

The Nancy Law Decision

The speakers within this section discuss the central importance of the concept of human dignity in determining a violation of equality rights under s. 15. The legal test for deciding when an act violates section 15 was developed by the Supreme Court of Canada in this decision. The claimant in this case was Nancy Law.

What you will find in this section:

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



Speaker Summaries and Viewing Notes (5:57 minutes)

Mr. Peter Hogg (Scholar in Residence, Former Professor Osgoode Hall Law School) Mr. Hogg asks Justice Iacobucci about why the concept of “human dignity” was incorporated into the s.15 legal test. He makes the criticism that by incorporating this element the courts have made it harder for individuals to claim that their rights have been infringed.

Justice Frank Iacobucci (Former Justice of the Supreme Court of Canada)

Justice Iacobucci addresses the historical use of the concept of dignity in human rights cases. He suggests that the wording of s. 15 requires judges to protect “essential human dignity” and that if a claimant cannot show that the action in question did not violate that dignity, then there is no infringement of equality rights. Despite different legal approaches to equality the Court was able to reach consensus in the case because it turned on the central requirement that human dignity be violated for a violation of equality to be established.

- *This section along with the clip of Mr. Peter Cory in “The Importance of s. 15”, also on this DVD, are good complementary clips to focus a discussion around equality rights and the courts emphasis on human dignity as a framework for understanding s. 15 and its role. This clip will help students understand the legal test for proving a s.15 violation.*



Key Terms in this Section

Formal Equality
Substantive Equality
Equality obligations
Human Dignity
Systemic discrimination
Government obligations
Burden of establishing a violation
Burden of Proof
Enumerated grounds
Analogous grounds
Human Dignity



Activities

Human Dignity: A measure of Equality?

Suitable for:
Civics 10 (discussion)
Law 11 or 12 (worksheet)

- a) Students can view the video in class and research the terminology that is unfamiliar to them ("enumerated" and "analogous" grounds of discrimination, "burden of proof," and "human dignity"). Definitions for these concepts can be found in the OJEN legal glossary in the resources section of the OJEN website: www.ojen.ca
- b) The teacher can lead a discussion about the concept of human dignity and ask the class whether or not they feel that s. 15 of the *Charter*, as written, is an adequate protector of "human dignity".
- c) Have students complete the Worksheet (Page 5)

Human Dignity in International Law

Suitable for:
Civics 10

- a) Have students discuss the concept of human dignity as it is related to international law. Have them consider:
- whether all countries have the same idea of human dignity,
 - whether human dignity is an inherent right or a right granted by the government,

- whether the idea of human dignity discussed in the Nancy Law Case relates to the dignity protected by the prohibitions against torture and genocide,
- why this section and legal test developed in the Nancy Law case was used as the model for the post-Apartheid South African Constitution because of the focus on dignity.

Nancy Law Case: Landmark Case Package

***Suitable for:
Law 11 and 12***

Have students view the clip and review the Nancy Law Landmark Case summary and related activities featured on the OJEN website in resources section. (www.ojen.ca)



Resources/Links

- The case is available at <http://scc.lexum.umontreal.ca/en/1999/1999rcs1-497/1999rcs1-497.html> or on the OJEN website at www.ojen.ca
- On section 1 of the Charter - R. v. Oakes: <http://scc.lexum.umontreal.ca/en/1986/1986rcs1-103/1986rcs1-103.html>
- Section 15: www.section15.gc.ca



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 and ability to organize information effectively
- Explain the causes of civic conflict, and identify the need for decision-making processes and strictures

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

- 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).

Worksheet: The Nancy Law Case

1. How were the judges divided initially in the Law case? What change or “move” allowed for a compromise to be reached?

2. What did the Law decision add to our understanding of the interpretation of Section 15 *Charter* rights? How is this different to the former method of interpreting Section 15?

3. What criticism of the post-Law approach does Mr. Hogg describe?

4. Justice Iacobucci rationalizes the inclusion of “dignity” in the interpretation of Section 15 in three ways. Briefly summarize each of his reasons.

5. What other collaborative effort of the Supreme Court’s does Justice Iacobucci mention? Research how it was collaborative.

6. What does Justice Iacobucci mean when he says “dignity” is a way of “putting a little water in our Section 15 wine”?
