

WHAT DO LESBIANS WANT?

Do you want

- to be able to sponsor your partner for immigration?
- to be able to benefit from your partner's dental plan?
- to be able to get married?
- to be able to insist on access rights to a child of a relationship you were in?
- to be required to support your partner or your partner's children after separation?
- to have automatic sharing of matrimonial property?
- to be automatically defined as being in a common-law relationship after a certain elapsed time?

It is not as easy as it first might appear; and until recently, there has been no legal basis for even asking these questions. Precedents are now being set in cases currently brought forward by lesbians and gay men claiming protection against discrimination under the Canadian Charter of Rights. The Women's Legal Education & Action Fund (LEAF) has started to take cases relating to lesbians.

Both the Canadian and British Columbian governments have recently announced their intention to amend their Human Rights legislation to prohibit discrimination on the basis of sexual orientation. The provinces of Ontario, Manitoba, Nova Scotia and the Yukon territory have already amended their legislation.

So what do lesbians want? Is the situation of lesbians, including lesbians of colour and disabled lesbians, different from the situation of gay men, including gay men of colour and disabled gay men? What would an effective alliance between lesbians and gay men look like? What issues are important to lesbians in Vancouver?

Consultations are being arranged in Vancouver, Toronto and Halifax with representatives from LEAF so that people who work with the law can better represent those who don't. For a free-wheeling discussion of what lesbians want and how we want to get it, come to **TAKING THE LAW INTO OUR OWN HANDS** from 9:30 to 4:30 on May 30. This event is sponsored by the Vancouver Lesbian Connection, the Lesbian Working Group and LEAF. For information and a free registration package, call 251-4356.

at the HASTINGS COMMUNITY CENTRE,
3096 E. HASTINGS.

TAKING THE LAW INTO OUR OWN HANDS

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What do lesbians want?

Do you want

- to be able to get your job back if you are fired because of your sexual orientation?
- to be free from psychiatric harassment because you are lesbian?
- to have protection in human rights codes and the Charter of Rights?
- to be able to sponsor your partner for immigration?
- to be able to benefit from your partner's dental plan?
- to be the one to decide what treatment your seriously ill partner will receive?
- to have access to reproductive technology?
- to be able to insist on access rights to a child of a lesbian relationship you were in?
- to be able to get married?
- to be required to support your lesbian partner after separation?
- to be each other's automatic beneficiaries if you or your partner dies without a will?
- to be entitled to share the in the property of your lesbian partner if you split up?

On May 30, Vancouver lesbians are invited to a free-wheeling discussion of what lesbians want from the law and the legal system, and what strategies will get us there. The one day consultation is being cosponsored by the Women's Legal education and Action Fund (LEAF), the Lesbian Working Group, and the Vancouver Lesbian Connection.

LEAF is a national organization which has been involved in litigating equality rights cases for women under the Charter of Rights, and want to discuss legal approaches with lesbians across the country. The Lesbian Working Group and VLC have been active in seeking lesbian legal rights.

The law affecting lesbians and gay men is changing very quickly. The federal government and the BC government have plans to amend their human rights legislation very soon to provide protection from discrimination. What is the best way to accomplish that? Lesbians and gay men are now arguing that the Charter entitles them to the same benefits as heterosexual partners and families. The Ontario government is considering the possibility of entitling lesbians and gay men to enter into a marriage regime.

There has not been much discussion in the lesbian community about what rights we want established under the law, or where to draw the line. Do we want to be "family" for all purposes? What issues are important to lesbians in Vancouver? How do we see ourselves an how do we want to represent our relationships? What strategies do we want to use?

Come and join the discussion TAKING THE LAW INTO OUR OWN HANDS May 30, 1992 9:30 a.m. to 4:30 p.m. at Hastings Community Centre, 3096 East Hastings. Call barbara findlay at 251-4356 by May 16 for a free registration package.

After extensive pressure, both the federal and B.C. governments have indicated that they will be extending human rights protection to prohibit discrimination on the basis of sexual orientation.

The moves have been a long time in coming. The federal government has been on record since 1986 with a commitment to amend its legislation. Recently Kim Campbell, the federal Justice Minister, has been canvassing her caucus for their views on amending the Act. She has been meeting strong opposition from some of her caucus who are morally opposed to protections for lesbians and gay men. As reported in the Vancouver Sun, some caucus members are demanding that if sexual orientation is written into the Act, a section protecting the "traditional family" also be written in. Those caucus members want to prevent claims by lesbians and gay men for "spousal benefits" such as pension plans currently available to heterosexual partners.

In B.C., the recently-elected NDP government pledged protection on the basis of sexual orientation in its budget speech. The previous Social Credit government had actually reduced human rights protection by restricting claims to a closed list of prohibited grounds of discrimination. The list did not include protection for gays and lesbians. Says Susan O'Donnell of the Human Rights Coalition, who was active in drafting a new Human Rights Code for consideration by this government, "If the legislation is enacted in the way we have recommended, B.C. will have the best protection for lesbians and gay men in the country."

Gay men and lesbians have been using the courts to claim equality rights under the Charter of Rights. They have been arguing that the equality guarantees in the Charter of Rights extend to protect lesbians and gay men. And even though the Charter does not list sexual orientation explicitly as a protected ground, some courts have held that because the Charter is opened up it does protect lesbians and gay men.

