

Mr. Justice D.C. McDonald,
Edmonton.
First Footnoted Version
November 13, 1984.

Why Lawyers Should Become Familiar with Section 15

Why should lawyers who do not practise criminal law or act for government be concerned with s. 15 of the Canadian Charter of Rights and Freedoms? The following observations are addressed in particular to them.

I have, in these notes, avoided any reference to the jurisprudence interpreting the Canadian Bill of Rights or federal and provincial human rights legislation. For the sake of stimulating thought, I have identified potential issues in part based on pure thought about the implications of s. 15 in the context of the Charter as a whole, and in part based on the experience of American courts which have interpreted their Bill of Rights and several federal anti-discrimination statutes enacted in the past twenty years. Equal rights have acquired constitutional significance in the United States where race is involved, and the decisions of the United States Supreme Court on racial discrimination as violating the Fourteenth Amendment's guarantee of the equal protection of the laws are well known to Canadian lawyers. In United States jurisprudence, discrimination on the ground of race, religion and nationality is subject to "strict

scrutiny", whereas discrimination based on gender has been subject to a lower standard of constitutional validity ("intermediate scrutiny"), and other grounds are subjected to "minimal scrutiny"; see Tarnopolsky, "The Equality Rights", at pp. 401-407 of The Canadian Charter of Rights and Freedoms: Commentary (eds. Tarnopolsky and Beaudoin, Carswell, 1982). Because of the lower standards of constitutional scrutiny applied to so many grounds, constitutional interpretation has not been a prominent avenue of successful attack upon discriminatory legislation and practices. Instead, in recent years the initiative in combatting discrimination on many grounds has originated with federal and state statutes and their judicial interpretation. The relevant federal statutes are listed in an Appendix. These statutes deal in particular with discrimination in employment and education. These statutes are not on all fours with s. 15 of the Canadian Charter, for they often contain specific provisions that are not found in s. 15. Nonetheless the judicial decisions interpreting these statutes can be instructive, if approached with prudence. They can provide examples of factual situations which may arise in Canada, and they can stimulate thought as to what approaches Canadian courts should and may take in interpreting s. 15.

The existing Canadian human rights legislation and judicial decisions interpreting it may serve the same limited purpose. Reference to it may be made in a later version of these notes.

Scope of Application of Section 15

So far the predominant, but not exclusive, academic and judicial view is that the Charter of Rights is directed against government abuse of the individual and not against conduct by private individuals toward other persons. Favouring the limited view of the Charter are for example, K. Swinton, in Canadian Charter of Rights and Freedoms: Commentary (Tarnopolsky and Beaudoin, eds.), at pp. 44-45, W.S. Tarnopolsky ibid., at pp. 422-423. Favouring the view that the Charter applies to the conduct of private citizens is Dale Gibson, "The Charter of Rights and the Private Sector", (1982) 12 Man. L.J. 213. His view was adopted by Rowbotham J. in R. v. Lerke (Alta. Q.B., June 21, [1984] W.C.D. 198, a case where tavern employees had searched the accused and then turned over the drugs found to the police.

The predominant opinion is that the notion of "government" includes legislative enactments, common law rules, and delegated legislation.

Even if the predominant opinion becomes clearly established and the Charter applies only to the conduct of government, it remains to be seen whether the rights it guarantees will be applied to the acts of persons, individual or collective, who

- (a) are seen as acting on behalf of government
- (b) receive financial assistance from government. If so, would this include private colleges or schools whose only source of government support is tuition payments from students receiving government grants or loans?¹ Would this include an airline which indirectly benefits from government funding used to develop airport facilities? Would it include a baseball club that rents a stadium constructed by a city with a federal or provincial government grant?²
- (c) are in receipt of some other privilege from government without which they could not function. Even if that should be so, violation of s. 15 would exist only if it were found that an individual had failed to have the "equal protection" or the "equal benefit" of the law. What if a broadcasting enterprise receives government financial assistance? What if a broadcasting enterprise receives no financial assistance but has a licence, and is subject in law to a review of its programming decisions?
- (d) contract with government for the supply of foods or services to it;
- (e) implement some law (whether a statute or a positive rule of common law).

