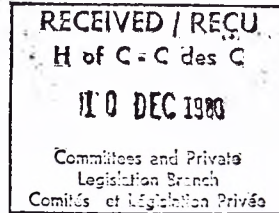


December 6, 1980

Richard Prigent
Joint Clerk
Room 512
South Block
P.O. Box 1044
180 Wellington Street
Ottawa, Ontario
K1A 0A6

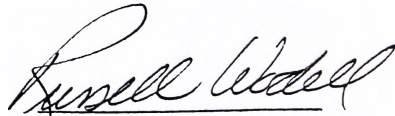


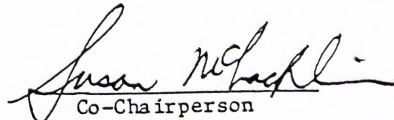
Dear Mr. Prigent

SEARCH (Society for Education, Action, Research and Counselling on Homosexuality) is a gay organization located in Vancouver.

We have studied the submission made by a coalition of gay groups and submitted by Mr. Sanders, Mr. Black and Mr. Manis. We give it our full support.

Respectfully


Co-Chairperson


Co-Chairperson

**The Charter of Rights and
Gay People**

**A Submission to the Special Joint
Committee on the Constitution of Canada**

1980 December

I Introduction

If Canada is to have an entrenched charter of rights, it must be an effective one: an ineffective charter would, in many ways, be worse than none at all. While we take no stand on entrenchment, we wish to point out a number of deficiencies in the proposed Charter of Rights and Freedoms; we are particularly concerned about its impact upon the sizable proportion of Canadians who are homosexual.

The purpose of this brief is to point out some inadequacies in the draft Charter, and, in particular, to recommend changes which would improve its application to gay people.

The remainder of this brief is organised as follows: Part II contains background information on Canada's gay community, and documents the need for an explicit statement of equal protection for gays; Part III refutes arguments against such a statement; and Part IV contains our recommendations. A list of organisations supporting explicit protection on the basis of sexual orientation is appended, as is the proposed Manitoba Bill of Rights.

II Background Information

The size of the gay minority in Canada

We first wish to establish the fact that the gay minority in Canada is large. There are two difficulties, however, in accurately determining the number of gay people in Canada. First, it has become generally accepted since the justly famous Kinsey reports were published that the normal range of human sexuality is broad indeed. Kinsey found that many people are neither exclusively homosexual nor heterosexual. Because of this, we run the risk of arbitrariness in attempting to estimate the size of the homosexual population of Canada. The complex range of human sexuality makes this difficulty unavoidable. The second difficulty in accurately determining the relevant numbers comes from the fact that most homosexuals are forced to remain invisible because of social discrimination and lack of legal protection. In the present circumstances, therefore, we have no means of taking an adequate census.

The closest guide for estimating the number of homosexuals in Canada remains the Kinsey reports. They found that:

4% of white males are exclusively homosexual throughout their adult lives.

8% are exclusively homosexual for at least 3 years between ages 16 to 55.

10% are predominantly homosexual with only incidental heterosexuality for at least 3 years between 16 and 55.

13% are predominantly homosexual but with a distinct history of heterosexuality for at least 3 years between 16 and 55.

18% are equally homosexual and heterosexual for at least 3 years between 16 and 55.

25% are predominantly heterosexual but with distinct homosexual history for at least 3 years between 16 and 55.

30% are predominantly heterosexual but with incidental homosexuality for at least 3 years between 16 and 55.

Overall, 50% are entirely heterosexual; 50% feel at least some sexual attraction towards members of their own sex.

Kinsey's figures for women were smaller, generally less than half those for men, but still significant.

Kinsey's statistics have often been challenged; yet in follow-up studies performed over the last thirty years, the percentage of the population which has had serious involvement with homosexuality has fairly consistently been found to be on the order of 10% of males and 5% of females.

These figures indicate that the actual homosexual population over age 16 in Canada may range from 500,000 to about 1,500,000. A reasonable estimate of the size of Canada's gay community would be about 1,000,000. Statistically speaking, if you are not gay yourself, you can quite likely count a homosexual among your relatives or friends.

Who are Canada's gay people? Those unfamiliar with gay society often find it hard to believe that there could be so many gay people. It should be remembered that, because most of us can "pass" as heterosexuals, we are one of the minorities that is generally invisible. We still encounter people who can tell us that we are the first homosexuals they have met. What they typically mean, however, is that we are the first who will admit it.

Gay people also differ from most other minority groups in that we are found in all walks of life and cross all ethnic, religious, educational, and class lines. Contrary to many popular myths, we are found in all professions -- from loggers, catskinners, and hockey players to educators, lawyers, doctors, and politicians. We not only have jobs, but also families, relationships, and social and political passions. We go to the dentist, buy shoes, watch TV, and pay taxes. Our presence, in short, is important and socially diffuse, and constitutes a significant minority status.

