

COME OUT AGAINST A BAD DEAL

30 September 1992

Dear friends,

As you know, Canada is once again embroiled in a Constitutional debate. We are writing to you because **we believe this deal will take away hard won gains by lesbians, gays and bisexuals.** We urge you to work with the progressive "no" campaigns in your area and to speak out against the harm it will do to our community.

The problem lies in the Canada Clause. This clause would be section 2 of the Constitution Act 1867 and would express "fundamental Canadian values". It is, by the governments' own admission, an interpretive clause and, in their own words, "would guide the courts in their future interpretation of the entire Constitution, including the Canadian Charter of Rights and Freedoms". Practically speaking, the Canada Clause would take precedence over the rest of the Constitution. This creates, in effect, a hierarchy of rights: we are equal and entitled to freedom from discrimination, but those of us who are mentioned in the Canada Clause are more equal than the rest of us. It will come as no surprise to you to learn that the protection of the rights of lesbians, gays and bisexuals does not constitute a fundamental characteristic of Canada. We are not alone in this. People with disabilities and people dependent on social assistance, among others, are similarly dismissed.

Caselaw overwhelmingly supports section 15 Charter equality rights for lesbians, gay men, and bisexuals. Courts have repeatedly ruled that section 15 guarantees equal protection and benefit of the law without discrimination based on sexual orientation. Section 15 of the Charter is the legal underpinning for major victories such as Haig and Birch, in which the Ontario Court of Appeal held that sexual orientation must be read into the Canadian Human Rights Act, and Leshner, a benefits case, in which it was established that the Ontario Human Rights Code must accord equal recognition to persons in same-sex relationships as it does to persons in opposite-sex relationships. Notwithstanding these and other significant gains, lesbian, gay and bisexual equality rights are still very new and fragile. By failing to explicitly affirm our rights, the Canada Clause makes our equality rights extremely vulnerable to attack and erosion. We are more vulnerable to attack and discrimination. For the first ministers to expect lesbians, gays and bisexuals to remain silent in the face of a Canada Clause that is profoundly harmful to us and could easily be amended to include us, is unconscionable.

The Charlottetown agreement is bad for lesbians, gays and bisexuals, bad for all Canadians. There are many reasons to oppose this deal. We urge you not to succumb to the scare tactics and fear mongering of some elements of the "Yes" campaign, to ask yourself why, if the deal is so good, they will not discuss its substance. Read the agreement (in the absence of a legal text, you'll have to obtain the summary). Speak out against the harm this deal does to our community. Start your own "No" campaign or work with those organized by the National Action Committee on the Status of Women or other progressive voices opposing the agreement. Go public with your objections. If, in the end, you decide that you can support the deal, insist that it be amended to protect those of us currently left out in the cold.

This deal hurts the most vulnerable - persons with disabilities, people dependent on social assistance, the elderly, aboriginal women, racial and ethnic minorities, lesbians, gays and bisexuals... Please work with us to build a better country, one where we are all equal, where all of us count.

Diane

Diane Kilby
for the Association of Lesbians and Gays of Ottawa

Anne

Anne Molgat
for the Lesbian Issues Committee, National Action Committee on
the Status of Women