

CANADIAN LESBIANS AND GAYS ON FIRMER GROUNDS: DOORS OPENING TO NEW CLASS OF REFUGEE CLAIMS; GAINING MORE SAFE SPACES?

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This paper will question whether Canada is becoming one of the world's leading safe havens for lesbian and gay populations. This new reality has come about as a result of decades-long public policy changes, popular support for gay lifestyles, and the induction of corresponding jurisdictional reforms. By contrast, previous advances are either stalling or being rolled back in the United States. Increasingly, sexual orientation can even be cited as grounds for seeking the refugee status in Canada. This paper will also highlight important historical milestones, including the role played by the adoption of the Charter of Human Rights and Freedoms in 1982, and touch on media portrayals of homosexuals, and the growing political clout of lesbian and gay communities. Are the human-rights struggles over then?

Key words

Same-sex marriage—Charter of Rights and Freedoms—entrenchment—Supreme Court of Canada rulings—immigration laws—homophobia—discrimination—safe spaces

Introduction

Before delving into historical facts, it might be useful to review some of the recent achievements in the lesbian and gay communities' long battle for equal rights. We need to bear in mind that these recent victories have come against the background of centuries of repression and, referring to the late 20th century, after decades of struggling for equality and “pushing the boundaries” (Kinsman, 2000, 238). In this light, the recent changes tend to appear all the more striking.

In the historical overview, the legal landmarks of this process and the role of Canada's Charter of Human Rights and Freedoms in supporting the theoretical precepts of equality will be reviewed. Ultimately, however, further questions need to be asked: Have all the former prejudices and cases of discrimination been buried then, or are there still vestiges of intolerance? And, more importantly, what is there to strive for next? How is the situation in schools? Have media portrayals of gay lifestyle changed? In achieving equality on paper, did not gay and lesbian communities sacrifice their other goals – of lesbian and gay liberation, for instance?

On the surface of things – huge progress, amazing achievements

In 2008, Canada stood along with Spain as the only country in the world which has put the same-sex marriage on an equal footing with the opposite-sex marriage, with respect to

granting total legal equality: measured by the acquisition of spousal benefits, the right to adopt children, ability to sponsor partners for immigration purposes, etc. Things have been moving swiftly. Less than a decade earlier, in 1999, the Parliament of Canada reaffirmed the hetero-sexual definition of marriage, voting 216 against 55. But within three years, challenges to this definition were upheld by three provincial Superior Courts (Ontario, Quebec and B.C.) Subsequently, the Liberal party cabinet decided against appealing the decisions. In 2003, the Ontario Superior Court struck down the existing law of marriage as discriminatory, redefining marriage as a 'union of two persons.' Finally, in the fall of 2005, in a free vote, after two years of often acrimonious debates, hearings and committee inquiries across the land, the parliament, buttressed by the Supreme Court of Canada, gave the same-sex marriage its green light, voting 158 against 133. According to New York Times, little organized resistance had developed prior to the vote (Krauss, 2003).

Presently, any debate about this issue already seems irrelevant – same-sex marriage is being taken for granted. By 2003, every single province of Canada, in addition to its three northern territories, had come aboard and legalized it. In the same year, Canada had even had its first same-sex divorce. The lawyer for one of the divorcing partners, Martha McCarthy, announced this was actually a historic moment, and not just for Canada, claiming this was the first gay or lesbian divorce in the world (BBC-2, 2004). Interestingly, many gay or lesbian activists have been alarmed that the attainment of legal equality of homosexuals could divert attention from other pressing issues still concerning their communities.

Bringing partners from abroad

Historically, Canadian immigration laws had always discriminated against gay men and lesbians. Until 1977, homosexuals were listed in the categories of persons to be excluded from Canada “along with prostitutes, pimps, or persons coming for these or any other immoral purposes.”(LaViolette, 2004). The immigration policy has favored family reunification by which, until recently, married heterosexual Canadians were able to bring in their spouses from other countries. Now the same privilege applies to lesbian and gay Canadians too.

The new policy, called the Immigration and Refugee Protection Act, together with its accompanying Immigration and Refugee Protection Regulations, has already been tested. Canadian immigration courts have based their favorable decisions on studies examining negative or repressive attitudes to gay lifestyle in other parts of the world, be it in Europe, Asia, Africa or South America, bearing in mind that Amnesty International has been reporting human rights violations against sexual minorities from all across the world. There are few safe havens for lesbian and gay men: in 2005, two young men were executed in Iran for their sexual orientation.

