?

(B) Is the claimant subject to differential treatment based on one or more enumerated and a grounds?

and

(C) Does the differential treatment discriminate, by imposing a burden upon or withholding a ben the claimant in a manner which reflects the stereotypical application of presumed group or characteristics, or which otherwise has the effect of perpetuating or promoting the view individual is less capable or worthy of recognition or value as a human being or as a me Canadian society, equally deserving of concern, respect, and consideration?

Purpose

(4) In general terms, the purpose of s. 15(1) is to prevent the violation of essential human dignity and through the imposition of disadvantage, stereotyping, or political or social prejudice, and to pr society in which all persons enjoy equal recognition at law as human beings or as members of C society, equally capable and equally deserving of concern, respect and consideration.

(5) The existence of a conflict between the purpose or effect of an impugned law and the purpose of is essential in order to found a discrimination claim. The determination of whether such a conflict to be made through an analysis of the full context surrounding the claim and the claimant.

Comparative Approach

(6) The equality guarantee is a comparative concept, which ultimately requires a court to establis more relevant comparators. The claimant generally chooses the person, group, or groups with wh she wishes to be compared for the purpose of the discrimination inquiry. However, where the cl characterization of the comparison is insufficient, a court may, within the scope of the ground or pleaded, refine the comparison presented by the claimant where warranted. Locating the comparison group requires an examination of the subject-matter of the legislation and its effects, a a full appreciation of context.

Context

(7) The contextual factors which determine whether legislation has the effect of demeaning a cl dignity must be construed and examined from the perspective of the claimant. The focus of the i both subjective and objective. The relevant point of view is that of the reasonable pe circumstances similar to those of the claimant, who takes into account the contextual factors re the claim.

(8) There is a variety of factors which may be referred to by a s. 15(1) claimant in order to demons legislation demeans his or her dignity. The list of factors is not closed. Guidance as to these fac be found in the jurisprudence of this Court, and by analogy to recognized factors.

(9) Some important contextual factors influencing the determination of whether s. 15(1) has been i are, among others:

(A) Pre-existing disadvantage, stereotyping, prejudice, or vulnerability experienced by the indiv group at issue. The effects of a law as they relate to the important purpose of s. 15(1) in p individuals or groups who are vulnerable, disadvantaged, or members of "discrete and minorities" should always be a central consideration. Although the claimant's association historically more advantaged or disadvantaged group or groups is not *per se* determinati infringement, the existence of these pre-existing factors will favour a finding that s. 15(1) infringed.

(B) The correspondence, or lack thereof, between the ground or grounds on which the claim is b the actual need, capacity, or circumstances of the claimant or others. Although the mere fact impugned legislation takes into account the claimant's traits or circumstances will not neces sufficient to defeat a s. 15(1) claim, it will generally be more difficult to establish discriminati extent that the law takes into account the claimant's actual situation in a manner that respec her value as a human being or member of Canadian society, and less difficult to do so where fails to take into account the claimant's actual situation.

(C) The ameliorative purpose or effects of the impugned law upon a more disadvantaged person in society. An ameliorative purpose or effect which accords with the purpose of s. 15(1) *Charter* will likely not violate the human dignity of more advantaged individuals where the e of these more advantaged individuals largely corresponds to the greater need or the circumstances experienced by the disadvantaged group being targeted by the legislation. This more relevant where the s. 15(1) claim is brought by a more advantaged member of society.

and

(D) The nature and scope of the interest affected by the impugned law. The more severe and loca consequences of the legislation for the affected group, the more likely that the differential t responsible for these consequences is discriminatory within the meaning of s. 15(1).

