

Origins and Aspirations of Section 15

The speakers featured in this section highlight how various groups participated in the drafting of the Charter. Recalling with some humour their own participation in Committee hearings, at early points in their career, both speakers give a personal account of what it was like to be a part of Charter consultations. In the second clip the speaker addresses in particular the open-ended nature of the equality provisions, and points to how same sex rights eventually received Charter protection. These two speakers illustrate how average Canadians unexpectedly had a profound impact on the origins and the development of the Charter.

What you will find in this section:

- Speaker Summaries and Viewing Notes
- Key Terms
- General Discussion Questions
- Activities for Civics and Law classes
- Resource Links
- Curriculum Expectations



Speaker Summaries and Viewing Notes

Mr. Svend Robinson (Former NDP MP and Member on the Joint Committee on the Constitution) **(6:04 minutes)** Mr. Robinson describes his experiences as a member of the Committee drafting the *Charter*. He notes how the provisions of the *Charter* were too weak and he had actually voted against the initial legislation before being made a Committee member. In the context of the Committee hearings Mr. Robinson heard from many diverse groups in Canada who spoke of how they thought a *Charter* would or would not benefit Canadians. Mr. Robinson highlights a number of contributions that moved the Committee.

- *This is an excellent section to introduce students to the mechanics of how the Charter was drafted. It should prompt a discussion of how many diverse groups make up Canadian society and how this diversity informed the creation of our Constitution.*

Mr. Svend Robinson (Former NDP MP and Member on the Joint Committee on the Constitution) **(4:14 minutes)** In this clip Mr. Robinson speaks specifically to the attempts to include “sexual orientation” in s. 15 of the *Charter*. While the specific inclusion of “sexual orientation” was rejected by the Committee, Mr. Robinson explains how the open ended nature of the *Charter* provided a space to eventually incorporate protection for same sex rights into s.15. Mr. Robinson concludes by advocating that in the future the equality provisions of the

Charter must be interpreted to protect social and economic rights as well as political and civil rights.

- *This section should be viewed in conjunction with Mr. Robinson's clip in the "Making Progress in Equality Rights" section of this DVD in order to prompt a discussion about the open ended nature of the Charter and what this means as rights change and evolve. This section will also be an effective resource for a discussion on same sex rights specifically. Finally the clip briefly raises questions about the possibility of including social and economic right in s.15 - a current and controversial debate.*

Mr. David Lepofsky (Counsel, Crown Law Office, Ministry of the Attorney General, CNIB) (7:25 minutes) Mr. Lepofsky, a lawyer who is blind, speaks to his various levels of engagement in the promotion of equality rights protection and the impact of having disability rights recognized by the Charter. Specifically he speaks to his role in advocating for disability rights before the Committee on the Constitution. He speaks with humour of the "myths" and "realities" of those hearings and the groups involved.

- *This section should be watched in conjunction with the first Mr. Robinson clip to inform a discussion of how many real and diverse people from across Canada took part in very unrehearsed ways in the hearings that eventually produced our Charter.*



Key Terms in this Section

Equality
 Equality obligations
 Human Dignity
 Same sex rights/sexual orientation
 Analogous grounds
 Enumerated grounds
 Disadvantaged group
 Systemic discrimination
 Equality advocacy groups
 Committee/Charter Hearings
 Disability rights
 Institutional Tools



General Discussion Questions

- How do these clips give a picture of how the *Charter* was developed and drafted?
- How do you think public participation affected the drafting of the *Charter*?
- Does public participation continue to impact on how the *Charter* is interpreted and the new variations of equality rights which the *Charter* grows to protect?
- Does the law reflect public opinion or shape public opinion?



Activities

“Imagine”

Suitable for:
Civics 10

- Mr. Lepofsky jokingly mentions that in his research to prepare for appearing before the Committee drafting the *Charter* his tape recorder accidentally picked up the sound of a group of people singing John Lennon’s “Imagine”. Have students listen to or read (Page 9) the song “Imagine”.
- Why would Mr. Lepofsky as one of the many diverse equality seeking groups appearing before the *Charter* committee, identify with this song?
- What elements or ideals that are hoped for in the song do students think the equality provisions of the *Charter* can address? What ideals of equality within the song are not sufficiently addressed in our society?

