
The Canadian Institute for Professional Development

EQUALITY RIGHTS and EMPLOYMENT LAW

Preparing for Fundamental Change

A Conference on the Impact of Section 15 of The Canadian Charter of Rights and Freedoms on Employment Law and Practices.

Speakers

**Thursday,
November 28,
1985**

**Four
Seasons
Hotel**

701 West Georgia
Street
Vancouver, B.C.

John D. McAlpine, Q.C.
McAlpine & Hordo

James G. Carphin,
Russell & DuMoulin

Ian T. Donald,
Rankin & Co.

James E. Dorsey,
Braidwood, Nuttall, MacKenzie,
Brewer & Greyell

Peter A. Gall,
Jordon & Gall

Gavin H. Hume,
Russell & DuMoulin

C. Lynn Smith,
University of British Columbia

Katharine P. Young,
McGrady & Young

PROGRAMME MATERIALS

Conference participants will receive a comprehensive set of conference materials prepared by the speakers. These materials are intended to provide the participants with an excellent reference source after the conference.

HOW TO REGISTER

To register, complete and mail the attached Registration Form with your payment today. You may reserve your place by calling The Canadian Institute at (416) 927-0718. Acceptance will be confirmed to each registrant.

REGISTRATION FEE

\$295.00 per person. The fee includes the conference, all programme materials provided, refreshments and luncheon.

WHEN AND WHERE

The conference will be held on November 28, 1985, at The Four Seasons Hotel, 791 West Georgia Street, Vancouver, B.C., from 9:00 a.m. to 4:30 p.m. Materials will be distributed from 8:30 a.m. and the programme will commence promptly at 9:00 a.m.

CANCELLATION AND REFUND POLICY

Registration fees are refundable only upon receipt of written notification by November 18, 1985, less a \$25.00 service charge. Substitution of participants is permissible without prior notification.

The Canadian Institute for Professional Development reserves the right to cancel any course if it deems necessary and will, in such event, make a full refund of the registration fee. No liability is assumed by The Canadian Institute for Professional Development for changes in programme date or content.



EQUALITY RIGHTS and EMPLOYMENT LAW

Preparing For Fundamental Change

On April 17, 1985, Section 15 of The Canadian Charter of Rights and Freedoms came into force. This section, the "Equality Section", gives to every individual equality "before and under the law" as well as the "right to the equal protection and equal benefit of the law without discrimination". These short few words are expected to result in an unprecedented impact on many aspects of employment law and practices.

This conference will address topics such as the impact of Section 15 on employer-employee relations including, company retirement policies, wage policies, affirmative action programmes, hiring policies, termination policies, promotion policies, benefit programmes and more. It will also deal with the remedies available for breach of Charter rights and discuss strategies to avoid Charter violations.

For anyone involved in employment law practice, in the determination of company policy on employment

practices, in the protection of employer or employee rights, in the representation of unionized workers or in the development of employee benefit programmes, this conference is not to be missed. Mr. Justice Brian Dickson, Chief Justice of the Supreme Court of Canada has said that April 17, 1985, the day that the equality provisions of the Charter take effect, promises to be "a momentous day in Canadian history".

Mr. Justice Walter Tarnapolsky of the Ontario Court of Appeal has predicted that the equality provisions will be the most litigated sections of the Charter. Lawyers, employers, union representatives and other employment-related professionals would be wise to understand and prepare for the fundamental changes coming, whether (from the employer's point of view) to avoid litigation or, (from the employee's point of view) to take full advantage of the rights and freedoms set out in the Charter.

WHO SHOULD ATTEND?

- Lawyers ■ In-house counsel ■ Union representatives ■ Senior management
- Government officials ■ Employee benefits and pension plan consultants ■ Personnel managers

PROGRAMME

EQUALITY: WHAT DOES IT MEAN?

Prof. C. Lynn Smith

- Canadian and U.S. constitutional interpretations of Equality
- The substantive content of equality rights
- Intentional discrimination/unintentional discrimination: what will be the Charter response?
- Direct discrimination/indirect discrimination: will they be treated differently under the Charter?
- Justifiability of the limitation of equality rights under section 1 of the Charter

EQUAL PAY FOR WORK OF EQUAL VALUE

Ian T. Donald

- Does section 15 of the Charter require equal pay for work of equal value?
- Recent legislative initiatives in equal pay for work of equal value
- A discussion of the equal pay/equal work sections of the Canadian Human Rights Commission Guidelines: do these provisions contravene section 15 of the Charter?
- Evidentiary problems in establishing wage discrimination
- International conventions and legislation upholding the principle of equal pay for work of equal value: the effect on section 15 litigation

AFFIRMATIVE ACTION PROGRAMMES

Peter A. Gall

- What is affirmative action in employment law matters?
 - Section 15 (1) and section 15 (2) of the Charter: a constitutional conundrum?
 - Extent to which affirmative action programmes may be used as a remedy for past discriminatory employment practices
 - The relevance of current American and Canadian case law in the interpretation of section 15 (2) of the Charter
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CIVIL CONSEQUENCES OF BREACH OF THE CHARTER

John D. McAlpine, Q.C.