(10) Although the s. 15(1) claimant bears the onus of establishing an infringement of his or her equali in a purposive sense through reference to one or more contextual factors, it is not necessarily the the claimant must adduce evidence in order to show a violation of human dignity or freedom. Fr where differential treatment is based on one or more enumerated or analogous grounds, this sufficient to found an infringement of s. 15(1) in the sense that it will be evident on the basis of notice and logical reasoning that the distinction is discriminatory within the meaning of the provisi

F. *Application to the Case at Bar*

(1) Differential Treatment

89 The preliminary issue in this case is whether the questioned law draws a distinction, on the bas or more personal characteristics, between the claimant and some other person or group of persons, resulting in treatment. As discussed herein, this stage of the inquiry is not concerned with whether the distinction in t constitutes discrimination. Moreover, unlike in *Eldridge*, *supra*, and *Eaton*, *supra*, there is no question in thi the impugned legislation applying without distinction to all persons, and, in so doing, failing to take into ac individual's or a group's already disadvantaged position within Canadian society.

90 The CPP grants benefits to surviving spouses over the age of 35 immediately following the dea contributor. However, these benefits are not available to able-bodied spouses without dependent children who than 35 years of age at the time of the death of the contributor, until they reach age 65 or unless they should disabled in the interim. In addition, while those over age 45 are entitled to receive benefits at the full ra between the ages of 35 and 45 receive a reduced sum. Thus, as a result of the ages specified under the CPI distinction is drawn between claimants over and under age 35, and also between claimants who are over ag those between the ages of 35 and 45. In my view, both the delay in the receipt of benefits and the reduced en to benefits constitute a denial of equal benefit of the law under the first step of the equality analysis.

(2) Distinction on the Basis of Enumerated or Analogous Grounds

91 Age is one of the enumerated grounds of discrimination in s. 15(1) of the *Charter*. The appellan that she was rendered ineligible for survivor's benefits by virtue of her age and that its use as a distinguishing was discriminatory. The appellant does not base her discrimination claim upon any ground other than that of answer, the respondent contends that, although age is a factor in determining eligibility, it cannot be said appellant was ineligible solely because of this factor. Rather, the respondent argues that entitlement under s. of the CPP depends on the interplay of the three factors included therein, namely, age, disability and responsi dependent children. This was the position adopted by the Pension Appeals Board. With respect, I cannot ac view. In my opinion, it does not follow from the fact that any one of several criteria, including age, might d entitlement to a survivor's pension, that the legislation does not draw a distinction on the basis of age.

92 As an able-bodied woman without children, the appellant does not suggest that the CPP discrimi denying her equal benefits as compared to surviving spouses who have disabilities or dependent childr appellant submits that the issue in dispute is whether age is properly included among the factors which d eligibility for survivor's benefits and the amount that is provided. Had the appellant been able-bodied, dependent children, and over age 45 at the time of her spouse's death, she would have been immediately en receive full benefits. However, as an able-bodied, childless woman who was 30 years of age at the tim spouse's death, she is denied any benefits until she reaches age 65, provided she does not subsequently disabled. Similarly, for surviving spouses age 35 to 45, it is their age alone that serves to reduce the an benefits they receive as compared to those over age 45. In my view, the survivor's pension provisions of clearly draw distinctions on the basis of the enumerated ground of age.

93 In any event, even if, as the respondent argues, entitlement under s. 44(1)(*d*) of the CPP were de upon the interplay of age, disability, and parental status, this interplay would not preclude the appella establishing that a distinction had been drawn on one or more of the grounds in s. 15(1) of the *Charter*. A above, it is open to a claimant to articulate a discrimination claim under more than one of the enumer analogous grounds. Such an approach to the grounds of discrimination accords with the essential purpo contextual nature of equality analysis under s. 15(1) of the *Charter*. Where a party brings a discrimination the basis of a newly postulated analogous ground, or on the basis of a combination of different grounds, this pa discrimination inquiry must focus upon the issue of whether and why a ground or confluence of grounds is a to those listed in s. 15(1). This determination is made on the basis of a complete analysis of the purpose of s. 1 nature and situation of the individual or group at issue, and the social, political and legal history of Canadian treatment of the group. A ground or grounds will not be considered analogous under s. 15(1) unless it can b that differential treatment premised on the ground or grounds has the potential to bring into play human dign *Egan*, *supra*, at para. 52, *per* L'Heureux-Dubé J. If the court determines that recognition of a ground or confl grounds as analogous would serve to advance the fundamental purpose of s. 15(1), the ground or grounds wil so recognized: see, e.g., *Turpin*, *supra*, at pp. 1331-33.

