

**SAME-SEX MARRIAGE IN CANADA AND THE THEORY  
OF POLITICAL-CULTURAL FORMATION**

by

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## **ABSTRACT**

On July 20, 2005, Canada became the fourth country in the world to give same-sex couples the legal right to marry. This thesis analyzes the mobilization that contributed to the historic event while assessing several social movement perspectives. It adopts the political-cultural-formation (PCF) perspective, which attempts to explain how civil society becomes consolidated vis-à-vis the state based on organizations of subordinate groups, communities, and classes.

The lesbian and gay rights movement is often analyzed from the social movement perspective of resource mobilization theory, political opportunity structure, and new social movements, which each focus on important but partial dimensions. PCF was chosen because, by itself, it addresses cultural issues, state intervention, and organizational leadership that mediate between economic-structural processes and political-cultural formation outcomes. Beyond describing and explaining the movement at hand, this thesis argues PCF provides a more comprehensive framework by answering questions that the other theories, by themselves, leave unanswered.

### **Key Words:**

social movements Canada, social movement theory, lesbian and gay rights Canada, same-sex marriage Canada

*With love*  
*for mom and dad,*  
*who instilled a good work ethic*  
*and*  
*for Barry,*  
*who always knew I could do it!*

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## ACRONYMS

BULA	Bottom-up Linkages Approach
CEM	Canadians for Equal Marriage
CLGRO	Coalition for Lesbian and Gay Rights in Ontario
EFC	Evangelical Fellowship of Canada
GALE	Gay and Lesbian Educators
LGBT	Lesbian, Gay, Bisexual and Transgendered
MCCT	Metropolitan Community Church of Toronto
NSM	New Social Movement
PCF	Theory of Political-Cultural Formation
PFLAG	Parents, Families and Friends of Lesbians and Gays
POS	Political Opportunity Structure
RMT	Resource Mobilization Theory

## CHAPTER 1 – CONTEXTUALIZING THE RESEARCH

“I define the family heterosexually.” Stockwell Day,  
Leader, Canadian Alliance, 2000  
(Egale, 2000)

### Introduction

Growing up in the latter half of the twentieth century, few lesbians and gay men could have imagined that marriage to a same-sex partner would be possible in their lifetime. Yet, when Canada’s Senate passed Bill C-38 on July 20, 2005, Canada became the fourth country in the world to give same-sex couples the legal right to marry. The Netherlands was first in April, 2001, followed by Belgium in January, 2003, and Spain in July, 2005 (Elliott, 2005; Green, 2005). Canada’s historic legislation was accomplished, depending on one’s view, either with breath-taking speed or after more than three decades of continuous activism.

The issue of same-sex marriage divided groups and individuals across Canada, from political parties, faith groups, and ethnic communities to family members, neighbours, and co-workers. It challenged a fundamental social institution that many considered the exclusive domain of heterosexual couples, whether from a religious, historical, or moral argument. Furthermore, opposition was not limited to those outside the lesbian and gay community. Debates concerning the appropriateness of marriage in their relationships also took place among lesbians and gay men. In spite of the discord, same-sex marriage became a reality across Canada in July 2005.

The research reflected in this study was generated by a desire to understand the processes that contributed to seven provinces and one territory in Canada legalizing same-sex marriage between June 2003 and December 2004 (those provinces and territories that did not legalize same-sex marriage during this period were Alberta, New Brunswick, Prince Edward Island, the Northwest Territory, and Nunavut) and to analyze the activities from a social movement perspective. As Bill C-38 was passed and same-sex marriage was federally legislated in Canada just before I began the research interviews, my perspective subsequently shifted to include activities up to July 2005. Another of my goals was to analyse the relationship between local individuals and groups and social movement organizations in national leadership roles in the gay rights movement.

My central objects of study are “lesbian” and “gay,” two terms that are problematic because they are exclusionary of certain others such as bisexual and transgendered individuals. In this study, I use the term lesbian and gay rights/movement because it is a characterization used in much of the literature (e.g. Bernstein, 2002; Herman, 1994; Smith, 1999; Smith, 2004). Furthermore, when speaking of actors in the movement, I generally refer to lesbians and gay men. This decision reflects the argument of Terry Goldie that “sexuality is a physical fact that is organized in social terms;” given that I am interested not in “sexual possibilities but rather the organization of same-sex relations,” lesbians and gay men represent the homosexual “other” to heterosexuals (2001:7-8). This is not to suggest that there is a shared lived experience either among or within lesbians and gay men. In addition, “sexual orientation” is a defined attribute that is used by and about lesbians and gay men in legal discourse. Finally, I do not use the word “queer” as an umbrella term for gay, lesbian, bisexual, and/or transgender individuals or

community(ies), as I agree with Stephen Engel that “the term connotes a specific type of confrontational politics and identity theory that came into favour at a particular moment in gay and lesbian politico-cultural history” (Engel, 2001:xii-xiii). Furthermore, I believe that only those who espouse a “queer” identity can legitimately use it; therefore, as I am an outsider to the lesbian and gay community, it would be inappropriate for me to label the community(ies) or movement as such.

Although some might argue that the struggle for gay rights and, in particular, same-sex marriage constitutes special interest group politics, I have chosen to contextualize and study the events using social movement theory for the following reasons. First, a precedent for such an approach has been set in that a number of scholars have either studied lesbian and gay rights from one or more social movement perspectives (e.g. Bernstein, 2002; Engel, 2001; Rayside, 2001; Smith, 1999) or have used lesbian and gay rights to illustrate a particular social movement theory (e.g. Adam, 1997; Hull, 2001; Smith, 2004). Second, the demand for lesbian and gay rights has been designated as a social movement rather than as the pursuit of a special interest group by authors such as Rebecca Salokar and Miriam Smith. Salokar defines interest groups as purposive and political, as including organizations that range from formal structures to informal associations, and as either narrow in scope or more broad-based (2001:258). Salokar’s description is broad enough to encompass social movements. Where she distinguishes the lesbian, gay, bisexual, and transgendered (LGBT) movement as beyond interest group politics is in the fact that “there is not one clear agenda that encompasses the many demands of LGBT activists;” moreover, activists work both for rights and “to change the distribution of power that serves as the broader context for social and

economic relationships” and cultural traditions (Salokar:259-260). Miriam Smith holds a similar view, noting “the concept of an interest group explicitly rejects structural sources of social and political power; the group is seen as embedded in a society in which there are multiple paths [pluralist theory] to power and influence” (Smith, 1999:6).

Furthermore, in distinguishing social movements from interest groups, Salokar underlines the impact of social movements on legislation and politics (2001:259). For more than three decades the lesbian and gay rights movement has constituted itself as a political subject to fight against social discrimination and marginalisation and to demand equality in law. The struggle for the legalization of same-sex marriage has represented one challenge within a larger lesbian and gay movement that continues to seek social justice.

The lesbian and gay rights movement has been analyzed from a number of social movement theoretical perspectives, most often resource mobilization theory (RMT), political opportunity structure (POS), and new social movements (NSM). As each of these perspectives sheds light on important but only partial aspects of the movement, this thesis will offer an alternative analysis of the movement, specifically the same-sex marriage challenge, based on what Otero (1999, 2004) has called the theory of political-cultural formation (PCF). This is a theory that attempts to explain how civil society becomes consolidated vis-à-vis the state, on the basis of organizations of subordinate groups, communities, and classes. PCF systematically incorporates aspects of the three social-movement perspectives mentioned above, in a synthetic approach, but also addresses economic-structural processes, which may or may not have a direct impact on movements. PCF then focuses on three mediations that are considered critical in shaping the process of political-cultural formation: cultural issues, which shape movement

demands; state intervention, which impacts the character of resulting organizations; and organizational leadership, which plays a role in maintaining (or losing) the organization's independence from the state and in establishing alliances with and maintaining autonomy from other political organizations.

Although it is impossible to ignore the earlier activism and achievements in the gay rights movement that laid a solid foundation for same-sex marriage, this thesis will focus primarily on the period following June 2001, when the first same-sex marriage court cases were initiated. This thesis will demonstrate how PCF answers some questions that RMT, POS, and NSM, by themselves, leave unanswered. RMT ignores individual motivations for participation in movements and the ways in which state intervention affects development of the movement, particularly the component of leadership. For its part, POS focuses on political opportunity and top-down determinants disregarding the effects of culture on movements. Finally, NSM theory focuses on identity politics and/or diffused networks to the exclusion of material and political considerations.

In order to contextualize the upcoming discussion, the balance of this chapter will present a review of the literature, introduce the substantive concepts embodied in PCF, and describe the methodology used in this study. Chapter two presents an overview of the lesbian and gay rights movement since the 1970s with particular attention paid to key events that established the groundwork for same-sex marriage. The overall research findings are outlined in Chapter 3, so that Chapter 4 can present an analysis of the research findings using the perspective of PCF. Finally, Chapter 5 summarizes the ways in which PCF addresses the shortcomings of the RMT, POS, and NSM perspectives, describes some limitations of PCF, and suggests possibilities for future research.



## Literature Review

The lesbian and gay rights movement in Canada has been documented and analyzed from a variety of perspectives. Some authors have taken a historical approach to the study of lesbian and gay activism (e.g., Kinsman, 2001; Ross, 1995; Warner, 2002). Others have approached the topic largely from the disciplines of law and political science (e.g., Boyd and Young, 2003; Herman, 1994; Lahey and Alderson, 2004). Still others have engaged with the various discourses or arguments associated with the movement (e.g., de Souza, 2004; Parkin, 2003). There has been, however, a “neglect of gay and lesbian movements among social movement theorists” (Duyvendak cited in Adam, 1999:2). Miriam Smith and David Rayside are among the few theorists who have rigorously analyzed the lesbian and gay rights movement in Canada from the perspective of social movement theory.

In her book, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*, Miriam Smith (1999) argues that equality-seeking as a strategy in the lesbian and gay rights movement began prior to the adoption of the *Canadian Charter of Rights and Freedoms* in 1982. The Charter, however, reshaped the strategy from one of building a movement aimed at the social transformation of sexuality, including concepts of family, to a demobilized movement concerned almost exclusively with achieving legal and policy victories (Smith, 1999). The focus of Smith’s study is the central role of the state in the politics and practice of the movement, with particular emphasis placed on the impact of the judiciary on the movement. She concludes that political opportunities “create new paths for social movements that shape the discourse, values, and self-understanding of movement actors” (Smith, 1999:156). Smith provides a

comprehensive analysis of the effects of the Charter on lesbian and gay organizing, framing, and strategy. Her study of political opportunity and activities at the federal level, however, misses local organizing activities and the importance of cultural aspects in shaping the movement. In addition, her critique of the achievement of rights as an end unto itself understates what the movement gained in terms of social legitimization and citizenship for the homosexual community.

In her article “Segmented Networks: Linguistic practices in Canadian lesbian and gay rights organizing,” Smith maintains that within lesbian and gay rights movement networks, French-speaking activists are largely separated from English-speaking activists, although they “occasionally cooperate at the elite level in pursuit of common goals” (Smith, 2004: 99). Given that “the Canadian lesbian and gay rights movement has been one of the most successful of any in the world,” Smith suggests that its segmented networks may “provide a model for organizing divided societies [such as Canada itself] and for transnational social movement activity” (2004:120-121). Although Smith’s article is concerned primarily with the manner in which bilingual issues are addressed in one specific, pan-Canadian organization, Egale, the article provides useful information about the overall movement and its organizational structure (Smith, 2004). Moving away from the perspective of political opportunity structure, which characterized her 1999 book, Smith refers to the lesbian and gay rights movement as an “archetypal new social movement” (2004:101). Her characterization of a new social movement appears to rest on the notion of segmented networks at the level of civil society that create alliances to pursue political goals, with political issues addressed primarily in the context of Québécois, francophone, and anglophone identities (2004:102, 120). Unfortunately, with

its narrow focus on a specific challenge to social movement organization, the article offers limited engagement with broader social movement theory.

