Stigma and employability: discrimination by sex and sexual orientation in the Ontario legal profession*

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Identical résumés, differentiated only by sex and sexual orientation, were mailed to Ontario law firms, in application for an articling position. The response demonstrates the existence of discrimination by sex and sexual orientation in the Ontario legal profession. Implications for the administration of justice in Canada are explored.

Research into discrimination against racial minorities has developed a large and sophisticated literature in the United States. This study contributes to two areas that have attracted much less research attention: the investigation of employment discrimination in Canada and discrimination by sex and sexual orientation.

Popular wisdom asserts that discrimination against women is a thing of the past; a growing furor (especially in the United States) opposes so-called ‘reverse discrimination,’ fearing penalization of white and/or male job seekers. The findings of this study affirm that, on the whole, women have yet to attain footing equal to that of males applying for articling positions with Ontario law firms. Little systematic investigation has been devoted to discrimination against gay people. Representatives of provincial governments have at times chosen to interpret this dearth of evidence as lack of discrimination, redefining the complaints of gay

organizations as non-problems. Findings presented here attest to systematic discrimination against gay-labelled applicants for articling positions with Ontario law firms.

METHOD

A résumé was prepared appropriate to an applicant for an articling position. ‘Articling’ is a necessary stage in a legal career. It follows three years of legal schooling and constitutes an ‘internship’ or apprenticeship of ‘in-the-field’ work with a legal firm, prior to admission to the bar. The résumés were identical, apart from the sex of the applicant ‘Thomas Trent’ or ‘Susan Trent’ and sexual orientation. The latter was indicated by the addition, under ‘Personal Background,’ of the line ‘Active in (local) Gay People’s Alliance’ for ‘gay-labelled’ applicants, and omission of the line for ‘nonlabelled’ applicants. The four equal categories of résumés (nonlabelled male, gay-labelled male, nonlabelled female, and gay-labelled female) were randomly distributed to every Ontario law firm listed in Martindale-Hubbell (1976).

FINDINGS

Employer responses were initially divided into five categories: 1/interview offers; 2/explicit rejection; 3/other rejection; 4/deferral; and 5/no response. None of the responses rejecting the application explicitly mentioned the sex or sexual orientation of the applicant as the ground for rejection. The second category, then, contained no responses. Deferrals were few and did not vary with the sex or sexual orientation of the applicant. The most salient finding was the preponderance of the ‘other rejection’ category for all applicants. Even the most favoured category of applicants received only a 19 per cent positive return (i.e. interview offer) on applications sent. The magnitude of the ‘no response’ category paralleled that of the ‘other rejection’ category, suggesting that ‘no response’ may indicate discrimination. In other words, both female and gay-labelled applicants received higher rates of both ‘other rejection’ and ‘no response,’ than nonlabelled male applicants.

For ease of presentation, categories 2, 3, 4, and 5 have been cumulated: tables show percentages of interviews offered in each application category. We assume that offering an interview is indicative of the willingness of the employer at least to consider the applicant employable.

The response rates are broken down by employer’s location in Table II. About one-half of Ontario law firms are located in Toronto, permitting a convenient bifurcation between employers located in the centre (Toronto) and periphery (other cities in Ontario, none of which is greater than one-fifth the metropolitan population of the centre.)

DISCRIMINATION BY SEX

Breakdown of the interview-offer rate between centre and periphery reveals an important difference: anti-female discrimination appears to be concentrated in the

* This paper was written with the assistance of a law student at the University of Windsor and was presented to the Canadian Sociology and Anthropology Association, May, 1978 in London, Ontario.
received twice as many interview offers as lesbian applicants (nonlabelled males received 2.3 times as many). The centre-periphery breakdown reveals the same profile as for gay men: anti-gay discrimination is greatest in the highly competitive centre. The nonlabelled female rate rises to 3.5 times the lesbian rate (2.9 times for the nonlabelled male rate) in Toronto. The apparent trend toward ‘affirmative action’ for women in Toronto law firms clearly holds for only nonlabelled applicants. Lesbian-labelled applicants remain excluded from any pro-female benefit. Again, as for gay men, lesbian employability improves considerably in the periphery where the nonlabelled female rate edges lesbian employability by 1.2 times (and by 1.8 times for the nonlabelled male rate).

