

Lesson Four: Background Demanding Change

In the 1970s, queer people built the gay liberation movement to challenge all forms of oppression. Activists called for law reform and an end to police harassment. They opposed discrimination at work and sexism in society. And they demanded the Canadian government stop the LGBT Purge. Gay liberationists protested outside government buildings and media outlets. News coverage brought their messages into homes across the country. These actions for change helped lay the groundwork for ending the Purge.

The Canadian Charter of Rights and Freedoms

The *Canadian Charter of Rights and Freedoms*, enacted in 1982, was a milestone in the struggle for 2SLGBTQI+ rights. The Charter forms part of Canada's Constitution – the country's supreme law, meaning that all other federal, provincial and municipal laws and bylaws are subject to and must conform to the protections of the Charter. If they do not, they must be modified or removed.

Section 15 of the Charter states everyone is entitled to equality without discrimination.

“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.”

Unfortunately, after much debate, the term “sexual orientation” was not included in the list of protected rights in the Charter.

The military and the RCMP continued to discriminate against queer people and to purge them from service. Activists pressured the government to stop these violations.

Challenging the Charter

Many Purge survivors invoked the Charter to challenge unjust treatment. By taking legal action, they forced the government to end its policies of discrimination. They created the conditions for change.

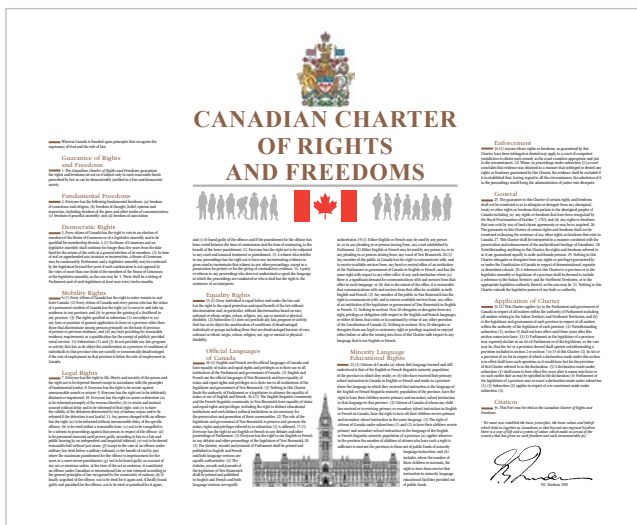


Image: Department of Justice Canada

Profile:

James Stiles

In 1984, the RCMP forced James Stiles to resign as an officer because he was gay. He launched a lawsuit based on his right to equality under the *Canadian Charter of Rights and Freedoms*. He settled out of court and was reinstated. His case contributed to the RCMP formally ending its purge of LGBT service members in 1988.

Profile:

Joshua Birch



Joshua Birch was born in St. Catharines, Ontario, and grew up in Windsor, Ontario. In 1992, he took the Canadian military to court for purging him on “medical grounds” in 1989. Consequently,

the courts added “sexual orientation” to protections under the *Canadian Human Rights Act*. Birch’s case expanded 2SLGBTQI+ rights under the law, setting precedent for future legal actions. The emotional impact of being purged was immense. Birch died by suicide five months after the verdict.

Photo: Courtesy of Pam Vermey

Ending the Military Purge

In 1989, Michelle Douglas launched a historic lawsuit against the Canadian Armed Forces (CAF) for discrimination and unfair dismissal. After joining the CAF in 1986, Douglas excelled in her training. She was soon assigned to the military’s Special Investigations Unit (SIU). She then found herself being investigated. She was taken to a hotel room in Toronto by two male members of the SIU. For two days, they interrogated Douglas about her sexual orientation and secretly videotaped the sessions. She later affirmed she was lesbian, which led to her discharge.

But Douglas fought back by taking the military to court. Douglas had strong allies. Svend Robinson, a member of Parliament who was openly gay, encouraged her to take legal action with support from civil rights lawyers Clayton Ruby and Harriet Sachs.

Douglas’ lawyers discovered that the military knew that its homophobic policies violated human rights law. They used Section 15 of the *Canadian Charter of Rights and Freedoms* to assert that her rights had been denied by the military. Such treatment could not be defended in court. The military settled with Douglas before the trial even began and formally ended its LGBT Purge partially because of the lawsuit from Birch. In 1992, she won a settlement that forced the military to change their policies and practices and end the LGBT Purge. Those who had been identified by the CAF for being queer were also restored to their proper rank. This case proved to be an early victory in the courts for the 2SLGBTQI+ community.



Demonstration at the Manitoba Legislature, Winnipeg, 1980. Photo: Doug Nicholson, The ArQuives: Canada’s LGBTQ2+ Archives

Charter Challenge – Egan v. Canada (1995)

The *Canadian Charter of Rights and Freedoms* is a part of the Canadian Constitution that protects the rights and freedoms of Canadians. The Charter came into force in 1982.

Only one province in the country recognized sexual orientation as a protected human right at that time (Quebec, since 1977).

Section 15 of the *Canadian Charter of Rights and Freedoms*:

“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.”

Does this mean other human rights are not included?

Other rights can be “read in” by the courts. This is to say that, looking closely at the wording of Section 15, there is a specific term which allows these rights to be expanded. Using the words, “in particular” within this section allows other grounds for discrimination to be “read in.” The language of “in particular” functions to highlight that there are other grounds as well. In 1995, sexual orientation was read in because of the activism of Jim Egan.

Profile:

Jim Egan

(1921-2000)



Jim Egan (left) was a gay activist, writer, politician and an environmental activist. He was born Toronto, Ontario and died in Courtenay, British Columbia. Egan was the first person to publish long articles written from a gay point of view in Canada. He even wrote articles against the LGBT Purge in the 1960s. He was one of the first openly gay politicians to serve in Canada.

Egan is best remembered for a court challenge that he and his partner, Jack Nesbit, launched against the spousal allowance benefit under the *Old Age Security Act* in 1988. They fought it all the way to the Supreme Court of Canada. The Egan v. Canada decision (1995) was a partial win for them. They did not get their spousal allowance, but the courts agreed that sexual orientation was a protected ground of discrimination in the *Canadian Charter of Rights and Freedoms*. Therefore, the courts formally “read in” sexual orientation into the constitution.^[1]

Photo: The ArQuives: Canada’s LGBTQ2+ Archives

^[1] thecanadianencyclopedia.ca/en/article/jim-egan