Origins of S. 15 Workshop

- Ask students how they would expect something as important and fundamental as the *Charter* was drafted.
- Have students watch clips 1 and 3 and complete the Worksheet (Page 10, answers on Page 11).
- Discuss how the stories about the *Charter* hearings did or did not meet students expectations. Was the process more accessible or was it more internal than expected.

Suitable for:
Civics 10
Law 11 or 12

Analogous Grounds

(see also the section on Making Progress in Equality Rights)

Suitable for:
Civics 10
Law 11 and 12

a) Ask your students to read s. 15 of the *Charter* (this can be found on Page 7 of the section on “The Importance of s. 15 of the *Charter*”). Ask students how many types of discrimination are listed in s. 15? (*Answer -9*)

Explain that these are referred to by the courts as the *enumerated grounds*.

b) Ask students if there are any types of discrimination, or grounds of protection not listed, that they would have expected to see included. Make a list of these. (*Answer- will vary, may include sexual orientation or economic rights*).

c) Ask students if they can recall from the clips, how the ground of sexual orientation can be protected by the *Charter* even though it is not listed in s.15.
(*Answer - One of the early decisions of the Court, the Andrews decision, stated that not only would there be a violation of s. 15 when “discrimination, evidenced by an effect of prejudice to a disadvantaged individual or group” based on the discrimination listed in s. 15 (the enumerated grounds) was proven, but also when there was discrimination based on “those non-enumerated grounds analogous to them”.*)

d) Discuss with the class what is meant by the term “analogous”. Explain how the court has now concluded that individuals/groups who were not specifically protected in the wording of s.15 of the *Charter* may convince the Court that they are facing discrimination based on a characteristic that is analogous, or similar, to the grounds listed and therefore deserve the protection of s. 15.

With this background then have students discuss or debate whether they think it is proper that the courts have read analogous grounds into the *Charter*.

Reasons in favour of reading in analogous grounds include:

- times change and new kinds of discrimination may arise
- the government may have left out certain grounds that they had hoped the court would include later, in an attempt to side step political issues
- judges must have flexibility in protecting people from abuses of human dignity (the *Charter* exist as protection of the minority against the actions of the majority)

Reasons against include:

- elected representatives decided what should be listed in s. 15 and unelected judges should not make additions
- if s. 15 becomes too broad, governments will be unable to act without affecting some “analogous” group

Social and Economic Rights

Suitable for:
Law 1 and 12

a) In the second Mr. Robinson clip, he states that to move forward the *Charter* must look to social and economic rights rather than just focusing on civil and political rights.

Students will be familiar with civil and political rights as those which are currently protected by the *Charter* (freedom of expression, protection against discrimination, right to consult a lawyer etc.)

Social and economic rights encompass a number of rights such as rights to food, social security, housing, education, an adequate standard of living, and healthcare. While these rights are protected by international laws and are part of the constitutions of many European countries, they were explicitly excluded from the *Charter*, despite lobbying by a variety of advocacy groups.

b) Have students list things they think should be rights that are protected by our *Charter*.

c) Have students discuss reasons why the government would be reluctant to protect social and economic rights.

d) Some equality advocates have been trying to gain protection for social and economic rights under s. 15 of the *Charter*. Women's groups made such an argument before the Supreme Court of Canada in the Gosselin case. The *Gosselin v. Québec* case is about a Québec welfare regulation that provided drastically reduced benefits (170\$ a month) for persons under thirty years of age who were considered able to work. NAWL (National Association of Women and the Law) intervened before the Supreme Court of Canada and argued that when the government reduces social assistance to a below-subsistence level, women are disproportionately affected because of the high number of women living in poverty. Women's equality rights create a duty for governments to make sure that laws and regulations do not have an adverse impact on women.

Ask students what they think about this judgment.