David Rayside's main argument in "The Structuring of Sexual Minority Activist Opportunities in the Political Mainstream: Britain, Canada, and the United States," is that public policy and law matter to sexual minorities in that they shape the possibility for social transformation (Rayside, 2001:51). Rayside also claims that gay and lesbian movements continue to be "minor players at the fringes of mainstream political processes" (2001:52). Several factors affect gay and lesbian influence on policy processes: the skills and resources of the activists, class and cultural issues in social movement organizations, and the potential of gaining equality through the law (2001:34-35). Moreover, the relative strength of the factors differs depending on the political, institutional, and social context. Rayside's purpose is both to understand "the extent to which gains have been made in and through the political process and the factors behind such gains" in gay and lesbian activism and to "illuminate the difference that geography, demographics, political structure, and party system can make" to political successes (2001:24). Rayside's comparative approach to examining British, American, and Canadian gay and lesbian activism is grounded in political opportunity structures. This perspective redresses NSM theory's inattention to political engagement so that it more adequately represents lesbian and gay activism by assessing both resource mobilization and opportunity structure (Rayside, 2001:29, 31). Rayside's description of the political systems in Britain, Canada, and the United States, unfortunately, provides few specific examples of social movement activity.

Both Smith (1999) and Rayside (2001) mention resource mobilization theory and new social movement theory, but their analyses are primarily organized around political opportunity structures. Rayside uses political opportunity to analyse the structure of the political system, including issues of openness, extent of centralization, electoral system, and influence of the courts (Rayside, 2001:33). Smith understands social movements as relying on political opportunity structures that encourage or discourage collective action and that influence mobilizing structures and cultural framing (values, goals, identity, and demands on the state) (1999:12). Smith acknowledges that she is focusing on the effects of political opportunity on the movement's mobilizing structures and framing process and not examining the way in which social movements influence state policy (1999:23-24). Moreover, Smith focuses on equality seeking at the federal level because the lesbian and gay rights movement consists of segmented networks and there is little secondary literature on activism at the local level (Smith, 1999:27). As already noted, Rayside's study is comparative and general and does not provide concrete analysis of the Canadian movement. In Smith (2004), a specific lesbian and gay movement organization is considered as part of a fragmented new social movement network, an approach that disregards engagement with the state. Finally, an analysis of the contribution of local organizations is absent. The theory of political-cultural formation is a perspective on social movements that addresses, in its content, just such an absence.

### **The Theory of Political-Cultural Formation**

What first inspired Otero (1999) to formulate an alternative framework to study the political-cultural formation of Mexico's peasantry was his general dissatisfaction with economic and class reductionist versions of Marxism in the late 1970s and 1980s. Social

movement theory during this period tended to be divided between those theoretical approaches that rejected the contributions of Marxism and those that developed parallel to them. Among the former, the NSM perspective, which emerged among theorists in Europe, represented a strong criticism of class-centred and political-party-centred politics, and was in favour of a politics of identity rooted in civil society (as opposed to focusing on the state or political society). Latin American expressions of this perspective focused on autonomy, meaning and identity (Escobar and Alvarez 1992; Alvarez, Dagnino, and Escobar, 1998).

In North America, the debate was more between sociologists inspired by structural-functionalist theories that regarded social movement actors as irrational and those with a social-conflict perspective (primarily with Weberian and Marxist influences) for whom mobilization was indeed rational (Canel, 1992; Engel, 2001). Among the latter perspectives, RMT put a strong emphasis on social-movement organizations as institutional actors. Unlike the NSM perspective, which focused on civil society, RMT continued to examine group action in the political system to achieve movement goals. POS was a development of and a useful supplement to RMT. The main emphasis of POS is on whether political institutions provide movements with sufficient openings to successfully challenge structural problems successfully.

While NSM provided a useful perspective to challenge economism and class reductionism in debates around the peasantry, Otero remained unsatisfied with its overemphasis on identity politics and its virtual discarding of any connection to what he called “class structural processes.” Class structural processes include not only the social

relations of production, but also the social relations of reproduction, both of which are critical elements of cultural relations and meanings.

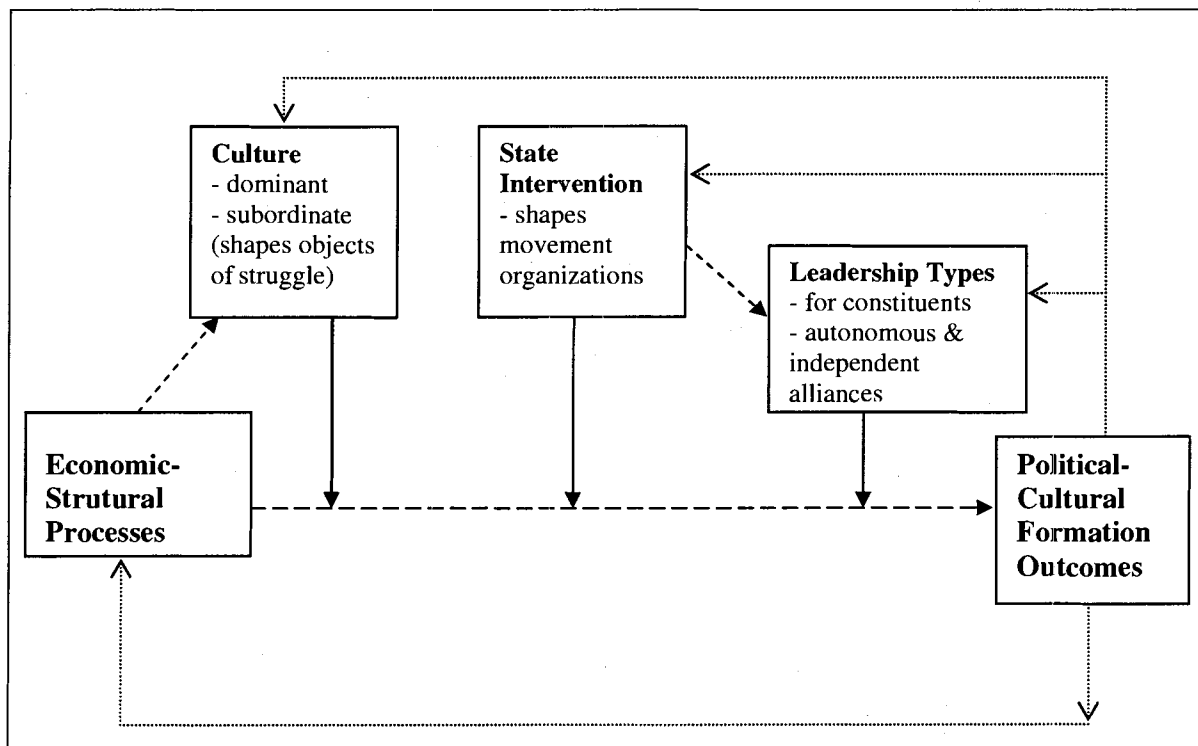
PCF does not “throw the baby out with the bath water,” in that it has some parallels with both RMT and POS. It stresses the formation of group, community, or class organizations for struggle as a critical aspect of political-cultural formation, just as RMT emphasizes movement organization. As well, PCF, like POS, regards the character of state intervention as a critical part of processes that influence group or movement action; but PCF also questions two aspects of state policies. First, are they favourable or detrimental to mobilized subordinate groups or classes? Second, are such policies initiated by the state itself or are they the result of bottom-up pressures and mobilization from below? Depending on the empirical answers to these questions, state intervention has different implications for political-cultural formation; specifically, whether social movement organizations will be co-opted by or remain independent from the state.

Using PCF to analyze the movement for same-sex marriage provides a more complete view than RMT, POS, or NSM alone in that it considers the effects of material and cultural determinants and analyzes how civil society becomes strengthened by a “bottom-up linkages approach” (BULA) (Otero, 1999, 2004). This theory offers a broader perspective on the state, specifically on how a strengthened civil society contributes to the reduction or, in the best case, the elimination of the state’s oppression of subordinate groups and communities.

New social movement theory is heavily oriented towards identity politics, tends to discount material (economic) influences on social movement formation, and underestimates political objectives (Engel, 2001:180-182). PCF does not discount the

importance of identity, as without such awareness and sense of community it would be difficult for members “to launch or sustain an effective struggle against dominant hegemonic forces” (Otero and Jugenitz, 2003:509). At the same time, though, PCF recognizes the possible effects of material/economic considerations on shaping demands, however indirect. That class structure cannot be ignored is an argument supported by authors such as Nancy Fraser (2000). PCF, however, places its focus on the mediating determinants between economic-structural processes and political-cultural formation: regional cultures, state intervention, and leadership types (Otero, 2004:326). Figure 1 diagrams the components of PCF.

**Figure 1: PCF Model - Culture, State Intervention, and Leadership Types mediate between Economic-Structural Processes and Political-Cultural Formation Outcomes**



**Diagram key:** solid lines denote mediating determinants; the dashed lines represent a causal relationship, acknowledged but not explicitly theorized; and the dotted lines reflect a feedback effect.

Regional culture takes into account the localized experience in relations between the exploited and exploiter (the realm of production) and among the exploited themselves (the realm of reproduction) (Otero, 2004:7), or *between* the oppressed and oppressor and *among* the oppressed in the cultural realm. We can imagine a “social geometry” (Black, 2004) in which both vertical and horizontal relations shape regional cultures. In *Farewell to the Peasantry?* a geographical contrast of various peasant groups was used to examine the effects of regional culture on shaping their demands (Otero, 1999). In examining the challenge for same-sex marriage in Canada, the focus will be on both the hegemonic or dominant culture and the subordinate culture of struggling groups.

State intervention affects the character of people’s struggles and can take three main forms: (1) the state may usurp the initiative to redress the demands of the subordinate groups or classes, which most likely results in their cooptation, and thus maintains bourgeois-hegemonic discourse; (2) it may repress or decline to satisfy the movement demands, which can initially lead to demobilization, but also contribute to the formation of oppositional organizations for struggle; and (3) the state may respond favourably to the movement’s demands, while its organization remains independent from the state, becoming popular-democratic and contributing to a greater strength of civil society (Otero, 2004:4, 7-8). As may be seen, a key distinction is whether state policies are initiated by the state, for cooptation purposes, or result from the bottom-up pressures of a popular-democratic movement (Otero, 1999:20).

Finally, leadership types as a determinant “influences the kinds of alliances that are established once class [or community] organizations are already formed and whether such organizations retain their independence from the state and/or the ruling class and



their autonomy from other political organizations” (Otero, 1999:5). There are two general questions to consider in this regard: (1) is the leadership accountable to its constituents and does it promote grassroots participation; or (2) is the leadership opportunistic and does it compromise the movement’s goals or independence?

In substantive terms, then, political-cultural formation is the “process through which direct producers and other exploited and/or oppressed social groups shape demands, form organizations to pursue them, and generate a leadership to represent them” (Otero, 2004:6). A key question is, how can subordinate groups, communities, or classes become hegemonic or at least “push for state interventions in their favour” (Otero, 2004:6)? In the case of lesbian and gay rights, the latter part of the question is most applicable as only fundamental classes can hope to become hegemonic. In terms of political outcomes, it is important to consider the kinds of demands made on the state and both the character of the movement organizations and the alliances they establish (Otero, 2004:25). Political outcomes, which have been hinted at above, can be of at least three types: (1) bourgeois-hegemonic, when the movement’s organization is co-opted; (2) oppositional, when the organization is repressed or its grievances not redressed; and (3) popular-democratic, when the organization not only achieves its goals but also retains its independence from the state and its autonomy from other political organizations. It is in the last case that civil society becomes strengthened vis-à-vis the state. This is a very fluid process, with substantial advancements in some periods and setbacks in others.

As the gay and lesbian movement has been considered primarily an “identity politics” type of movement, the specific challenge for same-sex marriage represents an excellent test case for the theory of political-cultural formation, especially as the theory

was initially formulated to explain class mobilization. The argument here is that it is equally applicable to understanding mobilization by groups and communities as well as social classes. While economic-structural processes are considered at least an indirect factor of political-cultural formation, the three mediating determinants - culture, state intervention, and leadership - can act with considerable autonomy. A key question is the extent to which the lesbian and gay movement advanced toward a critical goal while retaining its independence from the state and its autonomy from other political organizations.

