

A Question of Dignity

Law v. Canada (Minister of Employment and Immigration)

[1999]

Teacher Resource

Curriculum Links: Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

Legal Focus: Equality Rights, Canada Pension Plan, Administrative Law, Constitutional Law

Estimated Time: 1 period

Overall Expectations:

- Explain how rights and freedoms have developed in Canada.
- Identify the rights and freedoms outlined in the Canadian *Charter of Rights and Freedoms* and explain how to exercise them.
- Apply the steps in the process of legal interpretation and analysis.

Specific Expectations:

- Identify the legal rights and fundamental freedoms outlined in the *Canadian Charter of Rights and Freedoms*.
- Explain how rights and freedoms may be limited under the *Charter*.

Description of the Case

Nancy Law was thirty years old when her husband passed away. She applied for a pension as the surviving spouse of a wage-earner who had died. The Canada Pension Plan (the “CPP”) is a social insurance scheme created by the Parliament of Canada in 1965. The purpose of the CPP is to provide pensions to wage-earners who have contributed into the CPP and to their families when the wage-earner retires, becomes disabled, or dies. Not everyone is eligible for pensions under the CPP; these benefits are only available to applicants who meet certain criteria. Ms. Law’s application was denied because she did not meet the eligibility criteria.

Under section 44(1) of the CPP, a surviving spouse is entitled to a pension when his or her spouse dies only if a number of conditions have been met. Among other things, the surviving spouse must be either a) over thirty-five years of age; b) have dependent children to support; or c) be disabled.

Nancy Law was denied a survivor's pension under the CPP because she did not meet any of these three criteria: a) she was *under* thirty-five years of age; b) she did not have any dependent children to support; and c) she was not disabled. Ms. Law argued that this was discrimination on the basis of age, contrary to s. 15(1) of the *Canadian Charter of Rights and Freedoms* and appealed the decision.

The Pension Plan Review Tribunal found that the CPP discriminated against the equality rights of those who, at the time of their contributing spouse's death, were under the age of 35, did not have children and were not disabled. However, the majority of the Tribunal found that this discrimination was justified under section 1 of the *Charter*, because it allowed the CPP to provide benefits to those in greatest need. Therefore, the CPP provisions under attack were upheld as constitutional. The minority of the Tribunal, in contrast, decided that the provisions were unconstitutional because the age distinction was arbitrary and Parliament should have established a test based on need, not just on an age limit.

Ms. Law appealed the decision. After a new hearing, the Pension Appeal Board concluded that the age distinction did not infringe s. 15(1), but that, even if it did, the alleged discrimination on the basis of age was justified under s. 1 of the *Charter* because the CPP's benefit scheme is complex and Parliament's choice of measures should be respected.

Nancy Law appealed the decision to the Federal Court of Appeal, which did not overturn the Pension Appeal Board's decision.

The Final Judgment

Finally, Nancy Law appealed to the highest court in the country, the Supreme Court of Canada. The approach that the Supreme Court of Canada adopted in this case is now the analysis that the Court applies to every equality case to this day.

The Court found that even though the CPP makes distinctions between individuals on the basis of age, these distinctions are not discriminatory because they do not affect the dignity of the individual.

The Court focused on three main issues to determine whether an individual's section 15 rights have been violated:

1. Does the challenged law draw a distinction based on a personal characteristic of the claimant?
2. Has the claimant been treated differently on the basis of one or more of the grounds enumerated (listed) in section 15 such as "race", "age", "sex", "colour", or any of the analogous grounds?
3. Did the law discriminate against the claimant (by imposing a burden or withholding a benefit), contrary to the very purpose of section 15?

The Court said that the purpose of s. 15 is:

It protects essential human dignity and freedom and promotes a society in which everyone is recognized as being equally capable and equally deserving of concern and respect.

The Court then applied these principles to Nancy Law's circumstances. For the 1st and 2nd issues, the Court found that the CPP did draw a distinction on the basis of age, by denying benefits to individuals who are under the age of 35, have no dependent children to support and are able-bodied.

