

rights. What witnesses told us about the experiences of homosexuals in Canada indicates that they do not enjoy the same basic freedoms as others. Their sexual orientation is often a basis for unjustifiably different treatment under laws and policies, including those at the federal level, and in their dealings with private persons. We have therefore concluded that "sexual orientation" should be read into the general open-ended language of section 15 of the *Charter* as a constitutionally prohibited ground of discrimination.

The Canadian Bar Association expressed the view in its brief to the Committee that sexual orientation is one of the more obvious unenumerated grounds of discrimination prohibited by section 15. Peter Maloney supported this view when he told us

I think, quite frankly, it is there already. It is not there in the sense that the words "sexual orientation" are there...[but] the legislative history is such that sexual orientation is already included in section 15...

Although we have concluded that "sexual orientation" should be read into section 15, we do not believe that this interpretation fully protects homosexuals in those situations where the equal protection of the law should prevail — as in employment, accommodation, and access to services. Thus we turn to the *Canadian Human Rights Act*.

During our travels across the country, we met homosexuals of all ages, many professions, different religions and various socio-economic backgrounds. We also met their parents and siblings, spouses and former spouses. We found them to express a common concern about the lack of access to facilities, services and economic opportunities. These same concerns were frequently expressed as well by non-homosexuals on behalf of homosexuals.

Sexual orientation is no more relevant to a person's fitness to compete for a given job or reside in particular accommodations than sex, race or religion. Because sexual orientation is a personal matter, it should not be a criterion in determining the availability of services, facilities, accommodations or employment to Canadians. Many organizations recommended to us that homosexuals should be afforded the equal protection of the law, the same as that enjoyed by all other Canadians. Among those advocating this approach were the Canadian Human Rights Commission, the National Union of Provincial Government Employees, Human Rights P.E.I., the B.C. Human Rights Coalition (Vancouver Region), the Canadian Association of University Teachers, the Anglican Church of Canada, Canadian University Press, the Canadian Teachers' Federation, the United Church of Canada, the National Action Committee on the Status of Women, and the Manitoba Teachers' Society. We therefore conclude that sexual orientation should be a prohibited ground of discrimination in the *Canadian Human Rights Act*.

If sexual orientation becomes a proscribed ground of discrimination in the Act, persons alleged to have discriminated on that basis would have the opportunity to rely on the usual defences provided by the Act — that they had simply imposed a *bona fide* occupational requirement or, in cases outside the employment field, that there was a *bona fide* justification for their action. By amending the *Canadian Human Rights Act* to add sexual orientation as a prohibited ground of discrimination, Parliament would be extending the equal protection and equal benefit of the law, which we take to be guaranteed by section 15 of the *Charter*, to homosexuals.