## **Methodology**

The methodological approach was qualitative, consisting of a series of loosely-structured, open-ended, in-depth interviews. It was also interpretive, in privileging “people, and their interpretations, perceptions, meanings and understandings as the primary data source” (Mason, 2002:56). Interviews allowed participants to describe and interpret their experiences with a modicum of influence from me, as the researcher. In addition, while I did not limit the respondents to talk about specific years, the resulting conversations largely focused on the activities that took place post-2001, when the marriage challenge gained momentum that resulted in the reshaping of a fundamental social institution.

The methodology, flowing from a developmental intellectual puzzle, involved strategic, purposive sampling, using a snowball technique. Participants were selected based on the notion of “key informant” (Blee and Taylor, 2002:104); that is, for their inside knowledge of various aspects of the same-sex marriage challenge, including their ability to comment on cultural, organizational, and leadership issues. Egale and its spin-

off organization, Canadians for Equal Marriage (CEM), were front and centre in the marriage challenge, thus I began by contacting the head office of Egale, in Ottawa. Gilles Marchildon, the executive director, referred me to Laurie Arron, who played the dual role of Director of Advocacy for Egale and Political Coordinator for CEM, although his time was largely devoted to CEM from mid-2003 to July 2005. In the first of two interviews, Arron provided the names of several other individuals representing a variety of connections to Egale. From these individuals the list of possible contacts expanded to the point where I had more names of people to speak with than I could possibly include. This fortunate circumstance allowed me to be strategic in terms of who was invited to participate. Initial interviews determined whom I selected for subsequent interviews and the questions that were posed to the participants (Blee and Taylor, 2002:110).

Originally, I anticipated focusing on Ontario and British Columbia; however, I requested and was granted an amendment to my Ethics Application when it became evident that there was an opportunity to provide a wider perspective. Accordingly, I interviewed participants from New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, and British Columbia. I believe this broadening added immeasurably to the “completeness” (Blee and Taylor, 2002:100) of the research. In particular, being able to comment on the experience of Quebec in the same-sex marriage challenge has resulted in a more accurate reflection of Canada’s diversity.

In the end, I conducted twenty-six interviews with people representing a variety of perspectives, including those of lesbians and gay men, lesbian and gay organizations, non-lesbian and gay organizations, Chinese-Canadians, a union, faith groups, political parties, and married same-sex couples. Three participants were interviewed twice, and

one couple was interviewed twice due to a tape-recorder malfunction. All participants signed an Informed Consent form and, except for one human rights organization, agreed that their name (and the name of the organization they represented, if applicable) could be noted, at my discretion, in the final report.

The majority of the interviews took place over the phone, with the conversation being tape-recorded and later transcribed. Issues of representation are familiar sources of concern to anthropologists and sociologists; that is, accurately representing the participants is both an ethical concern and a goal of good research. As I transcribed the tapes, I realized that where I inserted punctuation marks and the types of punctuation that I chose to use had the potential to alter the message or change the emphasis of that participant's responses or comments. For example, it was not always obvious when a participant completed one sentence and started another, and hesitations in speech, and pauses for breath, were not necessarily where a comma should be inserted. I often made decisions about punctuation based on emphasis, flow, logic, and readability.

Due to the wide geographical area covered, only six interviews were conducted face-to-face, with three of these interviews being with married couples. Creating rapport with respondents is of paramount importance and I believe this challenge is accentuated when conducting telephone interviews, as all warmth, interest, enthusiasm, encouragement, and appreciation must be communicated with the voice and, to a lesser degree, phraseology. The in-person interviews were also demanding, but in a different way; I found that I was more nervous and to a certain extent more focused on my performance. Both phone and in-person interviews were, without exception, a wonderful

experience and it was a privilege to speak with people who are so clearly committed to their cause.

On average, the interviews lasted approximately one hour. While there were themes or areas of inquiry running throughout each interview, by virtue of the diversity of the participants and the role that either they or their organization played, there was no set group of questions, nor was every area of interest addressed in each interview. Thus the questions that emerged were unique to each interview and were shaped by the interpretations, accounts, and/or stories provided by the participant(s). This presented a challenge in analyzing the data because I was not able to systematically compare and contrast responses to specific questions from each participant. Interviews allow access to the participant's "experience and interpretation of reality, and access to people's ideas, thoughts, and memories in their own words . . . but at the cost of a reduced ability to make systematic comparisons between interview responses" (Blee and Taylor, 2002: 92-93).

As an outsider to the lesbian and gay community, I was seeking an "insider view" (Blaikie, referenced in Mason, 2002:56) of the processes involved in the same-sex marriage challenge. Initially, I was concerned that people would not want to engage with an outsider. This concern, however, was quickly dispelled. First, I realized that no one was particularly interested in my sexuality. From the outset, I never made a point of saying that I was homosexual or heterosexual, and no one asked. The issue of my sexuality arose only twice, in the course of conversation, and, when I confirmed that I was heterosexual, the conversation proceeded. Although I am not a member of the lesbian and gay community, I think a "conscious partiality" with the aims of the

movement for same-sex rights “provides a way of becoming involved in a research process by going beyond essentialist notions of identity” (Truman, 2000:29). Second, it was evident that people were eager to share their stories. Mary-Woo Sims, a CEM partner in B.C., observed that it is important to record the history of the people who participated in the campaign for equal marriage because lesbian and gay history is often not captured.

Most of the people interviewed were seasoned activists and/or senior representatives of the organizations they represented and were apparently comfortable being interviewed and tape-recorded. While there can be concerns about power imbalances in terms of the role of the interviewer (Bourdeau, 2000), my experience is that more often than not, I was the one being led, rather than being the leader. That is, the participants appeared to have a good idea of what they intended to communicate. Moreover, to a certain extent, I allowed the participants to lead, in that I did not try to limit the direction of their narratives (Blee and Taylor, 2002:110), but would listen carefully to their answers and use the information provided to shape the next question(s). In sum, I proposed the themes to discuss but the order and structure of the questions was generated out of the interview.

While people were my first and most critical primary source, secondary data sources augmented the interviews and provided historical and contemporary context for same-sex marriage. Secondary data sources included academic literature, government documents, annual reports, and both mainstream and alternative media accounts.

## Research Limitations

There are two relatively minor limitations to my methodology. First, by virtue of my interest in the elements that contributed to the successful passing of Bill C-38, the research was skewed to speaking with those who supported the challenge. Pat O'Brien, the Liberal MP who stepped down and became an Independent because he felt Paul Martin, the Prime Minister of Canada, was pushing through Bill C-38 without sufficient public debate, and Dr. Janet Buckingham, Director of Law and Public Policy and General Legal Counsel of the Evangelical Fellowship of Canada, were the sole interviews representative of a dissenting opinion from outside the lesbian and gay community. There is, however, a great deal of material on opponents available on the Internet and from the media; this material is drawn upon in Chapter 3 to describe the ideological position of opponents of same-sex marriage.

There were also dissenters within the lesbian and gay community and their views were obtained either from the lesbian and gay participants, who were very familiar with the alternative views, or through secondary research. Lesbian and gay research participants, because of their role in the movement and presence in the community, were exposed in several ways to the opposing viewpoints within the community, including through informal conversations, personal confrontations, involvement with LGBT organizations, and the LGBT media.

Second, since the enactment of the *Canadian Charter of Rights and Freedoms* in 1982, and especially subsection 15(1) in 1985, there have been numerous legal challenges based on sexual orientation discrimination at the provincial and federal levels, which laid important groundwork for same-sex marriage. While the legal process has been critical to

advancing same-sex marriage, in this thesis court challenges are taken as the context for the myriad non-judicial activities that supported the marriage challenge, particularly since 2001.



## **CHAPTER 2 – THE PATH TO SAME-SEX MARRIAGE IN CANADA**

Same-sex marriage must be understood in the context of events in the 1970s, 1980s, and 1990s, particularly the establishment of same-sex relationship recognition, which laid the necessary legal, political, and cultural bases for equal marriage. In order to contextualize the rest of the thesis, this chapter presents a history of the lesbian and gay rights movement since the 1970s, with a particular focus on events that established important groundwork for same-sex marriage. The overview is organized in five sections: lesbian and gay rights activism from 1970 to 2000; activities specifically oriented towards relationship recognition and same-sex marriage; a few of the most important same-sex marriage legal cases; the processual change in terms of the centre of attention of the fight for same-sex marriage from the courts to parliament; and statistics on the prevalence of same-sex marriages in British Columbia.

### **Activism from 1970 to 2000**

The North American lesbian and gay rights movement was firmly launched following the Stonewall riots of June 1969, in New York City. In Canada, the first lesbian and gay liberation groups were formed in Toronto in 1969, followed by the establishment of similar organizations in Vancouver, in 1970 (Adam, 1999:13; Warner, 2002:59). Within a few years, many organizations had sprung up across Canada, creating a community based on a commonly shared sexuality (Adam, 1999:13; Warner, 2002:61).

In the 1970s the visibility of lesbian and gay issues was raised, networks were established, and an advocacy agenda was developed. These accomplishments were facilitated by activist lesbian and gay organizations, which were propelled by a liberation ideology. Activists rejected the notion that homosexuality was pathological and criminal, fought against oppression from police, asserted pride in same-sex sexuality, and sought public, social, and legislative reform (Warner, 2002:61-66). Activists viewed human rights campaigns as a short-term strategy in the struggle to achieve the long-term goal of liberation from oppression (Smith, 1999). There were also those who, as a result of the oppression and harassment that lesbians, gay men, and bisexuals had experienced, thought it was safer not to “rock the boat.” Thus middle-ground organizations were formed, focusing primarily on legislated civil rights and using the more controlled and legal tactics of demonstrations, public meetings, conferences, and pickets (Warner, 2002:69-71). The middle-ground organizations viewed obtaining legal rights as the primary objective of activism (Smith, 1999, Warner, 2002:191).

The increasing prominence of lesbian and gay individuals and communities soon led, in the late 1970s and early 1980s, to a considerable backlash from the New Christian Right and from other social conservatives (Herman, 1994:77-102). New Christian Right refers to “evangelical, conservative [and largely Protestant] Christians” who interpret the Bible literally and believe in the Second Coming of Christ (Herman:79). In addition, members of the New Christian Right believe that the family is the fundamental unit of society, that homosexuality is “sinful, diseased behaviour,” with homosexuals seeking to subvert the family, and that children are pure and vulnerable to corruption by homosexuals (Herman:83). The backlash came because the lesbian and gay rights

movement was perceived as undermining social stability and traditional values (Smith, 1999:67; Warner, 2002:132). The groups opposed to lesbian and gay rights, including Focus on the Family and REAL Women of Canada, organized around “homophobia, stereotypes, myths, misinformation, and distortion” (Herman:78-79; Warner:133). In Ontario, a conservative government “attempt[ed] to push gay people back into the closet” (Adam, 1999:14). For example, the Ontario provincial government charged *The Body Politic*, a lesbian and gay newspaper, with obscenity and Toronto police raided the city’s gay bathhouses (Smith, 1999:67). These events infuriated lesbian and gay activists and led to the formation of the Right to Privacy Committee (RTPC) in early 1979, which sought to protect lesbians and gays in the face of the “tense police-community relations” of the time (Krawczyk, 1991; Smith:68-69). The organization eventually dissolved in 1991 (Krawczyk, 1991; Smith:68-69).

In 1981, the AIDS epidemic came to public attention and limited activist resources were removed from pursuing gay liberation and human rights and redirected to AIDS-related issues such as patient support, fundraising, and public education. Somewhat paradoxically, the conservative backlash to the burgeoning gay rights movement and the AIDS crisis encouraged previously non-political lesbians and gay men to identify themselves with the liberation ethos (Warner, 2002:165). Nonetheless, the backlash and the onset of AIDS intensified tensions over strategy, to the extent that two distinct factions – assimilationists and liberationists – emerged in the movement. On the one hand, assimilationists, composed largely of middle-class professionals and bureaucrats, were seeking equality; on the other hand, liberationists were fighting for freedom of sexual expression and against harassment by the state and police (Smith,

1999:148, 151; Warner, 2002:188, 191-192, 215). The assimilation track was strengthened, first by the 1982 Constitution Act and second, in 1985, by Section 15 of the *Canadian Charter of Rights and Freedoms*, which facilitated court challenges of inequality and discrimination (Smith, 1999; Warner, 2002).

