

They maintained that access should be based on capacities or abilities, not one's sexual preference. To continue to allow discrimination on the basis of sexual orientation, they argued, is directly contrary to the values expressed in anti-discrimination legislation and in the *Charter*.

Those who oppose treating sexual orientation as a prohibited ground of discrimination base their position on the moral values they believe are held by many Canadians. They also argue that the presence of homosexuals in many settings has a disruptive effect on those around them. Some suggest that homosexuals attempt to foist their views, and sometimes their practices, on others.

We gave long, careful and serious consideration to all these views. In doing so, we also looked for guidance to the actions taken in Canada and in other jurisdictions to protect homosexuals from discrimination.

Existing Provisions in Canada

The only jurisdiction in Canada where sexual orientation is a prohibited ground of discrimination is Québec. That province adopted its *Charter of Human Rights and Freedoms* in 1975. At that time, a member of the National Assembly tried unsuccessfully to add sexual orientation to the Act. Sexual orientation was eventually incorporated as a prohibited ground of discrimination as part of the 1977 amendments to the Québec *Charter*.

It should be noted that the Québec *Charter* takes precedence over all other legislation unless the other legislation states specifically that it prevails over the *Charter*. The rights guaranteed in the Québec *Charter* are not absolute but are subject to *bona fide* occupational requirements and to reasonable requirements justified by the charitable or religious nature of the institution against which discrimination is alleged.

A review of the Québec Human Rights Commission's annual reports indicates that complaints of discrimination based on sexual orientation have represented only a small proportion of its workload. Between 1978 and 1984, files opened on complaints of discrimination based on sexual orientation varied between one and four per cent of the total number of files opened by the Commission. It should be noted that this figure does not reflect the percentage of complaints *received* by the Commission — many complaints are withdrawn, settled, determined to be unfounded or abandoned because the complainant or respondent is untraceable.

The following situations illustrate the type of cases the Commission has dealt with successfully: the dismissal of several teachers because of their sexual orientation, the refusal of a newspaper to publish a classified ad for a homosexual club, the harassment of several homosexual waiters by a restaurant manager, the lowering of a student's mark because he was homosexual, and the refusal of a Roman Catholic school commission to rent a meeting room to a homosexual rights group.

Although Québec is so far the only jurisdiction in Canada where sexual orientation is a prohibited ground of discrimination, the experience of many human rights commissions has led them to conclude that sexual orientation should be a prohibited ground. The commissions in Ontario, Manitoba, Saskatchewan, Alberta and British Columbia have all proposed that sexual orientation be covered by their respective human rights acts. The Canadian Human Rights Commission has recommended, in every annual report from 1979 to date, that the *Canadian Human Rights Act* be