

Episode 2:

Out and Proud! (with Bennett Jensen, Adam Goldenberg, & Johanna Macdonald)



Guide

Learning objectives

- To introduce students to the history of 2SLGBTQ+ rights in Canada from a legal perspective
- To explore current challenges faced by the 2SLGBTQ+ community in Canada, through the personal experiences and perspectives of three lawyers: Bennett Jensen, Adam Goldenberg, and Johanna Macdonald
- To equip students with knowledge and tools to advocate for change within their own communities

Materials

- Copies of this handout for Episode 2 - Out and Proud!
- Copies of the “I Used to Think... Now I Think...” exercise
- Device to listen to the [“Law Syrup” podcast episode](#)

Teaching and learning strategies

- **Group discussion:** Assign the episode 2 handout and have students complete the discussion questions either in pairs or

small groups. Afterward, reconvene as a class to discuss their answers.

- **Reflective exercise:** Have students complete the “I Used to Think... Now I Think...” exercise individually. Encourage them to explore relevant resources from Egale Canada and The 519 while they work.
- **Resource exploration:** Use the following useful resources:
 - [Components of Human Identity](#)
 - [Pronoun Usage Guide](#)
 - [Affirming and Inclusive Language](#)
 - [2SLGBTQI Terms and Concepts](#)
 - [Terms and Definitions: Systems of Oppression and Privilege](#)
 - [2SLGBTQ Youth Homelessness in Canada](#)

Episode 2:

Out and Proud! (with Bennett Jensen, Adam Goldenberg, & Johanna Macdonald)



Handout

Bennett, Adam, and Johanna's journeys to law

Bennett: Bennett is currently the Director of Legal at Egale Canada, one of the country's leading organizations dedicated to 2SLGBTQ+ rights and issues. After completing his undergraduate degree, he initially worked in youth and family programming in Ottawa. However, he decided to pursue a legal education, believing it would provide the credibility and skills necessary to achieve his goals. Bennett earned his law degree from McGill University, drawn not only by the school's strong reputation but also its commitment to the 2SLGBTQ+ community. Following graduation, he served as a Judicial Law Clerk¹ for the Federal Court of Canada before joining a global law firm in New York City as a litigation² lawyer. In this role, he was able to engage in pro bono³ and public interest cases that aligned with his passions. He later returned to Ottawa as the Director of Litigation for the Attorney General of Canada before assuming his current position at Egale Canada.

Adam: Adam is a partner in the Litigation Group at McCarthy Tétrault, one of Canada's leading business law firms. Before law school, Adam worked for the World Food Programme, a United Nations humanitarian agency in Rome, and gained experience in politics by writing speeches for Michael Ignatieff, former leader

¹ A Judicial Law Clerk works under the guidance of a Judge, supporting the Judge with completing legal research and other matters.

² Litigation is the process for settling disputes through the court system.

³ Pro bono legal cases are completed by lawyers for free, to act in the public interest and advance access to justice to those who cannot otherwise afford a lawyer.

of the Liberal Party of Canada. He pursued his law degree at Yale University, motivated by a desire to make a meaningful impact in the community. After working as a Judicial Law Clerk for the Ontario Court of Appeal, he completed another clerkship at the Supreme Court of Canada, before returning to McCarthy Tétrault.

Johanna: Johanna serves as the Director of Public Interest and Legal Initiatives at The 519, a Toronto agency focused on supporting the 2SLGBTQ+ community. Initially drawn to criminal law, she completed her law degree at the University of British Columbia and began her career as a criminal lawyer. However, as she became increasingly interested in critiquing the justice system, she shifted her focus to the legal clinic system in Ontario. Over the years, Johanna has held various roles, including Clinic Director at Parkdale Community Legal Services and Health Justice Program Lawyer at ARCH Disability Law Centre. Her dedication to the community legal system in Ontario ultimately led her to her current role at The 519.

Discussion questions

- Bennett, Adam, and Johanna each have unique life stories and journeys that led them to the legal profession, where they advocate for the LGBTQ community in diverse roles. Have any of you considered pursuing law as a career? What stood out to you about how these three individuals arrived at their career decisions?
- As illustrated by all three panellists, the legal profession in Canada encompasses a variety of paths. For instance, Adam serves as a partner at a national business law firm, while Bennett transitioned from corporate law to advocacy at Egale Canada, and Johanna focuses on community support at The 519. Given the power and prestige associated with the legal profession, do you believe all lawyers have a duty to advocate for those facing barriers to justice? What does “access to justice” mean to you?

- Adam mentioned the concept of “prestige as armour,” a philosophy he adopted to cope with insecurities stemming from his queer identity. How do you interpret “prestige as armour,” and how might it apply to your own experiences or aspirations?
- Additionally, as Bennett pointed out, why do you think educational, extracurricular, and professional success is often viewed as a source of security for individuals from historically disadvantaged communities? What are your thoughts on this perspective?