By the 1990s there were “many hundreds of specialized task-oriented groups” involved in lesbian and gay social and political life (Adam, 1999:15). Moreover, the 1990s saw the continuation of the equal rights activism begun in the 1980s, with many activists conceding that engagement with the state institutions was a necessary step towards recognition of lesbians and gay men as full citizens (Rayside, 2001:24-25). In the early 1990s, the advertising pamphlet of Equality for Gays and Lesbians Everywhere (EGALE), the only pan-Canadian lesbian and gay organization, affirmed its commitment to attain “equality for gay men and lesbians under Canadian law” by “challeng[ing] the *Charter of Rights and Freedoms*,” with no reference to overturning repressive sex laws or combating homophobia or heterosexism (Warner, 2002:217). The concern was that the movement had adopted a less radical approach than that held by early liberationists. EGALE was formed in 1986 and renamed Egale Canada in 2001 “and is commonly referred to as Egale” (Smith, 2005:90, Note 4).

Into the tension between rights-seeking assimilationists and liberationists came a further source of divisiveness: the quest for legal recognition of same-sex partnerships, including the ultimate goal of marriage. In general, liberationists did not agree with seeking legitimation, validation, and respectability from the state for same-sex relationships and questioned the appropriateness of the institution of marriage for same-sex couples (Warner, 2002:220-222). Nonetheless, liberationists joined the fight to have

the laws changed when they could not ignore the fact that same-sex relationships did confront anti-homosexual attitudes and pervasive heterosexism (Warner, 2002:224, 231).

At the turn of the century, the dichotomy between assimilationists and liberationists seemed to no longer be an issue, or at least competing viewpoints were not characterized in this way. As will be seen in Chapter 3 and Chapter 4, however, there was clearly dissension in the lesbian and gay community over both the necessity and desirability of struggling for same-sex marriage. On the one hand, some people were concerned with protecting an alternative lifestyle from mainstream influences and with critiquing a problematic heterosexual institution. On the other hand, there were those who argued that the choice to marry was a fundamental human rights and equality issue.

### **Fighting for Relationship Recognition and Marriage**

The history provided thus far has only touched on the idea of activism in the courts. This section provides a more detailed discussion of the legal activism that took place in the 1970s, 1980s, and 1990s and the cases that laid critical groundwork for same-sex marriage. While these decades produced numerous court cases for lesbian and gay rights, the focus here will be on what are arguably among the most important cases that were undertaken. The case law that influenced the judges' rulings, however, will not be dealt with as deep legal analysis is beyond the scope of this research. Finally, where appropriate, the role of Egale will be discussed, as it eventually became the central social-movement organization in the marriage debate.

In 1974, well before the Charter came into effect, Richard North and Chris Vogel, gay liberation activists, "believed that achieving the legal recognition of same-sex

marriages [was] critical in the pursuit of equality in all its forms” (Warner, 2002:200, 223). The couple tried to obtain a marriage license, but a Manitoba court ruled against them, citing an ecclesiastical understanding of marriage as the union of one man and one woman (Lahey and Alderson, 2004:23). Then, in 1974 and 1975, the Canadian government responded to the 1970 Royal Commission *Report on the Status of Women in Canada* by introducing legislation “to replace sexist terms such as ‘husband,’ ‘wife,’ and ‘common-law wife’ with gender-neutral terms like ‘spouse’ and ‘cohabitant,’” but the cohabitant spouse had to be someone of the opposite sex, thus excluding lesbian and gay couples (Lahey and Alderson, 2004:24-25).

In 1977, Quebec became the first province to add sexual orientation to its Charter of Human Rights (Lahey and Alderson, 2004:71). No other province took similar action until Ontario did, in December 1986, as a result of a twelve-year campaign on the part of the Coalition for Lesbian and Gay Rights in Ontario (CLGRO, 2000). At the same time, however, in a move to protect the definition of marriage, Ontario inserted the opposite-sex definition of spouse into thirty-three statutes (Lahey and Alderson, 2004:26). By 2001, all the provinces and territories except Alberta, Prince Edward Island, and the Northwest Territories had taken such action (Centre for Research and Information on Canada [CRIC], no date).

In the wake of the proclamation of the *Canadian Charter of Rights and Freedoms*, there was a “substantial increase in litigation” (Smith, 1999:73). In fact, between 1985 and 1999, there were “literally hundreds of human rights complaints, labour grievances, and Charter challenges” (Lahey and Alderson, 2004:75). But this shift to equality-seeking rights advocacy did not negate a need for vigilant activism; that is, “concerted lobbying

campaigns remained essential, complemented and strengthened by court decisions and the findings of human rights tribunals applying the Charter in cases of sexual orientation discrimination” (Warner, 2002:197). In the mid to late 1980s, Brian Mossop launched “the first gay equality rights case to reach the Supreme Court of Canada” (Cossman, 2002:226). The *Mossop* case challenged definitions of family that did not include same-sex partners and was important because it used litigation as a “focus for social movement intervention” (Herman, 1994:26). Brian Mossop’s challenge to dominant definitions of family led very quickly to the mobilization of several groups both supporting and opposing his claim. “Coalitions of lesbian, gay, feminist, disabled, and civil libertarian groups, on the one hand, and conservative, evangelical Christian organizations, on the other, seized on the case as a forum in which to do battle over sexuality” (Herman, 1994:26). Mossop did not win his case, but his contention was important because it challenged prevalent views of heterosexuality (Herman:127), heteronormativity in law (Cossman, 2002:227), and raised public awareness that was critical to the advancement of lesbian and gay rights inside government institutions (Rayside, 2001:52).

Of all the litigation undertaken in the 1990s there were a few particularly influential rulings affecting lesbians and gays. The first such litigation, in 1992, was *Haig and Birch*, a case that challenged the federal government to add ‘sexual orientation’ to section 15 of the Charter. Graham Haig challenged an armed forces directive that made him ineligible for promotions, postings, or training because of his sexual orientation (Warner, 2002:196). The Ontario Court of Appeal “ordered that from thenceforth the federal human rights statute should be read ‘as if’ the words ‘sexual orientation’ had been inserted into the text of section 15 of the Charter” (Lahey and Alderson, 2004:74). This

was a historic decision because it “demonstrate[ed] that courts could and would use their broad powers under the Charter to bring discriminatory legislation into line with the Charter itself if the legislatures were not willing to take that step” (Lahey and Alderson, 2004:74).

Turning to marriage, in the 1993 *Layland and Beauline* decision (also known as *Layland Beaulne* [Warner, 2002:223]), “the court not only reiterated religious doctrine as a reason for maintaining the prohibition on same-sex marriage, but also sought to attribute the already-outmoded canon law requirements that married couples be able to physically consummate their marriage and to procreate to ‘the state’ and to ‘society’” (Lahey and Alderson, 2004:24). Essentially, the court interpreted marriage as a heterosexual union and ruled that Layland and Beauline were not discriminated against because homosexuals could marry, as long as it was to a person of the opposite sex (Brotsky, 1996). Egale supported the court challenge (Egale, 1994), but afterwards called a meeting of lawyers from across Canada, wherein it was decided that, strategically, relationship recognition must be attained before pursuing marriage (findlay Interview, 2005).

In the 1995 *Egan and Nesbit* case, the Supreme Court of Canada ruled “that ‘opposite-sex’ definitions of ‘spouse’ are discriminatory because they exclude same-sex couples” (Lahey and Alderson, 2004:74). But, “a bare majority . . . went ahead to rule that this discrimination was ‘justifiable’” (Lahey and Alderson, 2004:74-75). Madame Justice L’Heureux-Dubé was a dissenter in this case, a position she had also taken in the 1993 *Mossop* decision (Lahey and Alderson:80). The court decisions in the two cases (*Egan and Nesbit* and *Mossop*) reflect the slowly emerging support of judges for same-



sex relationship rights. Then, in 1998, when the *Rosenberg* case was brought forward by the Canadian Union of Public Employees (CUPE) to “challenge the federal income tax regulations,” the court ruled that the Act was unconstitutional and must be read to include coverage for same-sex partners (Kinsman, 2001:218).

In 1999, a breakthrough occurred when the Supreme Court ruled, in the *M. v. H.* case, “that section 15 of the Charter entitles same-sex couples to the spousal rights extended to opposite-sex cohabitants” (Lahey and Alderson, 2004:75). In this particular case the issue was the right to alimony (Lahey and Alderson:76). The *M. v. H.* decision “triggered an avalanche of legislative amendments to the bulk of *all* Ontario law relating to unmarried cohabitants . . . [which] spread to the greater part of *all* federal laws” (Lahey and Alderson, 2004:77). The “statutory changes were conceived as damage control, as a way to make it look like they [the government] were accepting the new legal status of same-sex couples that had been so clearly acknowledged in the *M. v. H.* decision – but to acknowledge that new legal status in a way that would still contain and limit the expansion of same-sex legal rights as narrowly as possible” (Lahey and Alderson, 2004:77). The *M. v. H.* case was particularly significant in that it involved a same-sex partner making a claim within the couple relationship; previously the spousal benefits challenges were between the couple and the state (findlay Interview, 2005). This case was instrumental in preparing the way for marriage.

In June 2000, Bill C-23, the *Modernization of Benefits and Obligations Act*, amended several federal laws related to benefits and obligations of couples from opposite-sex couples to “*all* couples who have been cohabiting in a conjugal relationship for at least one year” (Department of Justice, 2000). While the Act amended several

federal laws, a last minute compromise, negotiated by Anne McLellan, then Minister of Justice and Attorney General of Canada, to get the Bill passed, reaffirmed that marriage would continue to be the union of one man and one woman (Fry Interview, 2005). Using apocalyptic language, Garry Breitkreuz, M.P. for Yorkton-Melville, declared that Bill C-23 “should be renamed *The Death of Marriage Act*” (Breitkreuz, 2000).

A landmark case also occurred in Quebec in April 2002, when the National Assembly unanimously passed Bill 84, the Civil Union Bill. This Act made civil union accessible to both heterosexual and homosexual couples, granted the right to ‘filiation’ to same-sex couples, permitted the name of the spouse of a lesbian mother to be entered on the birth certificate in cases of assisted procreation, and allowed same-sex couples to adopt (Equal Marriage, 2002). The Quebec Coalition for the Recognition of Same-Sex Couples, under the leadership of Irene Demczuk and Laurent McCutcheon and working closely with Mona Greenbaum of the Lesbian Mothers Association, was instrumental in demanding the bill, lobbying the Parti Québécois, leveraging media attention, and educating the public.

While these specific court cases were critical in advancing relationship recognition, other activism inside and outside the courts was also instrumental in creating activists, shaping public opinion, and supporting the litigation cases. Thus, some of the activism occurring in British Columbia and Ontario in the 1990s, is worth noting briefly. In B.C., the grassroots December 9<sup>th</sup> Coalition was formed in 1992 when a group of “queer leaders” from Vancouver organized to defeat a bill proposed by then Justice Minister Kim Campbell to add protection from discrimination on the grounds of sexual orientation to the Human Rights Code, but to restrict marriage by defining it as

heterosexual (findlay Interview, 2005). The Coalition was successful in helping to defeat the proposed bill and members and/or working groups went on to address a number of issues through a wide range of activities. These actions went from holding workshops on sexism, racism, ableism, and internalized homophobia to the homosexual panic defence (a justification used in law for violence against lesbians and gays) and urging Census Canada to include a question on same-sex relationships (findlay Interview, 2005; Maynard Interview, 2005). Also in the late 1990s, Rainbow BC was formed to provide “networking between LGBT/GLBT people in small towns and big cities in every region across British Columbia” (Rainbow BC, 1999). Initially, the organization was comprised largely of December 9<sup>th</sup> Coalition members (Rainbow BC, 1999). Craig Maynard, a December 9<sup>th</sup> member, had a job that required travel around the Province. He used his over-night stays to connect with local lesbian and gay community groups to tell them what was taking place in other parts of the province in terms of successes and the types of issues that were being addressed and to provide administrative training (Maynard Interview, 2005). Provincial conferences of Rainbow BC provided a venue to include lesbians and gays from towns outside the Vancouver and lower mainland area and to hear about their issues. In 1997, the Rainbow BC conference addressed hate activities against and within LGBT communities and in 1999, a variety of topics addressed LGBT youth issues (Rainbow BC, 1997; Rainbow BC, 1999).

