

20th CONSTITUTIONAL CONVENTION  
May 16<sup>th</sup> to 20<sup>th</sup>, 1994

POLICY STATEMENT

**SEXUAL ORIENTATION**

## INTRODUCTION

1. The labour movement must play a key role in promoting a vision of fairness, decency, and equality for all. Fighting all forms of discrimination is and must continue to be a major priority for us, in society, in the workplace, and in our own unions. The struggle for lesbian and gay rights is an essential part of this work.
2. As a result of strong pressure from activists inside and outside the labour movement, significant changes have taken place in an historically brief period of time. In the past decade and a half, the recognition of lesbian and gay rights has evolved in jurisprudence and legislation to the point that seven provinces and one territory include sexual orientation in their human rights codes as a prohibited ground of discrimination, and the Canadian Human Rights Act has had sexual orientation "written in" by the courts. Moreover, in a cautious and grudging way, the rights of same-sex spouses to spousal benefits is being recognized in some jurisdictions. But this slow, agonizing process is far from over, and is in constant danger of being reversed. (The spousal benefits issue was very nearly dealt a fatal blow by Kim Campbell last year when she proposed to formally include sexual orientation as a form of discrimination in the Canadian Human Rights Act but also insisted on a restrictive, heterosexist definition of "family".)
3. This gradual progress can be seen internationally as well; for example, in Denmark, lesbian and gay couples are legally recognized as equivalent to heterosexual couples except for purposes of adoption of children; and in Australia, lesbian and gay relationships are in practice recognized for purposes of immigration sponsorship.
4. And this evolution can also be seen in labour's increasing awareness of the importance of lesbian, gay and bisexual rights. As long ago as 1980, a Convention of the Canadian Labour Congress passed a resolution calling for the inclusion of sexual orientation in provincial human rights codes, the Canadian Human Rights Act and the Canadian Bill of Rights, and encouraging its affiliates to bargain for the inclusion of sexual orientation in the no-discrimination clauses of their collective agreements. In 1986, another Convention resolution called for the CLC to work with other organizations to seek human rights amendments on sexual orientation, and to develop a policy on lesbian and gay rights.
5. In 1990, further resolutions called for same-sex benefits to be a collective bargaining priority, inclusion of sexual orientation in the Canadian Human Rights Act, and for the creation of an educational kit for affiliates to educate our own activists on lesbian and gay rights. The 1992 CLC Human Rights Policy Statement reaffirmed labour's opposition to homophobia — hatred of homosexuals — and noted that: "As unionists, we must strive to learn, to teach and to accept the diversity that enriches the fabric of our society and to fight for equal rights for all."

6. We can only do that effectively, however, if those of us who are heterosexual, not just those of us who are lesbian, gay or bisexual, truly understand what is at stake. We are not dealing here with an abstract concept which we can all hurriedly agree to and then move on to "real" issues. We are talking not only human rights, but union rights; not only society in general, but our own rank and file.
7. As the 1993 OFL Convention Equality paper put it: "The only way to resist a right-wing backlash ... is to continue to push for the rights of all workers — wherever they were born, whatever their gender, orientation, skin colour or language, and whether they are presently unionized or not... In this climate we are in danger of losing a lot more than our jobs — we are in danger of losing our values and our dreams."
8. An energetic commitment to action by the labour movement on lesbian, gay and bisexual rights is the next necessary step in the struggle for equality. Let us begin by making the attempt to understand the issue in human terms.

