

# **Midterm Assignment-Gay Rights Movement and Gay Marriage**

## **Task Requirements (Question)**

For this assignment you are required to write a 3-page essay on ONE of the topics below. It is a formal essay and, therefore, you must include an introduction (with a thesis statement - a clear argument), body, and conclusion. You will be required to take a strong and clear position on your topic of choice. You must use a minimum of 2 sources outside the course material to support your argument. When appropriate you should make references to any relevant court decisions that we discussed in the course. Any papers that include more than 3 outside sources for this assignment will receive a lower or failing grade. This paper is to be written in your own words with your own thoughts, using an excessive amount of sources for this 3-page assignment moves away from the main point this assignment which is to use the information in this course, with a few sources outside the course materials, to form an informed opinion on one of the topics below and defend it. As with your first paper, be sure to discuss each of the following: a) the right(s) at issue; b) the section(s) of the Charter affected c) the reason(s) why that right is important; d) how the court decided it; e) your evaluation of the court's reasoning (in other words: why is it a good decision?) Topics - Choose One 1. Do Canada's post-September 11th Anti-Terrorism laws violate the Charter? If so, what section(s) of the law violate what part(s) of the Charter? This is clearly a large topic therefore, you need to narrow your focus to only certain portions of the law. In your paper choose two sections of the anti-terrorism law that you believe violate sections of the Charter. Be sure to make reference to any court rulings made regarding our terrorism laws. For this assignment you are required to use the course textbook in your essay as well as the course lecture notes and readings. 2. Discuss the gay rights movement and the recent gay marriage debate in Canada. Be sure to explain the court's 3-part equality test in relation to equality in Canada. Be sure to include an overview of the gay rights movement in Canada. You should also include an explanation of any significant court decisions regarding gay rights in Canada. For this assignment you are required to use the course textbook in your essay as well as the course lecture notes and readings. EVALUATION This assignment is worth 30% of your final grade for this course.

## **Answer**

### **Introduction**

For a long time, same-sex and gay relationships have been subject to discrimination even though every person has equal rights to live their life the way they want. In Canada, gay rights were not accepted previously, and it has gone through movement to reach where Canada is now. Being a democratic country, the inhabitants of Canada have the right to pursue their vision of happiness, and they should be treated equally. For the past two hundred years, the world has observed many equality movements like the women's rights movement, the civil rights movement, the worker's rights movement, the gay rights movement etc. and Canada is considered one of them. Especially in the gay rights movement, Canada is considered one of the first countries to legalize gay rights in 1969 (Gay Rights and

Citizenship PPT). Canada's gay rights movement is based on the indiscriminate and equality exerted by the Supreme Court of Canada on gay people, and the recent gay marriage debate in Canada re-establishes the fundamental value of freedom and democracy in Canadian society.

### **Main body**

Gay rights and same-sex marriage fall under the right of equality in the Canadian Charter of Rights and Freedoms under Section 15. Section 15 of the Canadian Charter of Rights and Freedoms makes it abundantly plain that all citizens of Canada, irrespective of their racial or ethnic background and sex, color, age or physical and mental disability, are entitled to the same amount of respect and consideration as one another (Class notes, 2022). In no way, shape, or form may any of these forms of prejudice or discrimination be tolerated under the policies or regulations of the government. Furthermore, as per Sharpe & Roach (2005), the Supreme Court has held that Section 15 of the Civil Rights Act ensures equality on the ground of other traits, even if those attributes are not specifically mentioned in the statute. Under this provision, there is no discrimination based on a person's sexual orientation, marital status, or citizenship status. In *Egan v Canada*, SCC accepted the fact that sexual orientation is a deeply personal characteristic and falls within Section 15 protection as being analogous to the enumerated ground. The fact that a person's sexual orientation cannot be altered, coupled with the fact that gays and lesbians have long been the target of prejudice, discrimination, and persecution, meets the requirement for gender identity to be reviewed on analogous grounds (Gay Rights and Citizenship PPT). On the other hand, in the *Vriend v Alberta* case, the judge omitted the protection against discrimination based on sexual orientation from Alberta's human rights code constituted unjustified discrimination against lesbians and gays. Therefore, as per Sharpe & Roach (2005), the court accessed that gays and lesbians face discrimination the way heterosexual couples do not face. Also, in the *M v H* case, the court mentioned that the law had imposed a differential burden on those who cannot avail of court-ordered supported payments like opposite-sex partners, thus creating discrimination. Therefore, all these cases questioned whether a ban on gay marriage is not a representation of discrimination and whether they are not hampering the equality rights of the Charter (Gay Rights and Citizenship PPT).

