

particular forms of equality or kinds of discrimination, although sometimes the two coincided. In a composite chapter on further equality issues we bring together a number of matters that are no less important than the rest but do not fit neatly into any of our themes. In the final chapter we discuss the process of securing equality.

The Committee's Approach to Section 15 of the *Charter*

A Broad Interpretation

In examining federal laws we took a broad and generous view of section 15 of the *Charter*. We did not concern ourselves with the nice, technical questions of interpretation that might trouble a court. For us, the standard has been one of critical examination of all laws, whatever type of prohibited discrimination they might involve.

We concluded early in our deliberations that the prohibited grounds of discrimination listed in section 15 are simply illustrative and do not exhaust the forms of discrimination that are proscribed by the *Charter*. In other words, there is room for other groups, whose distinguishing characteristics are not described in section 15, to claim the benefit of that provision for their members. The wording of the section makes it quite plain that this must be the case. That wording is an accurate reflection of the intent of those that had a hand in settling the form of section 15, as is evident from the proceedings of the Special Joint Committee on the Constitution in 1980-81.

Equality is an elusive concept. It is much easier to narrow it down by stating what it does not mean than by trying, initially, to articulate what it does mean. We can safely say that, in our view, it doesn't necessarily mean either sameness of treatment or patent equality. A law dealing with allowable time off from work that made no distinction between male and female employees would not demonstrate equality as between the sexes. Yet on the face of it, such a law does not treat women any differently from men. To realize true equality that law would have to account for women's childbearing role by permitting women to be absent from work to accommodate that function. Such a provision would serve the goal of equality, in an ultimate sense, by putting men and women on a similar basis in terms of their ability to obtain and hold jobs, without being impeded by the occurrence of a common condition particular to their sex. To put it positively, *equality of results* would be achieved. We consider that to be the proper emphasis in any consideration of equality under section 15.

Consistent with this results-oriented approach, we also believe that the kinds of discriminatory laws to which section 15 relates are those that have the effect, in practice, of discriminating. Therefore, a law that does not single out for adverse treatment members of a group protected by section 15 will nonetheless be discriminatory if that is the inherent result. This type of discrimination has been described as 'systemic' in arguments before human rights tribunals. The example most often cited by way of illustration is a minimum height restriction for membership in a police force, which has the effect of excluding most women and many racial minorities. That rule may be said to discriminate in a systemic way on the basis of sex and race. We have adopted this terminology to describe what we take to be a form of discrimination that is covered by section 15.

The Context of Section 15

We considered section 15 in the context of the *Charter* as a whole. Accordingly, we recognize the separate protection afforded to aboriginal rights (section 25) and to