

# PROTECTION OF MINORITIES IN CONTEMPORARY SOCIETY

## PREVENTING DISCRIMINATION AND ENSURING EVERYONE'S RIGHTS

In 1989, the Supreme Court of Canada described discrimination as “a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.” (Canlii, see reference below)

All democratic countries that recognize the rule of law have legal measures to prevent discrimination. Accordingly, a law that does not respect the principle of equality cannot be valid in a democratic society. In Canada, the *Canadian Charter of Rights and Freedoms*, which stems from the *Constitution Act, 1982*, provides for the right to equality: “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability” (s. 15, ss. 1).

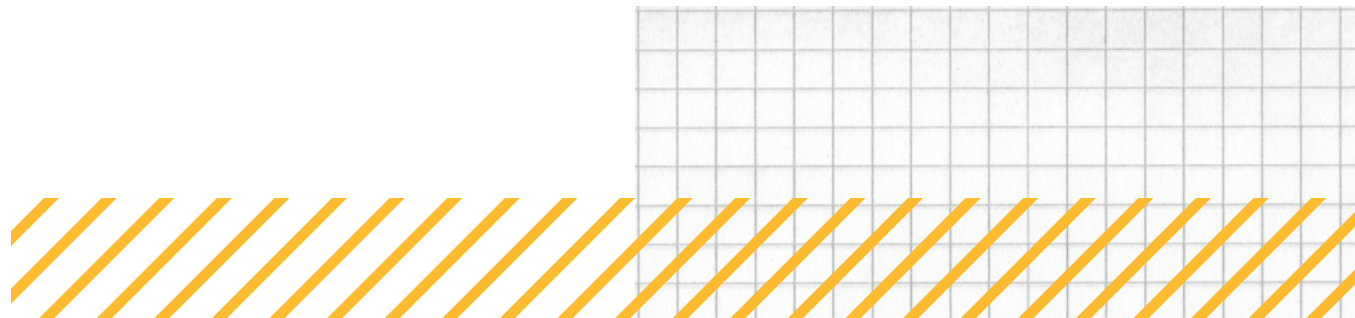
The question that arises is how to ensure equality when individuals are, in fact, in an unequal situation. In *A Theory of Justice*, author John Rawls points out that the principle of equality can be used as justification for differential treatment that benefits the worst-off members of society. This is the same principle that underlies positive discrimination as well as reasonable accommodation.

## REASONABLE ACCOMMODATION

Although they appear to be neutral, some laws can create situations of direct or indirect discrimination. In fact, although these laws are applied to everyone in the same way, they can still result in some people being excluded or discriminated against. The school calendar and the work week provide a good illustration. For the majority of Catholics, it is easy to get together with family on Christmas Day or at New Year's, while people of other religious faiths are often obliged to choose between their academic or economic success and their religious practices. Reasonable accommodation helps the members of other faith groups receive equal treatment, by adapting the situation to their needs, for example, allowing a student to take an examination at another time or giving an employee a day off to celebrate a religious holiday.

## POSITIVE DISCRIMINATION (AFFIRMATIVE ACTION)

Positive discrimination is a policy designed to guarantee real and equal opportunity for members of groups discriminated against by a law or regulation. It attempts to close an economic and social development gap, which involves going beyond differential treatment and establishing concrete preferential treatment in order to remedy the persistent inequalities that are experienced by racial and ethnic minorities or that are gender-based, especially in access to education and employment. The State intervenes to counter society's natural tendency to create inequality and segregation. Logically, differential treatment has a tendency to disappear once the groups concerned catch up to the rest of society.



The *Canadian Charter of Rights and Freedoms* confirms the principle of positive discrimination because, in section 15, it authorizes laws, programs or activities intended to improve the situation for individuals or groups who experience discrimination based on certain characteristics.

In some instances, positive discrimination is used to redress past historical injustices perpetrated against certain minorities. A good example of this is Part II of the *Constitution Act, 1982*, which is devoted exclusively to the rights of Indigenous peoples (First Nations, Inuit and Métis) in Canada.

The *Employment Equity Act* of 1995 illustrates perfectly the legal concept of positive discrimination in Canada. Its purpose is to achieve equality in the workplace by implementing equity measures so that no person can be denied benefits or employment opportunities for reasons unrelated to ability and, in fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Indigenous people, people with disabilities and members of visible minorities.

**For more information:**

D. Lipson, "Where's the Justice ? Affirmative Action's Severed Civil Rights Roots in the Age of Diversity", *Perspectives on Politics* 6, no. 4 (2008): 691-706.

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