In Ontario, after the defeat of Bill 167 in a free vote in the legislature in 1994, a grassroots organization called the Campaign for Equal Families was founded (Cossman, 1999). Bill 167 “proposed amendments to scores of provincial statutes to eliminate discrimination against same-sex couples” (Rayside, 1998:142). Mary-Woo Sims, co-chair

of Campaign for Equal Families, noted that the defeat of Bill 167 was disappointing and had resulted because too much responsibility for its passage lay with the NDP government of the day. Both lesbian and gay activists and the Christian right had lobbied hard for their respective positions (Rayside:143-145). When the Bill was defeated in a free vote, activists vowed to take their issues through the courts, using the Charter to force politicians to do the right thing rather than to take the most politically expedient action (Sims Interview, 2005). The Campaign for Equal Families, later called Foundation for Equal Families, intervened in several relationship recognition cases, including *M. v. H.* Then, in 1999, with the support of gay lawyer David Corbett, the Foundation sued the federal government in an omnibus case that challenged over fifty laws that discriminated against same-sex couples (Cossman, 1999). Omnibus in this sense means that one bill would change several laws. This challenge led to Bill C-23, the *Modernization of Benefits and Obligations Act*, referred to above, which passed in 2000.

Throughout the 1980s and 1990s lawyers were laying a foundation of jurisprudence in order to eventually pursue same-sex marriage; in a sense, they were preparing the judges (Maynard Interview, 2005). At the same time, as the few cases and activities that have been described above suggest, the push for same-sex relationship recognition required a great deal of individual tenacity, group solidarity, and leadership in the lesbian and gay community, along with legal resources and political acumen. If any one of these qualities had been absent, it is doubtful that marriage cases would have come forward as early as the turn of the century, and certainly unlikely that they would have been successful.

## The Same-Sex Marriage Cases

In Canada, laws governing marriage fall under two jurisdictions: who can marry falls under federal jurisdiction, while the solemnization of marriage is a provincial responsibility. In the latter half of 2000, three key legal cases were launched to challenge the opposite-sex definition of marriage: the *Hendricks* case, involving one couple in Quebec; the *Halpern* case, which involved eight couples in Ontario and which was joined by the Metropolitan Community Church of Toronto (*MCCT*) in 2001, after the Ontario government refused to register two marriages performed by the church under the authority of the publication of banns; and the *Egale* case, which involved five couples in British Columbia and which later joined three other B.C. couples who had brought forward the *Barbeau* case (Egale, 2004). Multiple provincial cases were launched because when a federal law is challenged in provincial court, an affirmative decision only applies in the province in which it is made, until it reaches the Supreme Court of Canada. A few of the most important dates and decisions are presented in Table 1.

**Table 1: Same-Sex Marriage Court Cases: British Columbia, Ontario, and Quebec**

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October 2, 2001	The B.C. Supreme Court ruled on the <i>Egale</i> and <i>Barbeau</i> cases that excluding same-sex couples from civil marriage is discriminatory, but that the division of powers in the Constitution prevents including same-sex couples in the definition of marriage. The couples appealed.
July 12, 2002	The Ontario Superior Court struck down the opposite-sex restriction on marriage, but imposed a two-year suspension. The Attorney General appealed.
September 6, 2002	The Quebec Superior Court struck down the opposite-sex restriction on marriage, but imposed a two-year suspension. The Attorney General and the Catholic Civil Rights League appealed.
June 10, 2003	The Ontario Court of Appeal unanimously confirmed the 2002 decision and removed the suspension. The City of Toronto immediately began issuing marriage licenses and same-sex couples began to marry.
July 8, 2003	The B.C. Court of Appeal overturned the 2001 decision, and same-sex couples were able to obtain licenses and marry later that day.
March 19, 2004	The Quebec Court of Appeal approved equal marriage.

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Source: Equal Marriage Info Kit (Egale, 2004)

On June 10, 2003, Canada joined the Netherlands and Belgium, when it became the third country in the world to permit same-sex couples to marry, if only at that time in the province of Ontario. British Columbia followed on July 8, 2003. Courts in the Yukon, Saskatchewan, Manitoba, Quebec, Nova Scotia, and Newfoundland also approved same-sex marriage in 2004 and New Brunswick in 2005. The remaining provinces of Alberta and Prince Edward Island, along with the Northwest Territory and Nunavut were legislated to allow same-sex marriage on July 20, 2005 (Egale, 2005b).

As the marriage cases were progressing through the court system, there were a number of activities generated by the government: the Justice Committee cross-country hearings, the Reference Questions presented to the Supreme Court of Canada, and the

Legislative Committee hearings with respect to Bill C-38. At every step of the way Egale and then Canadians for Equal Marriage, and their supporters, were involved.

In September, 2002 following the July Ontario decision, Martin Cauchon, then Minister of Justice, facilitated the Justice and Human Rights Committee cross-country hearings to discuss four options for addressing same-sex marriage: maintain status quo, support same-sex marriage, institute an alternative regime, e.g. domestic partnerships, or abolish civil marriage, which would take the government out of the marriage business (Egale Canada, no date). At this time the Equal Marriage committee in Egale was handling the marriage issue. The committee was lobbying, coordinating media responses, litigating, and intervening in the marriage cases, and networking with equality groups and religious groups. Egale ensured that there were individuals and organizations at every hearing across the country to represent the pro-marriage side of the debate. Likewise, the opponents lined up their witnesses. Those speaking in favour of same-sex marriage included same-sex couples and their parents, friends, and family members, educators, union groups, religious organizations, legal organizations, and women's and ethnocultural organizations (Egale Canada, no date). Those speaking against same-sex marriage included religious and ethnocultural organizations, academics, lawyers, and family organizations (Egale Canada, no date). From November 2002 to April 2003 the Committee heard from 467 witnesses, with 58.7% supporting same-sex marriage, 35.5% favouring the status quo, 1.7% for an alternative regime, 1.1% for abolishing civil marriage, and 3% neutral/other (Egale Canada, no date). Before the final report could be released, the Ontario Court of Appeal ruled in June 2003 that same-sex marriages should be allowed immediately. Pat O'Brien, the Liberal MP from Ontario who stepped down

from caucus in 2005 because he felt the Paul Martin government was rushing through Bill C-38, cited the lack of a report as one of the reasons for criticizing the government, yet the information above would indicate that the report would likely have been favourably disposed to same-sex marriage.

### **From a Legal to a Political Forum**

After the 2003 Ontario decision, then-Prime Minister Chrétien announced that the liberal government would not appeal the Ontario ruling; indeed, the government would put forward legislation for same-sex marriage. There is a view that the government's decision was influenced by the Justice Committee hearings (Elliott, 2005). In any event, the government's decision angered the opponents of equal marriage; "religious organizations and other proponents of heterosexual-only marriage howled with rage" (Lahey and Alderson, 2004:70) and responded by "coming on like gang busters and flexing their political muscle" (Arron Interview, 2005). Before tabling legislation the government presented a Reference to the Supreme Court in which it sought advice (Lahey and Alderson, 2004:92-93). Three questions were presented on July 7, 2003 (#s 1-3) and one more on January 28, 2004 (#4) (Lahey and Alderson:94). The fourth question was widely interpreted as a stall technique on the part of Paul Martin (who won leadership of the Liberal party in November 2003 from about-to-retire Jean Chrétien) to delay both a Supreme Court decision and government response to such a decision until after the 2004 federal election (Equal Marriage, 2004). In essence, question 4 was asking the Supreme Court to rule on prior provincial court decisions.



- 1) Is the Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes within the exclusive legislative authority of the Parliament of Canada?
- 2) If the answer to question 1 is yes, is section 1 of the proposal, which extends capacity to marry to persons of the same sex, consistent with the *Canadian Charter of Rights and Freedoms*?
3. Does the freedom of religion guaranteed by paragraph 2(a) of the *Canadian Charter of Rights and Freedoms* protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?
4. Is the opposite-sex requirement for marriage for civil purposes, as established by the common law and set out for Quebec in s. 5 of the Federal Law-Civil Code Harmonization Act, No.1, consistent with the *Canadian Charter of Rights and Freedoms*? If not, in what particular or particulars and to what extent?

There were over 20 participants in the Reference hearings that were scheduled for October, 2004: four governments (one federal and British Columbia, Ontario, and Quebec provincial), 14 intervenor groups (made up of 'for' and 'against'), two members of Parliament, and the litigants from British Columbia, Ontario, and Quebec (Lahey and Alderson, 2004:95-96). On December 9, 2004, the Supreme Court ruled in the affirmative for the first three questions and declined to answer the fourth question (Library of Parliament, 2005). Following the Supreme Court decision, a poll conducted by Environics between December 14, 2004 and January 5, 2005 found that 54% of Canadians polled said that Parliament should pass a law to change the definition of marriage to include same-sex couples (Environics, 2005). The strongest support came from Quebec and B.C. at 60%, while the lowest rating was Alberta at 37 percent.

In January 2005, Bill C-38, The Civil Marriage Act, was introduced into the House of Commons, with its first reading on February 1, 2005. Following the second

reading, the Bill was referred to a Legislative Committee and hearings took place between February 16 and May 4, 2005 (Library of Parliament, 2005). The Committee could hear proposed amendments or wording changes, but no additions could be made to the Bill (Dr. Buckingham Interview, 2005). One of the opponents presenting, the Evangelical Fellowship of Canada (EFC), made several recommendations for changes, but they stressed that their suggestions did not mean that they supported the Bill (Dr. Buckingham Interview, 2005). Bill C-38 passed the House of Commons third reading on June 28 and passed in the Senate on July 20, 2005 and Canada became the fourth country in the world to enact legislation providing for marriage for same-sex couples, following the Netherlands, Belgium, and Spain (Egale, 2005b).

The above discussion merely provides some of the facts associated with the legal and political challenges for same-sex marriage in Canada, but a wide array of activist resources were employed throughout the five years in which litigation and parliamentary hearings and debates were taking place. An in-depth analysis of this activism will be presented in Chapter 3. For now, it is sufficient to note that Egale and Canadians for Equal Marriage and their many and varied supporters were front and centre in the struggle for same-sex marriage: organizing, lobbying, rallying, litigating, and intervening in government committees and marriage cases.

### **How Wide-Spread is Same-Sex Marriage?**

In the 2001 Census, 34,200 couples identified themselves as lesbian or gay; this number represents approximately 0.5% of all couples (Glossop, 2003). Of the lesbian and gay couples, 55% were male same-sex couples. It is probable that there are more same-sex couples than the number recorded by the Census because some individuals expressed

concerns about identifying themselves as lesbian or gay (Maynard Interview, 2005). To encourage reporting of same-sex partnerships, Egale provided answers to frequently asked questions on its website prior to the census date (Egale, 2001).

So how widespread is same-sex marriage? The following statistics provide an example of the prevalence of same-sex marriage by describing the situation in British Columbia in 2003 and 2004 (see Table 2). In 2003, of 21,975 marriages solemnized in B.C., 735 (3.3%) involved parties of the same sex, with 401 couples (54.6%) residing in the United States (Vital Statistics, 2003:125, 129). Of the 735 same-sex couples, 400 (54.4%) were female couples (Vital Statistics, 2003:129). Notably, of all the marriages solemnized in B.C., opposite-sex and same-sex, only 5.1% involved couples from the United States (Vital Statistics, 2003:124). This would seem to indicate that there was a significant interest on the part of U.S. same-sex couples in coming to B.C. to be married likely because, other than in Massachusetts, marriage was not legally available to same-sex couples in the United States. Another factor may be the fact that “Canada has no residency or citizenship requirements for marriage” (Elliott, 2005).

The 2004 B.C. statistics for same-sex marriage indicate an increase over 2003 of 45 percent in the number of same-sex marriages: of 22,073 marriages, 1064 were marriages of same-sex couples (as opposed to 735 in 2003) (Vital Statistics, 2004:125). This increase can be accounted for, in part, by the fact that same-sex marriages were legal only as of July 2003. Moreover, in 2004, female couples accounted for 57% of the same-sex marriages, a figure very similar to the 54.4% in 2003 (Vital Statistics, 2004:129). Finally, U.S. couples accounted for 5.1% of the total of both opposite-sex and same-sex couples married in B.C., the same as in 2003 (Vital Statistics, 2004:129). In 2001, British

Columbia's population was about 13% of the total Canadian population (Statistics Canada, 2002), so even if the numbers cited above were extrapolated to Canada at large, same-sex marriages represent a relatively small percentage of the total number of marriages in the country. Given this statistical ratio, the prediction made by some opponents that legal recognition of same-sex marriage would result in the end of the traditional family and traditional marriage would now appear to be groundless.