The latter might include courts and administrative agencies exercising statutory powers; if such bodies are bound by s. 15, they might not have to decide in favour of a person who is the object of discrimination where there is no positive rule of statutory or common law the application of which could be said to be discriminatory. Yet such bodies might be required by s. 15 not to apply any such rule of positive law (e.g. the common law rule that an employee may be discharged for just cause) if the enforcement of the rule would, on the facts of the case, constitute the effective condonation of discrimination by an

agency of the state. If, on the other hand, the Charter as a whole is held to be applicable to actions by private persons, and s. 15 is held to be applicable to such conduct, it must be remembered that s. 15 will be violated only if the discrimination deprives the individual of "equal protection of the law" or "equal benefit of the law". Thus, some positive rule of law must be shown to have been applied with discriminatory intent or effect.

These observations should be sufficient to excite the interest of solicitors who act for non-governmental employers, provisioners of public transportation and accommodation, and trade unions and other private associations and clubs, as well as those who act for municipal corporations, school boards, and federal and provincial governments and agencies. They may conclude that they can serve their clients' interests adequately and professionally only by becoming familiar now with the provisions of the Charter generally, and in particular with the implications of s. 15.

Until now, professional interest in the Charter has been limited largely to the criminal bar. The remainder of the bar can no longer permit itself to remain detached and in ignorance of the Charter.

What follows is a brief discussion of some of the difficult issues that will arise under s. 15, whatever the scope of its application.

Criteria of Compliance

What is to be the test of compliance with s. 15? Is s. 15 to be limited to cases where there is no animus or intent to discriminate? Or is s. 15 to extend, as do anti-discrimination statutes, to conduct which has the effect of discriminating, even in the absence of such intent?

Will s. 15 be violated if the discrimination in issue is a reflection of stereotyping? Or must the employee be willing to conform to the employer's views so long as such conformity is not impossible by reason of some immutable characteristic and is not repugnant to some other value such as a fundamental right?³

Is the test whether there is discrimination to be whether, but for that person's enumerated status, the treatment of the person would be different?⁴ Does s. 15 prohibit unequal pay where women perform work that is segregated into a different job classification from the classification accorded to men who perform substantially the same work?

e.g. - A rule requires female employees of a company to make larger contributions to its pension fund than males.

- An employer pays female workers lower retirement benefits than male workers.

- A company health insurance plan provides spouses of male workers only limited coverage for pregnancy-related conditions as compared with the coverage provided spouses for other medical conditions, while spouses of female employees are fully covered.⁵

- Would there be a violation of s. 15 if an employer requires female employees to wear a uniform but no such requirement is applied to male employees? Does such a requirement suggest inferiority? Would there be a violation of s. 15 if a nursing programme were open only to women?⁶

In the case of covert discrimination, is the test whether the defendant showed an animus toward the enumerated class or ill will toward an individual of that class because of the class?

Is the notion of a bona fide occupational qualification to be read into s. 15? Putting this another way, to avoid a violation of s. 15 must any job qualification "have a manifest relationship to the employment in question"? (The "equal treatment" paradigm.) Are requirements that on their face are neutral but in fact have a disparate impact on women or discrete minority groups presumptively discriminatory? Can an employer nevertheless avoid violating s. 15 if he can show that the selection criteria are "job related" or justified by "business necessity"?⁷

Would discrimination in employment on grounds of sex, based on the personal privacy of clients or customers be upheld?

e.g. Obstetric nurses? Nurses in a female nursing home?

A supervisor of juveniles in a youth centre
prison guards?

Child counsellors in sheltered workshops for
mentally ill?⁸

Would discrimination in employment, on grounds of sex, be upheld when it is based upon the preference of customers, clients, suppliers or employees to deal with one sex?

e.g. Flight attendants and stewardesses?

Waiters in a first-class restaurant?

Female prison guards to work only day
shifts?⁹

Requirements of short hair for male
employees?

Can a claim of disparate treatment in hiring or promotion be defeated if the defendant can show that it selected a person of the same enumerated class as the complaining plaintiff? Will the claim be defeated even if the employer applies more stringent standards for the enumerated class than for others?¹⁰

e.g. - If a female electrician's helper "freezes" on an overhead steel beam and has to be physically assisted to the ground, and is fired, and the company hires another female to replace the discharged woman, does it matter that the company had not discharged male workers under similar circumstances?