The problem is that the courts so far are divided about what that protection might mean. In Egan and Nesbit v the Queen, for example, the court held that although sexual orientation is a protected ground under the Charter of Rights, there is no discrimination in legislation which confers old age pension benefits on heterosexual partners (including common law partners) but not on same-sex partners--because the law is conferring a benefit on heterosexual partnerships which have "traditionally been treated as the basic unit of a society upon which society depends for its continued existence".

How to argue for equality for lesbians under the Charter is currently being debated among lesbian feminists. Should lesbians' claims be made on the basis of sex equality? Sexual orientation? Another ground? Gwen Brodsky, a Vancouver equality rights lawyer, says "At this stage it is premature to rule out the possibility of any ground. One of the things we need to establish in the courts is the overlapping character of discrimination. It should be

recognized that anyone discriminatory behaviour may affect a woman on a number of grounds including her sex, family status, marital status, and sexual orientation or sexual identity as some women prefer to call it. The challenge is not to be artificially confined into any one category where that is not fully descriptive of the discrimination that women face."

Brodsky is counsel for EGALE, an Ontario lesbian and gay rights group. EGALE is intervening in the Mossop case currently before the Supreme Court of Canada. Mossop had argued successfully before a federal human rights tribunal that he suffered discrimination on the basis of "family status" because he was denied bereavement leave to attend the funeral of his male partner's father. The tribunal had recognized that same sex partnerships are "family relationships". The Federal Court of Appeal reversed that decision. Rejecting evidence of the different kinds of families in Canadian society, the court said "Is it not to be acknowledged that the basic concept signified by the word has always been a group of individuals with common genes, common blood, common ancestors?"

Says Brodsky, "The issue before the Supreme Court of Canada is whether the law will recognize that lesbians and gay men have people in their lives who they regard as family members."

The Mossop case is being watched with interest by all levels of government. The consequences of Mossop, says Brodsky, will be profound. "If the position of EGALE prevails, it ill mean that in the employment context, family benefit schemes will have to be changed to recognize the family choices of individual employees, or else the schemes will have to be changed so that family-based criteria are eliminated. In the latter case a worker could take leave to attend the funeral of anyone important to her, regardless of any purported family connection."

If the Supreme Court of Canada ultimately holds that the Charter equality guarantees protect lesbians and gay men, all areas of the law will be open for reexamination. Lesbians and gay men would be able to sponsor their same-sex partners under immigration law the way heterosexual partners can. Legislation conferring benefits on heterosexual couples or families could be open to challenge if it does not extend to same sex partnerships. In B.C. MSP legislation has already been successfully challenged under the Charter, in a case called Knodel. As a result, same-sex partners get the same premium break as heterosexual partners do.

The Charter of Rights has seemed the only hope for challenging laws which discriminate against lesbians and gay men in the eight jurisdictions without protection in human rights law. But the federal government recently cut its "Charter Challenges" program, under which disadvantaged groups could get funding to challenge discriminatory legislation.

The Ontario government is in the process of reviewing all of its legislation, policy and programs which create a distinction based

on spousal status, to eliminate discrimination against same sex partnerships. Such a review could have radical consequences for lesbians and gay men. It could mean that lesbians and gay men will be governed by the same matrimonial laws about custody, maintenance, division of property, etc. as common law heterosexual couples are governed by. Lesbians and gay men could register their relationships with the government, and be treated as if they were married.

Do lesbians want to be treated as 'family' or as 'spouses' under provincial legislation? Do they want to be deemed common law spouses after living together for a period of time? Is it possible to pick and choose--to argue for example that lesbians should be able to sponsor their partners under immigration law without being treated as spouses in other circumstances?

The question of how lesbians want to be recognized by the law has not received extensive discussion in the lesbian community, because the likelihood of change has seemed remote and unreal. L.E.A.F., the national litigation group which does feminist litigation, is conducting a three-city consultation to learn what lesbians want from the law and what strategies they want to adopt. There is controversy about what to aim for by way of changes to human rights legislation. Should lesbians be lobbying for inclusion of protection on the basis of 'sexual orientation', or is that a term which hides lesbian oppression by lumping it together inappropriate with the oppression of gay men? In arguing on behalf of lesbians under the Charter, should we be advancing lesbians' equality claims as sex equality? As equality for lesbians? What difference will it make in the long run?

In Vancouver, there will be a day long consultation "Taking the Law into Our Own Hands", co-sponsored by L.E.A.F., Vancouver Lesbian Connection, and the Lesbian Working Group. Says Hazel Hazelton of the Lesbian Working Group, "The Lesbian Working Group is very excited by the day because it will give Vancouver lesbians a chance to hear what the issues are and to participate in developing the position of our community". She noted that the day would also lead up to the OUrRights conference, the second Pan Canadian Conference on Lesbian and Gay Rights, planned for Thanksgiving in Vancouver.

The law is catching up with lesbians. If lesbians are to have a say in how the law develops, the time is now.

The consultation "Taking the Law into Our Own Hands" is May 30, 9:30 to 4:30, at the Hastings Community Centre, 3096 East Hastings. Preregister by May 16 by calling 251-4356 for a free registration package.

barbara findlay is a white lesbian lawyer in Vancouver.