

Making Progress on Equality Rights

The speakers featured in this section discuss some of the specific ways that the equality provision of the Charter has been used in the years since 1982. The speakers all focus to some extent on the failure of government to act according to the very obligations the government itself adopted in the Charter. The speakers look favourably on the courts as the main vehicle for achieving progress under s. 15 of the Charter.

What you will find in this section:

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



Speaker Summaries and Viewing Notes

Mr. Svend Robinson (Former NDP MP, Former Member of the Joint Committee on the Constitution) **(1:01 minutes)** Mr. Robinson comments on the significant impact that s. 15 has had on the advancement of rights for those discriminated against because of their sexual orientation. Mr. Robinson champions the *Charter* as responsible for the forcing the government to act in situations they otherwise would not have.

- *This brief section can prompt a discussion of a number of interesting Charter issues such as same sex equality and the use of “analogous grounds” to expand the scope of who is protected under s. 15.*

Mr. David Lepofsky (Counsel, Crown Law Office, Ministry of the Attorney General, CNIB) **(2:36 minutes)** Mr. Lepofsky discusses the progress of disability equality rights under the *Charter*. While courts have found in favour of disability advocates under the *Charter*, governments have been far too slow to act to implement these equality obligations. He notes that this should be contrasted with the comprehensive legislative change that resulted from cases brought by other equality seeking groups, for example cases promoting same sex rights. Mr. Lepofsky gives a number of examples in which disability rights have been affirmed by the courts but not responded to by governments.

- *This section can prompt a discussion of the financial or political costs of implementing certain equality rights which may require significant infrastructure changes to meet Charter obligations.*

Ms. Mary Eberts (Lawyer, Former Legal Counsel, Advisory Council on the Status of Women) **(5:43 Minutes)** Ms. Eberts addresses the complaint that courts under the *Charter* are “activist” courts. She suggests that courts are not activist, but are instead are responding to cases of inequality that come before the court because of the government’s failure to live up to its obligations under the *Charter*, and under s. 15 specifically. Ms. Eberts speaks to the inherent lack of money available to those seeking equality and the difficulties in advancing the rights of the disadvantaged. The disadvantage this creates makes the government’s failure to act particularly inappropriate.

- *This section focuses mainly on government inaction. Combined with prior clip, this clip is ideal for discussions about the extent to which equality rights require government action. It also raises the question of whether government’s reluctance to live up to its obligations under the Charter force courts to take on an active role in advancing equality protections.*

Mr. Raj Anand (Lawyer, Former Chief Commissioner of the Ontario Human Rights Commission) **(6:13 Minutes)** Mr. Anand focuses on the different levels of success experienced by various disadvantaged groups. He suggests that courts feel more comfortable striking down blatant cases of direct discrimination (such as discrimination related to gender, same sex, disability and religion) then they do having to participate in discussions of societal norms and systemic discrimination (in cases dealing with race, age and poverty). He suggests that the cost of challenging systemic discrimination using the *Charter* is so great that more programs are needed to provide help and money to equality rights claimants.

- *This clip focuses on some of the obstacles to progress in equality cases. It is a good clip to inform a discussion about the practical differences between direct and systemic discrimination and what this means for courts and governments.*



Key Terms in this Section

Equality
 Same sex rights/sexual orientation
 Analogous grounds
 Disability rights
 Activist courts
 Judicial activism
 Equality obligations
 Government obligations
 Civil society



General Discussion Questions

- What do these clips identify as obstacles to the progress of *Charter* rights?
- What is the difference between direct and systemic discrimination?
- Why are governments more willing to change legislation than systemic infrastructure? Do some Charter rights “cost” more than other rights? Should this impact on whether a right is protected?



Clip Specific Discussion Questions

Mr. Robinson

- What are analogous grounds? Do you agree that grounds other than those listed should be included in the s. 15? Why or why not?

Mr. Lepofsky

- What are some situations you encounter daily that are obstacles for persons with disabilities? How could the government eliminate these obstacles?
- Why are governments slow or reluctant to act to enforce equality for persons with disabilities?
- Should the cost of rights enforcement be a legitimate consideration for courts and government?