There have already been examples galore. Three homosexual Ugandan Christians who were arrested, beaten and verbally abused in Kampala found refuge in an East Vancouver Anglican church. The Anglican Bishop of Vancouver made a claim that “Canada’s west

coast is now seen by persecuted homosexual Christians in other parts of the world as a welcoming haven.”(Changing Attitudes). There have been cases of Iranians claiming and receiving political asylum in Canada. After settling in Canada, Iran’s Arsham Parsi, a spokesman for Persian Gay and Lesbian Organization, gave a moving speech at Toronto Gala 2006, held by Egale, one of Canada’s best-known Gay National Liberation organizations (Homan, 2006). Parsi was talking about the plight of lesbian, gay, bisexual and transgender (LGBT) people in Iran. Among many other cases, a Mexican gay who was refused asylum in Canada because Mexico is not on Canada’s list of violently homophobic countries, was murdered in his home country after returning there, allegedly because of his sexual orientation (Solidarity Across Borders, 2006).

Paddling away from the US?

Going through a sea of rapid social changes, Canadian society is surging ahead to such an extent that it is moving out of step with the United States, according to New York Times: “As far as the ease with which society changes, Canada is virtually in a category by itself” (Krauss 2003). So far, incomers taking advantage of Canada’s liberal immigration laws for gays and lesbians have been mainly US citizens. Most were attempting to enter into same-sex marriage contracts with citizens of countries where openly gay behavior can lead to discrimination at work and, in extreme cases, physical threats, beatings or imprisonment.

In general, the number of incoming Americans is difficult to estimate, however. Many find jobs in Canada or invest money, and can become resident in Canada without applying for citizenship. Toronto and Vancouver appear to be the most popular destinations. It is also hard to estimate how many among the incoming Americans are gay. The booming Canadian economy and aversion to the politics of George W. Bush have been additional factors in luring the Americans north. Most of these people are well educated and tend to come with financial resources; hence they often do not make it into any government statistics.

Canada has therefore been slowly moving away from its long-standing friend and ally, its guarantor of security and the strongest trade partner, even in the matters affecting gay and lesbian populations. Nationally, two thirds of Americans were against homosexuals to tie the knot in 2004, but this number climbs even higher in the conservative South and Midwest. Clergy and mayors who have defied laws and married same-sex couples faced criminal charges. According to Macleans, gays and lesbians in the US were being denied more than 1 000 rights and protections.

Albert Nerenberg, a Canadian documentary film maker has even produced a film about this phenomenon - Escape to Canada – looking at Canada's recent "freedom boom" when the world's attention focused on the country's legalization of same-sex marriage, movement toward decriminalizing pot and opposition to the war in Iraq. AWOL U.S. soldiers are profiled, as are American "reefer refugees" and gay and lesbian couples flocking to Canada to get married (www.canada.com). In addition to the settlers, many gay or lesbian Americans head north just to get the marriage license. In the US, same sex

couples can legally marry only in Massachusetts while about 40 states have approved laws or amendments barring the recognition of gay marriage. Catering to the nascent demand in Canada are companies and hotels offering gay wedding packages (BBC, Shenker, 2005).

The situation used to be very different back in the mid-sixties of the last century: Canada had not yet decriminalized homosexual activity while the United States seemed to be on a different path: San Francisco’s gay lifestyle was written about all over the world. Yet attitudes must have dramatically changed since then. Even statistics can support this trend. Asked which specific social groups people would not want as their neighbors, Canadians were far less concerned about having homosexuals as neighbors than Americans – by far (Grabb & Curtis, 2005).

FIGURES SHOWING INTOLERANCE TOWARD HOMOSEXUALS (2005)

The survey question	English Canada	Quebec	The US North	The US South
Which social groups wouldn’t you want as neighbors? (as related to gays)	33 %	19%	35%	44%
	Total for Canada:		Total for the United States	
	30%		38%	

Regions Apart: The Four Societies of Canada and the United States (Grabb & Curtis, 2005).

On the other hand, Amnesty International research has documented a huge number of incidents of harassment and abuse against LGBT individuals, even in large cities such as San Francisco. These reports include allegations of rape and other sexual abuse by police officers (Amnesty International). In one of the reports, published in 2006, most of the blatant abuse cases concern transgender individuals. By doing this research, the author came to the conclusion that transgender people have traditionally been exposed to the worst form of abuse, and this topic should be studied in more depth.