The history of 2SLGBTQ+ rights in Canada from a legal perspective

Overview: The journey of 2SLGBTQ+ rights in Canada from a legal perspective is both significant and surprising. Not too long ago, homosexuality was criminalized, with serious consequences. In fact, until 1969, you could be sentenced to life in prison simply for being gay, and it wasn’t until 2005 that same-sex marriage was finally legalized across the country.

Let’s dive into some key milestones that shaped the legal landscape for 2SLGBTQ+ rights in Canada.⁴

- **1967 – The last incarceration**
 - Everett Klippert was the final person imprisoned in Canada for being gay. When his case reached the Supreme Court, the judges upheld his sentence, labeling anyone who engaged in consensual same-sex relations as a “dangerous offender.” Klippert was released in 1971, but his story marks a painful chapter in Canadian history.
- **1969 – A step forward**
 - Under the Pierre Trudeau government, the Criminal Code was amended, decriminalizing homosexuality.

⁴ For a more exhaustive history, please check out [The Canadian Encyclopedia's timeline](#) on the subject.

This marked a crucial turning point in the fight for 2SLGBTQ+ rights.

- **1978 – *Immigration Act* changes**
 - The Immigration Act was revised, eliminating laws that previously barred homosexuals from entering Canada.
- **1993 – *Canada (AG) v Mossop***
 - This landmark case was the first Supreme Court decision to tackle LGBTQ equality rights. The majority ruled that denying bereavement leave to a gay partner was not discrimination. However, in a powerful dissent,⁵ Justice L’Heureux-Dube argued for a more inclusive definition of “family”.
- **1995 – *Egan v Canada***
 - Just two years after *Mossop*, the Supreme Court affirmed that sexual orientation is a prohibited ground of discrimination under Section 15 of the *Canadian Charter of Rights and Freedoms*. This was a victory for equality.⁶
- **1995 – First adoption legalization**
 - Ontario became the first province to legalize adoption for same-sex couples. Progress was happening.
- **1996 – *Canadian Human Rights Act* update**
 - Sexual orientation was officially added to the *Canadian Human Rights Act*,⁷ marking another significant stride toward equality.

⁵ A dissent or dissenting opinion, is an opinion written by one or more judges within a legal case, that disagrees with the majority opinion of the court (which forms the judgment).

⁶ See Historica Canada’s Heritage Minute on Egan’s story: <https://youtu.be/a3e5jC7yZeo?si=ljntszZPXg28qZof>

⁷ The Canadian Human Rights Act was passed by the federal government, with the goal of promoting equality and prohibiting discrimination based on a number of grounds, including: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability, and a pardoned or suspended record conviction.

- **1998 – *Vriend v Alberta***
 - When Will Vriend was fired from a religious college for his sexual orientation, the Supreme Court stepped in, ruling that excluding sexual orientation from the Alberta Individual Rights Protection Act violated the *Charter*. This was a major affirmation of LGBTQ rights.
- **1999 – *M v H***
 - In this case, the Supreme Court ruled that defining “spouse” exclusively as a person of the opposite sex in Ontario’s Family Law Act violated the *Charter*. Another win for inclusivity.
- **2005 – *Civil Marriage Act***
 - This federal Act legalized same-sex marriage across Canada.
- **2013 – Bill C-279**
 - The House of Commons passed a bill to amend the *Canadian Human Rights Act* and *Criminal Code of Canada*, including gender identity as a prohibited ground of discrimination. This was a monumental step for trans rights.
- **2023 – *Hansman v Neufeld***
 - In a recent Supreme Court ruling, advocates for the 2SLGBTQ+ community were granted protection against defamation⁸ lawsuits. The Court recognized that transgender individuals face unique societal challenges and often endure public scrutiny.

⁸ Defamation is any communication that harms another person’s reputation and allows that individual to pursue legal action.

Reflection

As we explore this history, it's essential to remember that each of these legal victories represents not just legislation but the resilience and determination of countless individuals who fought for their rights. The courts and governments sometimes clashed in their views, showing that the journey toward equality has been anything but straightforward.

Current challenges

Overview: Despite significant progress toward legal equality for the 2SLGBTQ+ community in Canada, many challenges persist on both societal and individual levels. Below are three key challenges discussed by the panelists.

Challenge #1: Minority status of the 2SLGBTQ+ community

- Adam pointed out that 2SLGBTQ+ individuals often face discrimination simply because they are part of a minority group. This challenge is especially pronounced for transgender individuals, who represent an even smaller segment within the already marginalized population. Many people outside this community may not personally know a trans person, leading to misconceptions and prejudice.
- However, there's a silver lining: recent graduates from high school are more likely to know someone openly identifying as 2SLGBTQ+, reflecting a positive shift in societal attitudes. Still, the minority status of this community remains a significant source of challenges. For instance, Adam highlighted that discrimination can vary based on appearance, suggesting that a cisgender gay man may experience more societal privileges compared to someone who is transgender.