However, in considering the 3rd issue, the Supreme Court of Canada found that the age distinction did not violate Ms. Law's rights, because the CPP did not violate her human dignity. The Court decided that the purpose of the survivor's pension was to provide long-term financial security to Canadians who had lost a spouse. The CPP aims to enhance the personal dignity and freedom of individuals by providing long-term financial support to these disadvantaged groups. A person under the age of 35, such as Ms. Law, is more capable of finding work and becoming financially independent than someone older or someone who is disabled. Nancy Law's human dignity was not violated and the provisions of the CPP did not infringe section 15. Therefore, the denial of Ms. Law's application for a survivor's pension did not violate the *Charter*.

Teaching & Learning Strategies

1. Provide students with chart paper and markers and in groups of 3-4, have students create a concept map about what equality means to them. Discuss as a class.
2. Have students review Section 15(1) of the *Charter*, either by posting it on an overhead, writing it on the board, or providing it on a hand-out. Clarify any questions about the meaning of s. 15(1).
3. Ask students to complete *The Big Question* and discuss as a class.
4. Using a teacher- or student-centred reading strategy, review *The Facts of the Case* and *The Relevant Law* with students. Discuss *The Issue* and ask a few students to share their opinions with the class.
5. In pairs or small groups, have students complete *The Lawyers' Debate* exercise. Discuss answers as a class.
6. Using a teacher- or student-centred reading strategy, review the sections on *The Progression through the Courts* and *The Final Judgment* with students. Answer students' questions as you proceed.
7. Have students complete the *Check for Understanding* exercise and take up the answers as a class.
8. Ask students to use the information they have learned about the case to complete the chart in *Taking a Closer Look*.

9. In small groups or as a class, have students discuss the questions in the *Reflecting* section. You may choose to have students provide written answers to be evaluated.

Assessment & Evaluation

- *The Big Question*
- Class discussions
- *The Lawyer’s Debate* activity
- *Check for Understanding* worksheet
- *Taking a Closer Look* chart
- *Reflecting* activity

Resources

Ontario Justice Education Network,
<http://www.ojen.ca>

- Landmark Case - Equality Rights and the Canadian Pension Plan: *Law v. Canada (Minister of Employment and Immigration)*

Supreme Court of Canada Decisions – *Law v. Canada* [1999]

<http://csc.lexum.umontreal.ca/en/1999/1999rcs1-497/1999rcs1-497.html>

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Student Handout

The Big Question

What do you think s.15 of the *Charter* aims to protect? (see *The Relevant Law* box on page 2 of this handout.) Can you think of any situations where the law may discriminate against someone but this discrimination is justified? (Hint: think of situations which involve specific age requirements, like mandatory retirement or minimum age requirements.)

The Facts of the Case

1. The Canada Pension Plan (the CPP) is a social insurance program that provides income to people who have contributed to the plan and need money to help with living expenses. Most people who receive money from the plan are retired persons.
2. Nancy Law was 30 years old when her husband died. Because her husband had been making payments to the CPP, Ms. Law felt she was entitled to a pension as the surviving spouse of a wage-earner who had died.
3. Under section 44(1) of the CPP, a surviving spouse is entitled to a pension when his or her spouse dies only if a number of conditions have been met.

- I. the spouse who has died must have made sufficient contributions to the CPP during his or her lifetime.
 - II. the surviving spouse must be either:
 - i. over thirty-five years of age;
 - ii. have dependent children to support; or
 - iii. be disabled.
4. Nancy Law was denied a survivor's pension under the CPP because she did not meet any of these three criteria.
5. Ms. Law felt that she was being discriminated on the basis of age, contrary to s. 15(1) of the *Canadian Charter of Rights and Freedoms*.

The Issue

- Nancy Law was denied a survivor's pension by the Canada Pension Plan because she did not meet the age criteria. Is this a violation of her s. 15 *Charter* right which protects against discrimination based on age?

The Relevant Law

Canadian Charter of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

15(1) 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.

The Lawyers' Debate

Arguments for the Applicant

List three arguments Ms. Law might make to prove she was entitled to a survivor pension from the C.P.P.

- i. _____

- ii. _____

- iii. _____

Arguments for the Respondent

List three arguments the Pension Plan Review Tribunal might make to justify the eligibility requirements of the survivor’s pension.

