

ROADS TO EQUALITY
LES VOIES DE L'ÉGALITÉ

PANEL 3 - P.M. - THE LEGAL PROFESSION

LESBIANS AND GAYS IN THE LEGAL PROFESSION

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LESBIANS AND GAYS IN THE LEGAL PROFESSION

There are no surveys or studies about the experience of lesbians, gays and bisexuals in the legal profession in Canada. There is no basis upon which to present a rigorous fact based argument. There are no seminars, no retreats, no training manuals. I came upon but one student essay, as yet unpublished, and that is really a work in progress, albeit a good one.(1)

The CBA has devoted substantial resources to the issue of equality of opportunity for women but, to my knowledge, nothing to the problem and issues faced by lesbian and gay lawyers or the visible minorities. This official silence is mirrored by a private one. Lesbian and gay lawyers have yet to establish an official voice within the profession. Only in the past three months has there been talk about starting a subsection in Ontario. To my knowledge, there are no unofficial discussion groups or ad hoc committees of lesbian and gay lawyers whose focus is to study problems within the profession. There certainly are groups dealing with all variety of legal issues of interest to the lesbian and gay community, but none dealing with workplace conditions.

In summary I have nothing to offer except my own opinions, somewhat informed, I hope, but certainly unscientific.

If there are no complaints and no evidence of complainants, some may conclude that there is no problem in the profession. However, that the consensus opinion among lesbians and gays is exactly the opposite, this silence is proof that lesbians and gays in the profession fear that openness will undermine their position at work. Notwithstanding this, I believe that there is a consensus among lesbians and gays on a basic position regarding the legal profession which can be extrapolated from the position of lesbians and gays in society in general and what ought to be done to improve it.

The Judiciary

I believe the lesbian and gay community would be virtually unanimous in its insistence that open lesbians and gays be appointed to the Bench. I know of none. I believe that you will hear this demand from all spectrums within the gay and lesbian

1) *Pamela Shine, University of Toronto, Faculty of Law. Research is continuing and Ms. Shine would be pleased to hear from open or closeted lawyers willing to be interviewed about their experiences on or off the record.*

represent a viewpoint more progressive than that which politicians in Ontario are able to express.

On the other hand, there are numerous examples of judicial attitudes that are out of date. To pick but one example, the Ontario Divisional Court recently heard and rejected the application of two gay men to be married under the Marriage Act. The majority held that these gay men were not discriminated against because they were, after all, as able as all members of society to marry someone of the opposite sex. This approach reduces equality to a useless and stupid abstraction. Lesbians and gays want and deserve more than just an abstract and formal equality. We want equal rights, not just to be abstract gays and lesbians, but to be able to do all the things in daily life that people do in real life on an equal footing with the rest of society.

The Judiciary needs a little enlightenment in a hurry.

The Workplace

Lesbians and gays have a rapidly growing impatience with conditions which make work life unjustifiably difficult and perhaps intolerable. At the risk of making a difficult problem seem trivial, they demand the right to feel good about themselves at work. They are angry they should bear the burden of staying silent about their personal lives for fear of offending or disturbing their workmates. Lesbians and gays pretend to have boyfriends and girlfriends, pretend they love people they don't, make false conversation about their private lives, manoeuvre to avoid heterosexual intimacy that might be embarrassing, invest immense energy creating and maintaining a respectable cover personality. The mapping of daily activities has to be carefully arranged to avoid the many circumstances where exposure is at risk. It is difficult to convey to straight folk the burden of all this. It's not like anything. The massive personal effort required to keep up appearances is psychologically, personally and professionally debilitating.

But the phenomena of "the closet" is bigger than those endeavours to hide identity altogether. Some people may be "out" but in form only. Once the basic fact is alluded to nothing is said. Instead of a pretence of a straight identity a shroud of silence is tossed over the secret life. Formal tolerance is established but it is in reality refined ostracism. At an everyday level this means, for example, we can all talk about Christmas but I can not speak of who came to Christmas dinner with me. You can speak of Saturday's wedding reception but I ought not to speak of Pride Day. It's not logical to ask the question whether this discrimination is better or worse than that suffered by people of colour or the

Official Sanction

If we turn to the question of what should be done, again we confront the problem that the nuances of closet politics are so complex and varied that it is extremely difficult to find a bottom line. Sympathetic straight people ask, "What can I do?" I presume the point of this discussion is that the Canadian Bar Association is preparing to ask the question, "What should we do?"

In my view, the response required at the present time is more than sympathetic and friendly chat and informal acceptance of lesbian and gay colleagues. I suggest that there is an urgent need to devote effort to what might be called institutional safeguards of tolerance and acceptance. It would make a great deal of difference if your office made it official that same sex health benefits should be enshrined. Recruiting material should indicate directly gay positive attitudes. Lesbian and gay charities should find their way on to the official office donation list. Equal time off for same sex family problems should be declared. Office parties should be declared open to same sex partners. No particular move is more decisive than the others. The cumulative effect will be to give certainty and permanence and official sanction to an attitude of tolerance and acceptance. I strongly suspect that as these policies are put in place by enlightened straight people, those good souls will discover lesbian and gay friends they never knew. I'm also quite certain that those offices will be strengthened in a thousand unexpected ways. The CBA's Gender Equality Programme is completely practical in its approach to the problems of discrimination against women. These modest suggestions are equally focused on the nuts and bolts of working conditions and fringe benefits and don't really require much effort.

The Quality of Justice

There is another interesting debate that underlies this whole discussion. It poses the question whether women, lesbians and gays, people of colour or the disabled, have some qualitatively different frame of mind than your average straight white male lawyer who is the benchmark of success and probity in our profession. I am loathe to ignore this substantive question, however, its complexities and value judgments are hotly disputed. The issues can not readily be condensed for presentation here and I do not feel any licence to summarize or generalize about the views of the lesbian and gay community. But I would offer these entirely personal observations in conclusion.

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FROM THE PERSPECTIVE OF "RACE"

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