Challenge #2: Tensions between judges and the government

- Bennett and Adam discussed the critical role that judges and government officials play in shaping the rights and experiences of the 2SLGBTQ+ community. In recent history, judges have tended to adopt progressive stances on 2SLGBTQ+ issues, which is vital given their influence on Canadian society.
- However, even more recent political trends reveal a troubling distrust of the judiciary. Politicians have increasingly turned to measures like the notwithstanding clause⁹ to undermine individual rights, posing significant risks for the 2SLGBTQ+ community.
- Discriminatory government actions can signal to society that such views are acceptable, leading to real-world consequences. Bennett emphasized that when politicians advocate for policies that strip rights from the 2SLGBTQ+ community, we often see a corresponding rise in violence against these individuals, particularly in schools.

Challenge #3: Reliance on government support

- Johanna brought attention to an often overlooked challenge: the dependency of marginalized, low-income members of the 2SLGBTQ+ community on government services for basic needs. Despite facing discriminatory policies, many individuals have no option but to seek assistance from the very institutions that may perpetuate their marginalization.
- This situation underscores the intersectional nature of the challenges faced by the community. For example, Johanna noted that a significant percentage of homeless youth in

⁹ The notwithstanding clause (which is contained in Section 33 of the *Charter of Rights and Freedoms* allows the provincial and federal governments to override certain portions of the *Charter* for a five-year term. As the *Charter* is a critical source of law that protects marginalized communities, the governments' ability to override this protection can be particularly problematic.

Canada identify as 2SLGBTQ+. Furthermore, the bureaucratic hurdles involved in changing one's name or gender legally add another layer of complexity to their lives.

Discussion questions

- As noted by all three panellists, “privilege” can exist on many different levels, while discrimination and prejudice within the 2SLGBTQ+ community is often characterized by the intersectionality¹⁰ of many dimensions of one's identity, including: wealth, sexual orientation, gender identity, disability, race, religion, and many others.
 - What do the concepts of “privilege” and “intersectionality” mean to you? Why are they important to this discussion?
- During the panel, Adam noted a growing distrust of judges and the court system among politicians, regardless of their political affiliation. This situation poses significant risks for marginalized communities that rely on the judiciary to safeguard their rights.
 - Why do you think this distrust exists? Do you believe that within Canada's diverse democratic framework, the voices of marginalized communities are sufficiently amplified by politicians?

Taking steps for change and advocating for progress

Step 1: Challenging complacency

- As Bennett pointed out, in Canada, we must confront the belief that “everything's fine” regarding 2SLGBTQ+ rights. Progress begins with small actions, such as normalizing the

¹⁰ Intersectionality is the concept that individuals' social categorizations such as race, class, gender, and sexual orientation (among many others) often overlap, and create unique combinations of both discrimination and privilege.

use of terms like “trans” in conversations and discussing these topics with your social circle. Additionally, supporting 2SLGBTQ+ organizations by donating or advocating for your employer to contribute can have a significant impact.

Step 2: Taking your voice and democracy seriously

- The panellists stressed that progress has slowed, and many Canadians—especially those with privilege—assume the government will take care of communities in need. However, threats to the 2SLGBTQ+ community often come from political leadership. This highlights the importance of actively using your voice within a democracy. This could involve voting, writing to your representatives, or even running for office yourself to advocate for change.

Step 3: Being informed and speaking up

- Johanna explained how difficult it can be for individuals directly affected by discrimination to speak out. For allies, it’s crucial to support the 2SLGBTQ+ community by challenging unfair treatment. This includes staying educated about the challenges the community faces, so we feel equipped to stand up for equality in our everyday interactions. In times when anti-2SLGBTQ+ sentiment is rising, having vocal allies¹¹ is so impactful on the lives of 2SLGBTQ+ people.

¹¹ An ally is someone who supports and educates themselves about and speaks out and advocates for 2SLGBTQ+ people and/or community.

Conclusion

As Adam pointed out, anyone can be an ally to the 2SLGBTQ+ community. You don't need to be wealthy, and you don't need a law degree. What you can do is use your voice to denounce hate and support equality. Whether it's writing a letter to the editor, speaking up when someone says something harmful, or listening to advocates like Bennett and Johanna, everyone can play a role in fostering inclusion.

Exercises

Exercise 1: Advocacy action plan

Debate topic: To encourage students to reflect on personal ways they can advocate for the 2SLGBTQ+ community.