- i. _____

- ii. _____

- iii. _____

The Progression through the Courts

- 6. When the survivor’s pension was denied to Ms. Law on the basis of her age, she appealed.
- 7. The Pension Plan Review Tribunal found that the CPP discriminated against the equality right of those who were under the age of 35, did not have children and were not disabled. However, the majority of the Tribunal found that this discrimination was justified under section 1 of the *Charter*, because it allowed the CPP to provide benefits to those in greatest need. Therefore, the CPP provisions were upheld as constitutional.
- 8. Ms. Law appealed the decision. Neither the Pension Appeal Board nor the Federal Court of Appeal, overturned the decision.
- 9. Finally, Nancy Law appealed to the highest court in the country, the Supreme Court of Canada.
- 10. The approach that the Supreme Court of Canada adopted in this case remains the analysis that the Court applies to every equality case to this day.



The Final Judgment

11. The Supreme Court ruled that Nancy Law's s. 15 equality rights were not violated. It ruled that Ms. Law had not been discriminated against because, although the CPP makes distinctions based on age, Ms. Law's human dignity did not suffer as a result of this denial.
12. In making this decision, the Court focused on three main issues to determine whether Ms. Law's section 15 rights had been violated:
 - i. Does the challenged law draw a distinction based on a personal characteristic of the claimant?
 - ii. Has the claimant been treated differently on the basis of one or more of the grounds enumerated (listed) in section 15 such as "race", "age", "sex", "colour", or any of the analogous grounds?
 - iii. Did the law discriminate against the claimant (by imposing a burden or withholding a benefit), contrary to the very purpose of section 15?

The Court said that the purpose of s. 15 is:

It protects essential human dignity and freedom and promotes a society in which everyone is recognized as being equally capable and equally deserving of concern and respect.

13. For the 1st and 2nd issues, the Court decided that the CPP did draw a distinction on the basis of age, by denying benefits to individuals who are under the age of 35, have no dependent children to support and are able-bodied.
14. However, in considering the 3rd issue, the Supreme Court of Canada found that the age distinction did not violate Ms. Law's rights, because the CPP did not violate her human dignity.
15. The Court decided that the purpose of the survivor's pension was to provide long-term financial security to Canadians who had lost a spouse, by helping people who were more economically vulnerable. The CPP exists to protect the personal dignity and freedom of individuals by providing long-term financial support to these disadvantaged groups.

16. A person under the age of 35, such as Ms. Law, is more capable of finding work and becoming financially independent than someone older or someone who is disabled. Nancy Law's human dignity was not violated and the CPP did not infringe section 15. Therefore, the denial of Ms. Law's application for a survivor's pension under the CPP did not violate the *Charter*.