Growing political clout?

It was in Quebec, the one Canadian province that has led many of the country’s social and political reforms, that the first openly gay leader of a major political party in North America was elected – Andre Boisclair of Parti Quebecois. During his two years in power (2005-07), Boisclair failed to produce electoral gains for the separatist party and eventually resigned to pursue his other interests: the environment. Prior to being the party leader, he had served in Quebec’s provincial cabinet as environment minister.

Significantly, his “gayness” was not an issue in his resignation or during his tenure; rather, the poor showing of the party was. Critics who had voiced homophobic remarks against him did not fare too well. After attacking Boisclair verbally, radio jockey Louis Champagne was promptly suspended from his job. (Authier, 2007).

Can Boisclair’s brief and not too happy stint at the helm of Parti Quebecois be described as a political achievement for the gay community? Before Boisclair, only two other openly gay politicians managed to hold political posts. One was Scott Brison who has been Member of Parliament in Ottawa since 1967, was Minister of Public Works under Prime Minister Paul Martin, and in 2006 ran unsuccessfully in a campaign to succeed Martin as the Liberal Party leader. The other one was Chris Lea, leader of the Green Party, 1990-96. Winnipeg, meanwhile, was the first major North American city to elect an openly gay mayor, Glen Murray (in 1998).

Perhaps the most encouraging sign ushering a new era may have been a ten-year-old old study by the University of Toronto which determined that being openly gay is not necessarily detrimental to one’s political ambitions – quite the opposite. Voters cynical about Canadian politicians’ honesty are thinking that if someone is courageous to openly admit homosexuality, they must be honest and open as politicians too. In its book form, the research was published by David Rayside under the title *On the Fringe: Gays and Lesbians In Politics*. (University of Toronto News).

Media portrayals shifting – even the NHL is involved

Media portrayals of gay characters have also been developing, changing from subtle insinuations through sanitized versions to perfectly natural. Many gay and lesbian people have been anxious to remind the public at large that they are just “living normal life like anybody else” and that “if only people could realize that their own children could turn out homosexual”, they would realize that (CBC archives).

Now along comes *Breakfast with Scot*, a Canadian family comedy featuring a gay couple, one of whom an ex-NHL star, bringing up a precocious openly-gay teenager. The NHL and the Toronto Maple Leafs let the filmmakers use their logos, first time ever the NHL has endorsed a film with an overt homosexual theme. The NHL spokesperson Bernadette Mansur explained the organization did not see the film as “groundbreaking”, commenting: “This is not a movie that’s making any statement about homosexuality. This is a story of a modern family raising a precocious child” (Johnson 2007). Normality, point final.

This trend of “normality” seems to be catching on: in the 2006 season of *Sopranos*, there was Vito, “a fat, foul, underhanded, murdering, leather-chaps-wearing breath of fresh air” (Deziel, 2006). Gay-rights organizations had apparently applauded this turnaround. Deziel quoted Damon Romine of GLAAD (Gay & Lesbian Alliance Against Defamation): “The character of Vito proves to people what we’ve known for years. Gay people are everywhere – doctors, teachers and even mobsters.” Gone are the days when gay characters had to “overcompensate with niceness to come across as sympathetic. It

was around the time of *Six Feet Under* that things started to change,” writes Deziel. Similarly, the scheming gay character on *Desperate Housewives* provides quite a break from the two gay guys on *Will and Grace* for instance. In the mainstream media in North America, however, there have been few or no attempts to create shows with lesbian characters.

History as related to legislative landmarks

Aboriginal people of North America had very different perceptions of sexuality and it was only with the arrival of the European settlers that new morality was imported, and words such as *miscreant, sinful, predatory, deviant*, etc., started to be applied to homosexuals. Among First Nations, homosexuality often had a place of honor. Unfortunately, there are few or no written records. In general, First Nations regarded homosexuals and transgender people as having the gift of being able to perceive the world from two opposing perspectives. They were often referred to as “two-spirited people” and were recognized as special because they maintained “balance and harmony by containing both male and female spirits” (Warner, 2002, 34).