Discrimination against the gay minority

In spite of the Federal government's partial decriminalisation of homosexuality in 1969, gay women and men continue to be

confronted with social, political, cultural, and economic discrimination. Social attitudes of intolerance and misunderstanding are widely prevalent. Homophobia -- the fear of homosexuals -- is more deeply rooted in our culture than many other forms of prejudice. The stereotypes and myths about homosexuality may differ from racist and sexist prejudices, but their function is the same: a rationalisation for oppression, the creation of a climate of fear and mistrust, and the encouragement of unfair practices in public life.

What is worse, however, is that such prejudice and discrimination are often approved by our legal system itself, a situation which is largely not the case for other minority groups. Thus, despite our numbers, lesbians and gay men have none of the human rights protections accorded to other minorities. For example, the Draft Charter of Rights and Freedoms, which ensures the protection of the rights of most minorities, does not include coverage for different sexual orientations.

Fortunately, the emergence and support of gay rights organisations across Canada has meant that more and more cases of discrimination are coming to light. We briefly discuss three of the most important forms: discrimination by government, physical abuse, and private discrimination.

Discriminatory laws and discriminatory enforcement

Until 1976, sections 5(e) and 5(f) of the Immigration Act specifically prohibited the entry into Canada of gay people. Those sections have now been repealed, but the fact that a statute which explicitly discriminated against gay men and lesbians has existed so recently demonstrates the need for constitutional protection.

The amendment of statutes that expressly discriminate against gay people is a step in the right direction, but it has not eliminated discrimination based on sexual orientation. There still exist a number of statutes that operate in a way that effectively discriminates against gay people, even though they are not on their face discriminatory.

Perhaps the clearest examples are in the Criminal Code. As noted above, the 1969 amendment of the Criminal Code only partially decriminalised relations between homosexuals. The Code is drafted in such a way that all homosexual sexual relations are still prohibited unless one comes within certain narrow exemptions (see sections 155, 157, and 158). The onus of proving that those exemptions apply is on the accused, and the Crown can establish its case merely by proving that the act took place. This procedure is in sharp contrast to heterosexual

acts, which are presumed not to be criminal except in certain limited circumstances. Moreover, though the wording of sections 155 and 157 suggests that certain acts are illegal whether performed by heterosexuals or homosexuals, cases have interpreted those sections so as to make the same act criminal if performed by people of the same sex, but not criminal if done by a man and a woman.

The Criminal Code provisions concerning the validity of consent also have the effect of discriminating against gay people. Section 158, which applies to homosexual relations, specifies that the age of consent is 21. The effect is to make criminal consensual relations that take place in private between two people who, for all other legal purposes, are considered adults.

In addition, Criminal Code provisions concerning common bawdy houses have been applied against homosexuals in situations in which they would not have been applied to heterosexuals.

A number of other statutes also effectively discriminate against gay men and lesbians, though they do not specifically refer to homosexuals. For example, section 19 (1) (c) of the Immigration Act still sometimes can exclude gay people because they have been convicted of crimes involving consensual sexual relations, even though heterosexual activity in the same circumstances would not have been illegal. The fact that many laws give special protection or benefits to married people, and that gays

cannot marry also has a discriminatory effect. For example, tax laws, unemployment rules, inheritance rights, maintenance duties, and evidence rules regarding marital communications all can have the effect of distinguishing between gay couples and heterosexual married couples.

Finally, a number of laws exist which do not necessarily have the effect of discriminating against gay men and lesbians, but which are dangerously vague and can be applied in a discriminatory way. For example, many laws governing admission to professions such as law and teaching require that the applicant be "of good moral character", which could be applied to exclude gay men and lesbians.

Physical abuse

The known cases of gay people who have been beaten and physically abused are frequent enough to indicate the embedded nature of homophobia in parts of our society. The remedies against assault in the Criminal Code are typically ineffective for gay people because of anti-gay feelings (and often outright harassment) on the part of the enforcement agencies themselves, and because of the unwillingness of gay people to press charges knowing that they are without institutional support, and that

their jobs, housing, and social contact may be automatically jeopardised if their different sexual orientation is publicised.

Private discrimination

Although the Charter is governmental in nature, there is a substantial amount of private discrimination. We briefly outline discrimination in two areas -- employment and access to services -- in order to demonstrate further the disadvantaged position of gay men and lesbians in our society.

Employment discrimination against lesbians and gay men is in many respects exactly the same as discrimination against other minorities: a refusal to apply the same standards of competence and reliability to one group of people that are applied to others. For example, parents may wish to "protect" their children from teachers of whom they disapprove -- just as they did with political or religious minorities.

