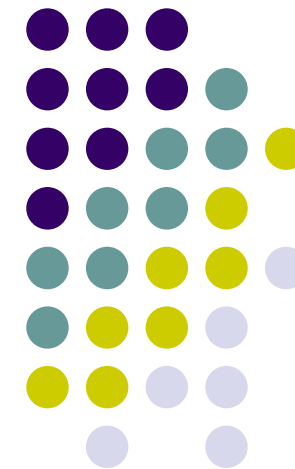


# SEEKING EQUALITY ANONYMOUSLY: Naming Names in Section 15 Litigation

Daphne Gilbert

Université D' Ottawa University of Ottawa  
Faculté de droit Faculty of Law



# The Anonymity/Identity Tension



- Identity Anonymity
  - The right to proceed with litigation anonymously
- Impact Anonymity
  - A consequence of the impact of judicial analysis

## The Questions



- What details of an equality claimant's identity matter to the Court in assessing section 15 claims?
- What details about a claimant's identity and what group characteristics should matter?
- What happens when identity does not seem to matter?

## Section 15(1) of the *Charter of Rights and Freedoms*



- ⇒ **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.

## ***Law v. Canada (Minister of Employment and Immigration), [1999]***

**1 S.C.R. 497**



- S.15 is the *Charter's* most “conceptually difficult provision”
- Purpose of s.15 is to prevent the violation of essential human dignity and freedom through the imposition of disadvantage or prejudice; AND
- To promote a society in which all persons enjoy equal recognition at law as human beings and members of society equally capable and deserving of concern, respect and consideration

# How to assess human dignity



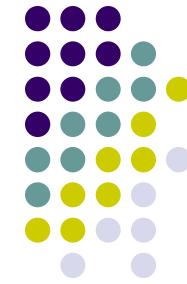
- Appropriate perspective?
- Focus of inquiry is subjective and objective
- Objective: consider larger context of legislation and society's past and present treatment of claimant's group
- Relevant point of view: reasonable person possessed of similar attributes to and under similar circumstances as claimant

# Human Dignity according to *Law* and hence “the law”



- What is human dignity?
  - Realization of personal autonomy
  - Feeling of self-respect and self-worth
  - Physical and psychological empowerment
  - Harmed by unfair treatment based on personal traits unrelated to needs or merit
  - Harmed when individuals marginalized, devalued
  - Concerned with the way an individual legitimately feels when confronted with a particular legislative goal

# The Power of Dignity



- “Draping an allegation of discrimination in dignity language deeply personalizes it and brings it to the very heart of an individual’s sense of self-worth. This makes the allegation more emotion-laden, and thus more rhetorically powerful.”
  - Donna Greshner, “Does Law Advance the Cause of Equality?” (2001), 27 Queen’s L.J. 299

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