

GAY RIGHTS  
AND  
THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

A brief submitted to the Special  
Joint Committee on the Constitution  
of Canada  
By the Alberta Lesbian and Gay Rights  
Association  
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## INTRODUCTION

This brief is submitted to the Special Joint Committee on the Constitution of Canada to put forward some concerns about the proposed Canadian Charter of Rights and Freedoms.

The Alberta Lesbian and Gay Rights Association has both individual and group members, representing gay people in every part of the province.

## SUPPORT FOR THE CHARTER

This organization expresses its support for the concept of a constitutional charter of human rights and freedoms. Such matters are of such fundamental importance in our society that they should be dealt with at the federal level and be given primacy over all other laws.

## SECTION ONE IS UNACCEPTABLE

The first section of the proposed charter is viewed by us as very dangerous and unacceptable. The time since severe persecution of gay people in this country was "generally accepted" is very short. Recent polls have indicated a majority support for gay rights, but this is possibly vulnerable to swings in public opinion. Section One must be eliminated or replaced if the rights and freedoms to be guaranteed by the Charter will have the fundamental, inalienable stature they deserve.

## POOR HUMAN RIGHTS RECORDS OF THE PROVINCES

One reason for our support of federal jurisdiction over human rights and freedoms is the generally poor records of the provinces in such matters. There is a great deal of discrepancy among the various provincial human rights acts in the extent and nature of protection. The identified categories of persons against whom discrimination is prohibited are quite different from one province to another. Considering the truly fundamental role that respect for the dignity

of individuals plays in our society, it is shameful that some provinces have moved to protect certain categories of their residents and others have not.

At present only the Province of Quebec prohibits discrimination on the basis of sexual orientation. In other provinces, political responses to pressures by anti-gay bigots have prevented such protection from being enacted.

#### THE NEED FOR LEGAL PROTECTION

The Canadian Human Rights Commission and the various provincial commissions have all accumulated evidence of discrimination against gay people in Canada. Some incidents of such discrimination are reported in the news media. It can hardly be argued by anyone familiar with the evidence that discrimination on the basis of sexual orientation does not occur. When a large proportion of the population (8-10 % are gay) is open to such discrimination, it is necessary for the cause of justice that legal protection be provided.

This conclusion was put forward strongly by the Canadian Human Rights Commission in its 1979 annual report, and Mr. Gordon Fairweather, the Commission chairman, has stated publicly that the failure to legally protect gay rights in this country is a "national disgrace".

#### THE PRESENCE OF OPPOSITION IS NO ARGUMENT AGAINST

There is considerable opposition to legal protection of gay rights in Canadian Society. Many groups and individuals have spoken against such rights publically or lobbied privately.

As is always the case when arguments are made in favour of the right to discriminate, such arguments are based upon ignorance and false images. For example, at this point in time we should hardly have to document once again the utter falseness of the stereotype of gay men as child molesters, but such ignorant ideas are widespread.

It is very important that you legislators not be swayed by bigoted arguments, however well they are articulated and however large a number of Canadians they seem to come from. You must take a firm stand on the principle of equal dignity for all.

TO OMIT PROTECTION FOR A GROUP IS TO DENY THE DIGNITY OF MEMBERS OF THAT GROUP

When human rights legislation, or in the present case a constitution, lists identifiable categories of persons against whom discrimination is prohibited, it is of great importance that such a list be as broad as possible. When categories against which discrimination does exist in our society are omitted, it is not only an assurance of the right to discriminate, it is also an implicit assertion of the inequality and non-dignity of such persons.

The presently proposed Charter is dangerously bereft of such breadth, offering protection to even fewer persons than the Canadian Bill of Rights, the Canadian Human Rights Act and many provincial laws. If clause 15(1) is entrenched unchanged in our constitution, it will be a distinct retrograde step for human rights in Canada.

EITHER BROADEN OR ELIMINATE THE CATEGORIES

It is imperative that the categories of persons who are protected from discrimination be broadened before this Charter is enacted. This can be done either by greatly expanding the list of categories or by eliminating the categories altogether.

FAILURE TO GAIN PROTECTION NOW WILL BE A GREAT SETBACK

Any category of discriminated-against persons omitted from the charter at this time will suffer a great setback in progress towards human rights protection. It seems likely that amendments will be infrequent, and controversial ones nearly impossible. Many groups, including organizations of gay people, have

against discrimination. We hope particularly that you will recommend protection against discrimination on the basis of sexual orientation.