## THE CONTEXT OF HOMOPHOBIA AND HETEROSEXISM

9. Those who ask for equality are accused of wanting 'special rights' and dismissed as coming from 'special interest groups', when all they are demanding is equal rights, equality with the only special interest group which isn't **called** a special interest group — the one against which they are constantly being measured. The white, able-bodied, middle-class heterosexual male is still the definition of what is "normal". Those who don't measure up are harshly judged.
10. When we as trade unionists understand how pervasive this definition of 'normal' is, it is possible to begin to see the links between racism, classism, sexism, ableism **and** compulsory heterosexism. Homophobia and heterosexism reinforce the 'norm' of heterosexuality and help perpetuate discrimination against lesbians, gay men and bisexuals.
11. Homophobia describes any negative personal attitudes or behaviours about homosexuality. Homophobia is reinforced by heterosexism, which describes the systemic belief supported by institutions, such as corporations, the media, the justice, education, health and social service systems, that everyone is heterosexual and that heterosexuality is inherently superior to homosexuality. But, heterosexuality is but one thread within the complex weave of human sexuality. Those who are attracted to members of the opposite sex are heterosexual; people who are attracted to members of the same sex are lesbians or gay men, and those who are attracted to both opposite and same-sex partners are bisexual — all are sexual orientations.
12. But we live in a country where gay men and lesbians are systematically denied jobs and accommodation, are harassed, assaulted, and even killed, simply because of whom they are. Newspaper columnists and talk-show hosts freely and publicly express their homophobia. Some churches and so-called

"community leaders" continue to denounce lesbians and gay men as "immoral" and make smug pronouncements about "family values" to rationalize their institutional hatred of difference.

13. When a lesbian union member was denied special leave to attend to the illness of her partner of 16 years, an arbitrator upheld the employer's decision in 1986 on the grounds that "the universal meaning" of the term "common-law spouse" in the collective agreement was a heterosexual relationship. (Whose universe?) When Revenue Canada stubbornly insists to this day that registered pension plans will not be permitted to provide same-sex benefits; when children are taken from their lesbian mothers in custody battles by courts for whom the traditional patriarchal family structure is the norm; when union members who pay the same dues are denied spousal coverage solely on the basis of their sexual orientation, and cannot sometimes even obtain permission to go to the funeral of their loved one — we should ask ourselves how this systemic discrimination can be tolerated any longer, and why it has been up to now.
14. The personal costs of such vicious discrimination are incalculable.
15. In such a context, one can only wonder at and admire the courage of gay men, lesbians and bisexuals. Now it is time for the rest of us to show some of that same courage, and to stand in solidarity with our gay brothers and lesbian sisters.
16. Lesbians, gay men and bisexuals are everywhere: they work beside us, they are active in our unions, they are our neighbours, they are church members, community activists, elected officers, and politicians. They are our mothers, fathers, brothers, sisters, spouses, and our friends.

## THE TASKS OF THE LABOUR MOVEMENT

17. We in the labour movement must fight homophobia in a number of arenas. **Negotiating collective agreement language** to ensure that all members have the same rights and receive the same benefits must be a priority. **The workplace** must be kept free of homophobic harassment. **Political action** is required as well, and **public campaigning** on the issue. We must be prepared to take **legal action** to obtain rights and benefits denied by discriminatory statute. Within our own ranks, **gay and lesbian participation in the union** should be encouraged and promoted. **Education** is essential, both to prepare our activists for concerted and effective work in this area, and to counter homophobia which too often discourages gay and lesbian members from active participation in the union. Finally, the active **participation of all of our rank and file** in confronting and eliminating discrimination against lesbians, gay men and bisexuals in the labour movement, in the workplace and in society, is a necessary goal to be achieved if we hope to be effective.