Many gays are integrated into the workforce, rather than forming an economic underclass (although, of course, lesbians face discrimination on the basis of both gender and sexual orientation). Even so, many of us are forced to live in fear that we will be "found out", and summarily dismissed. Our

consequent need for secrecy thus makes it impossible for us to speak out for our own dignities and rights.

The same situation applies in housing and services. It is difficult enough for gay singles to obtain housing from some landlords, let alone gay couples. Hotels suddenly find they have no vacancy when a gay couple seeks accommodation. Public houses exclude patrons they suspect of being gay. Office buildings and community centres arbitrarily refuse to rent to gay organisations. Insurance companies refuse to insure us, demand higher rates, or require extra policies not demanded of heterosexuals. Hospitals may refuse visitation privileges in intensive care units to the long-term lover of a gay individual. Printers refuse to print newsletters of gay political organisations. Major newspapers openly refuse advertisements placed by gay organisations. Radio stations refuse to broadcast public service announcements of gay organisation meetings. Various media regularly vilify us, and then deny us the opportunity to reply.

In the present circumstances, gay people are either vulnerable to discrimination, or are forced to try to escape such oppression by concealing their sexual identity. Neither alternative can be countenanced in a democratic society. The first alternative offends the principle of minority rights. The second alternative is surely one of the most oppressive forms of

discrimination -- to pressure people into lives built around deception and lies. Imagine what it would be like for heterosexuals to be either exposed to unjustified discrimination against them, or to be forced to conceal their husbands and wives from co-workers, to never be truthful about their home lives.

III The Case for Change

A society which designs its political institutions on the basis of birth, race, or other status is obviously less desirable than one which designs those institutions on the premise of equal respect and concern for all of its citizens, a respect and concern accorded them simply as human beings. A person has a fundamental right if that right is necessary to protect her or his dignity or standing as a moral person equally entitled to concern and respect. This concept includes the idea that there are ways of treating a person that are inconsistent with recognising him or her as a full member of the human community, and holds that such treatment is profoundly unjust.

Furthermore, disrespect for the law itself is discouraged if we expect conformity to the law without at the same time providing egalitarian human rights protection under its auspices. That is, laws in Canada are not effective simply because they may be enforced by applying coercive sanctions, but also because they are consistent with the basic principles upon which our political system is founded. Given the traditional presuppositions of a democratic society such as ours, we submit that an individual's sexual orientation is no more a justified reason for denying human rights than is race, ancestry, religion, marital status, or gender. As a minority group, homosexuals are as deserving of protection from

discrimination arising from social prejudice as are members of other minority groups. The examination of five common arguments against proposals to include protection on the basis of sexual orientation will confirm this point.

1) It is sometimes claimed that gay people voluntarily choose to engage in homosexual activity, and therefore do not deserve legal recognition. This argument would also apply to discrimination on the basis of religion, which is included in the draft Charter. Mere voluntariness is not in itself a deciding factor.

Moreover, while there are many schools of thought about the causes leading to homosexuality and about whether a homosexual orientation is or is not immutable, it is clear that one's sexual orientation at some stage becomes a very basic part of one's personality. We seldom hear that heterosexuality is a voluntary course of activity which can be changed at will. The claim that human rights should be denied because homosexuality might be modifiable is highly offensive to gay people. Certainly, religious or political minorities would react strongly to any suggestion that they deserved no rights since their views could be changed by means such as aversion therapy. Gay people are offended for the same reasons.

The only possible defense for this line of argument must

assume that homosexuality is harmful to others. Yet the Criminal Code recognises that private sex between consenting adults shall be free from adverse legal concern (at least to some extent). However, the media continue to give publicity to two old and completely unfounded notions: that gays are child molesters, and that they try to "recruit" adolescents into homosexuality. In fact, the heterosexual population, taken as a whole, is nine times more dangerous to children than homosexuals. Dr Judd Marmor, past president of the American Psychiatric Association, and a world-famous authority on sexual disturbances, has stated:

The popular assumption that homosexuals constitute a threat to young children is a myth; in fact, the seeking out of children as sexual objects is much less common among homosexuals than among heterosexuals.

Over 90% of all sexual offences involving children are committed by male adults against female children. It should be pointed out that no one thereby argues that heterosexuals in general should be denied human rights. Those incidents involving male children are frequently committed by men who have also committed offences against female children. (Virtually no women, including lesbians, are involved in these offences.) The original assumption tries to cast an aspersion on gay people by confusing homosexuality with paedophilia. The overwhelming majority of gay people, just as the majority of heterosexuals, have no sexual interest in young children, and agree that all children deserve to be protected from sexual assault.

