

October 18, 2013

## The *Vriend* Case 15 Years Later

Written by: Jennifer Koshan

**Case and legislation commented on:** *Vriend v Alberta*, [\[1998\] 1 SCR 493](#); *Alberta Human Rights Act*, [RSA 2000, c A-25.5](#)

This year marks the 15<sup>th</sup> anniversary of the Supreme Court of Canada decision in *Vriend v Alberta*, [1998] 1 SCR 493 [*Vriend*] in which the Court unanimously held that the lack of protection for discrimination based on sexual orientation in Alberta's human rights legislation was an unconstitutional violation of *Charter* equality rights (for a previous post on the *Vriend* decision by Linda McKay Panos, see [here](#)). To celebrate the anniversary Delwin Vriend visited Alberta this week, and his visit included participation in a public forum organized by the [Sheldon Chumir Foundation for Ethics in Leadership](#), as well as a visit to my human rights class at the law school.

The public forum began with remarks from a number of panellists on the legal protection of discrimination based on sexual orientation at the international, national and provincial levels. Blair Mason, Chief Commissioner of the Alberta Human Rights Commission, noted that Mr. Vriend's human rights claim had been blocked by the Alberta government back in 1991, after he was fired from his position as a lab instructor at King's College in Edmonton for being gay. The government instructed the Commission not to accept complaints based on sexual orientation. Chief Commissioner Mason described how Mr. Vriend had pursued his complaint in spite of the barriers and opposition he faced, including intractability and prejudice on the part of the government. The Chief indicated that such interference with the independence of the Commission would not be tolerated today.

At both the public forum and in my human rights class, Mr. Vriend talked about the saga of the case from his perspective. Although he was not involved in framing the legal strategy, he was highly involved in the media response, which had its challenges. There were also access to justice challenges. Mr. Vriend initially had paid counsel representing him, but was eventually represented by pro bono lawyers. In spite of this, disbursements in the case totalled approximately \$75,000, offset by fundraising efforts and ultimately a donation on the part of the family of one of his lawyers. As a class, we talked about the fact that human rights commissions are intended to be accessible processes that complainants can navigate without a lawyer, but that option was closed to Mr. Vriend. The inability of Alberta's human rights commission to file complaints was raised as a continuing access to justice issue in Alberta as well (see the *Alberta Human Rights Act*, RSA 2000, c A-25.5, s 20). In spite of these challenges, Mr. Vriend was clear that he would make the same decision today to bring a constitutional challenge.

Another issue that was discussed at the public forum and at the law school was the Alberta government's continued refusal to explicitly amend its human rights legislation to include sexual orientation until 2009. A majority of the Supreme Court in *Vriend* had granted the remedy of reading sexual orientation in to our human rights legislation, but in spite of this, it took the government 11 years to change its *Act*. Although complaints based on sexual orientation were accepted before the formal amendment was made, Linda McKay Panos described on the panel how this state of affairs created uncertainty, especially for newcomers.

And the eventual addition of sexual orientation came with a price. In 2009, the government added s 11.1 to the newly named *Alberta Human Rights Act*, which requires school boards to give notice to parents when teaching materials and lessons will deal with issues related to religion, human sexuality or sexual orientation. Parents may then request an opt out for their children. At the public forum, Dan Shapiro from the Chumir Foundation described how this section is having a chilling effect on discussions of sexual orientation in classrooms in Alberta (for the Foundation's position paper on s 11.1, see [here](#)).

The lack of explicit protection of gender identity in the *Alberta Human Rights Act* was also raised in both forums. At the same time, the Human Rights Commission has indicated that it will accept complaints on this basis under the ground of gender, and there are some cases raising gender identity discrimination that are currently working their way through the human rights system in this province (see e.g. *Greater St. Albert Roman Catholic Separate School, District No. 734 v Buterman*, [2013 ABQB 485](#)).

The federal government was also [taken to task](#) for failing to participate in a recent high level meeting of foreign ministers on discrimination against LGBT persons at the United Nations in September.

At both the forum and law school, there was discussion on the progress made in the area of LGBT rights, but also of the work that remains to be done. There is still a lack of formal protections against discrimination on the basis of sexual orientation and gender identity at the international level. Violence, oppression, discrimination and hatred continue to be perpetrated against LGBT persons nationally and internationally. Delwin Vriend's visit to Alberta provided an excellent opportunity to reflect on these matters, and many people expressed their thanks to him for that, as well as for his courage and tenacity in pursuing his rights in Alberta.

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>  
Follow us on Twitter @ABlawg