94 There is no reason in principle, therefore, why a discrimination claim positing an intersection of cannot be understood as analogous to, or as a synthesis of, the grounds listed in s. 15(1). In the present cas CPP had based entitlement on a combination of factors, the appellant would still have been able to estal requisite distinction, whether on the basis of age alone, or based on a combination of grounds.

(3) Discrimination

95 The central question in the present case is whether the age distinctions drawn by ss. 44(1)(*d*) a the CPP impose a disadvantage upon the appellant as a younger adult in a manner which constitutes discri under s. 15(1) of the *Charter*. The appellant is asserting her claim solely on the basis of age -- specifically basis of being an adult under the age of 45. Relatively speaking, adults under the age of 45 have not been con and routinely subjected to the sorts of discrimination faced by some of Canada's discrete and insular minorit this reason, it will be more difficult as a practical matter for this Court to reason, from facts of which the Co appropriately take judicial notice, that the legislative distinction at issue violates the human dignity of the appe

96 The appellant argues that the impugned CPP provisions infringe s. 15(1) of the *Charter* in b purpose and their effect. She submits that the original intent underlying the distinctions created by ss. 44(1)(*a* was to provide benefits to those surviving spouses most in need, based on an assumed correlation between other things, increased age and one's ability to enter or re-enter the workforce following the death of one's The appellant argues that this assumed correlation is faulty because, in fact, young people generally, and the a in particular, have difficulty in obtaining employment, and the legislation's assumptions to the contrary are l false stereotypes regarding the advantages of youth. The appellant submits that there is no evidence estab direct link between a survivor's age at the time of the spouse's death and the need for benefits. She suggests effect of the impugned provisions is to demean the dignity of adults under the age of 45 and to treat them as b worthy than older adults, by stereotyping them as being less in need.

97 In support of her position, the appellant refers to the remarks of the Honourable Judy LaM Minister responsible for the enactment of the CPP. In Parliament on November 16, 1964, Ms. LaMarsh noted philosophy on which the CPP survivor's pension is premised is that benefits "should be available to those wh easily obtain employment". She went on to outline the eligibility criteria and reduction in benefits for those u 45, and, as to the ineligibility of those under age 35, she stated: "Young widows in their twenties and early usually have little difficulty in finding employment, and of course many of them remarry": see *House of C Debates*, vol. IX, 2nd Sess., 26th Parl., November 16, 1964, at p. 10122.

98 In reply, the respondent maintains that, although the age distinctions in the survivor's pension pr of the CPP might initially have been based upon assumptions, the accuracy of those assumptions are al reflected in statistical data, other legislation, and several decisions of this Court. The respondent also emphas the assumptions underlying the impugned CPP provisions concern, not the relatively immediate financial surviving spouses, but their long-term financial needs.

99 The questions, to take up the dignity-related concerns discussed above, may be put in the f terms. Do the impugned CPP provisions, in purpose or effect, violate essential human dignity and freedom the imposition of disadvantage, stereotyping, or political or social prejudice? Does the law, in purpose c conform to a society in which all persons enjoy equal recognition as human beings or as members of Canadian equally capable and equally deserving of concern, respect, and consideration? Does the law, in purpose c perpetuate the view that people under 45 are less capable or less worthy of recognition or value as human bei members of Canadian society?

100 Before answering these questions, it is useful to note that, although the appellant has referred th to government reports and other sources which favour extending survivor's pensions to younger spouses on that they suffer immediate financial need, she has not demonstrated that either the purpose or the effec impugned legislative provisions violates her human dignity in the sense discussed above so as to c discrimination. I agree with the appellant that surviving spouses of all ages are vulnerable, economic otherwise, immediately following the death of a spouse. However, as both the appellant and res acknowledged in their submissions before this Court, the purpose and function of the impugned CPP provisio to remedy the immediate financial need experienced by widows and widowers, but rather to enable older wid widowers to meet their basic needs during the longer term.

