

Final Exam

- 30% 15 questions worth 2 marks each, have to match concepts together
 - Both sections, s.101 of BNA Act (constitution act)- power of reservation
- SA Questions
 - Choose 5/7 each worth 6 marks out of 30
 - Explain and define significance of a concept (examples through cases we discussed in class) judicial activism- tendency of judges to override decisions made by parliament examples needed and cases where that happened, explain judicial activism
- Hypothetical question, only on the charter, can assume this section should be defining the scope of a right and applying some form of a test, finding and infringement
 - Oakes test analysis
 - Any cases that outline tests
 - Cases that illustrate outlining a particular right

Section 15- Equality Section

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.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- Government wanted to enact a program with a purpose to increase certain ethnic minorities in the federal government isn't discrimination because they're trying to increase representation
 - Historically viewed as disadvantaged makes it ok if you can prove they're marginalized or vulnerable

Andrews vs Law society

Test purpose to determine whether there's a violation of equality rights

- Met all requirements to pass law society bar except being a Canadian citizen
- Discriminatory on the grounds of citizenship (which isn't in the charter)

Examine the language of s.15

2 part test to be applied every time there is equality rights analysis

1. Government action achieves desirable social objective
2. Equality right infringed in the process of pursuing that objective of evaluating its importance

Key words in s.15 (1) are without discrimination

- There was discrimination in this case bc an entire class of people had to be delayed in gaining employment
- Government action needs to be made up to achieve a desirable social objective
- Introduces concept of differential treatment

Equality Case

Vriend vs Alberta

- Guy fired from religious school due to his sexual orientation
- This ground was not included under the human rights legislation
- After they looked into this issue, they found Alberta's human rights thing was missing stuff
- Order parliament to correct something they may or may not have wanted there
- Judicial activism, said it was unconstitutional and read into legislature

One dissent from John C Major

- Court overreaching trying to get sexual orientation listed because alberta said they didn't want these things listed in the document

Interpretivism vs Noninterpretivism

Law vs Canada

- Leading SCC decision
- Sets out test on discrimination the basis of equality
 - Government may make discriminatory decision as it doesn't lead to marginalization or good
- Nancy Law wanted to get survivor benefits under CPP limited to people over 35 disabled or dependent at time of husband's death
 - Because she's not disabled she gets benefits at 65
 - She thinks its discrimination on the basis of age

Whether CPP infringed s.15 on the basis of age against widows and widowers under the age of 35?

Test

1. Asked does the law impose differential treatment between the claimant and others in purpose or effect - comparison
2. Whether one or more enumerated or analogous realms of discrimination are the basis for the differential treatment
3. Whether the law in question has a purpose or affect that is discriminatory in the meaning of equality guarantee

When your looking at applying the test it is critical to look at whether the person is disadvantaged in canadian society

- Does this disadvantage rise to the level of creating a difference between two classes of people
- Is there a specific burden placed on this specific group of people
- Or are they a group of people that traditionally face stereotypes

Is there a risk that that person will suffer a loss of dignity by promoting stereotypical ideas

- Pre existing disadvantage, vulnerability
- Whether the person or group belongs in discrete minority group

M vs H

- Same sex couple, landmark decisions that really was critical in the civil liberties movement
- They started a successful advertising businesses H contributed more than M (experience)
- H wanted to separate from M, ownership debate
- M was financially dependent on H
- Under s.29 of family law act, it only allowed the definition of a spouse to be heterosexual

Faces stigma that the other sex doesn't have to face

Non-interpretivism-looking beyond plain language of the text

Hypothetical

- Bill 62 Quebec, niqab head covering issue
- No religious symbols in the workplace so no head coverings

What tests are applicable from both perspectives