

# The Case of the Fired Worker

## *Vriend v. Alberta* [1998]

### Teacher Resource

**Curriculum Links:** Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

**Legal Focus:** Discrimination based on sexual orientation, Equality rights, *Canadian Charter of Rights and Freedoms*

**Estimated Time:** 1 period

#### **Overall Expectations:**

- Explain how rights and freedoms have developed in Canada.
- Identify the rights and freedoms outlined in the *Canadian Charter of Rights and Freedoms* and explain how to exercise them.

#### **Specific Expectations:**

- Identify the legal rights and fundamental freedoms outlined in the *Canadian Charter of Rights and Freedoms*.
- Explain how rights and freedoms may be limited under the *Charter*.
- Explain the importance of acknowledging and respecting minority rights in a democratic society.
- Describe how a person makes a complaint concerning a violation of *Charter* rights.
- Describe the remedies available to citizens whose rights have been violated.

#### **Description of the Case**

Delwin Vriend was employed as a laboratory coordinator at a Christian college in Edmonton, Alberta. He had received positive evaluations, salary increases and promotions for his work performance. In January 1991, Mr. Vriend was fired by the college. The only reason given by the college was that he did not comply with its policy on homosexual practice: Mr. Vriend was fired because the college had become aware that he was a gay man.

In June 1991, Mr. Vriend filed a complaint with the Alberta Human Rights Commission on the basis that his employer had discriminated against him because of his sexual orientation. In July 1991, the Commission told Mr. Vriend that he could not make a complaint under the *Individual's Rights Protection Act (IRPA)* of Alberta because sexual orientation was not included in the list of protected grounds in section 7(1) of the *IRPA*.

If Mr. Vriend had been fired because of his race, for example, he would have been allowed to file a complaint against the college with the Human Rights Commission. However, because sexual orientation was omitted from the list in section 7(1), the Human Rights Commission could not help him.

Mr. Vriend and several groups that advocated for gay and lesbian rights applied to the Court of Queen’s Bench of Alberta for a declaration that the *IRPA* violated the equality guarantee contained in s. 15(1) of the *Canadian Charter of Rights and Freedoms* because of this omission.

### **Trial Decision**

The trial judge ruled that s. 7(1) and several other similar sections of the *IRPA* were unconstitutional because they violated the *Charter*. Specifically, they violated the equality provision of the *Charter* (s. 15) and that these violations were not justified as reasonable limits permitted under s. 1 of the *Charter*.

### **Alberta Court of Appeal**

The Crown appealed to the Alberta Court of Appeal where 2 out of 3 judges ruled that the *IRPA* did not violate the *Charter* and reversed the decision of the lower court. Mr. Vriend appealed the decision to the Supreme Court of Canada.

### ***The Final Judgment***

The majority of the Supreme Court held that the provisions of the *IRPA* were unconstitutional and did not follow the equality provisions of the *Charter*. Leaving out “sexual orientation” from the list of protected grounds created a distinction that had the effect of discrimination, which is prohibited by s. 15(1). The Court held that this breach of s. 15(1) was not justified as a reasonable limit under s. 1 of the *Charter*. The Court ruled that the sections of the *IRPA* were unconstitutional and that “sexual orientation” should be read into the *IRPA* as a protected ground.

### ***Teaching & Learning Strategies***

1. Have students read the statements in *The Big Question* and decide what their opinion is – strongly agree, agree, disagree, strongly disagree, or not sure. Label the four corners of the classroom for the first four opinions. Students who are unsure can stand in the centre. Read the statements aloud and have students move to the area of the room that best represents their opinion. Ask students to discuss their views with their group and appoint one member of the group to present the argument for the entire class. Hear from each group and discuss students’ opinions as a class. Discuss the third question in more detail and ask students to come up with additional examples. This will provide an introduction to the difference between substantive and formal equality.
2. Using a teacher- or student-centred reading strategy, review *The Facts of the Case* and *The Relevant Law* with students. Discuss *The Issue* and ask a few students to share their opinions with the class.
3. In pairs or small groups, have students complete *The Lawyers’ Debate* exercise. Discuss the

answers as a class.

- Using either a teacher- or student-centred reading strategy, review the sections on *The Progression through the Courts* and *The Final Judgment* with students. Answer students' questions as you proceed.
- Have students complete the *Check for Understanding* exercise and take up the answers as a class.
- Have students read and complete the *Taking a Closer Look* exercise. Clarify any questions and check for understanding about enumerated and analogous grounds. Discuss students' answers as a class.
- Read the *Reflecting* section aloud to students. Stop after each paragraph to explain concepts and answer questions. Have students complete the related activity in pairs and discuss their answers as a class.

### **Assessment & Evaluation**

- *The Big Question* activity
- Class discussions
- *The Lawyer's Debate* activity
- *Check for Understanding* worksheet
- *Taking a Closer Look* worksheet
- *Reflecting* activity

### **Resources**

Ontario Justice Education Network  
[www.ojen.ca](http://www.ojen.ca)

- Landmark Case - Sexual Orientation and the Charter: *Vriend v. Alberta*

Supreme Court of Canada Decisions – *Vriend v. Alberta* [1998]  
<http://csc.lexum.umontreal.ca/en/1998/1998rcs1-493/1998rcs1-493.html>

# The Case of the Fired Worker

## *Vriend v. Alberta* [1998]

### Student Handout

#### *The Big Question*

For each of the following statements, decide which sentence below best represents your view.