101 As the appellant states, reflected in the age distinctions in the survivor's pension provisions of appears to be the notion that young persons experience fewer impediments to long-term labour force participa are generally in a better position than older persons to replace independently over the long run as a working of Canadian society the income of a deceased spouse. It seems to me that the increasing difficulty with which find and maintain employment as one grows older is a matter of which a court may appropriately take judicia Indeed, this Court has often recognized age as a factor in the context of labour force attachment and detachm example, writing for the majority in *McKinney*, *supra*, La Forest J. stated as follows, at p. 299:

> Barring specific skills, it is generally known that persons over 45 have more difficulty finding w others. They do not have the flexibility of the young, a disadvantage often accentuated by the fac latter are frequently more recently trained in the more modern skills.

Similar thoughts were expressed in *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986, at pp. 998 Iacobucci J., and at pp. 1008-09, *per* McLachlin J., regarding the relevance of increased age to a determination constitutes reasonable notice of employment termination. See also *Moge v. Moge*, [1992] 3 S.C.R. 813, at pp. *per* McLachlin J., regarding the relevance of increased age to a determination of a former spouse's ability to himself or herself.

102 The answers to the questions which I posed above with respect to human dignity thus lie, in pa aim and effects of the legislation in providing long-term financial security for Canadians who lose a spouse, with the greater flexibility and opportunity of younger people without dependent children or disabilities to long-term security absent their spouse. Yes, the law imposes a disadvantage on younger spouses in this class. unlikely to be a substantive disadvantage, viewed in the long term. The law on its face treats such younge differently, but the differential treatment does not reflect or promote the notion that they are less capable deserving of concern, respect, and consideration, when the dual perspectives of long-term security and the opportunity of youth are considered. Nor does the differential treatment perpetuate the view that people in t are less capable or less worthy of recognition or value as human beings or as members of Canadian society. C contemporary and historical context of the differential treatment and those affected by it, the legislation stereotype, exclude, or devalue adults under 45. The law functions not by the device of stereotype, but by dis corresponding to the actual situation of individuals it affects. By being young, the appellant, *a fortiori*, ha prospect of long-term income replacement.

103 Another factor supporting the view that the impugned CPP provisions do not violate essentia dignity is the clear ameliorative purpose of the pension scheme for older surviving spouses. Older surviving like surviving spouses who are disabled or who care for dependent children, are more economically vulnerab long-term effects of the death of a spouse. Parliament's intent in enacting a survivor's pension scheme with allocated according to age appears to have been to allocate funds to those persons whose ability to overcome r weakest. The concern was to enhance personal dignity and freedom by ensuring a basic level of long-term security to persons whose personal situation makes them unable to achieve this goal, so important to life and This is a legislative purpose which accords well with the fundamental purposes of s. 15(1) of the *Charter*. G the appellant is more advantaged in a relative sense, and that the legislative distinctions in the present cas correspond to the greater long-term need and different circumstances experienced by the more disadvantage being targeted by the legislation, I find it difficult to perceive in the purpose or effects of the impugned legi violation of the appellant's dignity.

104 The challenged legislation simply reflects the fact that people in the appellant's position are mor overcome long-term need because of the nature of a human being's life cycle. Those who are younger when t a spouse are more able to replace the income lost from the death of a spouse. A reasonable person under the a who takes into account the contextual factors relevant to the claim would properly interpret the distinction cr the CPP as suggesting that younger people are more likely to find a new spouse, are more able to retrain or ob employment, and have more time to adapt to their changed financial situation before retirement. Young pe inherently better able to initiate and maintain long-term labour force participation, and as such the impugn provisions cannot be said to impose a discriminatory disadvantage upon them. In such narrow circumstance legislation does not demean the dignity of those it excludes in either its purpose or its effects, it is ope legislature to use age as a proxy for long-term need.