Is s. 15 violated if an employer applies rules that put some women at a disadvantage vis-a-vis other women, even in the absence of competition between male and female employees?

- e.g. - If an airline prefers single, thin, young women who do not wear glasses and are not pregnant?
- e.g. - If an airline permits male flight attendants to marry but does not permit stewardesses to marry, and does not apply the no-marriage rule to any other job classification?¹¹ Must the disadvantage suffered by women be vis-a-vis men in the same job classification?¹²
- e.g. - If a female executive secretary is replaced by a younger woman, in accordance with the employer's policy of favouring younger, more attractive women over their older, more experienced co-workers? Or if promotion is denied pursuant to the same policy?¹³
- e.g. - An airline imposes a maximum weight requirement for flight hostesses, according to a chart limiting weight in relation to height. Only women are hired as flight hostesses. No weight limitation exists for an exclusively male category of employees, known as directors of passenger service, who perform tasks similar to those performed by flight hostesses. The airline argues that its competitive position would improve if it created an "image" by having thin, attractive females serve the public. Should the result depend on the availability of evidence of dissimilar treatment of men performing the same, or comparable, tasks? Or should the result turn on the fact that thinness cannot reasonably affect a woman's ability to perform the duties of a flight attendant?¹⁴

Is s. 15 violated when an employer has rules that are neutral as between men and women, or as between an enumerated class and other persons, and those rules, although not intentionally discriminatory, have a disparate impact upon women or one of the other enumerated classes?

- e.g. - An employer has a promotion test not based on job related criteria, which native people

failed in disproportionate numbers, yet has an affirmative action programme under which significant members of native people were promoted. Is there a violation of s. 15 if there is a discriminatory potential, even if the employer's workforce contains representative numbers of minorities and women?¹⁵

Minimum height and weight requirements exist for police or prison guards, which have an adverse impact on female applicants.¹⁶

Persons with Physical Disabilities

What test will the courts apply to determine whether s. 15 has been violated in the case of a physically handicapped person seeking employment?

(a) Will an employer avoid violating s. 15 so long as he evaluates handicapped applicants according to functional criteria? This would mean that handicapped persons must be as qualified as non-handicapped persons in order to be able to invoke s. 15. (This is called the "equal treatment" paradigm.)¹⁷

(b) Will the test be whether the person is otherwise able to function sufficiently in the position sought in spite of the handicap, if proper training and facilities are suitable and available?¹⁸ Perhaps this can be restated as follows: Will s. 15 be held to impose a responsibility on employers to make

reasonable accommodations for the handicaps of employees? That is, in the case of physically handicapped persons, is there a violation of s. 15 not only when persons in that enumerated class are treated differently from those not suffering from that handicap, but also where employers fail to take whatever steps are (reasonably?) necessary to accommodate the disadvantages caused by disabilities? (This is called the "equal impact" paradigm.) If the governing notion is that of what is "reasonable", is that notion to be defined in terms of, perhaps, "undue hardship", and will this require the court to consider the costs of accommodations and the size, purpose, structure and budget of an employer's programme? If so, how are such factors to be weighed and assessed? How much hardship is "undue"?¹⁹

The following are some typical potential issues, and situations that may violate s. 15:

Will a state agency be required to provide readers for blind social workers because of the expense involved?²⁰

Will a school district be required to hire an aide for a blind administrator?²¹

A psychiatric residency committee turns down an applicant based on the fear and pity that the applicant's handicap (due to multiple sclerosis) might evoke from patients in therapy.²²

A provincial regulation prohibits the hiring of bus drivers who do not have two natural legs, but an applicant with one natural leg demonstrates that he has undergone rehabilitative training and can drive a bus safely.²³

A written aptitude test, required to be taken by persons applying to be a heavy equipment operator, has a disparate impact on dyslexics.²⁴

An employer's policy is not to hire or to retain a pregnant female employee although it has no similar policy for expectant fathers. If the "equal impact" paradigm is a permissible interpretation of s. 15, will employers be required to accommodate pregnant employees even if to do so imposes extra costs on employers?

