

Speaker: The Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada

Time: 16:30, Monday, 14th March, 2016

Venue Large Moot Court, 2/F

The journey of right to equal treatment in Canada:

To eliminate discrimination and achieve equality for all citizens, it is not enough to change the law although it is a critical element. **To fully succeed, we have to change social attitudes and expectations.** The journey in Canada can be divided into 3 stages:

1. Tolerance of lots of discrimination (to the middle of 20th Century)

- From its beginning, Canada is a place of opportunities and freedom of expression. Despite these values, **discrimination still persisted in very negative and strong forms in the first century of Canadian history.** Women were not even allowed the right to vote. The first inroad on discrimination in terms of the law was made on that front: women were first allowed to vote in New Zealand, which was a wave sweeping through the western world. It took very determined women over 50 years of sustained effort to secure the right to vote. In 1916, the right was first granted to women in Manitoba. 2 years later, women were allowed to vote in the federal election. But it was until 1940 that women in the farms of Quebec were first allowed to mark an “x” in the ballot. It took 40 years more for all Canadians to obtain the right to vote.
- It is difficult to overestimate the transformational effect on Canadian society of granting women right to vote. One of the most renowned woman behind the suffrage movement, Nellie McClung, she predicted women suffrage would cause a tidal wave of political and social changes throughout Canada. But in many other ways, women’s right to vote did not change much. One of the key barrier was that **women could still not hold public offices** e.g. senators and judges because of the texts in constitution and laws, which was ruled that the word of persons did not include women. This was the second challenge to gender equality and was won in the Persons Case of 1929. **Constitution has to recognize social changes to adopt a flexible interpretation as a living tree** when women were playing a more active role in society.
- Despite recognition of the right to vote and right to hold public offices, there were still assumptions that women, particularly worked women, would not

work outside the home. The Chief Justice was even asked why she would like to work back into her interview back in 1968. So women had still a long way to go on the social front.

- Chinese migrants were not regarded as equal citizens even when they worked in dangerous jobs. However, this kind of discrimination gradually eroded as this did not fit with the ethics of Canada.

2. *Heightened concerns to use human rights statutes to combat discrimination (after the WWII)*

- This stage focuses on the laws. Laws were passed to ensure equal treatment and outlaw discrimination. The Bill of Rights was adopted in 1960. On paper, it protected lots of freedom. Despite the broad reach, it turned into disappointment, only one case in the Supreme Court has struck down a law which has breached the Bill of Rights. There are many reasons for the under-performance: (1) the Bill only applied to the federal government but not provinces; (2) it was contained in the ordinary legislation, leading it to be interpreted narrowly since the Bill would not be of avail when there was conflict between existing laws.
- There were 2 cases to reflect that: (1) *Attorney General of Canada v Lavell* in 1974: equality was found as it applied to all women; (2) *Bliss v Attorney General of Canada* in 1979: this did not violate the guarantee of equality before the law because any inequalities were not the product of the law but of nature.

3. *Constitutional adoption of Canadian Bill of Rights: Canadian Charter of Rights and Freedoms. (ushered in 1982 and we are still in)*

- The Charter is part of the constitution of Canada. Any laws inconsistent with it is declared void. It has become an icon of the Canadian identity. The Charter protects lots of rights in the Bill of Rights, but it provided constitutional guarantee. It also protected new rights like language right. From the beginning, people recognized challenges in the implementation of the Charter. The implementation of the section of equality guarantee was thus delayed for 3 years.
- The social perception that women should not work outside home has been displaced. Many changes have been made in this stage regarding equality.
- **Same-sex right** has come in a long way in Canada. Recognition of homosexual right has led to social and legal improvements e.g. allowing same-sex couples to adopt children.

- The issues on same-sex marriage was hotly debated. The critical question was whether it was constitutionally necessary.
- There is broad recognition that Canada is a broadly culture-diversified society and society can prosper in peace only if all members enjoy substantive equality. The journey is not still done as fears and resentment still remain e.g. Muslim in some circumstances. We have to realize although law is an important instrument, but political and social actions are still essential.

Q&A Section:

1. Any hints about the impact in the US?
 - The values in the Charter are shared by many Americans
2. There are many inconsistencies with religion right and how to deal with the conflicts?
 - It is better to look on a case-by-case basis and we have tended to try to protect both rights insofar as we can. The religious proactive may give way in such circumstances.
3. How to reach a balance in the complexity between human rights and various social causes?
 - The balancing is a tough aspect in judging. Under the design of the charter, balancing is inherent in the section 1. However, balancing is not absolute. The executive can limit those rights to the extent that it can be justified to be reasonable in a democratic society i.e. public interest over individual right. It puts the burden on the state to justify. (idea of proportionality). There is the need to deference to the legislature or the executive.
4. We do not have legislation in relation to LGBT. What do you think are the benefits of having such comprehensive anti-discrimination system and what can HK learn from it?
 - All the decisions have to be consistent with the right in the Charter. People can get educated quickly about the law in force.
5. Why there is emphasis on immutable personal characteristics?
 - The immutable ground of argument: the intention to protect against discrimination based on immutable ground and we should not interpret it narrowly. It cannot be just anything but there is debate on this. You should be treated with the same dignity with anyone else.
6. Should the court deal with the family matters?

- Approach in the Canada is that there is no exemption to family matter
7. What would you see yourself as the Chief Justice?
 - My main role is simply give the decision which the laws require.
 8. Any comments on proportionality test in terms of linguistic group and the view that constitution as a living tree?
 - The tree grows so slowly