

The Importance of Respecting the Human Rights of Lesbians

Notes for NAWL's presentation to the
Standing Committee on Justice and Human Rights

15 March 2000

The National Association of Women and the Law (NAWL) is a national, non-profit, feminist organization that has worked to improve the legal status of women in Canada through research, law reform and public legal education for over 25 years. Our membership is comprised of lawyers, academics, students, and others who actively pursue women's equality.

NAWL recognizes that each women's experience of inequality is unique due to race, class, sexual orientation, disability, age, language and other factors. In NAWL's view, a just and equal society is one which values diversity and is inclusive of it. We are committed to working collectively and in coalition with other groups to dismantle barriers to all women's equality.

NAWL and its nationwide caucuses have appeared before many parliamentary committees, royal commissions, and taskforces on diverse matters including, but not limited to, family law, tax law, employment law, women's health, the federal budget and numerous subjects addressing violence against women including the recodification of the criminal code. NAWL played an important role in securing equality rights in the Charter of Rights and Freedoms. NAWL has also participated in United Nations processes to secure and to use international conventions to safeguard women's equality. Given our interest, expertise and experience in matters affecting women's equality, NAWL is pleased to be appearing before this Committee reviewing the Modernization Bill.

Lesbians are women who sometimes experience a heavy burden of prejudice, disrespect and violence by the virtue of the fact that we prefer to love and live with other women. Coming out at any time is to make oneself vulnerable and open to disapprobation, discrimination and violence. Silence and invisibility is often the only viable strategy, yet it carries a heavy toll and places us in a position of constant vulnerability.

Lesbians share specific experiences with women, as women. Lesbian sexuality is systematically represented in the pornographic form, lesbians get raped, sexually harassed in the workplace, fired when pregnant and dependant on child support and we share the same social and economic status of other women. Lesbians suffer from sexist wage discrimination and from a male dominated division of labour, we feel the brunt of racism and the edge of poverty. The fact that we are lesbians may make us more vulnerable to the different forms of discrimination and sometimes, paradoxically, it may help us to confront it.

We are women who, most of us willingly, have stepped outside the bounds assigned to our gender. And yet, we fall in love, commit to relationships, create families and sometimes have kids together. Lesbians yearn to be recognized, and have their individual and collective realities honoured and respected. In this we aspire to universal claims to dignity and freedom. This Bill is a symbolic step in that direction.

Bill C-23 presumably purports to establish formal equality for gay and lesbian couples. While we do not discount the value of formal equality, this Bill is incomplete and it fails to live up to its own promise. Indeed, it maintains the ongoing ban on lesbian and gay marriage, despite the fact that the Supreme Court has stated that governments must respect the equality of same-sex spouses

We are also concerned that this Bill will negatively impact the substantive equality rights of lesbians. NAWL has not had the opportunity to conduct an in-depth study of this Bill, given the expeditive nature of the process relating to this Bill.

We are concerned by the omissions in the recognition of equality rights of lesbians in family law, and the apparent lack of coordination between the federal, provincial and territorial governments on necessary reforms in the area of adoption, custody and access, the fair division of property rights and matrimonial assets for example.

NAWL fears that the changes to the definition of spouse in the Income Tax Act will result in a tax grab for the government. Although some lesbians will pay less tax, many will pay more and this will result in an overall benefit to the government.

In particular, those in relationships where both partners have relatively low incomes will lose the most. Entitlement to the GST tax credit and the Child Tax Benefit is based on joint family income and as the income of the couple increases, entitlement to either of these tax credits diminishes and disappears. This will mean loss of the GST tax credit for many of those with low incomes who are currently receiving the credit as individuals. The negative impact is most likely to be experienced by lesbians because women tend to earn less than men.

Lesbians couples in which one partner is economically dependent on the other will benefit from being included as common law partners because they will have access to the spousal tax credit and be able to transfer unused tax credits to their partners.

However, we are concerned that this Bill will in effect force some lesbians to live within a patriarchal family model, that is predicated on one partner executing most of the unpaid labour in the family and thus becoming a “dependant”. Because of government cuts to public services, there have been more and more demands on the unpaid labour traditionally done by women in the family. Lesbian families have to deal with these same pressures, and they will now have fiscal incentives as well as legal imperatives to structure themselves like traditional families. This traditional division of labour has not been beneficial to wives, often placing them in a position of limited economic freedom, social isolation and vulnerability to spousal violence. Will lesbians ultimately benefit from this model?

In the present context where the state is relying more heavily on the family and on the spouse to provide basic economic security and social services, and where recent Supreme Court decisions in the area of family law have been expanding the scope of the spousal support obligations after divorce (*Moge, Bracklow*), it would seem that lesbians will be thrust in a system where they will have to start suing each other for support and compensation. What interests do lesbians have in relinquishing their claim against the state and relying primarily on their spouse and their families? This is a question that is indeed of concern to all women.

Past experience has shown us that forcing women to rely on their spouses and ex-spouses for their basic economic and social well-being is not an avenue of empowerment and equality and it makes us more vulnerable to abuse of power and spousal violence. This approach also guarantees class and race inequalities and posits that each woman's right to have her needs met, will be determined by the means, situation and, to a large extent, good-will of her ex-husband. Forcing women to depend on their spouses for their basic economic security places us in a position where our human rights entitlements are subjected to individual will and capacity.

NAWL considers that we need to collectively reassess the economic role of marriage in Canadian society, in light constitutional *Charter* and international human rights law obligations relating to individual rights to universally accessible and publicly funded social security programs.

The Supreme Court of Canada has clearly stated that government action must not limit itself to formal equality: law and policy must be tailored by taking into consideration its effective impact on the substantive equality rights of disadvantaged groups that are protected by section 15 of the *Charter*. We have concerns that this Bill may not ultimately achieve this objective.

NAWL recommends that at the very least, a Preamble be drafted for this bill, on the model of the Preamble to Bills C-49 and C-46, acknowledging past and ongoing discrimination against lesbians and women, and clearly stating government's intention to achieve the effective

protection of lesbians substantive equality rights.

We also recommend that a tailored opting out provision be added to the Bill, to allow for lesbian autonomy and choice vis-à-vis the heterosexual model of the family.

Finally, should this Bill be adopted in the absence of full and complete analysis of its impact on substantive equality rights on lesbians, NAWL recommends that a commitment to evaluate the Bill's impact within a five year time-frame be included in its current provisions.