Have students discuss how they think the courts should balance these competing claims for protection. Have students also consider what aspect of s. 15 discussed by Mr. Robinson, regarding the inclusion of same sex rights gives advocates hope for social change?

Sexual Orientation and s. 15

Suitable for:
Law 11 and 12

The case of *Vriend v. Alberta* (1998) addresses a number of very important *Charter* issues such as:

- the inclusion of sexual orientation as a prohibited ground of discrimination,
- the idea that the *Charter* creates a dialogue between courts, parliament and society,

- and the courts rejection of formal equality in favour of substantive equality

Justice Cory and Justice Iacobucci, who wrote the majority decision, described equality rights as “fundamental to Canada” and stated that they “reflect the fondest dreams, the highest hopes and the finest aspirations of Canadian society.” In order to achieve “the magnificent goal of equal dignity for all ... the intrinsic worthiness and importance of every individual must be recognized regardless of the age, sex, colour, origins, or other characteristics of that person.”

Have students view the second Mr. Robinson clip. Distribute the case summary from the Landmark Case package for *Vriend v. Alberta*, found in the Teacher Resources section of this DVD or on the OJEN website. Use the package in class or as individual assignments.



Resources/Links

- Classroom Civics or Law Textbooks
- The Canadian Charter of Rights and Freedoms
- Justice Canada: www.canada.justice.gc.ca
- Section 15: www.section15.gc.ca
- Canadian Human Rights Commission: www.chrc-ccdp.ca
- Canadian Heritage: *Your Guide to the Canadian Charter of Rights and Freedoms* Minister of Public Works and Government Services Canada 2003
- United Nations Declaration of Human Rights: <http://www.un.org/Overview/rights.html>
- International Covenant on Economic Cultural and Social rights: <http://www.hri.ca/uninfo/treaties/2.shtml>
- Social and Economic Rights for Women (Gosselin Case): <http://www.nawl.ca/ns/en/is-serights.html>
- Video: **Trudeau: The Man, The Myth, The Movie**, CBC Miniseries, Starring: Colm Feore, Polly Shannon, Director: Jerry Ciccoritti
Synopsis: This recent mini-series is a valuable exploration of the life, times, and events that shaped Pierre Trudeau, Canada's most popular prime minister, and of how he in turn shaped Canada. His efforts to negotiate the terms of the *Charter* and to repatriate the Constitution are historical precursors to our rights protection model.



Curriculum Expectations

Civics Open Grade 10 (CHV20)

- Distinguish between democratic and authoritarian forms of decision-making, and compare the benefits and drawbacks of each form when used in everyday contexts

- Describe fundamental beliefs and values associated with democratic citizenship
- Communicate their own beliefs, point of view, and informed judgments, and effectively use appropriate discussion skills
- Demonstrate an ability to organize information effectively
- Explain the causes of civic conflict, and identify the need for decision-making processes and structures

Understanding Canadian Law, Grade 11, University/College Preparation (CLU3M)

Overall Expectations

- describe the rights and freedoms enshrined in Canadian law and explain how they are interpreted, how they may be limited, and how they are enforced in Canada and in Ontario

Specific Expectations

Barriers to Human Rights

- describe historical and contemporary situations in which rights in Canada have been denied (e.g., rights of Japanese in the Second World War, Aboriginal rights to land, women's rights, rights of physically or mentally challenged persons)
- evaluate the contribution of individual citizens and organizations in developing and increasing awareness of human rights issues

Human Rights Legislation in Canada and in Ontario

- describe the rights and freedoms found in the *Canadian Charter of Rights and Freedoms*
- explain the role of the judiciary, especially the Supreme Court of Canada, in interpreting the *Charter* and the role of government in enforcing Charter rights

Canadian and International Law, Grade 12, University Preparation (CLN4U1)

Overall Expectations

- demonstrate an understanding of the rights and responsibilities of individuals under the Canadian Charter of Rights and Freedoms
- explain the role of the legislature and the judiciary in defining, interpreting, and enforcing Charter rights in Canada
- analyze the conflicts between rights and freedoms and between minority and majority rights in a democratic society and describe the methods available to resolve these conflicts