1. I **strongly agree** with the statement.
2. I **agree** with the statement.
3. I **disagree** with the statement.
4. I **strongly disagree** with the statement.
5. I'm **not sure** how I feel.

- Everyone in society is equal.
- People should always be treated equally in all circumstances.
- It's ok to treat people differently if the reason for the differential treatment is so that everyone can be equal in the end. (For example, Student A is very good at math while Student B is not. It's ok to provide Student B with a math tutor - while Student A does not have one because she does not need the help - if the final goal is for both students to pass their math tests.)

#### *The Facts of the Case*

Delwin Vriend was employed as a laboratory coordinator at a Christian college in Edmonton, Alberta. He had received positive evaluations, salary increases and promotions for his work performance. In January 1991, Mr. Vriend was fired by the college. The only reason given by the college was that he did not comply with its

policy on homosexual practice: Mr. Vriend was fired because the college had become aware that he was a gay man.

In June 1991, Mr. Vriend filed a complaint with the Alberta Human Rights Commission on the basis that his employer had discriminated against him because of his sexual orientation. In July 1991, the Commission told Mr. Vriend that he could not make a complaint under the *Individual's Rights Protection Act (IRPA)* of Alberta because sexual orientation was not included in the list of protected grounds in section 7(1) of the *IRPA*.

If Mr. Vriend had been fired because of his race, for example, he would have been allowed to file a complaint against the college with the Human Rights Commission. However, because sexual orientation was omitted from the list in section 7(1), the Human Rights Commission could not help him.

Mr. Vriend and several groups that advocated for gay and lesbian rights applied to the Court of Queen's Bench of Alberta for a declaration that the *IRPA* violated the equality guarantee contained in s. 15(1) of the *Canadian Charter of Rights and Freedoms* due to the omission.

## The Issue

- Mr. Vriend was dismissed from his job because his employer found out he was gay. Does this qualify as discrimination based on sexual orientation? Is it a violation of s. 15(1) of the *Charter*?

## The Relevant Law

### Alberta *Individual's Rights Protection Act*

7(1) No employer or person acting on behalf of an employer shall

- (a) refuse to employ or refuse to continue to employ any person, or
- (b) discriminate against any person with regard to employment or any term or condition of employment because of the race, religious beliefs, colour, gender, physical disability, mental disability, marital status, age, ancestry or place of origin of that person or of any other person

### **Canadian Charter of Rights and Freedoms**

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

## **The Lawyers' Debate**

### **Arguments for the Applicant**

List three arguments Mr. Vriend might make to argue that he was being discriminated against based on sexual orientation.

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_

### **Arguments for the Respondent**

List three arguments that the Crown might make to argue that section 7(1) of the *Individual's Rights Protection Act (IRPA)* does not violate s. 15(1) of the *Charter*.

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_

## **The Progression through the Courts**

### **Trial Decision**

The trial judge ruled that s. 7(1) and several other similar sections of the *IRPA* were unconstitutional because they violated the *Charter*. Specifically, they violated the

equality provision of the *Charter* (s. 15) and that these violations were not justified as reasonable limits permitted under s. 1 of the *Charter*.

### Alberta Court of Appeal

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### *The Final Judgment*

The majority of the Supreme Court held that the provisions of the *IRPA* were unconstitutional and did not follow the equality provisions of the *Charter*. Leaving out “sexual orientation” from the list of protected grounds created a distinction that had the effect of discrimination, which is prohibited by s. 15(1). The Court held that this breach of s. 15(1) was not justified as a reasonable limit under s. 1 of the *Charter*. The Court ruled that the sections of the *IRPA* were unconstitutional and that “sexual orientation” should be read into the *IRPA* as a protected ground.

## Check for Understanding

1. When he was hired, Mr. Vriend's employer did not know he was gay.  
**TRUE/FALSE**
2. Mr. Vriend was fired because he was a poor worker who received negative evaluations from his employer.  
**TRUE/FALSE**
3. According to the *Individual's Rights Protection Act (IRPA)*, an employer cannot discriminate against a person based on his or her religious beliefs.  
**TRUE/FALSE**
4. Mr. Vriend filed a complaint with the Alberta Human Rights Commission stating that he was being discriminated against because of his sexual orientation.  
**TRUE/FALSE**
5. The *IRPA* of Alberta includes sexual orientation in the list of protected grounds in s. 7(1).  
**TRUE/FALSE**
6. Mr. Vriend challenged s. 7(1) of the *IRPA* on the basis that it violated his s. 15(1) *Charter* rights.  
**TRUE/FALSE**
7. The trial judge agreed with Mr. Vriend that s. 7(1) was unconstitutional.  
**TRUE/FALSE**
8. The Alberta Court of Appeal ruled in favour of Mr. Vriend.  
**TRUE/FALSE**
9. The Supreme Court of Canada ruled that Mr. Vriend was being discriminated against based on sexual orientation but that it was justified under s. 1 of the *Charter*.  
**TRUE/FALSE**
10. The Supreme Court of Canada ruled that sexual orientation be added to the list of protected grounds in s. 7(1) of the *IRPA*.  
**TRUE/FALSE**



## Taking a Closer Look

Subsection 15(1) of the *Charter* reads:

15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The list of protected grounds (“race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”) are known as the **enumerated grounds** because they are the specific ones that have been listed (or *enumerated*) in s. 15(1). What is common among the enumerated grounds is that each ground is “a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs.” For example, the fact that someone was born in Canada, Jamaica, India or Hungary is not something that he or she can change.