Forbidding child molestation is the relevant strategy, not denying human rights to either the general heterosexual or homosexual population. Indeed, it should be obvious that the general denial of such rights is an ineffective, and even a counterproductive, means of child protection.

The other frequently heard accusation is that gay people "recruit" adolescents into homosexuality. Although researchers do not agree on the causes of either heterosexuality or homosexuality, there is general agreement on what does not cause it. One cannot "recruit" either a gay person to heterosexuality or a heterosexual person to homosexuality. Any cases apparently to the contrary do not demonstrate the supposed efficiency of "recruitment", but rather raise the question of whether one began with a heterosexually or homosexually oriented person in the first place. Sexual orientation is a basic given in everyone's personality -- probably determined by as yet unknown very early childhood experiences and possibly genetic, hormonal, or environmental factors -- and is not susceptible to arbitrary manipulation or chance interventions. A single or short-term series of either homosexual or heterosexual experiences is not predictive of an individual's permanent sexual orientation.

Moreover, any homosexual or heterosexual problems of recruitment can be dealt with by means of normal

professional procedures, and by criminal and juvenile law. Again, there is no justification for denying human rights to either the heterosexual or the homosexual population as a whole.

2) It is sometimes claimed that the prohibition of discrimination on the basis of sexual orientation would conflict with more basic rights. But that is not an argument against including that right in the Charter. There will many occasions in which the rights set out in the Charter will be balanced against one another. For example, the Criminal Code provisions concerning hate literature require a balancing of the right to equality against the right of free speech.

It is not acceptable to discriminate against someone merely because he or she is a Jew or a Native person. Where discrimination of any kind occurs, the onus should be on the discriminator to prove that the right to equality should be limited in order to protect some other right.

3) It is sometimes claimed that explicit protection of lesbians and gay men is not needed. In rebuttal, we refer the reader to our above description of the ongoing (though largely submerged), legally permitted, anti-gay discrimination in Canada.

Indeed, Canadian courts have been consistently shown to be extremely conservative in cases involving human rights. For example, the British Columbia Human Rights Code was narrowly interpreted by the Supreme Court of Canada in Gay Alliance Toward Equality vs. The Vancouver Sun. The absence of a specific sexual orientation clause in an enumeration of protected minorities would undoubtedly cause many judges to conclude that the drafters of the Charter did not intend to include protection for gay people.

4) It is sometimes claimed that the inclusion of sexual orientation would be too costly. But a Charter of Rights is a statement of principles of a democratic society. Moreover, discrimination itself has high social costs, both financial (e.g., welfare to a person unreasonably denied employment) and intangible (e.g., the psychological effects of the fear of discrimination, and of the pressure to "pass" as a heterosexual).

5) Finally, it is sometimes claimed that the inclusion of a sexual orientation clause is too far ahead of present social attitudes. This does not appear to be the case. For example, a Gallup Poll in June, 1977, indicated that 52% of Canadians were in favour of including sexual orientation; only 30% were opposed. Support for such legislation has come from public agencies, corporations, women's organisations, labour unions, municipalities,

school boards, religious groups, bar associations, and political groups. (See Appendix A for a list of supporting organisations). These groups represent a broad spectrum of Canadian society. Their support illustrates the change in attitudes toward homosexuality in recent years, and indicates that the Canadian public is ready today to extend to gay men and lesbians the same basic protection that other minority groups in this country enjoy. Indeed, support for the inclusion of sexual orientation clauses has not proven to be any sort of political liability. For example, Quebec recently amended its human rights charter to include sexual orientation without important incident.

In fact, those adamantly opposed to the inclusion of sexual orientation constitute a small (albeit highly vocal) minority, many of whom would oppose any Charter of Rights on other grounds.

We are not saying that the majority does or does not endorse homosexuality as a way of life, but rather that they genuinely accept the principle of supporting the rights of a minority. It is important to recognise the difference between saying that someone has a right to do something, and saying that it is the "right" thing for that person to do. The question of discrimination because of sexual orientation is a human rights issue in the first sense only. Regardless of their personal feelings about

homosexuality, the majority of Canadians recognise that democratic civil liberties require the elimination of anti-gay discrimination. Just as the native Indian needs protection from racism, and women need protection from sexism, gay people need legal protection from homophobia. Ultimately, unfair discrimination offends the civil genius of our community and cannot reasonably be perpetuated by the public institutions themselves.

It is our conviction that gay people are equal in dignity and moral worth to all other human beings, and that they are equally capable and deserving of sharing in the privileges and responsibilities of full citizenship. The present absence of explicit protection in the Draft Charter is tantamount to serious denial of our fundamental rights as human beings, and cannot be countenanced. There is no utilitarian, legal, or moral justification for the continued exclusion of lesbians and gay men from our society.