A nursing programme refuses to admit an applicant with a severe hearing impairment even though otherwise qualified.²⁵

Will a hospital be required to provide supervision and regular blood tests for an epileptic nursing assistant?²⁶

Will the Post Office be required to offer "light duty status" to handicapped employees who have not met a minimum five-year minimum service requirement?

Will public transportation systems be required to make all their services accessible to the physically handicapped?²⁷ If not, will such authorities be required to make special efforts to provide transportation services to the handicapped? What efforts?²⁸

May an employer consider potential incapacity, due to progressive disease, in reaching hiring decisions?²⁹

May an employer decline to hire a summer job applicant who suffers from dermatitis where medical evidence demonstrates that exposure to chemicals in the workplace would aggravate the condition and render the applicant unable to perform the required duties?

Does a landlord's refusal to waive its rule against admitting tenants with pets, in the case of a blind person with a seeing-eye dog, violate s. 15?

What if a school system fails to remove physical barriers that prevent mobility-impaired students from using shuttle bus service?³⁰

What if a school system refuses to ensure that school personnel provide children afflicted with spina bifida with clean intermittent catheterization during school hours?³¹ What if kidney dialysis were required during school hours?³²

What if a school system refuses to ensure that school personnel administer medication to a child with tracheomalacia, reinsert her tracheotomy tube should it become dislodged, and suction excess mucus from her lungs if necessary?³³

What if a school system provides both regular school year programming and optional summer school programming for non-handicapped children, but only regular school year programming for severely handicapped children?³⁴

Persons with Mental Disabilities

Is there an inherent difficulty in addressing discrimination against mentally handicapped persons, in that it is difficult to set the norm against which the existence of the alleged discrimination is to be tested? Putting this another way, can any criterion of discrimination be stated which will avoid being applicable to any distinction based on comparative intelligence? Perhaps the existence of such a difficulty is unlikely. Perhaps the application of functional criteria, or even a broader test imposing some responsibility on employees to make reasonable accommodations for persons of subnormal intelligence (see supra, under the heading "Physically Handicapped Persons"), will avoid practical difficulties in applying the concept of "discrimination based on physical disability".

Here are some situations that may violate s. 15, and issues that will likely arise:

School administrators exclude from regular classrooms mentally retarded children who carry hepatitis B, which cannot be shown to be transferable other than through the blood.³⁵

A school system uses a minimum competency test designed to ascertain whether test-takers possess basic skills deemed necessary in order to receive an academic diploma. Mentally retarded students contend that successful performance in the examination requires skills to which they have not been exposed in their special classes, that the application of the test to them would violate s. 15, and that the school system should regard satisfactory completion of the special education curriculum as an alternative diploma criterion.³⁶

A school system expels several mentally retarded high school students for misconduct. If the disciplinary action is related to the children's handicaps, is s. 15 violated?³⁷

Does s. 15 require public school systems to provide individual handicapped children with an appropriate education and to make available a full range of alternative educational placements in an appropriate educational setting?³⁸

Does a housing authority's refusal to waive its rule against admitting tenants with pets violate s. 15 in the case of a mentally disturbed person who alleges that she would be unable to live in the authority's facility without her dog as a companion?

Does a school system violate s. 15 when it does not provide a special programme for learning-disabled children and has to participate in the regular education programme from which he receives minimal benefit?³⁹

Does a school system violate s. 15 when it excludes mentally handicapped children from the regular classroom?⁴⁰ Does violation occur only

if the system fails to provide an alternative programme for such children? If such a programme is provided, what standard must it attain?

Does a mental hospital violate s. 15 if it does not have a programme permitting the deinstitutionalization of patients who can look after their daily needs if living outside the institution?