Specific Expectations

Human Rights in Canada

- identify historical and contemporary barriers to the equal enjoyment of human rights faced by individuals and groups in Canada and analyse their effects

The Canadian Charter of Rights and Freedoms

- explain what is meant by entrenching rights in a written constitution;
- explain the definitions of legal rights, fundamental freedoms, and democratic, language, equality, and mobility rights under the *Charter*;
- explain how citizens can exercise their rights under the *Charter* (e.g., by initiating *Charter* challenges in the courts to legislation or government action; by raising the *Charter* as a defence when charged with an offence).

The Legislature and the Judiciary

- explain how rights may be limited or overruled according to the *Charter* (e.g., section 1, section 33)
- evaluate the role of the courts and tribunals and, in particular, the Supreme Court of Canada in interpreting *Charter* rights
- describe how *Charter* rights are enforced.

Minority and Majority Rights

- assess historical and contemporary examples of conflicts between minority and majority rights (e.g., the Quebec sovereignty debate; Aboriginal land claims; affirmative action programs)
- demonstrate an understanding of the difficulty of balancing rights in a democracy;
- evaluate the political and legal avenues available for resolving conflicts (e.g., the courts, tribunals, referendums).

Imagine

by John Lennon, released October 11, 1971

Imagine there's no Heaven
It's easy if you try
No hell below us
Above us only sky
Imagine all the people
Living for today

Imagine there's no countries
It isn't hard to do
Nothing to kill or die for
And no religion too
Imagine all the people
Living life in peace

You may say that I'm a dreamer
But I'm not the only one
I hope someday you'll join us
And the world will be as one

Imagine no possessions
I wonder if you can
No need for greed or hunger
A brotherhood of man
Imagine all the people
Sharing all the world

You may say that I'm a dreamer
But I'm not the only one
I hope someday you'll join us
And the world will live as one

"Imagine" is a utopian song performed by John Lennon, which appears on his 1971 album, *Imagine*. It has become an anti-war anthem that symbolizes the potential for social cohesion through respect and peace.

Origins of s. 15 Worksheet

1. What was Mr. Robinson's role in the NDP party?

2. Why did Mr. Robinson dislike the proposed *Charter*?

3. What was Ed Broadbent's reaction to Mr. Robinson voting against the *Charter*.

4. List 3 of the organizations who were represented during the committee hearings on the *Charter*?

5. How do you think the diverse range of groups that spoke before the Committee influenced the drafting of the *Charter*?

Questions for Clip 3

6. What was unique about the addition of disability rights to the *Charter*?

7. According to Mr. Lepofsky, what were the myths about equality seeking groups?

Origins of s. 15 Worksheet - Answers

1. What was Mr. Robinson's role in the NDP party?

- Justice critic for the NDP party

2. Why did Mr. Robinson dislike the proposed *Charter*?

- Felt it was far too weak, particularly the provisions of the *Charter*
- Felt the *Charter* was put together too quickly
- It needed more scrutiny/criticism

3. What was Ed Broadbent's reaction to Mr. Robinson voting against the *Charter*.

- Ed Broadbent, NDP Leader, put Mr. Robinson as the NDP representative at the *Charter* hearings.

4. List 3 of the organizations who were represented during the committee hearings on the *Charter*?

- Canada Human Rights Commission
- National Action Committee on the Status of Women
- Canadian Civil Liberties Association
- Canadian Jewish Congress
- National Association of Japanese Canadians
- Aboriginal groups
- Groups representing physical disabilities
- Canadian association of lesbians and gay men

5. How do you think the diverse range of groups that spoke before the Committee influenced the drafting of the *Charter*?

Questions for Clip 3

6. What was unique about the addition of disability rights to the *Charter*?

- It was the only right added to the *Charter* as a result of the parliamentary debate. It was not already explicitly included before the debate.

7. According to Mr. Lepofsky, what were the myths about equality seeking groups?

Equality seeking groups are well organized, well researched and well resourced organizations