However, s. 15(1) protects against more than just discrimination based on the enumerated grounds. Because of the words “in particular”, it is clear that the list is only meant to provide some examples and that discrimination based on other similar grounds is also unconstitutional. These other grounds are known as the **analogous grounds** because they are similar (or *analogous*) to the enumerated grounds. After the case of *Vriend v. Alberta* [1998], sexual orientation became accepted as an analogous ground.

1. In your own words, describe the difference between enumerated and analogous grounds.

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2. Can you think of another “deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs” that is not already in the list of enumerated grounds?

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3. Why do you think sexual orientation was not included in this list of protected grounds?

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4. In your opinion, should the wording be changed or is it enough to have a court ruling that prevents this type of discrimination and is enforced by the law?

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## Reflecting

The Attorney General of Alberta argued that the *IRPA* treated homosexuals and heterosexuals equally. To understand this argument, consider this hypothetical example:

*A homosexual person is fired because of his or her race, and a heterosexual person is also fired because of his or her race.*

Because “race” is listed in s. 7(1) of the *IRPA*, both the homosexual person and the heterosexual person are protected. They can both file a complaint with the Alberta Human Rights Commission, so both the homosexual person and the heterosexual person are treated equally. On the other hand, if a homosexual person and a heterosexual person are both fired because of their sexual orientation, neither person is protected, because “sexual orientation” is not listed in s. 7(1) of the *IRPA*. According to this argument, both the homosexual person and the heterosexual person are being treated equally as well, because neither one can file a complaint with the Commission.

The Supreme Court rejected this argument because it only addressed the issue of formal equality. Instead, it stated that the *Charter* guaranteed substantive equality.

**Formal equality** looks at whether the law treats everyone the same while **substantive equality** looks at whether laws encourage full participation in society by everyone, regardless of their personal characteristics or group memberships. This approach requires lawmakers to consider the historical disadvantage and oppression that exist in society and to take these into account when making laws.

The concept of substantive equality requires judges to consider the underlying social context. It recognizes that a law that applies equally to everyone may impact some individuals more than others. It asks how the law actually affects Mr. Vriend and people like him.

In this case, it was important to consider the social reality of discrimination against gays and lesbians. In our society, if a person is discriminated against on the basis of sexual orientation, most of the time it will be because that person is homosexual, not because that person is heterosexual. Although it is possible that a heterosexual person could be discriminated against because of his or her sexual orientation, this is

far less likely to occur than discrimination against a homosexual person on that same basis. Thus, leaving out “sexual orientation” from the *IRPA* was far more likely to have a negative impact on homosexual persons than on heterosexual persons. For that reason, gays and lesbians were denied “the right to the equal protection and equal benefit of the law” as guaranteed by s. 15(1).

Consider the following example and in pairs, answer the questions in the space provided.

1. Alya has a learning disability that causes her to have difficulty reading and concentrating on one task at a time. She especially has difficulty when she has to write tests.
  - Teacher A requires Alya to write her tests with the rest of her classmates during the regular class period. Teacher A believes that allowing all students the same amount of time, in the same environment is the best way to achieve fairness and equality amongst students.
  - Teacher B allows Alya to write her tests in a private room after school , and she is given an extra hour of time beyond the regular class period. Teacher B believes that giving Alya these accommodations will allow her an equal opportunity to do as well on the test as other students who don't have a learning disability like her.

Which teacher approaches Alya’s tests from a **formal** equality perspective? Why? Explain your answer using the information you’ve learned about formal and substantive equality.

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Which teacher approaches Alya’s tests from a **substantive** equality perspective? Why? Explain your answer using the information you’ve learned about formal and substantive equality.

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2. A group of youth are going to play a game of soccer in the park and they decide to race each other to the soccer field. One youth, Jerome, is carrying a heavy backpack filled books, clothes, the soccer ball, and other items. None of the other youth are carrying anything.

- Youth A suggests that Jerome has a 5 second head start in the race to make it fair and equal for everyone. Youth A believes this make Jerome equal to the others who are not carrying any weight on their backs.
- Youth B suggests that everyone start at the same time. Youth B believes that this is the best way to ensure that everyone is equal in the race.

Which youth approaches Jerome’s situation from a **formal** equality perspective? Why? Explain your answer using the information you’ve learned about formal and substantive equality.

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Which youth approaches Jerome’s situation from a **substantive** equality perspective? Why? Explain your answer using the information you’ve learned about formal and substantive equality.

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