**Table 2: British Columbia Marriage Statistics: 2003 & 2004**

<b>Year</b>	<b>Total Marriages Solemnized</b>	<b>Same-Sex Marriages (% of Total Marriages)</b>	<b>Female Same-Sex Marriages (% of Same-Sex Marriages)</b>	<b>Male Same-Sex Marriages (% of Same-Sex Marriages)</b>	<b>U.S. Same-Sex Couples Married in B.C. (% of Same-Sex Marriages)</b>
<b>2003</b>	21,975	735 (3.3%)	400 (54.4%)	335 (45.6%)	401 (54.6%)
<b>2004</b>	22,073	1064 (4.8%)	606 (57.0%)	458 (43.0%)	493 (48.0%)

Source: Marriage Related Statistics (Vital Statistics, 2003, 2004)

## **CHAPTER 3 – FORMING LESBIAN AND GAY POLITICAL-CULTURAL SUBJECTS**

The judicial and parliamentary systems were essential in legalizing same-sex marriage in Canada. As important as these systems were, there was a great deal of activity on the part of many individuals and organizations within and outside the gay and lesbian community, and by political leaders, faith groups, and human rights organizations to support the campaign for equal marriage. This chapter presents an overview of the key findings of the research substantiating the importance of the broad-based support that was present for same-sex marriage. Chapter 4 will then discuss the movement for legal recognition of same-sex marriage from the perspective of the theory of political-cultural formation.

Unless otherwise noted, the information presented here reflects the content of the research interviews. After a brief introduction, several themes are examined: the organizations of Egale and Canadians for Equal Marriage; the importance of marriage and why common-law status does not adequately recognize lesbian and gay relationships; the manner in which legal rights can effect social change; a sample group of same-sex couples who have chosen to marry; the supporters and opponents of same-sex marriage; the types of collective action that figured throughout the challenge and the role of the Internet; and the complementary but distinct path to same-sex marriage that occurred in Quebec. Each of these themes will reappear in Chapter 4 when the same-sex marriage movement is analysed using the analytical concepts of PCF.

## Research Findings

Most, but not all, of the research participants are either a lesbian woman or gay man and all participants are to varying degrees politically astute and activist minded. What the lesbian and gay participants share is some level of perceived social marginalisation by virtue of their sexual orientation. Marginalisation is experienced and expressed in a variety of ways, including experiencing inequality in law, suffering homophobia or social censorship, and/or being characterized stereotypically. The lesbian and gay participants also share an intense desire to live life as fully included and respected citizens of Canada. While formal equality in law is different from substantive equality, or the lived experience of individuals, same-sex marriage was seen as an essential step towards achieving social recognition. Egale's 2003 Annual Report states, "without marriage, we will not proceed much further in our equality struggle" (Egale, 2004b).

My research shows that same-sex marriage has been contentious on all levels in society: within the government, between and within political parties, religious organizations, civil society organizations, and ethnic communities, and between citizens and within families. Furthermore, Quebec activism was conducted in a manner somewhat apart from that of other organizations in Canada; this chapter therefore also provides a brief description of some of the activities that took place within Quebec. My research will also demonstrate that while there were many influential groups and individuals involved in the same-sex marriage challenge, it is undisputable that Egale was a central force. Although this section presents Egale and CEM separately, the two organizations cannot be neatly disconnected one from the other. Therefore, depending on the information to be

presented, these two organizations will either be identified individually or be referenced jointly.

### **Egale Canada: a National Organization for Lesbian, Gay, Bisexual, and Trans-Identified (LGBT) People**

Egale was established in 1986 for the express purpose of carrying out litigation and lobbying activities, but since then its mandate has expanded to include legal, political, and cultural issues at local, national, and international levels. In its early years, Egale lacked formal organization and was seen as “an organization of individuals rather than a coalition of organizations . . . [and] as dominated by professionals, particularly lawyers, which affected the ideological direction of the organization and privileged white middle-class individual members” (Smith, 1999:97, 104). Responding to concerns about its ability to effectively represent the LGBT community, Egale has reorganized twice, in 1992 and 1997, and has made concerted efforts to increase membership and to include both individual and organizational memberships (Smith, 2004:111-113). As of early 2005, Egale had just over 4000 members across Canada (Egale, 2005). It also adopted a structure where one man and one woman are elected to represent each of its six regions. These changes helped Egale to grow in visibility and political access and in activist networks (Rayside, 2001:42). In recent years, Egale’s leadership has attempted to be more accountable, inclusive, and representative of a wider constituency. It has responded to criticism by moving beyond legal issues to “incorporate a broader range” of concerns of lesbian, gay, bisexual, and transgendered people (Smith, 2005:84). Reflecting this goal, the Winter 2005 newsletter highlights the fact that Egale is involved in more than legal and political advocacy. The newsletter provides information about Egale’s new

forum for family- and child-related issues and its partnership with a local youth group concerned with queer and transgendered youth living in poverty (Egale, 2005).

From the time that Egale was established marriage had been an important issue, although strategically the campaign for same-sex marriage began in earnest in the mid-1990s. In 1993, the *Layland and Beauline* case challenged the common-law rule restricting marriage to persons of the opposite-sex. Common-law is often called case law because the law “is not collected into a single comprehensive and authoritative code, but is drawn instead from the decisions that judges have made in the cases brought before them by individuals” (Mount Allison University, no date). After an Ontario court ruled against the couple, Egale organized a meeting of virtually all the lawyers from across Canada who were at that time involved with same-sex litigation. The lawyers’ group agreed that groundwork had to be laid before the marriage issue could be pursued, because at that time several jurisdictions did not even have human rights protection. One of the lawyers involved, barb findlay, said the group thought that to start with marriage was “pretty much to guarantee failure.” For strategic reasons, it was decided to pursue the same legal treatment for same-sex partners as that received by opposite-sex common-law couples. To this end, Egale intervened before the Supreme Court of Canada in every gay rights case that reached the courts, including those noted in the historical section above, i.e. *Egan v Canada* and *M. v. H. and Ontario* (Egale, 2005d).

When the marriage cases began in 2001, Egale launched its own case with five B.C. couples (which later joined with three other couples, represented by barb findlay) and intervened in the Ontario and Quebec cases. Here too Egale organized a meeting in Toronto of the lawyers involved in the cases. At the meeting lawyers strategized together



and created affidavits that were the same, by design, so that the messages would be consistent. Until the middle of 2003, Egale's Equal Marriage Public Education committee coordinated the many activities associated with the marriage challenge.

### **Canadians for Equal Marriage: A Single-Issue Organization**

Following the Ontario Court of Appeal ruling, in July 2003, that same-sex marriage should be allowed immediately, Egale and the Metropolitan Community Church of Toronto (MCCT) decided that a separate organization was needed to work "solely on passage of the government's equal marriage legislation" (Reverend Hawkes Interview, 2005; Egale, 2004). MCCT had launched its own court case after the Ontario government refused to register two same-sex marriages performed under the authority of the publication of banns in 2001. Reverend Brent Hawkes of MCCT had also been involved with Egale for a number of years, including as a Board member (Egale, 1997). CEM was organized as a campaign structure to eliminate bureaucratic processes and to provide the flexibility and speed that were required to respond to issues on a daily and even hourly basis. Several committee members from Egale's Equal Marriage Public Education Committee staffed CEM.

In the fall of 2003, Stephen Harper, then an Alliance party member of parliament, reintroduced a motion put forward by the Reform Party in 1999, to preserve the definition of marriage as a union between one man and one woman. This motion became the first issue that CEM addressed. Its members lobbied MPs, spoke to the media, and stressed that a vote for the motion was a vote to use the notwithstanding clause.

The notwithstanding clause in section 33 of the Charter provides that both Parliament and the provincial legislatures may expressly declare that legislation shall operate 'notwithstanding' the Charter's constitutional protection of fundamental freedoms (section 2), legal rights (section 7 to 14) and equality rights (section 15). Although legislative declarations to this effect automatically expire after five years, they may be renewed indefinitely (Manfredi, 2003).

There were over one million emails sent to MPs and the motion was narrowly defeated in Parliament, 137-132, on September 16, 2003.

CEM was a separate organization, not controlled by Egale, although Egale encouraged its members to get involved through its website and provided the most resources in terms of money, staff, and administrative support. CEM was accountable to its Coalition partners, including Parents, Families, and Friends of Lesbians and Gays (PFLAG), Canadian Business Students, the United Church, and the Canadian Labour Congress. As CEM possessed few economic or human resources at the head office in Ottawa, it had to rely on its local representatives/chapter coordinators, partner organizations, and other sources of support. The Public Services Alliance of Canada, for example, donated office space, computers, phone lines, and free long distance calls to CEM for several months in 2005. CEM's chapter coordinators were located across Canada and generally looked after particular election ridings.

CEM was fortunate to have highly capable, politically astute, and deeply committed local coordinators. There were people like Eldon Hay, a PFLAG Leader in New Brunswick, who has received several awards, including the Order of Canada, for his human rights work, and Mary-Woo Sims, from British Columbia, who has both extensive human rights experience, including serving as Chief Commissioner of the BC Human Rights Commission, and media contacts. The local coordinators lobbied MPs, organized

rallies, mobilized support, disseminated information, educated the public, and responded to media opportunities. CEM held regular national conference calls with its partners and area contacts, facilitating two-way communication: down from CEM and up from the partners and local coordinators. The calls were used to communicate updates on legal processes and activities, to share successful strategies, and to ensure consistent messages. The partner organizations disseminated information directly to their members.

CEM operated for two intense years securing introduction of Bill C-38, moving public and political support, and countering oppositional rhetoric (Egale, 2005d). Designed as a one-issue organization, it disbanded a few days after the Senate decision on July 20, 2005 legislated same-sex marriage in Canada. Although CEM was run as a one-issue organization, it was situated within a history of sustained social movement activity for lesbian and gay rights. In PCF terms, the formation of CEM was an example of a politically-constituted community creating a second organization to fulfil different tactical needs based on the state response to the movement's demands.

### **Why Same-Sex Marriage?**

The demand for same-sex marriage was influenced by a number of elements, including love, legitimacy, choice, citizenship, equality, and symbolism. Michelle Ritchot, a CEM chapter coordinator from Winnipeg, reflected that she was raised to believe that a marriage ceremony is the way romantic partners express love for each other. Each of the couples interviewed for this study also noted the importance of publicly expressing their love and commitment to building a life together.

Laws reflect social values, so it is a powerful social statement when laws discriminate against certain groups. Most participants believe that changing the laws to legalize same-sex marriage is a necessary step to a more general social acceptance of homosexuality. Furthermore, before same-sex marriage, lesbians and gay men could not validly say they were choosing not to marry because marriage was simply not an option. Now, individuals can legitimately say, “I do or do not want to be married” and know that either is possible. Marriage, then, gives lesbians and gay men the same choices, to marry or not, as heterosexual couples. The research participants acknowledged that not everyone will want to be married, but those who want to should be able to.

Same-sex marriage is also about the right of lesbians and gay men to choose the type of family and home life they want and to have their family status validated. Same-sex marriage entails both rights and responsibilities; it recognizes the role of same-sex couples as equal to heterosexual couples in civil society. As law-abiding citizens, with the same tax responsibilities and obligations as heterosexuals, they should have the right to marry. After common-law status gave lesbians and gay men partner rights, gaining the right to marriage was the next hurdle. Civil unions or domestic partnerships were not acceptable because these options would have established a separate but equal status for lesbians and gay men and the alternative family forms do not have the symbolic status of marriage. Symbolic status is important because social discrimination can translate into economic discrimination, which is part of the economic-structural processes that shape a movement’s struggles (this idea is expanded in Chapter 4). Although research participants did not make a direct connection, it would seem reasonable to suppose that if legitimating same-sex unions through legal marriage, and not merely offering the

common-law option, advances the pursuit of societal acceptance, this must somehow be related with economic equality.