IV Recommendations

It is essential that the Canadian Charter of Rights and Freedoms protect the rights of gay men and lesbians. Previous sections of this brief have documented the existence of discrimination against gay people both by private individuals and by public officials. In addition, there are still instances in which federal and provincial statutes operate in a manner that discriminates against gay men and lesbians. Of course, the protection provided by a constitutional charter of rights cannot solve all these problems, and for that reason gay groups have proposed other legal reforms including amendments to federal and provincial human rights statutes. But the Charter can eliminate some of the sources of discrimination, and can serve to set an example for all members of our society. Gay men and lesbians do not seek any special treatment, but we do assert the right to protection on the same basis as all other citizens. In addition, we urge that the Charter be modified so that the rights it sets out can be effectively enforced. A number of changes are required to achieve these goals.

The right to equality

Section 15 (1) of the Charter provides that: "Everyone has the right to equality before the law and the equal protection of the law without discrimination because of race, national or ethnic

origin, colour, religion, age, or sex." (emphasis added) The most obvious interpretation of this wording is that only the named types of discrimination are prohibited. While other interpretations are possible, experience with section 1(b) of the existing Bill of Rights suggests that the courts will interpret the right to equality narrowly if the wording of the section allows.

Surely, the right to equality should itself be granted on an equal basis to all people. The right to equality does not give any kind of immunity to anyone. It merely provides that laws affecting any person or group must be non-discriminatory and must fulfil a legitimate governmental objective. There is no reason for excluding certain kinds of discrimination from this protection.

We recommend that section 15 be amended to make clear that the right to equality protects against all forms of discrimination. If a list of prohibited grounds is included, the wording should be changed so as to clearly show that the purpose is not to exclude other forms of discrimination from the protection the section provides. The wording proposed in paragraph 2.4 of the submission of the Canadian Human Rights Commission achieves this purpose, and has our strong support.

In addition, we support the recommendation of the Canadian Human Rights Commission that "sexual orientation" be included in any

list of prohibited grounds. If the purpose of the list is to identify groups that historically have experienced discrimination, gay men and lesbians should be included. If the purpose is to identify types of discrimination affecting large numbers of people, again, gay men and lesbians should be included. Finally, if the purpose is to direct the courts to give protection where they otherwise might not, it is especially important that "sexual orientation" be added to the list. Earlier sections of this brief have outlined the failure of the courts to extend legal protections to lesbians and gay men. We have shown that the attitude of the judiciary is behind that of the general population. It seems unlikely that the courts would interpret the right to equality as failing to protect against racial or religious discrimination, but there is a real chance that they would not interpret section 15 as protecting gay men and lesbians, particularly if that section included a list of prohibited grounds and "sexual orientation" were not on that list.

Other restrictions in the Charter

The Charter is worded in such a way that all of the rights it sets forth may be severely restricted, if not abolished altogether. These weaknesses affect everyone, and they have been examined in detail in other submissions to the Committee. We wish, however, to briefly outline some of them, and to point out ways in which they would particularly affect gay men and

lesbians.

1) Section 1: This section provides that the rights declared are subject to "such reasonable limits as are generally accepted in a democratic society with a parliamentary system of government." Judicial interpretation of the existing Bill of Rights suggests that the courts may interpret this section as authorising laws that violate the Charter as long as they are duly enacted by Parliament or a provincial legislature and purport to represent the will of a democratically elected majority.

Popular majority groups seldom need constitutional protection. We need a bill of rights to protect minorities from the intolerance sometimes expressed by the majority, and to guarantee everyone the freedom to express unpopular views and to work for unpopular causes. In short, we sometimes need protection from the will of the majority. Section 1 may well deny protection when we need it most. We recommend that section 1 be deleted.

2) Frozen concepts: Many sections of the Charter state that a person "has the right to ..." certain protections. This seemingly innocuous wording is dangerous, for there is judicial authority to the effect that similar wording in the existing Bill of Rights authorises the continuation of restrictions on rights that existed when the Bill of Rights

was enacted. A similar approach to the Charter would condone all limitations on rights that exist as of the time the Charter becomes operative. That danger affects everyone, but it is especially likely to affect gay men and lesbians, whose rights are presently restricted in very substantial ways. We recommend that the language be changed to make clear that the scope of the right is not limited by existing restrictions.

3) Authorised violations: Several sections of the Charter, including those protecting against searches (section 8) and unreasonable bail (section 9), can be denied "on grounds, and in accordance with procedures, established by law." That means there is no limit on the power of Parliament or provincial legislatures to restrict or abrogate these rights. The criminal process has been used in the past and is still used as a means of oppression of gay people. We recommend that these sections be amended to give meaningful protection to those subjected to the criminal process.

