Charter: A Course

A podcast about Canadian Constitutional Law & Litigation

Season 2, Episode 3: Disability Rights under the Charter

About the Series

Charter: A Course is a podcast created by the David Asper Centre for Constitutional Rights (the Asper Centre) and hosted by the Asper Centre's Executive Director Cheryl Milne.

Charter: A Course focuses on Canadian constitutional law and litigation. In each episode, we highlight the accomplishments of U of T Law's faculty and alumni involved in leading constitutional cases and issues. Each episode also includes a "Practice Corner", where we talk about the ins and outs of what it means to be a constitutional litigator.

Whether you are a law student, a lawyer, or just an interested person, we hope that you learn about an aspect of constitutional law and litigation that interests you in our podcast.

Show Notes

In 1982, disability was included as an enumerated ground of discrimination under Section 15 of the Canadian Charter of Rights and Freedoms. Since then, disability rights advocates have pursued constitutional litigation on a range of issues, including the availability of sign language, interpretation and hospitals, funding for autism treatment programs, and inclusive education for students with disabilities to remain in classes with their peers without disabilities. However, challenges remain in litigating disability rights under the Charter. This podcast episode examines the successes and remaining challenges in having disability rights recognized and protected under the Charter.

Our esteemed guests in this podcast are David Lepofsky and Anita Szigeti, two lawyers specialized in disability rights. Our guests will discuss, amongst other issues, how disability came to be an enumerated ground under section 15 of the Charter; some of the seminal Supreme Court of Canada cases that dealt with disability rights under the Charter; how individuals living with a mental disability either alone or in combination with a physical disability experience discrimination; how section 7 of the Charter interplays with respect to discrimination claims that normally fit within section 15 Charter claims; and, the future of disability rights under the Charter.

In this episode's "Practice Corner" **starting at 1:07:16,** we will be speaking with constitutional litigator Stephen Aylward, on his experiences as a constitutional litigator while living with a disability, and ways to remove existing barriers within the legal profession to make the practice of law more accessible.

Find a FULL TRANSCRIPT of this episode HERE.

Case & Statute Links

In this episode, the following cases and statutes were discussed:

Eldridge v. British Columbia (Attorney General), [1997] 3 SCR 624
R. v. Conway, [2010] 1 SCR 765
R. v. Swain, [1991] 1 SCR 933

Eaton v. Brant County Board of Education, [1997] 1 SCR 241
Ontario (Attorney General) v. G, 2020 SCC 38
Thompson v. Ontario (Attorney General), 2016 ONCA 676
P.S. v. Ontario, 2014 ONCA 900 (CanLII)
Carter v. Canada (Attorney General), 2015 SCC 5
AG (BC) v Canadian Council of Disabilities, 2022 SCC 27
Moore v. British Columbia (Education), 2012 SCC 61
R. v. Sharma, [1993] 1 SCR 650
Christopher's Law (Sex Offender Registry), 2000, S.O. 2000, c. 1.
Not Criminally Responsible Reform Act, S.C. 2014, c. 6
Mental Health Act, R.S.O. 1990, c. M.7
Bill C-5

Additional Links:

- Accessibility for Ontarians with Disabilities Act Alliance (Twitter: @aodaalliance)
- Women in Canadian Criminal Defence (Twitter: @WICCD_Canada)
- Ontario Courts Accessibility Committee's online *Survey of Accessibility for People with Disabilities in Ministry Courts*: https://www.surveymonkey.com/r/OCACSurveyEN
- Lambda Legal (Twitter: @LAMDACANADA)
- Canadian Association of Lawyers with Disabilities Facebook Group
- David Lepofsky's lectures on Advocating for Disability Rights
- David Lepofsky's Twitter: @DavidLepofsky
- Anita Szigeti's Twitter: @pouchbaby
- Anita Szigeti's 2020 book: A Guide to Mental Disorder Law in Canadian Criminal Justice (LexisNexis)
- Anita Szigeti's 2023 book: Law and Mental Health in Canada Cases and Materials (LexisNexis)
- David Lepofsky's upcoming journal article in the Windsor Yearbook on Access to Justice: People with Disabilities Need Lawyers Too!

About the Asper Centre

The Asper Centre, a part of the University of Toronto's Faculty of Law since 2008, is devoted to realizing constitutional rights through advocacy, research and education. The Centre aims to play a vital role in articulating Canada's constitutional vision to the broader world. The cornerstone of the Centre is a legal clinic that brings together students, faculty and members of the bar to work on significant constitutional cases and advocacy initiatives. The Centre was established through a generous gift from U of T law alumnus David Asper (LLM '07).

Thank You's

Charter: A Course is proudly sponsored by the University of Toronto's affinity partner **TD Insurance**. We would like to thank our sponsor, and you can discover the benefits of affinity products here.

We would like to thank the creators of our theme music for Charter: A Course. Constitutional law professor Howie Kislowicz and law professor Rob Currie gave us the licence to use their constitutional law shanty in exchange for a donation to the Calgary Food Bank. The song's performers are: Vanessa Carroll, Rob Currie, Howie Kislowicz, Avinash Kowshik, Anna Lund, Patricia Paradis, Elin Sigurdson, Lyle Skinner, and Dave Wright. You can listen to the entire shanty here: Charter a Course. Please consider contributing to your local food bank!

Thank you to Caitlin Salvino, JD student at the University of Toronto Faculty of Law and Asper Centre 2022 Summer Research Assistant, for her major contributions to the production of this episode and for taking on the hosting duties in this episode's Practice Corner! Thank you also to Marisa Benjamin, JD student at the University of Toronto Faculty of Law and Asper Centre research assistant for her additional help in producing this episode.

Thank you to our incredible guests on this episode: David Lepofsky, Anita Szigeti and Stephen Aylward! Thank you to our audio editor Liam Morrison of Bell Room Media Solutions.