Does a public school system violate s. 15 by refusing to provide supplemental summer instruction to handicapped children, it being contended that the skills of such children regress substantially over the summer months and thus they are denied an equal opportunity to receive educational benefit?⁴¹

Race

Here is an issue that may arise: An employer uses a diploma requirement and aptitude tests as methods for screening prospective or incumbent employees who wish to transfer to higher paying positions. Native persons assert that these methods disqualify a disproportionate number of native persons, perpetuate an existing pattern of segregation, and constitute an employment practice that operates to exclude native Canadians and cannot be shown to be related to its performance.⁴²

Religion

If the "equal impact paradigm" is a permissible interpretation of s. 15, will the courts require employers to make

reasonable efforts to structure work schedules in order to accommodate employees' religious observances?⁴³

Will the courts require modification of the unemployment insurance law to avoid penalizing persons unwilling to work on Saturdays because of their religious belief (assuming such a law now exists)?⁴⁴

Age

The following are some issues that may arise, and some possible violations of s. 15:

Do statutes that prohibit the sale of liquor or pornography to minors violate s. 15?

Do statutes that prohibit the admission of minors to adult entertainment establishments violate s. 15?

Do child curfew bylaws violate s. 15?⁴⁵

Do provincial statutes violate s. 15 by making compulsory the attendance of children at a public school or a private institution that is officially approved?

What consideration would justify differential treatment of the constitutional rights of minors under s. 1?

- (a) the peculiar vulnerability of children?
- (b) the inability of children to make critical decisions in an informed, mature manner?
- (c) the need to ensure that parents are able to play a central role in their children's upbringing, child-rearing being the role of parents not of impersonal political institutions?⁴⁶

Discrimination based on an unenumerated ground, including cross-referencing to other Charter-guaranteed rights

Section 15 enumerates certain specific grounds of discrimination that are proscribed. That enumeration is preceded by general words asserting "the right to the equal protection and equal benefit of the law without discrimination"

Would denial to an individual of the benefit of a law by legislation or (more likely) administrative practice, on some capricious or irrational ground, be caught by these general words?

Would denial to an individual of such benefit on a ground which constitutes a violation of some other right guaranteed by the Charter be a violation of s. 15 as well? (Perhaps the last question is only of theoretical interest, if a remedy would result from violation of the other right.) Here are possible examples of this:

Assume that provincial legislation imposes a three-month residency requirement as a condition of subscribing to the provincial medical case insurance programme. Does this violate s. 6(2) (the right to move and take up residence in any province)? Does it violate s. 15?⁴⁷

Assume that provincial welfare legislation contains a residency requirement designed to ensure fiscal savings by discouraging welfare recipients from entering the province.

The Effect of Section 1

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Throughout these notes it has been assumed that not all discriminatory legislation or conduct will be struck down by s. 15. In other words, it has been assumed that the courts will develop tests that will protect some legislation and conduct that is discriminatory in intent or effect, apart from affirmative action programmes that are specifically protected by s. 15(2).

But s. 15(1) enunciates equality "before and under the law" and pronounces a "right to the equal protection and equal benefit of the law without discrimination" in absolute terms. It does not say that any discriminatory act must be "reasonable" or "practicable", or prescribe any functional or other tests by which it may be determined whether there the discrimination has been such as to be constitutionally permissible. The words in s. 15 that will require particular construction are "equal protection of the law" and "equal benefit of the law": what is "equal" will

not always be clear. However, even if a court determines that, for example, a woman or a person with a physical disability does not receive "equal benefit of the law" pursuant to a statute or an administrative practice, the court may be faced with an argument that the form of discrimination is one that ought not to be struck down because it is reasonable in the circumstances.

If recent judicial dicta are correct, in the absence of an issue of reasonableness being expressly raised by the wording of a substantive section of the Charter, the right must be construed in an absolute sense and without receiving the gloss of any judicially-created limitation. If this view is held to be correct, any qualification of its scope must then be founded upon the strictures of s. 1: a limitation in either of the rights guaranteed by s. 15 must be "prescribed by law" and it must be "reasonable" and such as can be "demonstrably justified" in a "free and democratic society".

In regard to s. 15, the significance of the words "prescribed by law" may be that if any conduct is held to violate s. 15, it could find protection in s. 1 only if it is authorized by a rule of law. Thus, unless it is authorized by a statute or by a rule of common law, or by delegated legislation (including municipal by-laws, school board resolutions, resolutions by the governing bodies of statutorily-established professions, and

policies duly approved by statutorily created Crown corporations in the manner required by their establishing statute), it will not be protected by s. 1 even if it is "reasonable" and "demonstrably justified".

