



*Equality Issues  
in Federal Law  
A Discussion Paper*



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## VIII — Sexual Orientation

Sexual orientation is not an enumerated ground of discrimination under section 15 of the *Charter*. Courts in the United States have held that neither the prohibition of sex discrimination in the *Civil Rights Acts* nor guarantees of equal protection in the Constitution protect homosexuals, lesbians or transsexuals. Present Canadian jurisprudence seems to support the proposition that a prohibition of sexual discrimination does not encompass discrimination on the basis of sexual orientation. Quebec's is currently the only human rights legislation in Canada to specifically include sexual orientation as a prohibited ground of discrimination.

Distinctions on the basis of sexual orientation are not made on the face of any federal legislation. However, there are policies excluding homosexuals and lesbians from such bodies as the Canadian Armed Forces.

The Forces will not enrol a homosexual or a lesbian. An individual found after enrolment to be a homosexual or a lesbian is discharged, normally on an honourable release. This policy is consistent with those of the armed forces in the United Kingdom, the United States and the Federal Republic of Germany.

The Canadian Forces give a number of reasons for this policy. The first is that Canadian military personnel serve outside the country with the United Nations and NATO. In a great many cases, homosexuals or lesbians would be ineligible for such service because of the laws or the social mores of the host country.

The second reason given is that employment of homosexuals and lesbians would be disruptive to the efficiency of the Forces; their presence in situations where personal privacy is most difficult or impossible — in isolated postings, in communal life in barracks, on board ship, in the field and so on — often results in physical attacks on them.

A third reason often given is that homosexuals and lesbians are at greater risk of subversion by authorities of foreign countries whose interests are inimical to those of Canada and its allies. Such persons are either directly or indirectly subject to blackmail. Experience over the years has demon-

strated a degree of vulnerability and, therefore, unless and until social attitudes change considerably, it is impossible to place homosexuals or lesbians in security-sensitive positions.

Other reasons are given, such as the significance of a cohesive force, adherence to majoritarian values and public image.

This policy raises the question of whether refusal to employ a man or woman because of his or her sexual preference is consistent with the equality guarantees in section 15 of the *Charter*.