In Toronto, gay male and lesbian applicants share equally minimal chances of being offered interviews, that is, only 1 out of 22 applications in each case.

### Employability in Centre and Periphery

Only the interview-offer rate for (nonlabelled) females varies from the overall trend to greater discrimination in the major metropolitan centre. The rate for (nonlabelled) female applicants to law firms outside Toronto is 0.8 times the Toronto rate.

Employability of the three other groups improves in the periphery. The positive response from outside Toronto for nonlabelled males equals 1.4 times the Toronto rate; for lesbians, 2.3 times; and for gay men, 3.9 times. These figures lend support to including gay people in the LGB (last in, first out) syndrome, where minorities (and often, women) suffer most in the tight labour market situation of high unemployment.

### Double-Stigma Discrimination: Lesbians

The figures indicate that ‘double-stigma’ discrimination is no simple cumulation of the degrees of discrimination exercised separately according to each label. While a trend toward ‘affirmative action’ for (nonlabelled) women appears in Toronto, lesbians (labelled as such) do not benefit at all, but share the abysmal status of gay men. Lesbian and gay male employability improves outside the highly competitive metropolitan area. Where being female is destigmatized and made something of an asset through ‘affirmative action’ employment, lesbians (labelled as such) experience no alleviation of discrimination. The gap between (nonlabelled) female employability and lesbian employability in Toronto is the most striking of all the differences.

### Conclusions

Survey studies of gay people report the existence of employment discrimination. Saghir and Robins (1973: 128) found among the members of their sample that ‘in only [sic] 30% the reasons for being fired were directly or indirectly related to homosexuality.’ Weinberg and Williams (1974: 98) found 30 per cent reported on-the-job problems related to homosexuality, but a smaller 16 per cent job-loss rate (cf. Crew, 1978; Adam, 1978).
Levinson (1975) documented the practice of employment discrimination by recording the responses of employers to men and women applying by telephone for a variety of male and female-identified positions. This study reveals systematic, discriminatory practices against identically qualified applicants differentiated only by sex.

Discriminatory practices of the legal profession point to wide-ranging ramifications extending well beyond the concerns of articling students. Laws in Ontario and other Anglo-American jurisdictions have traditionally disabled women in a number of ways (cf. Zuer, 1976). Canadian laws not specifically directed against gay people (such as those concerning 'gross indecency,' 'obscenity,' 'common bawdy houses,' and public notices) have recently been reinterpreted by the courts to further encroach upon the limited freedoms retained by gay people. Saghir and Robins' (1973: 165-7) interviews with members of homophile organizations reveal that 37 per cent had suffered arrest under anti-gay statutes. Entrapment accounted for 24 per cent. In addition, while a similar proportion of homosexuals and heterosexuals were arrested for nonsexually related offences, homosexuals tended to be imprisoned and put on probation more often (cf. Weinberg and Williams, 1974: 108; Dannecker and Reiche, 1974: 368).

Today's articling students are tomorrow's lawyers and the next generation of judges. The intolerance demonstrated in this study by the Ontario legal profession suggests a systematic bias practised against women and, even more so, against gay people by the Ontario judiciary. Such hiring practices clearly function to perpetuate this legal-judicial partiality and exclude women and gay people from the administration of justice. Saghir and Robins' finding of judicial bias against gay people in the United States is likely duplicated in Ontario courts.

NOTES

1 Preliminary results indicated an unexpected contamination rooted in the research design. Three-quarters of gay applications to one small city received interview offers—the same city listed as the applicant's home and as the location of the applicant's law school. This result indicates either: 1/ extraordinary liberalism in the employment practices of the city's law firms; or 2/ a desire to discover the self-identified homosexual at the local law school. Interviews offered in order to 'expose' the candidate are likely to be rather poor indicators of employability—perhaps the contrary. All law firms in this city have been eliminated from the final calculation.

2 Excluding Toronto

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