## NEGOTIATING COLLECTIVE AGREEMENT PROVISIONS

18. Unions are not only morally responsible to fight discrimination against gay, lesbian and bisexual rank and file; they are beginning to be found legally responsible as well. In the Mossop case, a Canadian Human Rights Tribunal found that both the union and the employer had discriminated against the complainant when he was denied bereavement leave to attend the funeral of his partner's father. The tribunal noted: "This approach recognizes the reality that the negotiation and resolution of a collective agreement are a joint effort and that both parties, as signatories to the collective agreement, are legally bound by the final product of that effort (whether or not... it is morally acceptable to one or the other)... The fact is that both parties, for whatever reasons, opted to sign the collective agreement as opposed to pursuing whatever other avenues were open."
19. No-discrimination clauses are a first step, although they do not in themselves solve the problem of discrimination in the workplace, either by managers or, regrettably, by union representatives. Nor will such contract language prevent the denial of many employment benefits to same-sex spouses and their families.
20. Ways must be found to negotiate around discriminatory legislation such as the Income Tax Act, under which insured benefits such as a registered pension plan, a group sickness plan, a private health services plan, a supplementary unemployment benefit plan, a deferred profit sharing plan and a group term-life insurance policy are tax-free for heterosexual spouses. If same-sex spouses are included in any such plan, the plan could lose its special tax status. This is presently being challenged at the Supreme Court level by CUPE. In the meantime, equivalent coverage by alternate means should be negotiated for gay and lesbian members.
21. Non-insured benefits, such as family-related leave, bereavement leave, adoption leave, care and nurturing leave, relocation expenses, flight passes and so on, must also be made equally applicable to lesbian and gay members.
22. (It is also worth stating that, because lesbian and gay members are denied benefits based upon marital or family status as a result of the heterosexual definition of the word "spouse", they are in fact subsidizing other members with their dues.)
23. Care must be taken to ensure that such contract provisions are and remain a priority during the collective bargaining process. They must not be seen as bargaining chips to be given up for advances in other areas. We cannot permit contract negotiations to divide our membership, at the very time that unity and solidarity are most called for.

## **THE WORKPLACE**

24. While the employer is legally liable to maintain a harassment-free workplace, it is the responsibility of the union to ensure that this obligation is upheld. Union

representatives and local officers should be available to assist gay, lesbian and bisexual members suffering harassment — not be part of the problem themselves. It is important that affiliates sensitize their activists to the issues of homophobia and heterosexism, and ensure that they understand their duties to the membership in this respect.

## **POLITICAL ACTION**

25. Labour must play a significant role in helping to create a context in which gay men and lesbians can achieve equality in society. One cannot be equal in the workplace but unequal outside it. The forces which rob lesbian, gay and bisexual members of their collective agreement entitlements are exactly the same forces which make the world outside the workplace oppressive and often dangerous for those brothers and sisters.
26. We must, therefore, work closely with organizations representing lesbians, gay men and bisexuals, and other equality-seeking groups, to lobby for legislative changes which would remove legal discrimination against gay men, lesbians and their families. We must also actively pursue the recognition of multiple and intersecting grounds of discrimination in human rights legislation at all levels of government.
27. We must seek to have lesbians and gay men included in employment equity programs. We must ensure an active role for and on-going consultation with gay and lesbian members.

## **PUBLIC AWARENESS**

28. The fight against homophobia must be a public and visible one. Our movement will be sending a strong message for necessary social and political change by campaigning vigorously in this area. We must play our part in developing a public intolerance of homophobic acts and heterosexist practices, from gaybashing to denial of spousal benefits.

## **LEGAL ACTION**

29. Significant legal victories such as the Haig and Birch decision which had sexual orientation "written into" the Canadian Human Rights Act have already been won. Other challenges of a heterosexual definition of "spouse" are pending. But there is no indication that employers such as the federal government will give up their fight against equality. Unions should be prepared to allocate resources to carry on the struggle in the legal sphere as a necessary part of an over-all strategy for change.

## **GAY AND LESBIAN PARTICIPATION**

30. The labour movement must be a welcoming place for our lesbian sisters and gay brothers. Through a Lesbian, Gay and Bisexual Rights Working Group, a sub-committee of the Human Rights Standing Committee, recommendations will be made to the CLC Executive Council on how lesbian, gay and bisexual members can play a more active role within the CLC, the federations, labour councils and affiliates.

