**Discrimination Based Upon Sexual Orientation**

***Vriend v. Alberta* [1998] 1 S.C.R. 493**

**FACTS**

- 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.

***Lower Court Decision***

- After hearing the arguments of the applicants (Mr. Vriend and the advocacy groups) and the respondent (the Attorney General of Alberta, representing the provincial government), Judge Russell decided that s. 7(1) and several other similar sections of the IRPA were unconstitutional. These sections 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. Therefore, on April 12, 1994, Judge Russell ordered that s. 7(1) and the other sections of the IRPA “be interpreted, applied and administered as though they contained the words ‘sexual orientation’.” This remedy is known as “reading in”: the court effectively added the words “sexual orientation” into the IRPA. From that day onwards, the Alberta Human Rights Commission would be required to offer protection to those who suffered discrimination on the basis of sexual orientation, such as Mr. Vriend.

## Appeal to the Alberta Court of Appeal

The government of Alberta disagreed with this judgment and appealed to the Alberta Court of Appeal. The panel of three judges who heard the appeal were divided as to the outcome. Justices McClung and O’Leary ruled that the IRPA did not violate the Charter. However, Justice Hunt agreed with the lower court’s decision. By a margin of two-to-one, the Court of Appeal reversed the decision of the lower court

Mr. Vriend was not satisfied with this result and applied for permission to have his case heard by the Supreme Court of Canada, the highest appellate court in the country.

**ISSUE**

Has Vriend been discriminated against if provincial human right code (IRPA) does not include sexual orientation as an equality right?

In Section 15 (1) of The Canadian Charter of Rights and Freedoms equality rights are guaranteed to all Canadians

## Individual’s Rights Protection Act

The IRPA was a statute passed by the Legislative Assembly of Alberta. Section 7(1) of the IRPA stated:

*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.*

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 Charter of Rights and Freedoms due to the omission.

## Canadian Charter of Rights and Freedoms, 1982

The Charter is a part of the Constitution of Canada. Section 15(1) of the Charter states:

*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 …*

**Supreme Court of Canada’s Decision**

The majority of the Supreme Court held that the provisions of the IRPA were unconstitutional, reversing the decision of the Court of Appeal. Justices Cory and Iacobucci, who wrote the majority decision, described equality rights as “fundamental to Canada” and stated that they “reflect the fondest dreams, the highest hopes and the finest aspirations of Canadian society.” In order to achieve “the magnificent goal of equal dignity for all … the intrinsic worthiness and importance of every individual must be recognized regardless of the age, sex, colour, origins, or other characteristics of that person.”

The Supreme Court decided that the provisions of the IRPA breached the equality provisions of the Charter because the omission of “sexual orientation” from the list of protected grounds created a distinction that had the effect of discrimination, which is prohibited by s. 15(1).

Furthermore, the Supreme Court held that this breach of s. 15(1) was not justified as a reasonable limit to guaranteed rights as permitted by s. 1 of the Charter. In conclusion, the Supreme Court held that Alberta failed to demonstrate any reasonable basis for excluding sexual orientation from the IRPA. Rather than find the whole of the IRPA unconstitutional, the Court chose, as the least intrusive and expensive mechanism, to read in, as had been ordered by the trial judge, the words "sexual orientation".

**Discussion Questions:**

1. Describe in your own words why the Alberta Human Rights Code (IRPA) allowed the Vriend to be fired based upon his sexual orientation.
2. What changes will have to be made to the IRPA?
3. How is this case legally significant? Does it set a precedent? Why?
4. Vriend was working for a Christian College, should the values of the school allow them to hire or fire employees? Explain