4) Remedies: The only remedy provided by the Charter is to declare an existing statute inoperative. Many violations of the Charter, however, will be caused by improper conduct of public officials rather than repressive statutes. It would almost certainly be a police officer, not a statute, who would deprive a person of the right to be informed of the cause of arrest (section 10(a)) or the right to retain

counsel (section 10(b)). Cruel and unusual treatment or punishment might be imposed by a statute, but often the violation would be caused by prison officials who instigated such treatment or tolerated inhumane prison conditions. Usually, it would do no good to declare a law inoperative in those circumstances, for the law would not be the source of the problem. We recommend that the Charter include remedies for violations that result from the conduct of public officials as well as those caused by legislation. Courts should have the power to order officials to comply with the Charter, and they should be able to award damages for violations of the Charter, to exclude evidence gained as a result of illegal conduct, and to punish those intentionally violating the Charter.

This matter is of particular importance to gay men and lesbians, since prejudice against gays and lesbians on the part of law enforcement officials and other public authorities is not uncommon.

In addition, we recommend that an independent Commissioner be appointed to assist private individuals in enforcing their rights under the Charter. Often, enforcement of the provisions will require expensive and time-consuming litigation that is beyond the resources of many individuals. If the Charter is to effectively protect all people, rich and poor alike, it is necessary that an

official be appointed who is responsible for enforcement of the Charter. Sections 17-21 of the Proposed Bill of Rights for Manitoba (shown in Appendix B) might serve as a model for the establishment of such an office.

Omitted rights: the right to privacy

Nowhere in the Charter is there any protection of the right to privacy. That right is of particular importance to gay men and lesbians, whose private lives have often been made the subject of regulation and public scrutiny. United States courts have interpreted the U.S. Bill of Rights as protecting the right to privacy, and that right has helped to protect individuals from governmental regulation of matters that are of no legitimate public concern but are of importance to the individual. The right to privacy has not, however, been generally established by Canadian legal authority. An explicit statement of that right should be included in the Charter.

Appendix A: Public Support

A broad spectrum of important organisations has publically supported the principle that persons should not be discriminated against, in employment or other matters, by reason of their sexual orientation, and have urged civil rights legislation that would ensure homosexual citizens the same protections now guaranteed to others. This appendix contains a partial list of these organisations.

Academic associations

Canadian Association of Anthropologists and Sociologists
Canadian Association of University Teachers
Ontario Secondary School Teacher's Federation
Faculty Associations of the Universities of Ottawa,
Windsor, Waterloo, and Carleton University.
Non-discrimination clauses re faculty employment
at Simon Fraser University and the University of
British Columbia
Ontario Conference of University Faculty Associations

Civil liberties organisations

Canadian Federation of Civil Liberties and Human Rights
Associations
British Columbia Civil Liberties Association

Family service organisations

Planned Parenthood Federation of Canada
Sex Information and Education Council of Canada
Mental Patients Association of British Columbia

Government organisations

Canadian Human Rights Commission
Ontario Human Rights Commission
Quebec Human Rights Charter

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Labour unions

Canadian Labour Congress
British Columbia Federation of Labour
Canadian Union of Public Employees (Saskatchewan)
Canadian Union of Public Employees (Ontario)
Non-discrimination clauses in many union contracts

Legal organisations

Canadian Bar Association
Law Union of British Columbia
Vancouver Community Legal Assistance Society
Westminster Community Legal Services Society

Municipalities (non-discrimination clauses in hiring policy)

City of Ottawa
City of Toronto
City of Windsor

Political parties

Liberal Party of Canada
New Democratic Party of British Columbia
New Democratic Party of Canada

Religious denominations

Anglican Church of Canada, House of Bishops
Metropolitan Community Churches of Canada
Society of Friends (Quakers)
United Church of Canada

Women's organisations

Advisory council of the Status of Women
British Columbia Federation of Women
National Action Committee on the Status of Women
Vancouver Status of Women

Major organisations in the United States

American Association for Advancement of Science
American Bar Association
American Anthropological Association
American Civil Liberties Union
American Federation of Teachers
American Medical Association
American Psychiatric Association
American Psychological Association
American Public Health Association
American Sociological Association

Democratic Party
Lutheran Church of America
National Council of Churches
National Education Association
National Organization of Women
United Church of Christ
Unitarian Universalist Association
Young Women's Christian Association
Cities of New York, Boston, San Francisco,
Washington (DC): non-discriminatory clauses
in hiring policy.

Appendix B: Proposed Bill of Rights for Manitoba

The following proposal for a Bill of Rights for Manitoba was written by Walter Tarnopolsky, and is reprinted in The Constitution and the Future of Canada, published by the Law Society of Upper Canada as a Special Lecture (1978).