The Charter has aided the rights of gay and lesbian Canadians, and even while this promise of equal rights based on sexual orientation was not inscribed into the text, it has helped the progress of gay rights. According to Idreis (2022), it was a fundamental change from the 1970s' attempts to raise awareness of sexual orientation to the 1980s' fight for legal acknowledgement and inclusion in law and society when Section 15 and human rights statutes were read in" sexual orientation. Lesbian, homosexual, bisexual, and transgender people's legal efforts were slow and ineffective before courts began applying the equality guarantees of the Charter to sexual orientation. Due to the newly available information, rights were seen as a means of strengthening political identity and legal personality. Human rights have taken precedence over liberation aims in activist groups, but this does not mean that the basic goal of making lesbian and gay communities stronger was lost. Instead, activist groups have shifted their attention from human rights to human rights. For the first time in history, a

long-term activist network was formed due to this transformation. The Toronto bathhouse raids on February 5, 1981, were a defining occasion for the gay rights movements on a national scale in Canada (Umanitoba.ca, 2022). Just before Summer Olympics in 1976, protesters in Ottawa and Montreal were quite similar to those in Toronto 5 years later (Umanitoba.ca, 2022). However, the intensity of the demonstrations in Toronto was unsurpassed. And the intense protest reached the court with the *Little Siter Book and Art Emporium v Canada* when the court admitted that the customs conducted discrimination based on sexual orientation in targeting the gay and lesbian book shops and mentioned that Section 15 was violated (Sharpe & Roach, 2005). It also opened a new area of conversation.

However, as the movements intensified, the debate over same-sex marriage continued to strengthen. Previously, the concept of equality came from the Judeo-Christian and Islamic traditions, which stated that we are all children of God; thus, everyone has equal rights (Class notes, 2022). Therefore, it is based on the secular faith. However, the marriage definition was also based on religious belief, describing it as “the living tree capable of growth and change over time” (Sharpe & Roach, 2005). However, in the Court of Appeal of British Columbia, it was mentioned that marriage is a legal institution that is not based on religious validity and applying section 15(1), it was found that opposite-sex marriage definition has created discrimination between same-sex and opposite-sex couples based on sexual preferences; thus, it is substantive discrimination. Only in Ontario and British Columbia was same-sex marriage legal in 2003, thus, implementing the fundamental belief of democracy and freedom. In conformity with (2020), it can be said that same-sex marriage has been legalized in Canada since July 20, 2005, when the federal *Civil Marriage Act* came into effect. According to Sharpe & Roach (2005), in the case of *Canada v Hislop*, complex legislative amendments were brought into existence where Canada Pension Plan for same-sex coupled was legalized. The court mentioned under Section 1 of the Charter that they could not find any objection that the government put up with in terms of different treatment of same-sex couples, hence, establishing the equality rights for gays and lesbians.

## Conclusion

The equality rights for legalizing gay marriage and gay rights have resulted from a battle against discrimination and prejudices. However, it is undeniable that the success could not have been achieved if SCC did not understand that gays and lesbians faced oppression along with the movements and debates that led to the establishment of the *Civil Marriage Act*, making same-sex marriage legal. The previous rulings of the Supreme Court of Canada on issues pertaining to the rights of homosexuals played a role in the decision of Parliament to make gay marriage legal in Canada as SCC believed in the democracy, freedom and equality of gay and lesbian couples.

## References

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