### *Common-Law Is Not Good Enough*

Across the country there is a legal distinction between a common-law relationship and marriage, which was upheld by the Supreme Court of Canada in the *Walsh v. Bona* case (Bailey, 2004; findlay Interview, 2005). Common-law is an ascribed status in that the couple does not have to do anything except cohabit for a certain period of time in order for the relationship to be considered common-law. In Canada, same-sex common-law became equal to opposite-sex common-law in federal statutes with the *Modernization of Benefits and Obligations Act* of 2000. In addition to the federal qualification of one year of cohabitation, the provinces have differing requirements for recognition of a common-law relationship. In B.C., for example, common-law status is attained after two years of cohabitation, while in Ontario recognition comes after three years (J.P. Boyd, no date; Birenbaum, Steinberg, Landau, Savin & Colraine, no date). Furthermore, while common-law status confers the same rights and responsibilities for same-sex partners and opposite-sex partners, it does not provide all the benefits and obligations of marriage. There are three main differences between the two statuses: a couple has to wait to be deemed common-law; when a common-law relationship dissolves, property is not automatically split 50/50; and, a common-law partner is not exempt from testifying against his/her partner (Bailey, 2004; findlay Interview, 2005).

While common-law status confers almost all of the same material benefits and obligations as marriage, there are also symbolic differences. Manny Calisto, for example, commented that although Manitoba gave most of the rights of marriage to common-law

couples, in an emergency situation being able to say, “This is my spouse,” carries social weight. There is a socially hierarchical division between marriage and common-law. Manny and his partner, Brad Tyler-West, and Jean-Marie Russell and James Chamberlain commented that their families treated them differently after they were married: Manny and Brad were given family heirlooms and James said that his mother definitely considers Jean-Marie as one of the family and refers to him as her son-in-law now that the couple is married. Likewise, Tanya Chambers mentioned that people understand the language of marriage and that there is clearly a difference between being related to as a spouse and daughter-in-law or sister-in-law as opposed to being “just” a friend or roommate.

### **Do Legal Rights Create Social Change?**

Legal strategies are used to achieve more than substantive changes in law; there is an accompanying desire to effect social change. Legal rights are foundational: laws reflect society and its values, define what is acceptable in society, and provide a social anchor. Brian Stiller, president of Tyndale University College and Seminary in Toronto, proposes that the role of the law is both prohibitive and pedagogical; it regulates behaviour and sends a public message (Stiller, 2003). Stiller does not support same-sex marriage, but his definition is valid. Even with changes in law, people may still have negative attitudes, but through its laws a society indicates, for example, that discrimination based on sexual orientation will not be tolerated and that there are consequences for illegal behaviour. Furthermore, laws should evolve and change as society evolves and changes.

Without exception, the respondents believe legal change does create social change. But at the same time they acknowledge that the resulting social change is neither immediate nor comprehensive. Several respondents cited the experience of women and African-Americans as examples of where legal changes have definitely made a difference in the lives of people, but by no means have misogyny and racism been eradicated. Didi Herman has extensively analysed the work of theorists who either critique or argue in favour of seeking rights as a movement strategy (Herman, 1994:55-76). While there are concerns that “gains won may easily be eroded” (Fudge and Milner referenced in Herman:75), Herman concludes that rights-related law-reform strategies have been successful in raising awareness of lesbian and gay rights, in mobilizing support, and in shifting notions of normality, equality, and rights (Herman:75-76).

The legalization of same-sex marriage recognizes changing family forms and continues the process, which began with relationship recognition, of removing the stigma of same-sex attraction, of homosexuality, in civil society. Legalizing same-sex marriage also provides the opportunity for the creation of role models for younger generations. Young gay people will now grow up with models for long-term relationships, and these models will diminish the possibility of their believing the myth that gay people cannot have long-term relationships. Legal rights are necessary and come about after a great deal of consciousness raising and thinking; that is, changing laws requires that subordinate groups, communities, and classes create sufficient support in civil society to influence law-makers.

### **The Couples: Ordinary Canadians?**

There is no typical same-sex couple. This was precisely the message that Egale wanted to communicate when it chose the five B.C. couples for its legal challenge of marriage. Likewise, the couples I interviewed each had unique stories. Brad Tyler-West and Manny Calisto, of Winnipeg, have been together over eight years and are parents to a daughter, who is Brad's biological child. Tanya Chambers and Melinda Roy, of Vancouver, have shared a life for more than 10 years and James Chamberlain and Jean-Marie Russell, also of Vancouver, have been partners for 18 years. The enduring nature of their relationships would seem to negate the concerns expressed by Dr. Buckingham of the Evangelical Fellowship of Canada that allowing same-sex couples to marry will undermine the commitment of marriage.

The couples would be considered middle-class, although there is a range of education and a variety of careers within the couples. Some of the individuals hold a university degree and careers include retail service, teacher, and business manager. Brad, Manny, and James are the most politically active in terms of the organizations with which they are involved, including GALE B.C. (Gay and Lesbian Educators), Pride Canada, LAMBDA (a gay and lesbian professionals group), and Rainbow Educators of Manitoba. James gained public attention with a landmark lawsuit against the Surrey school board for banning three children's books that dealt with the issue of same-sex families. Tanya and Melinda had a unique experience as one of Egale's B.C. couples. Their lives were put on public display, as they became the face of the marriage challenge, a role that required them to attend court sessions and respond to many media requests. Their involvement did



not end with the legislation of same-sex marriage; they often act as witnesses for American couples who come to British Columbia to be married.

While each couple has a unique set of circumstances, there are some commonalities. Each of the couples had shared rings and/or held a commitment ceremony prior to their legal marriage; in the case of James and Jean-Marie, the ceremony was over 17 years ago. Early on in their partnerships, Brad and Manny and Jean-Marie and James took the step of having living wills and other documents produced so that, for example, they could speak for each other in the case of a medical emergency. Michelle Ritchot, a CEM contact in Winnipeg, mentioned that she and her partner, Stephany Cholakis, had also taken similar precautions. While there were a variety of reasons for wanting to marry, the couples shared a desire to freely express their same-sex desires, to have their relationships recognized and valued as equal to heterosexual marriages, and to provide role models for gay youth and society at large of committed, loving gay/lesbian relationships.

### **Supporters of Equality, Fairness, and Respect**

The challenge for same-sex marriage was supported by a wide variety of individuals and organizations from across Canada. In fact, in March 2005, CEM put a full-page advertisement in *The Hill Times* political newspaper of Ottawa, listing more than 150 organizations and individuals in support of same-sex marriage (the title for this section reflects some of the copy contained in the advertisement) (*The Hill Times*, 2005).

Of particular consequence was that CEM had the support of many politically astute and politically active individuals and organizations. First, there were the partner

organizations, including PFLAG Canada, the Canadian Federation of Students, CUPE (Canadian Union of Public Employees), the Canadian Labour Congress, and the Canadian Psychological Association (CEM, no date; Courtney Interview, 2005). There were also the litigants who put their lives on public display. Tanya Chambers and Melinda Roy have been mentioned, but the most visible couple has been Kevin Bourassa and Joe Varnell, who, following their marriage officiated by MCCT in 2001, wrote a book and launched a website. Their website has been very active in posting current news events and received over five million visitors and over 101 million hits between 2001 and 2005 (Equal Marriage, 2005).

Over the years, several lawyers have been instrumental in the fight for same-sex marriage. In fact, Reverend Hawkes, of MCCT, and Evangeline Caldwell, of the Quebec Coalition for Same-Sex Civil Marriage, stressed that an enormous debt is owed to lawyers, such as Douglas Elliott and Noël Saint-Pierre to name only two, who worked completely or largely pro bono. Reverend Hawkes went so far as to say that without the pro bono work the litigation may not have been possible because the costs of litigation far exceed what the average individual or organization could afford.

Then there were a host of individuals and organizations that spoke in support of same-sex marriage, wrote MPs, participated in rallies, appeared on radio and TV programs, and spoke to neighbours and friends. Other non-Coalition supporters included unions, faith groups such as the United Church, MCCT, and the Liberal Rabbis, and human rights organizations such as Asian Canadians for Equal Marriage. Also throwing their support behind same-sex marriage were party leaders Paul Martin, Jack Layton, and Gilles Duceppe, who stood for same-sex marriage on the grounds of human rights, and

individual MPs, such as Hedy Fry, who engaged her colleagues in debates and attempted to sway opponents.

Interview participants described a wide variety of roles that the supporters played and identified an array of reasons for supporters being passionate about the same-sex marriage challenge. CUPE is the largest union in the country with approximately 540,000 members. According to Joe Courtney of the CUPE Research Branch (and formerly of its Human Rights Equality Branch), CUPE worked with Egale/CEM and other union groups, like the Canadian Labour Congress, to bring consistent messages to Parliament, in effect lobbying the government. In addition, CUPE presented to the Justice and Human Rights Standing Committee, supported Egale monetarily, prepared fact sheets for union membership that outlined the organization's position on equal marriage, presented action alerts on the website so people could contact their members of Parliament, and encouraged union Locals to get involved with a local chapter of CEM. CUPE has a history of supporting same-sex rights, fighting, for example, for pension benefits for its lesbian and gay workers (CUPE, 1998); the union's efforts in this regard reflect a policy on equality rights that condemns homophobia, racism, and misogyny. CUPE represents largely white-collar workers and therefore it could be argued that their participation supports middle-class interests and represents a class affinity with the most visible activists working for same-sex marriage.

Richard Chambers, Associate Executive Minister in the Justice, Global and Ecumenical Relations Unit of the United Church of Canada, believes that the United Church played a leading role in providing a positive theological rationale for same-sex marriage. For a number of years sexual orientation has not been a source of

discrimination in the church. In Canada, the United Church was the first to ordain gay and lesbian ministers, in 1988, and in 1992 it created a liturgy for blessing same-sex unions (United Church, 2003). These decisions reflected the result of a long consensus building process between 1980 and 1988 that involved church hierarchy and significant congregational resources from across Canada. While the United Church General Council takes a stand on these issues, individual congregations decide whether or not to follow the stated position. The Church submitted a paper and made a presentation to the Justice and Human Rights Committee and intervened with the Supreme Court Reference questions. Its position became more clearly articulated over time and its best summation was submitted to the Supreme Court in fall, 2004. In addition, the Moderator of the United Church wrote a letter to all Members of Parliament and held a breakfast meeting that was open to all MPs, wherein he urged Parliament to approve same-sex marriage.

MCCT has a history of activism dating from the 1970s. Reverend Hawkes believes that supporting same-sex marriage by marrying couples under the publishing of the banns helps “undercut the God versus gay argument.” In other words, the public support given by churches and religious leaders invalidates the argument that religious people do not support same-sex marriage. Rabbi Mivasair, a seasoned activist, belongs to the Canadian Coalition of Liberal Rabbis and was one of the activists that generated the idea of a Vancouver rally in April 2005, an idea that spread to include rallies in Toronto, Calgary, and Halifax on the same day. He views same-sex marriage as a justice and human rights issue and was determined to present an alternative position to those who said religious people and religious communities do not support same-sex marriage. His

commitment to human rights and justice has perhaps been shaped by his own experiences with racism growing up in the 1950s and 1960s in Baltimore, Maryland.

Asian Canadians for Equal Marriage supported same-sex marriage because as a human rights issue it aligns with their values of antidiscrimination and anti-oppression. The goal of the Asian Canadians group was to change attitudes in the Asian community and in mainstream Canada. By naming these few individuals and organizations, I am omitting many others who played an important role in advancing the rights of gays and lesbians. Not negating the central role of Egale and CEM, Laurie Arron said equal marriage “was a movement that went way beyond Canadians for Equal Marriage.”

