

complaints of discrimination; it involves investigation, conciliation and the establishment of tribunals to hear and determine disputes that cannot be otherwise resolved.

In the course of this report we explore several human rights concepts that are helpful in analyzing federal laws from the perspective of section 15. They include **reasonable accommodation**, **bona fide occupational requirement** and **bona fide justification**. Reasonable accommodation describes the obligation to take reasonable measures to account for the special needs of those individuals in protected groups, such as disabled people, who require different treatment. The obligation is a positive one — to make special arrangements for a class of individuals and not simply to refrain from showing preference to others.

The terms *bona fide* occupational requirement and *bona fide* justification describe the standard defences to complaints of discrimination in employment and in the provision of goods and services. They too recognize limits to the prohibition of discrimination. However, they do not protect all action that is well-intentioned and in good faith. That action must also be reasonable and demonstrably justifiable in the circumstances, a qualification that also finds expression in section 1 of the *Charter*.

In summary, we have taken a very broad view of section 15 and the meaning of equality. It would be fair to say that we have been guided by the letter and the spirit of the new equality provision of Canada's *Charter of Rights and Freedoms*.

Preamble to United Nations
Convention on the Elimination of
All Forms of Discrimination against
Women, 1979

Introduction

Federal law accommodates women's childbearing activities by providing for special maternity leave under the Canada Labour Code and by governing employment practices. It also provides benefits for women workers in the employment insurance system for the 15-week period surrounding childbirth. The intent of the legislation was to protect women and a portion of the costs of childbearing and child care are borne by the state. It recognizes that women in the workplace have special needs relating to pregnancy and childbirth that are specific to women.

The Commission believes that there is no denial of equality of rights by providing this type of protection to women during the period surrounding childbirth. However, several questions can be made of the Canadian system of maternity and parental protection on equality grounds. Perhaps the most obvious flaw is that women are unable to claim benefits under the Employment Insurance Act during any portion of the 15-week benefit period should they wish to remain a home to participate in early child care.

Maternity Benefits

The Employment Insurance Act guarantees benefits to women who are the primary caregivers whose earnings have been interrupted by a job loss or leave.