When the first French and British explorers, fur traders and missionaries had met up with Canada’s Aboriginal cultures, they were shocked by the power of women and by the “openness and respect accorded to sex between males and between females...in some cultures there were more than two gender groupings. Alongside what could be described as ‘men’ and ‘women’, there would be third- and sometimes fourth-gender groupings made up of individuals born male or female who took up some of the work and clothing of the other gender...these mixed or cross-gender groupings were seen as having special spiritual and healing qualities as well as being able to bridge the divide between men and women.” (Kinsman, 2000, 216). Further, Kinsman quotes researchers positing that a crucial part of the attempted marginalization of the First Nations was the destruction of their indigenous sexual and gender practices.

Nation-building after the creation of Canada in 1867 dramatically changed the social paradigms. It is important to recall a number of historical facts and milestones so as to fully comprehend the changes, both evolutionary and revolutionary, that Canada has gone through since its birth and, more appropriately, in the past two decades. The recent process of liberalizing laws dealing with lesbian and gay rights will appear all the more astounding when contrasted with the past. In the first century of Canada’s existence as a nation, the family unit was central to Canadian society. “The nuclear family is the definite metaphor for many nationalisms”, wrote Rankin (2000). “In Canada, the nation-building project produced a legacy of homophobic, racist and sexist public policy including criminal sanctions against homosexual activity.”

Sexuality, it was understood, belonged only to the confines of marriage – a man-and-woman union – whose sole goal was procreation. Homosexuality, on the other hand, was denounced as perversion and declared a criminal act (Bibby, 1990, 17). A conspiracy of silence has robbed lesbians and gay men of their history, it is proclaimed in the Canadian Lesbian and Gay Archives in 1977 (Maynard, 2004, 254).

Correspondingly, the average citizens' attitudes were far from tolerant. In 1950's video clips from the CBC archives, random people addressed on the street talk about "homosexuals being a menace to the society" who should be "locked up", "put away in special institutions such as exist for the insane" or "accept medical treatment". Homosexuality was also referred to as a '*social disease*'. Two homosexuals are interviewed in silhouette to protect their identity: they both point to the fact that their lives are as regular as anybody else's but mention also the reality of gay men not being able to live their personal lives, often suffering from alcoholism or mental problems as a result. Yet change is already announcing itself. In the same clip, a lawyer points out that the current laws are "out of touch with reality". He also speaks of the importance of Dr Alfred Kinsey's studies, in which about 4-10% of the population described themselves as homosexual while about 36% admitted to having had a homosexual experience at least once in their lives (CBC Archives-1).

Midway through the 20th century, the number of people who would dare to openly display homosexual tendencies was negligible. One lone voice belonged to Jim Egan, who had spent his entire life demanding greater public education about homosexuality – his name would emerge in 1995 in the landmark Egan v Canada legal dispute. Overt homosexual behavior was being neutralized "through humor and caustic labels, such as calling them 'fairies' and 'fruits'...the Canadian government had even funded an experiment nicknamed the 'Fruit machine', aimed at developing a reliable system which would detect homosexuality" (Bibby, 1990, 58). Their interest seemed to dwell on monitoring civil service employees in particular.

Same-sex activity came to be associated with '*distinct*' types of people and the emergence of homosexual identities was being matched by more extensive regulation. Canada's Criminal Law, stemming in turn from the English Criminal Code, had contained the offence of '*gross indecency*' since 1980: it made any sexual contact between men a crime, paving the way for intensive police surveillance and legal persecution (Maynard, 2004, 255). Open homosexuality could be punishable by up to 14 years in prison. A 1948 amendment renamed the wording of the offence as '*criminal sexual psychopath*'. All these rather bizarre regulations ignored references to lesbians. Gary Kinsman (1996, 8) states that this omission "reflected the prevailing belief that lesbian sexuality was either non-existent or should not be encouraged by being mentioned".

Only in 1967 was the law amended to exclude consenting adults. It was in the same year, ironically, that the Supreme Court of Canada had denied the appeal of Everett George Klippert, a mechanic's helper serving a life sentence whose admission of his homosexuality led him to be classified as a "*dangerous sexual offender*". A public outcry would follow, the media would start leaning more sympathetically toward homosexuality causes and, subsequently, Justice Minister Pierre Trudeau would be instrumental in pushing forward a law decriminalizing homosexual activity, heralding the change of affairs with his now famous statement that "the state has no place in the bedrooms of the nation."

