

Gay rights not needed, court told

Groups want ruling turfed

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Sexual orientation is a lifestyle choice, comparable to getting married or having children, and it should not be included in human rights legislation, the Alberta Court of Appeal was told Wednesday.

Lawyer Gerald Chipeur, representing the Evangelical Fellowship of Canada, says Delwin Vriend has not been denied any charter rights.

The Individual's Rights Protection Act provides fair treatment to any person, regardless of sexual orientation, he said.

The act "does not draw distinctions between heterosexual and homosexual persons and it does not have a different impact on gay and lesbian persons that is distinct from others in society."

The fellowship was one of three interveners supporting the Alberta government's appeal of Court of Queen's Bench Justice Anne Russell's decision declaring the act unconstitutional because it doesn't include sexual orientation as a prohibited ground of discrimination.

The Focus on the Family Association argued the Alberta legislature has taken no action to authorize, permit, condone, approve or mandate discrimination on the basis of sexual orientation. Therefore, the act can't be said to violate the charter.

The charter was enacted to constrain government activity, not to generate legislation, argued Tom Wakeling for Focus on the Family. And the charter does not require laws to control private activity.

Dallas Miller, representing the Alberta Federation of Women United for Families, said Russell was wrong to take judicial notice that homosexuals are discriminated against.

There was no evidence of that put before her, and there should have been, he said.

But Robert Abells, lawyer for the Jewish Federation of Canada, intervening on Vriend's side, said Russell was correct to conclude that homosexuals are discriminated against.

"Evidence is not required because the truth is notorious.

THE CASE

■ Jan. 28, 1991: Delwin Vriend is fired as a lab instructor from King's College because he is a homosexual.

■ Six months later he was told he couldn't complain to the Alberta Human Rights Commission because sexual orientation is not protected under the Individual's Rights Protection Act.

■ He then applied to the Court of Queen's Bench, saying the act infringes upon the Charter of Rights and Freedoms because it doesn't include sexual orientation.

■ April 12, 1994, Justice Anne Russell said the act was unconstitutional and sexual orientation must be read into it.

■ On Wednesday, an Alberta Court of Appeal panel made up of Justices J.W. McClung, W.E. O'Leary and C.D. Hunt reserved its decision on the government's appeal of the Russell decision.

There will always be people who don't believe the Holocaust happened and that homosexuals aren't discriminated against. It simply isn't true."

Abells said the Vriend case "is not about sexual morality as Mr. Chipeur would have you believe."

"It's about whether or not homosexuals have the right to be protected from discrimination."

Bill Pentney, a lawyer representing the Canadian Human Rights Commission, said the Vriend case itself provides evidence that a homosexual was discriminated against.

"Delwin Vriend was fired from a job he was doing well simply because he is a homosexual. That's what human rights laws were put in this country to stop."

"We are all diminished as a society by the exclusion of groups from this protection. We are all equal in dignity and rights."

Shirish Chotalia, with the Alberta Civil Liberties Association, an intervener on Vriend's side, agreed the case centres on an issue of fairness.

"Homosexual Albertans deserve to be treated fairly. That's what the judgment said."