A Proposed Bill of Rights for Manitoba

PART I

1. It is hereby proclaimed that in Manitoba every person shall have the following fundamental freedoms:

- (a) freedom of thought and opinion;
- (b) freedom of conscience and religion;
- (c) freedom of expression and communication;
- (d) freedom of assembly;
- (e) freedom of association.

2. Every adult Canadian citizen who is resident in Manitoba shall have the right to vote, and to be a candidate for election to elective public office.

3. (1) Every person shall be entitled to equality before the law and the equal protection of the law.

(2) Subsection (1) shall not be so applied as to exclude affirmative action taken on behalf of disadvantaged persons or groups.

4. Persons of ethnic or linguistic groups shall have the right to enjoy and promote their own culture, and to use their own language.

5. (1) The freedoms and rights proclaimed in sections 1, 2, 3 and 4 may be subject only to such limitations as are prescribed by law and are reasonably justifiable and humane in a democratic and pluralistic society.

(2) The burden of proving that a limitation referred to in subsection (1) is reasonably justifiable and humane lies upon the person asserting that such limitation was necessary.

6. The Legislative Assembly of Manitoba shall not continue beyond five years from the day of the return of the writs for the choosing of the Legislative Assembly, subject to being dissolved sooner by the Lieutenant-Governor, or to a continuation, when the Governor General in Council declares that a state of real or apprehended war, invasion or insurrection exists, if the continuation is not opposed by the votes of more than one-third of the members of the Legislative Assembly.

7. There shall be a session of the Legislature of Manitoba at least once in every year so that twelve months shall not intervene between the last sitting of the Legislature in one session and its first sitting in the next session.

8. Every person shall have the right of reasonable access to all public information in the possession of all departments, organs, agencies and representatives of the provincial, urban and municipal government.

9. (1) No person shall be subjected to unreasonable interference with her or his privacy.

(2) For the purposes of this section, a search, seizure or intentional interception of communication shall be deemed to be unreasonable interference unless lawfully made:

- (a) in accordance with an order made by a court of competent jurisdiction;
- (b) in accordance with a search warrant issued by a court of competent jurisdiction on reasonable grounds, supported by adequate information describing the purpose of the search and who or what is to be searched;
- (c) in response to circumstances of such seriousness and urgency as to require and justify immediate action without the authority of such an order or warrant;

and in any event, every search, seizure or interception of communications shall be effected with no more force or interference with privacy than is necessary to carry out the provisions of the order or warrant or to meet the seriousness or urgency of the circumstances.

10. (1) No person shall be deprived of liberty except on such grounds and in accordance with such procedures as have previously been established by law.

(2) No person shall be subjected to arbitrary arrest or detention.

(3) Every person who is deprived of liberty shall be treated with humanity and shall not be subjected to cruel and unusual treatment or punishment.

(4) Every person who is deprived of liberty has a right of recourse to *habeas corpus*.

(5) Every person who is arrested or detained shall be provided with:

(a) the reasons for the arrest or detention, and a clear statement of the charges against her or him;

(b) the opportunity to retain and instruct counsel without delay;

(c) information on the rights in paragraphs (a) and (b).

(6) No person arrested shall be detained in custody unless the detention is reasonably necessary to assure the appearance of the person detained at the hearing or hearings into the charges against that person or is otherwise necessary in the public interest.

(7) Every person charged with an offence shall be tried within a reasonable time.

(8) Every person charged with an offence shall be:

(a) presumed innocent until proved guilty according to law; and

(b) entitled to refuse to testify or to refuse to confess guilt.

(9) No accused person shall be held guilty of an offence on account of any act or omission which, at the time of its commission, did not constitute a violation of the law.

11. (1) All courts, quasi-judicial and administrative bodies must act fairly.

(2) Every person shall have a right to fair, effective and authoritative procedures, in accordance with the principles of fundamental justice, for the determination of that person's rights, privileges, liabilities and obligations under the law.

(3) In the determination by any court or by any quasi-judicial body, of any charge, allegation, application or proceeding which could result in a fine, imprisonment, penalty, punishment, the loss or denial or continuation of any opportunity or gain, or in the curtailment of the fundamental rights and freedoms proclaimed herein, every person shall be entitled:

(a) to adequate notice and a fair hearing by a competent, independent and impartial tribunal established by law;

(b) to be represented or defended by legal counsel of that person's own choosing;

(c) to present evidence and examine witnesses on her or his own behalf;

(d) to cross-examine witnesses against that person;

(e) to have the free assistance of an interpreter if the person cannot understand or speak the language used in court; and

(f) to be informed of the rights in paragraphs (a) to (e) inclusive.