1. Ask students to brainstorm three actions they can take within the next month to support 2SLGBTQ+ rights. These actions can be as simple as starting a conversation with a family member, attending a community event, or posting on social media in support of 2SLGBTQ+ rights.
2. Have them draft an “Advocacy Action Plan,” where they list:
 - the action they will take
 - why it’s important to them
 - who they hope to impact
 - how they will measure their success (e.g., starting a conversation, donating, writing to a representative)

Exercise 2: Mock debate on voting and civic engagement

Debate topic: “Voting and civic engagement are the most effective ways to support underrepresented communities.”

Objective: This debate will encourage students to explore the significance of civic engagement, particularly voting, as a tool for supporting and uplifting communities who face systemic disadvantages.

Students will critically examine whether civic participation truly drives meaningful change for these groups or if other approaches might be more effective. In addition, they will have the chance to practice their public speaking and presentation skills.

Instructions:

1. Group division:

- Divide the class into two groups:
- **Pro:** This group will argue that voting and civic engagement (e.g., participating in elections, petitions, running for office) are the **most effective** ways to support underrepresented communities like the 2SLGBTQ+ population.
- **Con:** This group will argue that while civic engagement is valuable, it is **not the most effective way**, and other methods (e.g., grassroots activism¹², direct action, legal advocacy) have greater impact.

2. Role assignment and research:

- Each group selects their roles (speakers, researchers, rebuttal specialists, etc.).
- Groups will research evidence, case studies, and historical examples to support their stance. They should also anticipate counterarguments and prepare rebuttals.
 - **Pro group:** Might cite how voting has led to policy changes such as the legalization of same-sex marriage or the protection of gender identity under human rights laws.
 - **Con group:** Might argue that direct action and activism, such as Pride movements or legal challenges like *Vriend v Alberta*, have been more effective in advancing rights than electoral politics alone.

3. Debate structure:

- **Opening statements (3-5 minutes each):** Each group presents their main arguments supporting their side of the debate.

¹² Grassroots activism is community-driven action for social, political, or environmental change, where ordinary people organize and mobilize from the ground up, rather than relying on institutional leaders or top-down approaches. It often involves local initiatives, protests, or campaigns to address issues directly affecting the community.

- **Rebuttals (2-3 minutes each):** Groups respond to the opposing side's opening arguments, challenging key points.
- **Closing statements (2 minutes each):** Each group summarizes their position and leaves the audience with final points.

4. **Key questions to consider:**

- How has voting historically impacted the 2SLGBTQ+ community in Canada?
- Are there examples of non-voting-based activism achieving more for marginalized communities?
- Can civic engagement fail when systemic barriers or voter suppression exist?
- Is there a role for both civic engagement and activism, or is one approach inherently more effective?

5. **Judging panel** (optional): Select a panel of students or the teacher to evaluate each group's performance based on the strength of arguments, rebuttals, and overall delivery.

6. **Reflection discussion:**

- Following the debate, host a discussion to reflect on the experience:
 - Are both civic engagement and activism necessary for systemic change?
 - Did anyone's perspective on civic engagement and its role in advancing the rights of underrepresented communities shift after the debate? This mock debate will engage students in critical thinking about the role of civic participation in addressing inequality while sharpening their debate and public speaking skills.

Thought exercise: I used to think... Now I think... ¹³

Instructions: Think about what you have learned about the topic we have been studying and complete the following sentence stems: I used to think... Now I think...

Objective: What kind of thinking does this routine encourage? This routine helps students to reflect on their thinking about a topic or issue and explore how and why their thinking has changed. It helps consolidate new learning.

Application: When and where can I use it? This routine can be used whenever students' initial thoughts, opinions, or beliefs are likely to have changed as a result of a learning experience. This may be after reading new information, watching a film, listening to a speaker, experiencing something new, having a class discussion, at the end of a unit of study, and so on.

Launch: What are some tips for starting and using this routine? Explain to students that the purpose of this activity is to help them reflect on their thinking about the topic and to identify how their ideas have changed over time.

Here's a possible approach for using the routine:

- "When we began our exploration of 2SLGBTQ+ rights in Canada, you had some initial ideas about it. Take a minute to remember what ideas you previously had about challenges faced by the 2SLGBTQ+ community. Write a few sentences using the sentence starter, "I used to think..."
- "Now, think about how your ideas about 2SLGBTQ+ rights and challenges in Canada have changed as a result of what we've been studying/ doing/discussing. Again, in just a few sentences, write down what you now think about these issues. Start your sentences with, 'Now, I think...'"

¹³ Note: from Harvard Graduate School of Education's Project Zero's [Thinking Routine Toolbox](#).



Have students share and explain their shifts in thinking. When you first begin using this routine, it is often helpful to do it as a whole group so that you can probe students' thinking and explain things in more depth. Once students become accustomed to explaining their thinking, students can share with one another in small groups and pairs.