



Department of Justice  
Canada

Ministère de la Justice  
Canada

## **Policy of the Department of Justice on Gender Equality Analysis**



**Canada**



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## **WHAT IS GENDER EQUALITY ANALYSIS ?**

In the legal context, gender equality analysis is a process that assesses, from the earliest working stage, in all our functions, the differential impact on women and men of policies, programs, legislation or legal principles. This assessment is made through the consideration of gender differences, of the nature of relationships between women and men and of their different socio-economic circumstances, taking also into account compounding issues such as race, class, sexual orientation or disability.

### ***The Terms....***

**SEX** identifies the biological differences between women and men.

**GENDER** is the culturally specific set of characteristics that identifies the social behaviours of women and men and the **relationship** between them. Gender, therefore, refers not simply to women or men, but to the relationship between them, and the way it is socially constructed. Because it is a relational term, gender must include women **and** men. Like the concepts of class, race and ethnicity, gender is an analytical tool for understanding social processes.

**GENDER EQUITY** is the process of being fair to women and men. To ensure fairness, measures must often be available to compensate for historical and social disadvantages that prevent women and men from otherwise operating on a level playing field. **Equity leads to equality.**

**GENDER EQUALITY** means that women and men enjoy the same status. Gender equality means that women and men have equal conditions for realising their full human rights and potential to contribute to national, political, economic, social and cultural development, and to benefit from the results.

**Gender equality is therefore the equal valuing by society of both the similarities and differences between women and men, and the varying roles that they play.**

*From "Gender-based Analysis: A guide for policy-making", Status of Women Canada, p. 3*



## ***Why Gender Equality Analysis?***

Gender equality remains a broad societal issue demanding a response. Because law should reflect and translate into norms the highest values of a society, it must integrate the pursuit of equality between women and men.

By adopting an official policy on the integration of gender equality analysis into all Department of Justice work, the Department formalizes its commitment to ensuring that every Justice issue is analyzed for its impact on gender equality.

The policy is consistent with the vision of the Department of Justice as an outstanding department of government and a leader in the national system of justice. The policy is also consistent with our mission, in particular our commitment to promoting respect for rights and freedoms. In addition, the policy reflects the commitment of our Department and the federal government stated in *The Federal Plan for Gender Equality* and approved by Cabinet in 1995, to implement gender equality analysis, particularly as regards objectives 1 and 8:

*Objective 1: 'Implement Gender-based analysis, throughout Federal Departments and Agencies', puts forward a systematic process to inform and guide future legislation and policies at the federal level by assessing any potential differential impact on women and men. Hence, this objective underpins all subsequent objectives.*

*Objective 8: Advance gender equality for employees of federal departments and agencies.*

*p.ii*

The fundamental purpose of gender equality analysis in the work of the Department of Justice is stated in the document entitled *Reorganization of the Department of Justice*:

- To ensure that the needs of women in the justice system and the Department of Justice are taken into account in all of the Department's substantive work and management practices and policies;*
- to embed awareness, responsibility and accountability for gender equality throughout the Department.*

*p. 30*



## ***Gender Equality analysis - Principles and guidelines***

*"...The accommodation of differences... is the essence of true equality..."*

*Andrews v. Law Society of British Columbia  
[1989] 1 S.C.R. 143 at 169 (McIntyre J.)*

### ***Principles***

Certain fundamental principles govern the application of gender equality analysis:

- gender equality can only be achieved by recognizing the differential impact of norms or measures on women and men according to their diverse life situations, including other factors of diversity such as race, sexual orientation, disability and social class;
- gender equality analysis takes into account the historical and current social context creating inequality and seeks to redress such inequality;
- gender equality analysis is an integral part of the substantive analytical process and must be applied at every stage of this process;
- gender equality analysis focuses not only on the results but also on the concepts, arguments and language used in the work process;
- gender equality analysis must be free from prejudices and stereotypes in its basic assumptions as well as in approach and process;
- gender equality analysis must lead to remedies to inequality.

### ***Guidelines***

Gender equality analysis follows certain main steps that are common to all functions in the Department:

1. definition of the relevant facts and substantive issues at stake;
2. through an analysis of the relevant social context, consideration of the different socio-economic realities of women and men, as they are relevant to the issues at stake, through research or consultation within the Department, with client departments, academics or with external government and non-government organizations, particularly women's groups;
3. assessment of the actual impact of the measure at stake for women and men, according to the facts revealed in the social context analysis;
4. development of strategies to remedy inequality.



## ***Our Policy***

The Department of Justice policy on gender equality analysis requires that:

- Gender equality analysis be integrated in all work of the Department of Justice. This includes policy and program development, research, interpreting judgements, legal advice, drafting legislation and regulatory provisions, litigation instructions and strategies, resolving disputes, establishing management policies and consultations as well as communications plans.
- Specifically, each file shall be approached in a way cognizant of the different life situations of women and men and, where gender equality issues arise, solutions will be developed to prevent or remedy any inequality.

*“Even in imposing generally applicable provisions, the government must take into account differences which in fact exist between individuals and so far as possible ensure that the provisions adopted will not have a greater impact on certain classes of persons due to irrelevant personal characteristics than on the public as a whole. In other words, to promote the objective of the more equal society, s.15(1) acts as a bar to the executive enacting provisions without taking into account their possible impact on already disadvantaged classes of persons.”*

*Rodriguez v. B.C. (Attorney General)*  
*[1993] 3 S.C.R. 519 at 549 (Lamer, CJC)*



## ***Putting our Policy to Work***

1. The Department will ensure that all employees can recognize gender equality issues in all substantive work and seek remedies to inequality. To that end:
  - employees will be given professional development seminars in order to learn the steps involved in gender equality analysis, learn to identify relevant issues and conduct the analysis themselves or consult with the Gender Equality Specialists to do so;
  - a guide on how to apply gender equality analysis to the substantive work of the Department will be available as a work tool; and
  - a network of Gender Equality Specialists has been established to serve as resource persons in order to identify gender equality issues that arise, whether in policy and program development, research, interpreting judgements, legal advice, drafting legislation or regulatory provisions, litigation instructions and strategies, resolving disputes, establishing management policies and consultations or communications plans.
2. The employees will contribute to the implementation of gender equality analysis. To that end:
  - employees will make gender equality analysis an integral part of their substantive work, as relevant;
  - employees will identify gender equality issues as they arise and seek remedies to inequality or consult Gender Equality Specialists to do so;
  - any departure from the recommendations of a gender equality analysis will be explained in writing;
  - employees will attend professional development seminars on gender equality analysis relating to the substantive work of the Department;
  - managers will support and promote the work of Gender Equality Specialists linked to their centres of responsibility; and
  - managers will support and promote work by all employees aimed at addressing gender equality issues.
3. The Department will develop measures to monitor the application of gender equality analysis in the substantive work of the Department and its impact on the justice system. This will be done in co-operation with other government and non-government organizations, particularly women's groups.