105 In referring to the existence of a correspondence between a legislative distinction in treatmen actual situation of different individuals or groups, I do not wish to imply that legislation must always co perfectly with social reality in order to comply with s. 15(1) of the *Charter*. The determination of w legislative provision infringes a claimant's dignity must in every case be considered in the full context of the c the present case, the appellant is more advantaged by virtue of her young age. She is challenging the va legislation with an egalitarian purpose and function whose provisions correspond to a very large degree with t and circumstances of the persons whom the legislation targets. There are no other factors suggesting that he as a younger adult is demeaned by the legislation, either in its purpose or in its effects.

106 Under these circumstances, the fact that the legislation is premised upon informed s generalizations which may not correspond perfectly with the long-term financial need of all surviving spou not affect the ultimate conclusion that the legislation is consonant with the human dignity and freedor appellant. Parliament is entitled, under these limited circumstances at least, to premise remedial legislati informed generalizations without running afoul of s. 15(1) of the *Charter* and being required to justify its under s. 1. I emphasize, though, that under other circumstances a more precise correspondence will undoub required in order to comply with s. 15(1). In particular, a more precise correspondence will likely be importar the individual or group which is excluded by the legislation is already disadvantaged or vulnerable within C society.

107 In conclusion with respect to the particular circumstances of the appellant's case, I would also people in the position of the appellant are not completely excluded from obtaining a survivor's pension, altho delayed until the person reaches age 65 unless they become disabled before then. The availability of the pe the appellant strengthens the conclusion that the law does not reflect a view of the appellant that sugges undeserving or less worthy as a person, only that the distribution of the benefit to her will be delayed until sl different point in her life cycle, when she reaches retirement age.

108 In these circumstances, recalling the purposes of s. 15(1), I am at a loss to locate any violation o dignity. The impugned distinctions in the present case do not stigmatize young persons, nor can they be perpetuate the view that surviving spouses under age 45 are less deserving of concern, respect or considerat any others. Nor do they withhold a government benefit on the basis of stereotypical assumptions a demographic group of which the appellant happens to be a member. I must conclude that, when considere social, political, and legal context of the claim, the age distinctions in ss. 44(1)(*d*) and 58 of the CPP discriminatory.

109 In finding that the impugned legislative provisions do not infringe s. 15(1) of the *Charter*, I do in any way to minimize the emotional and economic upset which affects surviving dependents when a spou My analysis herein is not meant to suggest that young people do not suffer following the death of a loved one, that the impugned CPP provisions are not discriminatory between younger and older adults within the purp meaning of s. 15(1) of the *Charter*.

110 I conclude, then, that this is one of the rare cases contemplated in *Andrews*, *supra*, in which dif treatment based on one or more of the enumerated or analogous grounds in s. 15(1) is not discriminato important to identify such cases through a purposive analysis of s. 15(1), in order to ensure that analysis under does not become mechanistic, but rather addresses the true social, political and legal context underlying e every equality claim.

G. *Section 1 of the Charter*

111 As I have found no violation of s. 15(1) of the *Charter*, it is not necessary to turn to s. 1.

VII. Conclusions and Disposition

112 In the result, I would dismiss the appeal. I note that the respondent has not asked for costs. U circumstances, I make no order in that regard.

113 I would thus answer the constitutional questions as follows:

Q. 1: Do ss. 44(1)(*d*) and 58 of the *Canada Pension Plan*, R.S.C., 1985, c. C-8, infringe on s. 15(*Canadian Charter of Rights and Freedoms* on the ground that they discriminate against wid widowers under the age of 45 on the basis of age?

A.: No.

Q. 2: If so, can this infringement be demonstrably justified in a free and democratic society under s. *Canadian Charter of Rights and Freedoms*?

A.: In view of the answer to Question 1, it is not necessary to answer this question.

Appeal dismissed.

Solicitor for the appellant: Community Legal Assistance Society, Vancouver.

Solicitor for the respondent: The Attorney General of Canada, Toronto.

* See Erratum [2000] 1 S.C.R. iv