Check for Understanding

1. What is the Canada Pension Plan, and what is its purpose?

2. What did Nancy Law want from the Canada Pension Plan?

3. Why did the Canada Pension Plan refuse this request? What was Nancy Law's response?

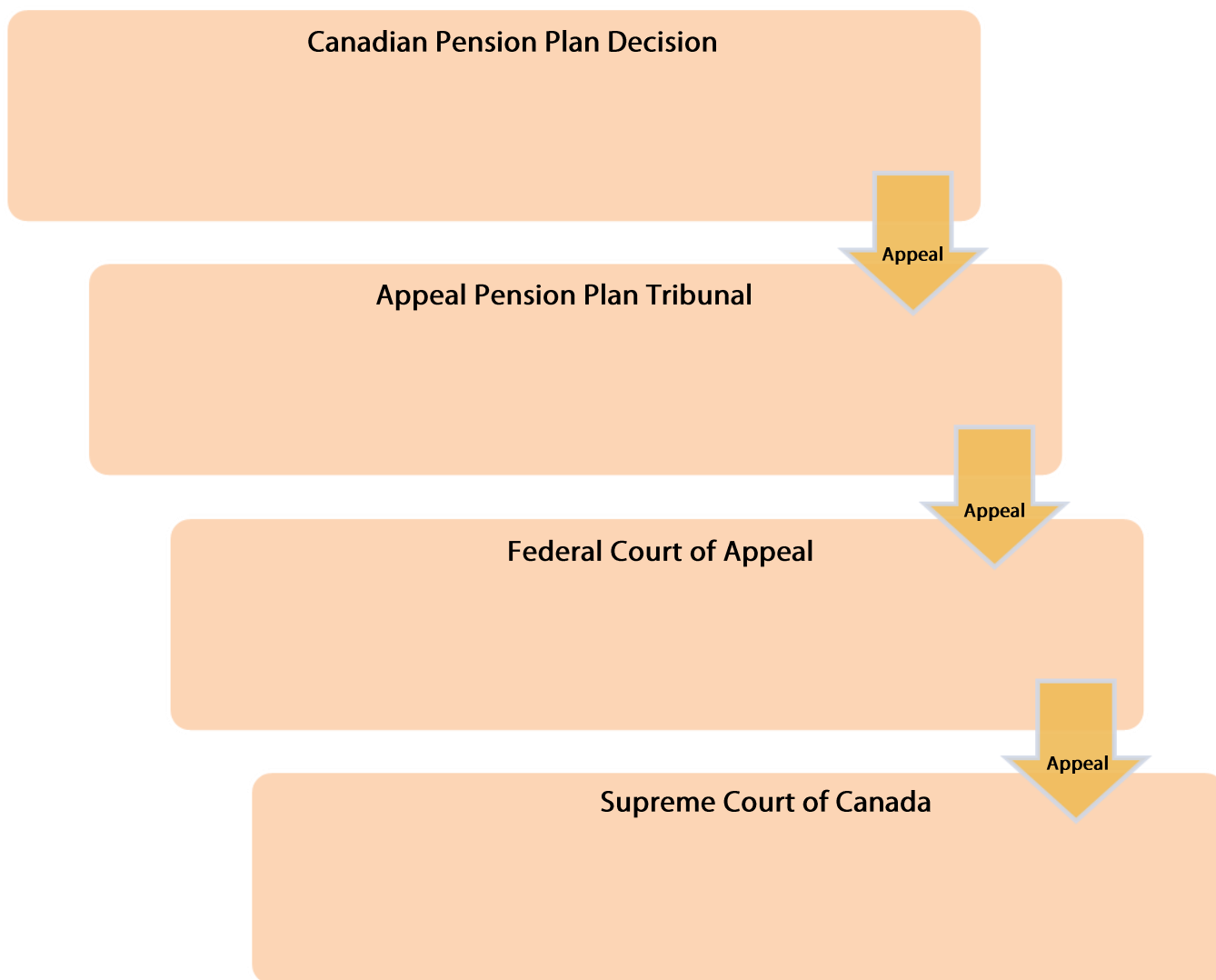
4. After her appeals had been heard, did Ms. Law finally receive her pension? Why or why not?

5. Why is this case important in Canadian law?

Taking a Closer Look

Administrative hearings, like those that take place at the Canada Pension Plan Tribunal, may resemble a criminal court in some ways, but are not actually part of the traditional court system. They are set up to resolve disputes (like courts); however, they are less formal, less expensive and are usually a faster way to resolve these disputes. Administrative hearings are also different from court trials in that the decision maker (often called a "Board Member") is someone with specialized knowledge about the topic which they are asked to adjudicate. Judges, in contrast, are expected to have general knowledge of the law and make decisions on a variety of matters.

Use the chart below to summarize what happened at each step in the Nancy Law case. Be sure to include why the appeal took place and the decision made by the court or tribunal at each level. Once complete, use this chart as a quick reference for understanding the events and decisions made in *Law v. Canada*.



Reflecting

1. Why did Nancy Law feel discriminated against?
2. What is the purpose of s. 15 - as outlined in the Law case?
3. a) What does the Supreme Court of Canada mean when it refers to “human dignity?”

b) How do you think a court can measure or assess human dignity?
4. Review the three issues the Supreme Court of Canada focused on to determine whether a person’s s.15 rights have been violated. Do you think this is a fair analysis?
5. How would you have decided the issue? Why?
6. Do you think government should have the ability to treat some people differently? Why or why not? Can you think of situations where it would be appropriate for the government to treat people differently? Offer some examples.