Rapid changes would not follow, however. Rankin (2000) asserted that the construction and maintenance of pan-Canadian nationalism had demanded that the state remain keenly interested in what was happening in the bedrooms of its citizens. “In fact, the project of defining national identities in Canada has always involved significant attention to the regulation of sexual preferences and practices of Canadians.” Rankin maintained there is “continued exclusion of queer populations from full citizenship rights and membership in the Canadian nation.”

The ‘People’s Charter’ to the rescue

In 2007, it was the 25th anniversary of the Charter of Rights and Freedoms, meaning that most Canadians have lived under its umbrella long enough to be thoroughly influenced by it: in terms of content, the Charter did little more than codify freedoms Canadians already took for granted; procedurally it gave those freedoms a legal status only partially explored at the time of its passage. It is also the charter’s location within the constitution itself, its so-called *entrenchment* that makes it so very powerful. The last two decades of the 20th century saw exploration of that status displace almost all other types of legal questions taken under consideration by the Supreme Court of Canada. The Supreme Court has become a *Charter* court. It would soon be overwhelmed with work (Dickin, 2001, 107-9).

The Charter’s *Subsection 15* states that every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability. This subsection has been heavily litigated, and its cases make up interesting reading among the Supreme Court of Canada judgments. The example of a gay couple seeking to redefine the term spouse, as in the *Egan v Canada* case, in 1995, had provided one of the testing grounds.

It could be useful to peruse just one particular Charter-linked case in front of the Supreme Court of Canada: Delwin Vriend, an openly-gay teacher, was fired from his job purely on the grounds of his sexual-orientation. With his complaint to a Human Rights Commission rejected, he went to court and received a favorable ruling in 1992. Anna Russell, later a judge with the Alberta Court of Appeals, commented in her ruling that: “The discrimination homosexuals suffer is so notorious that (she could) take judicial notice of it without evidence.” Although Vriend lost his case on an appeal, he was vindicated by a subsequent Supreme Court of Canada’s ruling. (The Supreme Court of Canada) Subsequently, he never sought a settlement for his dismissal – a precedent was not created – but his efforts had clearly advanced the case of gay legal equality.

One of the most valuable assessments of the impact of the Charter comes from Carlton University Professor Miriam Smith. In her book, *Lesbian and Gay Rights in Canada: Social Movements and Equality Seeking, 1971-1995*, Smith has analyzed the growth and transformation of gay and lesbian social movements, the formation of Egale, and added an overview of the Charter’s impact on litigation tied to sexual orientation. She points out

that the gay liberation movement was engaged with equality seeking even prior to the entrenchment of the Charter: “The Charter did not create equality-seeking as a meaning frame for social movement politics, it merely generated a particular meaning frame of equality seeking: rights talk”. And while the gay liberation movement was centered on “developing gay and lesbian consciousness, political identity, organizations, and networks... rights talk pulled lesbian and gay rights organizations toward an assumed lesbian and gay identity and focused on the achievement of legal change as the primary goal. She also wondered if the legal inclusion of lesbians and gay men within the ambit of family would “fundamentally alter the heterosexual and patriarchal nature of the family as a social institution or the ways in which future generations will interpret and frame sexual identity.”(Smith, 1999, 151-2).

Looking at the scenarios from the gay liberation perspective, Warner (2002, 3-6) agrees that for queer communities the last three decades of the twentieth century were “truly remarkable and historically unprecedented”. But he clearly sees the legal gains as being only parts of the overall picture: “Recent trends portray the struggle as being over, concentrated on human rights and equality seeking dimensions of the lesbian and gay movement.” Warner is convinced that gay and lesbian liberation is “alive and well, and continues as a force”. It is to be recalled that back in the seventies and eighties, gay and lesbian theorists were rejecting marriage as an incurably heterosexual institution (Cere, 2004).

The Furor: Divorcing Marriage from Procreation

In the wake of the same-sex marriage legislation in 2005, the Government of Canada had not brought the issue back for another review. Neither had some of the earlier decisions of the provincial Supreme Courts come up for more scrutiny. John Fisher, an equal-rights activist, claimed in 2003 that two thirds of Canadians would support gay marriage (Macleans, 2003). This may or may not have been an over-statement. Many critics of the legislation, even those who are sympathetic to the gay and lesbian causes, say the Government should have stopped at permitting *legal unions*, like those that function in many European countries, but not marriage. The opponents come from different quarters.