There has been relatively little judicial comment on the words "reasonable" and "as can be demonstrably justified in a free and democratic society". Until appellate authority becomes available, see Reich v. College of Physicians and Surgeons of Alberta⁴⁸. If the analysis in that judgment is valid, then, to be protected by s. 1, the form of discrimination found in a statute or delegated legislation or a rule of common law must be "capable of being supported as a rational means of achieving a rational objective" and in addition, to be "demonstrably justified in a free and democratic society", the "object and the means chosen must be shown to be preferable to some other state object and preferable to some other means of attaining a state object" (i.e., an object and a means that are less intrusive upon Charter rights). If this view, particularly of the meaning of "as can be demonstrably justified", is valid, then it may be that the courts will scrutinize a discriminatory law or conduct authorized by law quite "strictly" in the sense that, at the very least, the discriminatory rule or conduct would have to be shown to be not only reasonable but something more than reasonable in order to attract the protection of s. 1.

If this is so, then what use can be made of the tests of what is permissible, that are found in American cases based on statutes lacking constitutional status and containing somewhat different provisions? Similarly, what use may be made of the tests found in cases interpreting the Canadian Bill of Rights 1960? It may be that the temptation to borrow such tests ought not to be yielded to except with great prudence. For, if anything, it may be that some of the tests developed in those cases are far from being sufficiently strict against discrimination to justify their being considered appropriate standards of compliance with the Charter, bearing in mind the demands of s. 1.

Burden of Proof

When a violation of s. 15 is alleged, upon whom rests the burden of proof? Assuming that the legal burden rests with the plaintiff/applicant seeking a remedy under s. 24(1) of the Charter, what must he or she produce by way of evidence in order to place an evidentiary burden upon the respondent? Under s. 15 is the evidentiary approach the same as under human rights legislation?⁴⁹

FOOTNOTES

1. See Judith Welch Wegner, "The Antidiscrimination Model Reconsidered: Ensuring Equal Opportunity Without Respect to Handicap under Section 504 of the Rehabilitation Act of 1973", (1984) 69 Cornell L.R. 401, at pp. 409-10.
2. See Wegner, at p. 409.
3. See Martha Chamallas, "Exploring the 'Entire Spectrum' of Disparate Treatment under Title VII: Rules Governing Predominantly Female Jobs", [1984] U. of Ill. L. Rev. 1, at p. 11.
4. See City of Los Angeles v. Manhart, (1978) 435 U.S. 702.
5. Chamallas, p. 10.
6. Cases in Chamallas, p. 28.
7. Griggs, "Employment Discrimination Against the Handicapped and Section 504 of the Rehabilitation Act: An Essay on Legal Evasiveness", (1984) 97 Harv. L. Rev. 997, at p. 1004.
8. Cases in Chamallas, supra, n. 3, at p. 7.
9. Cases in Chamallas, supra, n. 3, at pp. 8-9.
10. Cases in Chamallas, supra, n. 3, at p. 20.
11. Cases in Chamallas, supra, n. 3, at p. 30.
12. Cases in Chamallas, supra, n. 3, at p. 31.
13. Cases in Chamallas, supra, n. 3, at p. 34.

14. Cases in Chamallas, supra, n. 3, at pp. 35-37.
15. Cases in Chamallas, supra, n. 3, at p. 43.
16. Cases in Chamallas, supra, n. 3, at p. 50.
17. Griggs, supra, n. 7, at p. 1003.
18. Griggs, supra, n. 7, at p. 998.
19. Griggs, supra, n. 7, at p. 1011.
20. Griggs, supra, n. 7, at p. 998.
21. Griggs, supra, n. 7, at p. 1011.
22. Griggs, supra, n. 7, at p. 1001, Pushkin v. Regents of University of Colorado, 658 F. 2d. 1372.
23. Griggs, supra, n. 7, at p. 1001.
24. Griggs, supra, n. 7, at p. 1001.
25. Griggs, supra, n. 7, at p. 1008.
26. Griggs, supra, n. 7, at p. 1011.
27. Griggs, supra, n. 7, at p. 1011.
28. Wegner, supra, n. 1, at pp. 501-503.
29. Wegner, supra, n. 1, at p. 470.
30. Wegner, supra, n. 1., at p. 492.