(4) Every person who is party to any proceedings before

(i) any court or

(ii) other non-consensual tribunal or

(iii) any administrative board, commission or tribunal to which the parties or any party must by law resort or respond to any non-arbitrary adjudication

is entitled to prosecute an appeal on the merits for error in law or evidence, or the weight of evidence, within the time limitations prescribed by law, to a designated appellate tribunal from a final judgment or disposition in such proceedings; and if no time limitations be prescribed or appellate tribunal be designated then an appeal shall lie to the Court of Queen's Bench within one month of pronouncement or signing of the judgment or disposition appealed from, whichever be the later.

PART II

12. Any provision of a law of Manitoba, whether enacted before or after the coming into force of the *Manitoba Bill of Rights*, as well as any order, rule or regulation subject to being repealed, abolished or altered by the Legislative Assembly of Manitoba, which is inconsistent with any provision in Part I hereof shall, to the extent of any such inconsistency, be inoperative and of no effect.

13. No evidence which has been obtained directly or indirectly as a result of an infringement of one of the fundamental rights and freedoms herein proclaimed, shall be admissible in any court, tribunal, board, commission, or other authority in the Province of Manitoba.

14. Sections 12 and 13 do not apply in relation to a provision of a law of Manitoba as described therein, if any Act of the Legislature of Manitoba expressly declares that such provision shall operate notwithstanding the *Manitoba Bill of Rights*.

15. The fundamental rights and freedoms herein proclaimed shall not be construed so as to exclude, limit, or diminish, any other rights and freedoms of the individual whether under the laws of Manitoba or of Canada.

16. The Attorney-General shall, in accordance with such regulations as may be prescribed by the Lieutenant-Governor in Council, examine every proposed regulation submitted in draft form to the Registrar of Regulations pursuant to *The Regulations Act* and every Bill introduced in or presented to the Legislative Assembly, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Manitoba Bill of Rights* and he shall report any such inconsistency to the Legislative Assembly at the first convenient opportunity.

PART III

17. There shall be a Manitoba Commissioner of Civil Liberties whose function is to investigate alleged contraventions or infringements of the fundamental rights and freedoms herein proclaimed, to attempt to achieve redress of infringements which the Commissioner finds unjustified and, if necessary, to institute proceedings in respect of such infringements.

18. (1) Where pursuant to a complaint, or on her or his own initiative, the Commissioner believes that there may be contravention or infringement of a provision in Part I, the Commissioner shall investigate the alleged act.

(2) Unless the Commissioner determines that the subject matter of the complaint is trivial, frivolous or vexatious, or that some other remedy is reasonably available to the complainant, or the complaint is made more than twelve months after the doing of the act, the Commissioner shall investigate the complaint and determine whether there is probable cause for believing that contravention or infringement of Part I was occasioned.

(3) Should the Commissioner decide for any of the reasons in subsection (2) not to continue the investigation or conduct of the complaint, the Commissioner shall then inform the complainant of the decision and the reasons for that decision.

19. If the Commissioner decides that there is probable cause for believing that contravention or infringement of Part I was occasioned, the Commissioner shall attempt to effect a settlement between the parties, with adequate redress, including a satisfactory assurance from the person who has done an act in contravention of Part I against a repetition of the act.

20. For the purposes of the investigation the Commissioner shall have all the powers available to the Manitoba Ombudsman.

21. If the Commissioner is of the opinion that a person has committed an act which is in contravention or infringement of a provision in Part I, and is unable to obtain a satisfactory settlement of the matter, the Commissioner may institute a proceeding in the Court of Queen's Bench for such relief as may be granted pursuant to section 24, and the proceeding may be instituted and the relief granted without proof of damage or the loss of any economic opportunity or gain.

22. Notwithstanding sections 17 to 21, any person who alleges that her or his right or freedom as proclaimed under this Act has been infringed may institute a proceeding in the Court of Queen's Bench for such relief as may be granted pursuant to section 23, and the proceeding may be instituted and the relief granted without proof of damage or the loss of any economic opportunity or gain.

23. (1) The Court of Queen's Bench shall have power to issue such prerogative writs, equitable remedies, directions, orders, including orders for the payment of compensation, by way of special, general or punitive damage, as may be appropriate for the enforcement of any of the rights or freedoms conferred by Part I, and for the proper compensation of any one injured by contravention or infringement of such rights and freedoms.

(2) For the purposes of subsection (1), where the contravention is committed in the course of employment, the employee shall be jointly and severally liable with his employer or employers.

24. Notwithstanding the provisions of section 23, all courts, tribunals and public authorities in exercising any power accorded by the Manitoba Legislature or under the laws of Manitoba shall, whenever it is pertinent to do so, give effect to the provisions of the *Manitoba Bill of Rights*.

25. The Crown is bound by the provisions of the *Manitoba Bill of Rights*.