## **EDUCATION**

31. Education about homophobia and heterosexism must be given priority in union education programs, not only in human rights courses, but as an integral part of the educational process from steward training onwards. We cannot hope to confront discrimination against gay men, lesbians and bisexuals unless we are willing to ensure that our own movement is informed and sensitized on this issue. Too often lesbians, gay men and bisexuals report instances of homophobia within their unions which are as serious and damaging as any they have experienced. It is a clear and urgent responsibility of the labour movement to clean house in this regard.

## **PARTICIPATION OF ACTIVIST RANK AND FILE**

32. Fighting homophobia is not the responsibility of gay, lesbian and bisexual members alone, any more than fighting racism is the exclusive responsibility of visible minorities and aboriginals, or fighting ableism is up to people with disabilities, or fighting sexism is a woman's job (!) To fight for lesbian and gay rights is the obligation of every rank and file member. To this end, the leadership of the labour movement should encourage, on a continuing basis, the participation of rank and file activists in on-going activities for gay and lesbian and bisexual rights, in the workplace, in the union, and in the community.

## **CONCLUSION AND RECOMMENDATIONS**

33. As indicated, the labour movement can and should play a key role in the achievement of lesbian, gay and bisexual rights. This is an integral part of the new approach to unionism which is essential if we are to survive as a vital force in society. Not only does it help to involve yet another marginalized section of our membership, but it makes another link with the wider society in the general struggle to implement a people's agenda. This building of true solidarity is the test of our ability to grow and move forward in the difficult years ahead.
34. Lesbian, gay and bisexual activists within our unions and in the community will settle for nothing less than this solidarity. They look to their heterosexual sisters and brothers to join with them in common cause to work for a society free of fear, free of violence, free of discrimination, oppression and exploitation. Gay or

straight, we must struggle together to defeat homophobia and heterosexism as part of our struggle to build a genuinely democratic society.

35. With this goal in mind, the CLC will:
  - a. establish a Lesbian, Gay and Bisexual Working Group as part of the Human Rights Standing Committee and facilitate the holding of caucuses at CLC conventions and conferences; such caucuses will not be scheduled at times which conflict with other equality caucuses.
  - b. work to facilitate the development of an active network of members who are lesbian, gay and bisexual.
36. The CLC will, and calls upon affiliates, federations of labour, locals and labour councils to:
  - a. read anti-harassment statements, which include sexual orientation as prohibited grounds, at conventions, conferences and all union functions.
  - b. ensure complaints of harassments are investigated and dealt with expeditiously.
37. The CLC, with affiliates, federations of labour, locals and labour councils, will:
  - a. work and participate in public campaigns with organizations representing lesbians, gay men and bisexuals and other equality-seeking groups to lobby for change in human rights legislation and other discriminatory laws to ensure equality. This will include changes which recognize multiple and intersecting grounds of discrimination in human rights legislation at all levels of government.
  - b. participate visibly in gay, lesbian and bisexual pride parades across the country.
38. The CLC will and calls upon affiliates, federations of labour, and labour councils to:
  - a. prepare and distribute education material, including modules which will be integrated within on-going education courses on lesbian, gay and bisexual rights.
  - b. prepare and implement an education program for CLC officers and staff on heterosexism, homophobia and multiplicity of experience.
39. The CLC encourages and calls upon affiliates to:
  - a. make a priority of bargaining collective agreement provisions which will ensure protection for and recognition of members in same-sex spousal relationships and their families.

- b. actively oppose homophobia and heterosexism in the workplace and in the union.
- 40. The CLC will:
  - a. report to the 1996 CLC Convention on implementation of this policy paper.
- 41. "The CLC clearly understands that sexism, racism, ableism and heterosexism share common roots. We acknowledge that we can change attitudes and behaviour if we stand united; we know we will fail if we allow ourselves to be divided. We believe that we can be unified without uniformity and that we can celebrate our diversity without divisiveness. We will strive to achieve a truly inclusive union movement that is representative of all of its members."