Ms. Eberts

- What is “judicial activism”?
- Should courts have a role in making social, philosophical and political change? Has the *Charter* and s. 15 already given them this role?
- Why does Ms. Eberts think that judges are acting appropriately in equality cases?

Mr. Anand

- Why do courts feel more comfortable dealing with cases of direct discrimination rather than ruling on systemic discrimination?
- Mr. Anand proposes more support for programs which give assistance to Charter claimants. Should the government be required to finance court action against its own policies and laws? Why does Mr. Anand think so?



Activities

Equality Law Vocabulary

Suitable for:
Civics 10
Law 11 or 12

a) Ask your students to read s. 15 of the *Charter* (see overhead in Page 7 of “The Importance of s. 15 of the Charter” section of this DVD). This activity examines the meaning of s. 15 and how the Supreme Court of Canada has interpreted the section.

Have students define the following terms, as they understand, them in one sentence:

1. discrimination
2. gender
3. disability
4. same sex/sexual orientation
5. analogous grounds
6. benefits (i.e. seniority, paternity, parental)
7. systemic discrimination
8. judicial activism
9. equality obligations
10. pro bono
11. cost awards
12. monetary gains

Definitions of these terms are available in the Legal Glossary featured in the resources section of the OJEN website at www.ojen.ca

b) Discuss the different definitions and how they affect the speakers and the students own understanding of progress in equality rights.

Discussion of Judicial Activism

Arrange your class in groups or pairs. Have students discuss what is meant by the criticism that judges are “too active” or that governments are too slow or reluctant to respond. Have student teams debate the pros and cons of implementing change in society by means of elected representatives versus judges who are not elected.

Suitable for:
Civics 10
Law 11 or 12

Disability Rights: In Depth

Suitable for:
Law 12

The Auton Case is an excellent case to have students debate and discuss many of the topics touched upon by the speakers in the above clips. Specifically, it raises the issue of to what extent a government is required to fund the treatment of certain disabilities. It involves a discussion of the “cost” of a finding of discrimination under s. 15. The case also raises the question of to what extent governments must be “active” as opposed to “reactive” in the removal of barriers to full equality.

Have students view the video clips. Distribute the case summary of *Auton v. B.C. (A.G.)* from the Related Landmark Cases file located in the Teacher Resources section of this DVD or on the OJEN website, www.ojen.ca. Use the discussion questions and activities included in the package as in-class or individual assignments.

Origins of s. 15 Workshop

See the lesson plan and activities featured in “Origins and Aspirations of s.15” section also on this DVD.

Suitable for:
Law 11



Resources/Links

- Classroom Civics or Law Textbooks
- The Canadian Charter of Rights and Freedoms
- CBC: <http://www.cbc.ca/news/background/autism/>
- 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
- Video: **The Justin Clark Case** (14 minutes) Copyrighted 1991, Distributor: Kinetic Video Inc. (KTC), Series **Right to Be You:**

Synopsis: The *Canadian Charter of Rights and Freedoms* guarantees all Canadians equal rights. Most young people in Canada enjoy equality of education, job opportunities, and the freedom to make their own choices about how and where to live. A young man who was severely disabled with cerebral palsy was denied these rights because he lived in an institution. Meet Justin Clark, a determined individual who overcame discrimination and won the right to an equal place in Society.



Curriculum Expectations

Civics Open Grade 10 (CHV2O)

- 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
- describe historical and contemporary barriers to the equal enjoyment of human rights in Canada

Specific Expectations

Barriers to Human Rights

- evaluate the contribution of individual citizens and organizations in developing and increasing awareness of human rights issues
- describe the development of rights legislation in Canada (e.g., *Canadian Charter of Rights and Freedoms*, Ontario Human Rights Code)

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

- describe the historical development of human rights legislation in Canada
- 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 analyze their effects
- explain the evolution of Canadian human rights legislation from English common law to the Canadian Bill of Rights and then the *Canadian Charter of Rights and Freedoms*.

The Canadian Charter of Rights and Freedoms

- explain what is meant by entrenching rights in a written constitution
- analyze how rights and freedoms are protected under the *Charter of Rights and Freedoms* (e.g., fundamental freedoms; democratic, mobility, legal, equality, and language rights)
- 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

- 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)