Australian-born Margaret Somerville, professor of law and of medicine at McGill University in Montreal, has rejected same-sex marriage because she is keenly interested in children’s rights, first and foremost. “Same-sex marriage presents a difficult choice between conflicting claims, each of which can be characterized as a right,” she writes. According to her, quite simply, children need both a mother and a father: “same-sex marriage makes children rights secondary to adults” (Somerville, 2004, 64). As an ethicist, Somerville is also interested in issues such as reproductive technologies, positing the thesis that an argument can no longer be made that only opposite-sex people can beget children. But how to reconcile the fact that human reproduction (through surrogate mothers or gamete donors) should not be for sale on one hand, and the fact that two men in a marriage contract can have children only through such an arrangement? “The use of law can never be neutral, whether we are enacting, changing or repealing it. We use it...to challenge or uphold our most important societal values” (Somerville, 2004, 71).

Some opponents have claimed that in going ahead and sanctioning same-sex marriages, Canada has made a “romantic mistake” and is “refusing to think clearly about actions and consequences” (Farrow, 2004, 93). Others are challenging the notion that the majority of Canadians do support same-sex unions. According to Cere (2004, 15), a parliamentary committee was set up in 2003 and public hearings were held, moving across the land to even remote Inuit communities, 500 submissions were made on the topic, etc., yet the Ontario Court of Appeals unilaterally declared it would not wait for the government to consider the legislative responses – it struck down the existing law of marriage as discriminatory, redefining marriage as a *union of two persons*. “No other country in the world has made the claim that Canada appears set to make: That marriage as we have known it constitutes a rights violation” (Farrow, 2004, 97).

There is a third way ahead: forget marriage altogether, forget about defining it or legislating its form and status. British social theorist Anthony Giddens (1992, 13-15) argues that contemporary society is in the midst of a major shift which will eventually reject the culture of marriage in favor of a culture of pure relationships. A pure relationship is based on “ever-changing products of private negotiation... such unions would have no goals or end beyond intrinsic emotional, psychological, or sexual satisfaction that the relationship brings to the adults involved.” Somerville (2004, 71) has also considered the option of the law abandoning marriage altogether, but would not be indifferent to its demise: “De-legislating marriage... would detract from its importance and the values associated with it.” She points out that young couples still tend to enter marriage contracts when they decide to have children.

From decriminalization to realization: same-sex couples counted

In the first decade of the new millennium, same-sex unions have been increasingly gaining legal recognition, both federally and provincially. In 2001, for the first time, the census gathered data on such unions: 34 200 couples who identified themselves as same-sex common-law couples were recorded – representing 0.5% of all couples in Canada that year. Five years later, in the 2006 census, same-sex married couples were counted for the first time – reflecting the legalization of the same-sex marriage in Canada the previous year. The results recorded 45,345 same-sex couples in Canada, of whom 7,465 (16.5 per cent) were married. Half of all these couples lived in Montreal, Toronto and Vancouver, about the same percentage as in the previous census. Overall, same-sex couples made up 0.6 per cent of all couples in Canada, comparable to the ratio in Australia and New Zealand (CBC Archives-2). The 2006 census also analyzed the composition of individual households. The main story of the census concerned the decline of marriage in general, however. For the first time in Canada’s history, where data has been gathered since 1870, married people, straight or queer, were outnumbered, with 51.5 per cent of people over the age of 15 being unmarried.

FAMILY PORTRAITS OF CANADIANS AS RELATED TO SAME-SEX UNIONS

Same-sex common-law couples: Canada, provinces and territories, 2001		
	Number of same sex couples	As a percentage of all couples
Canada total	34,200	0.5
Quebec	10,360	0.6
Ontario	12,505	0.5
British Columbia	5,790	0.6

Statistics Canada, 2001 Census of Population

http://www12.statcan.ca/english/census01/products/analytic/companion/fam/canada.cfm#same_sex_common_law

Same-sex common-law couples: Canada, provinces and territories, 2006					
Status of same-sex couples	Presence of other household members	No other household members	Children only	Other household members only	Children and other household members
Total: Status of same-sex couples	45,350	36,425	3,785	4,620	515
Same-sex common-law couples	37,885	32,055	2,715	2,845	275
Same-sex married couples	7,465	4,375	1,070	1,775	240

Statistics Canada, 2006 Census of Population

<http://www12.statscan.ca/english/census06/data/topics/Print.cfm?PID=89034&GID=61413>

Conclusion: Challenges ahead

While Canadian lesbian and gay communities have achieved high levels of formal-legal equality, new challenges are looming ahead. LGBT organizations in Canada will have to adjust their strategies to meet those new realities. In a certain sense, the gay liberation movement has come full circle: it is now time to re-evaluate the ideas which guided their struggles in the seventies and the eighties when legal equality seemed to be a far shot and same-sex marriage was of little interest. In the coming few years, organizational restructuring and repositioning is to be expected. Smith (2006) predicted that “the policy agenda of the gay and lesbian movement will increasingly focus on advancing queer identities and interests within social institutions, such as the educational system, health care system and broader fields of social policy.”