- Is there a civil cause of action for breach of the equality provisions in employment-related situations: a constitutional tort?
 - What should be the basis for calculating damages for breach of constitutional rights? Are punitive damages appropriate?
 - What is the proper forum: Must a civil action be brought to obtain damages for breach of constitutional rights or can an award be made by Grievance Arbitrators, Criminal Courts, Labour Boards and other Administrative Tribunals?
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THE CHARTER, UNION PRACTICES AND COLLECTIVE BARGAINING

James E. Dorsey

- What impact will the Charter have on union-organizing rights?
 - What impact will the Charter have on union-organizing procedures: More union access to the workplace? More employee free speech?
 - Union security: threatened by the Charter? Charter restrictions on how unions may spend dues?
 - Does the Charter guarantee dissenter rights?
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PENSION PLANS

James G. Carphin

- A review of the age and sex distinctions currently permissible in pension plans
 - Analysis of the substantive impact of section 15 of the Charter on the structure of pension plans
 - Will any distinctions among members of a pension plan still be permitted under the Charter?
 - A pragmatic look at what steps, if any, should be implemented to ensure that a pension plan will not contravene the provisions of the Charter
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THE RELATIONSHIP BETWEEN SECTION 15 OF THE CHARTER, THE HUMAN RIGHTS CODES AND EMPLOYMENT LAW

Gavin H. Hume

- An analysis of the conflict between section 15 of the Charter, various provincial and Federal Human Rights Codes and employment-related legislation
 - A review of various Provincial Charter compliance programmes
 - Expected amendments to existing Provincial and Federal legislation
 - Likely Charter challenges to existing Provincial or Federal legislation
 - An overview of the anticipated impact of section 15 on employment practices including mandatory retirement
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THE CHARTER AND PUBLIC, QUASI PUBLIC AND PRIVATE SECTOR EMPLOYERS

Katharine P. Young

- Do the Charter equality provisions apply to Public Sector employers? Quasi Public Sector employers? Private Sector employers?
- Are Private Sector employees "Less Equal" than Public Sector employees under the Charter?
- The relationship between section 32 (Applicability) and section 52 (Supremacy) provisions
- A review of the U.S. and European jurisprudence regarding the applicability of an entrenched Bill of Rights to Private Sector employers

SEE OVER TO REGISTER

REGISTRATION FORM

Please register the following individual(s) for

EQUALITY RIGHTS AND EMPLOYMENT LAW: Preparing for Fundamental Change

I have enclosed my cheque for \$ _____ made payable to

THE CANADIAN INSTITUTE FOR PROFESSIONAL DEVELOPMENT.

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Please return Registration Form to: **The Canadian Institute for Professional Development**

56 Scollard Street, Toronto, Ontario M5R 1E9 (416) 927-0718

SPEAKERS

JOHN D. McALPINE, Q.C. is a senior partner in the firm of McAlpine & Hordo. He is well known within the profession as a leading counsel in Employment and Public Law matters. Mr. McAlpine has served as Chairman of various Canadian Bar Association Committees, Legislative Committees and Law Reform Commissions. He has been a frequent participant in conferences on Public Law matters.

JAMES G. CARPHIN is a partner in the firm of Russell & DuMoulin and practices in the area of Estates and Trust Administration. Mr. Carphin has served as both the Provincial and National Chairman of the Canadian Bar Association, Estates and Trusts section. He has lectured in the Canadian Bar Association and Law Society Continuing Legal Education Programmes and has been a frequent conference participant.

IAN T. DONALD is a member of the firm of Rankin & Co. and restricts his practice to Labour Law. He is a past Chairman of the Canadian Bar Association (British Columbia) Labour Law section and has participated in numerous seminars and conferences on Employment and Labour Law matters.

JAMES E. DORSEY is a member of the firm of Braidwood, Nuttall, MacKenzie, Brewer & Greyell and practices in the Labour Relations and Employment Law fields. Mr. Dorsey is a past Vice-Chairman of the Canadian Labour Relations Board and a past Director of the Arbitrators' Association of British Columbia. He has published widely on Labour and Employment Law matters and is a frequent speaker at Canadian Bar Association seminars. He is currently co-authoring the second edition of Christie on *Employment Law in Canada* and is also writing a new volume on *Employment Law* for the Canadian Encyclopedic Digest (Western) 3rd Ed.

PETER A. GALL is a partner in the firm of Jordan & Gall and specializes in the areas of Labour, Administrative Law and Constitutional Law. Prior to entering private practice, Mr. Gall was professor at the University of Toronto Law School. He has published widely in legal journals and is a frequent speaker on Employment Law matters.

GAVIN H. HUME is a partner in the firm of Russell & DuMoulin and is well known within the profession in the areas of Labour and Employment Law. He has participated in numerous professional seminars and educational forums.

C. LYNN SMITH is a professional at the University of British Columbia in the Faculty of Law where she teaches, among other subjects, in the area of Equality Rights. Prof. Smith has served as Chairperson of Boards of Inquiry under the British Columbia Human Rights Code. She has published numerous articles on the subject of Equality and is soon to publish a new book entitled *"Writing the Balance: Canada's New Equality Rights"*. Prof. Smith is a frequent participant at seminars and conferences dealing with Equality Rights' issues.

KATHARINE P. YOUNG is a partner in the firm of McGrady & Young and practices in the areas of Labour Law and Civil Litigation. Ms. Young has successfully argued before the Courts a number of timely and contraversial cases involving Charter Rights and Labour Law.