31. Wegner, supra, n. 1, at p. 492.
32. Wegner, supra., n. 1, at p. 495.
33. Wegner, supra, n. 1, at p. 494.
34. Wegner, supra, n. 1, at p. 500.
35. Wegner, supra, n. 1, at p. 464.
36. Wegner, supra, n. 1, at p. 477.
37. Wegner, supra, n. 1, at p. 477.
38. Wegner, supra, n. 1, at p. 478.
39. Wegner, supra, n. 1, at p. 492.
40. Wegner 495, 496-7, supra, n. 1, at pp. 495, 496-7.
41. Wegner, supra, n. 1, at pp. 509-11.
42. Wegner, supra, n. 1, at p. 440.
43. Griggs, supra, n. 7, at p. 1007; Wegner, supra, n. 1, at p. 514, 449, 442? 542?
44. Wegner, supra, n. 1, at p. 542.
45. Note (unsigned) "Assessing the Scope of Mirrors. Fundamental Rights: Juvenile Curfews and the Constitution", (1984) 97 Harv. L. Rev. 1163.
46. See Bellotti v. Baird, (1979) 443 U.S. 622.

47. Wegner, *supra*, n. 1, at p. 447.
48. (1984) 31 Alta. L.R. (2d) 205 (Alta. Q.B.).
49. See Base-Fort Patrol Ltd. v. Alberta Human Rights Commission, (1983) 143 D.L.R. (3d) 334, [1983] 2 W.W.R. 752, 23 Alta. L.R. (2d) 372 (Alta. Q.B.), adopting the approach taken in Texas Dept. of Community Affairs v. Burdine, (1981) 450 U.S. 248. For a comment on Burdine, see Player, "The Evidentiary Nature of Defendant's Burden in Title VII Disparate Treatment Cases", (1984) 49 Missouri L. Rev. 17.

SELECTED ADDITIONAL ARTICLES ON AMERICAN ANTI-DISCRIMINATION LAW:

G. Sidney Buchanan, "State Authorization, Class Discrimination, and the Fourteenth Amendment", (1984) 21 Houston L. Rev. 1.

Linda S. Auwers, "Equal Protection and the Illegitimate Child", (1984) 21 Houston L. Rev. 229.

Sylvia A. Law, "Rethinking Sex and the Constitution", (1984) 132 U. Penn. L. Rev. 955.

Stephanie M. Wildman, "The Legitimation of Sex Discrimination: A Critical Response to Supreme Court Jurisprudence", (1984) 63 Ore. L. Rev. 265.

SELECTED CANADIAN READINGS:

Marc Gold, "A Principled Approach to Equality Rights: A Preliminary Inquiry", [1982] 4 Sup. Ct. L. Rev. 131.

Jill McCalla Vickers, "Majority Equality Issues of the Eighties", Canadian Human Rights Yearbook 1983, p. 59.

RELEVANT AMERICAN STATUTES:

Civil Rights Act of 1964 (as amended in 1974).

(Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 373 (codified at 42 U.S.C. s. 2000d (1976))).

Title VII, s. 601. ~~_____~~ No person in the United States shall, on the ground of race, colour, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Education for All Handicapped Children Act of 1975 (20 U.S.C. ss. 1401 (17)-(18), 1412(1) (1982))

Requires that recipients of particular federal funds assure handicapped children "free appropriate public education", which consists of "special education and related services" (the latter being defined with some particularity).

Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat. 2076 (1978) codified at 42 U.S.C. s. 2000 e/k) (Supp. V 1981).

Rehabilitation Act of 1973

Rehabilitation Act of 1973, Pub. L. No. 93-212, 87 Stat. 355, 394 (codified as amended at 29 U.S.C. s. 794 (Supp. V 1981); Rehabilitation Act Amendments of 1974, Pub. L. No. 93-516, s. 111(a), 88 Stat. 1617, 1619; Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978, Pub. L. No. 95-602, s. 119, 92 Stat. 2982).

s. 504 No otherwise qualified handicapped individual...shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, [amendment follows:] or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978...

Education Amendments of 1972

s. 901(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

Age Discrimination in Employment Act of 1967, s. 4 (F)(1), (29 U.S.C. s. 623 (C)(1) (1976).

Creates exception "where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business".