Most researchers and writers do agree that there are indeed many issues outstanding. Canada may be among “the few countries that systematically ban discrimination against lesbian and gay men” (Smith, 2006), but in a postmodern dynamic society the current state of affairs is likely to evolve still further: The workings of the Immigration and Refugee Protection Act should be monitored. Homophobia at all levels of the society should be resisted, systemic and institutional prejudices exposed. The issues of easier access to affordable housing, health and social services, especially for young homosexuals and transsexuals, ought to be discussed and resolved. Among issues offering themselves for future exploration, the following should be noted:

- **Conflicts within the movement itself:** In large cities, where most gay and lesbians reside, problems exist within the gay and lesbian communities themselves. These are partly of ethnic nature as gay people from other countries, especially those of color may feel excluded from existing gay and lesbian spaces. The same often applies to young First Nations people. Warner (2002, 321) writes: “Aboriginal two-spirited people often find urban centers foreign and unfriendly, even if they allow people to be more open about their sexuality.” There may often be language barriers as well.
- **Loopholes in the immigration laws:** The current Immigration and Refugee Protection Act that allows same-sex couples to enter Canada under the family-class category appears to have many loopholes. Chief among these is the requirement for same-sex couples to prove they had co-habited for a one-year period: an impossible requirement if one of the partners comes from a gay-hostile country or belongs to a family where he/she has to deny his/her sexual orientation. The immigration regulations have created more stringent criteria for lesbian and gay refugees than for other applicants, in requiring they prove *actual past persecution* rather than *well-founded fears of persecution*, which is adequate for others. Furthermore, visa officers and judges may approach the cases heard with their own standpoints and biases. Even in Canada, homophobia, levels of discrimination and even violence persist, despite the dramatic improvements over the past twenty years (LaViolette, 2004).

- **Safe spaces outside large urban areas:** Homophobia and heterosexism remain persistent and rampant, especially outside Canada's largest metropolitan areas (Vancouver, Toronto, Edmonton, Winnipeg and Montreal). The five cities enclosed in brackets were chosen by Planet Out (www.planetout.com) as the most gay-friendly Canadian cities. According to Warner (2002, 307), "gay pride marches are being held successfully and welcome only in large urban areas... at the beginning of the 21st century, many still live in isolation and fear."
- **Queer pedagogy:** One of the most important political issues that has emerged is the presence of LGBT parents and their children in the school system. There have been cases of school authorities banning gay or lesbian positive reading materials. In Ontario, a high school student was prevented from taking his boyfriend to the prom in 2002, creating a legal case. Campaigns have been held against censorship of same-sex imagery and books. Fisher (2003) maintains that many school boards are still opposed to using materials that reflect diversity. The power of Canada Customs to seize gay and lesbian materials continues today, Kinsman wrote in 2000 (236).
- **Access to health and social services:** For transgender people, especially for transsexuals who might want to undergo special surgery reassignment, access to such procedures is being increasingly seen as a human rights issue. In broader sense, better access to psychological counseling is also desirable – especially for young gay and lesbian people settling in large cities away from their family support, to prevent mental health problems and even suicide.
- **Attention to immigrant cultures:** Within tightly-knit communities of recent immigrants, the risks arising from coming out as a gay, lesbian and bisexual can be enormous... the consequences of social disapproval and ostracism are much more isolating and traumatic (Warren, 2002, 322). It can mean severing all ties to one's family. Support services are urgently needed.

Last but not least, the special plight of transgender people still appears to be largely misunderstood. Is Canada a safe haven for LGBT communities? A more accurate assessment might be that Canada appears to be on its way toward creating it. Canada belongs to a small select group of countries that have been consciously creating safe spaces for LGBT communities. They include Spain, Belgium, the Netherlands, Scandinavian countries, Australia and New Zealand. Yet even in Canada, many challenges still lie ahead.

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