### **Opposing Viewpoints**

The opponents of same-sex marriage were not limited to individuals or organizations from outside the lesbian and gay community. Some people within the community expressed resistance to marriage, but their concerns tended to be more against the institution of marriage than against relationship recognition. The LGBT newspapers, *Xtra*, *Xtra Ottawa*, and *Xtra! West*, provided a forum for critical editorials, articles, and letters to the editor. The main concerns expressed were fear of losing an alternative sex-positive culture, criticisms of the historical gender inequality in marriage, and denial that the state had to sanction lesbian and gay relationships and family forms (Chapter 4, *Subordinate Culture*, extends the discussion of these concerns). A reading of articles and letters on the subject that were published in *Xtra! West* between 1999 and 2005, however, leads to the conclusion that the tone of the articles and letters changed. In March 2001, a news piece in *Xtra! West* outlined several concerns, including: marriage does not work even for heterosexuals, witness that divorces are commonplace; marriage will be more

legitimate than chosen family, polyamoury, or anonymous sex, setting up a hierarchy of relationships within the lesbian and gay community; marriage will negatively impact queer identity, a source of pride to many lesbians and gay men; and, coupled monogamy will become the standard, also eroding queer identity (Yeung, 2001). By August 2002, there were more supportive pieces appearing, such as Paul Gallant's article in which he worried that the decision on same-sex marriage might reach the Supreme Court of Canada before public support was fully behind it. The Liberal government then might offer registered domestic partnerships rather than marriage, leaving lesbians and gays "stuck with some sort (sic) separate-but-equal registered domestic partnership" (Gallant, 2002). Reverend Hawkes thought that *Xtra* got off on a wrong tangent in terms of being for or against marriage, when the issue was always equal access.

The Coalition for Lesbian and Gay Rights in Ontario (CLGRO), whose underlying ideology is liberation politics, advocated eliminating marriage in favour of civil unions where an individual could choose to register a friend, sibling, or parent as his or her significant other (Giese, 2002). In 2002, however, CLGRO spokesperson Tom Warner said, "if our current marriage structure is maintained, same-sex couples should be able to marry" (Warner quoted in Giese, 2002). As well, academic opponents such as Susan Boyd and Claire Young argued that "adopting the status quo in terms of the rights and responsibilities that go with spousal status has reinforced the existing system with all its problems (class and gender hierarchies), rather than seeking a more transformational strategy" (2003:771). The dissenting voices in the lesbian and gay community, however, never organized to block or interfere with the litigation or mobilizing efforts of Egale and

others and they were never as vocal in their dissent as the organizations intent upon legally and politically obstructing Bill C-38.

The B.C. marriage case was the first to be heard in court. Intervening in that case were the Interfaith Coalition for Marriage and the B.C. Coalition for Marriage and Family. The Interfaith Coalition includes the Evangelical Fellowship of Canada, the Archdiocese of Vancouver, the B.C. Council of Sikhs, the B.C. Muslim Association, the Ontario Conference of Catholic Bishops, the Islamic Society of North America, the Ontario Council of Sikhs, and the Catholic Civil Rights League (EFC, 2001). The main argument of the Coalition was that for millennia, marriage has been commonly understood as heterosexual in nature and was never defined by the courts or by any legislature, so it cannot be redefined by such institutions (EFC, 2001). The Interfaith Coalition also intervened in the Ontario court cases and the Supreme Court of Canada Reference. The B.C. Coalition for Marriage and Family was formed by Focus on the Family Canada, REAL Women of BC, and the Canadian Alliance of Social Justice and Family Values Association (Focus on the Family, 2001). This group maintained that Canadians and Canadian society “are best served by a definition of marriage that limits the union to one man and one woman” and that committed domestic relationships could be recognized without redefining marriage (Focus on the Family, 2001). Melinda Roy and Tanya Chambers, one of the B.C. couples in Egale’s court case, said it was very difficult to sit in court and listen to the hurtful comments of these interveners. The couple feels that the interveners were basically saying that gays and lesbians are evil and that allowing them to marry would destroy society.

After the favourable Ontario decision in 2003 there was considerable backlash because opponents had been at once anticipating and dreading the decision since the mid-1990s: in 1995, the phrase “sexual orientation” was used for the first time in federal law in the hate crimes protection act; in 1996, the Canadian Human Rights Act was amended; and in 2000 the common-law definition of spouse was amended. At each step opponents warned the changes were leading to marriage. So when same-sex marriage was allowed, the opponents sprang into action mobilizing their support, especially through the summer of 2003 and again over Parliament’s Christmas break, after the federal government presented the Reference Questions to the Supreme Court.

There were a variety of arguments or statements about why marriage should remain the domain of opposite sex couples; most often cited were the longevity and normality of marriage as the union of a man and a woman and concerns for family stability and the raising of emotionally healthy children. Pat O’Brien, former Liberal MP, declared that same-sex marriage defies common sense and that it is both illogical and immoral (O’Brien Interview, 2005). By far the most organized opposition came from such religious institutions as the Catholic Church, the Evangelical Fellowship of Canada, and organizations such as REAL Women of Canada, Focus on the Family, and the Defence of Marriage Coalition. The following provides a brief synopsis of the positions expressed by each of these groups.

Beginning in November 2002, the Canadian Conference of Catholic Bishops “intervened time and time again to convince Members of Parliament not to redefine the institution of marriage for the benefit of persons of homosexual orientation” (Canadian Conference of Catholic Bishops, 2005). Cardinal Ouellet, at the July 2005 Senate



hearings, said allowing same-sex marriage would be equivalent to saying that heterosexuality and homosexuality are morally equivalent and such a statement of social equality would be unjust (to heterosexuals):

Laws are established to ensure respect for the social order. But a social order is valid only if it respects the order inscribed in human nature itself. When laws contradict this natural order, they become unjust and are liable to provoke division and dissension. The result is social disorder. . . . In claiming marriage, persons of the same sex are seeking a social recognition that if granted to them in this way, would be unjust since their union does not fulfill the essential condition of sexual complementarity and openness to natural procreation which is characteristic of the institution of marriage (Canadian Conference of Catholic Bishops, 2005).

It should be noted, however, that there are Catholic clergy and Catholic groups who have opposed official directives (de Valk, 2005)

The Evangelical Fellowship has for fifteen-years been trying to protect the traditional definition of marriage; their efforts to this end have included intervening either singly or as part of the Interfaith Coalition, in the *M & H* case, Supreme Court Reference Questions, and the B.C., Ontario, and Quebec marriage cases. EFC's concern is, in part, that redefining marriage changes the understanding of its social role for everyone and that it sends the wrong message to young people about the nature of marriage. Marriage involves more than love and romance. EFC believes, according to Dr. Buckingham, (Director of Law and Public Policy and General Legal Counsel) that marriage is about sacrifice, children, and family. The Defence of Marriage Coalition is comprised of the Catholic Civil Rights League, Canada Family Action Coalition, Campaign Life Coalition, and Real Women of Canada. The coalition believes "redefining marriage will harm children, violate the human rights of people of faith, undermine our culture and subvert the very democratic nature of our land" (Defend Marriage, no date).

Reverend Hawkes of MCCT stated that the involvement of the religious community on the abortion issue paled in comparison to what was seen around same-sex marriage. At a point in time, Famous Players Theatres cancelled advertisements supporting same-sex marriage “as a result of the heavy-handed campaign [organized by the religious right] which included death threats to those associated with running the ads and their families” (CEM, 2005c). As well, the will of religious organizations to influence public opinion was not limited to Canada; there was also a huge intervention of the religious right supported by U.S. money and U.S. coaching (CEM, 2005a, 2005b).

### **Repertoires of Collective Action**

A repertoire of collective action refers to the range of actions that people in social movements use and reflects forms that are “culturally inscribed and socially communicated” (Tarrow, 1998:20). That is, there are historically established forms of collective action, such as strikes, rallies, and petitions. The repertoire of Egale and CEM included rallies, letters, and emails to newspapers and MPs, in-person meetings with MPs, radio and television talk shows (including ethnic programs) and on-air debates, and town hall meetings. In addition, members of the Saskatoon PFLAG group mentioned taking or making opportunities to discuss homosexuality and/or marriage with friends, family, and strangers. Repertoires of collective action are available to individuals and organizations on both sides of a debate, so it is no surprise that both supporters and opponents of same-sex marriage used similar strategies.

Given the backlash from the institutional religious right, support from faith communities was particularly important to the movement. MCCT petitioned approximately two hundred religious leaders, signed an Interfaith Statement developed

by the Religious Coalition, and worked with CEM to organize religious support for media conferences and rallies. The United Church, the largest protestant denomination in Canada, argued for same-sex marriage in the Justice and Human Rights Committee hearings and the Moderator wrote a personal letter to, and held a breakfast meeting with, MPs from all political parties. In addition, the United Church, the Canadian Unitarian Council, the Metropolitan Community Church of Toronto, and the Coalition of Canadian Liberal Rabbis intervened in the Supreme Court Reference in October 2004. In April 2005, a national demonstration took place in Halifax, Ottawa, Toronto, Calgary and Vancouver, organized by The Religious Coalition for Equal Marriage Rights. While Paul Martin's liberal government brought forward the debate, people such as Rabbi Mivasair felt the decision was threatened and that a rally to visibly present faith groups speaking out in support of same-sex marriage was necessary. Rabbi Mivisair said that if he had believed that Bill C-38 would pass on the strength of Liberal and NDP [and, presumably Bloc] support alone he would not have felt compelled to organize the rally. Hearing from the moderate faith groups is critical according to Jim Wallis (2005), the author of *God's Politics*.

Sometimes, however, the actions of supporters were constricted by concerns related to tax status and political advocacy. For example, PFLAG Canada only recently obtained a charitable tax number, such as churches have. This tax benefit is governed by the Revenue Canada rule that allows only ten percent of a charitable organization's revenues to be dedicated to activism. Accordingly, Kay Williams, a local coordinator and member of the PFLAG national Board, noted that PFLAG literature stresses its role of education and support and, more importantly, it was private individuals, rather than the

official voice of PFLAG Canada, who effected the majority of the lobbying, rallies, and letters to newspapers and MPs. In one specific case, Eldon Hay a PFLAG leader in New Brunswick dropped his membership with the PFLAG Board of Directors prior to representing CEM at a Liberal caucus in Fredericton, New Brunswick. As well, at one point during the 2004 election the United Church had to distance itself from CEM, while remaining a strong supporter, in order to not appear politically partisan.

### **Role of the Internet**

Repertoires of collective action “involve not only what people *do* when they are engaged in conflict with others but what they *know how to do* and what others *expect* them to do” (Tarrow, 1998:30). One of the most significant advances for the same-sex marriage movement was the ubiquity of the Internet and its usefulness in extending the reach of communication to thousands, even millions of people. CEM and its supporters relied extensively on the Internet and used it to mobilize to action people who might not otherwise have been politically engaged.

The Internet was used as a strategic resource to increase the visibility of the same-sex marriage challenge. The Internet was used to communicate to large numbers of people the arguments for marriage, to provide updates on the activities of marriage opponents, and to encourage people to communicate with their MPs and other social leaders. The Internet also enabled Egale/CEM to present a consolidated presence to opponents of same-sex marriage. CEM had access to Egale’s membership list and the Internet was the primary means of communication with these people. Coalition partners and other support groups also used the Internet to communicate directly with their

memberships. CEM, for example, would send an email communication to PFLAG Canada and PGLAG would in turn forward the message to all of its local chapters.

The Internet was a critical resource for the facilitation of instantaneous communication to large numbers of people. As Arron said, the CEM Coalition was not going to be able to win the numbers game, because the other side was able to mobilize more people, particularly through the churches. But the Internet provided a means to communicate that in a certain sense gave CEM and its supporters a larger presence than they had in reality. Another way of viewing the role of the Internet, according to Brad Tyler-West, a CEM coordinator in Winnipeg, was that it performed a role similar to the rallies of the 1970s in that it enabled people to communicate with one another, provided a means for disseminating information, rallying supporters, and organizing activism, and demonstrated power and solidarity. Tyler-West's view is consistent with the conclusions of researchers who have analyzed the environmental movement and the American militia movement; these researchers "found a process of empowerment for grassroots groups using the Internet as an instrument of information, communication and organization" (Bartz and Zook, cited in Castells, 2004:417).

### **Role of the Media**

The mass media presents an opportunity structure for social movements in that it provides a "master forum in the sense that the players in every other forum also use the mass media" (Gamson, 2002:9468). Thus, mass media forums can be used by a movement's supporters and opponents and such forums "are *the* major site of contest politically;" that is, the meanings constructed in the mass media can influence social and

political change (Gamson, 2002:9468). Given the influence of the media, a positive interaction is desirable between the mass media and social movement organizations.

Brad Tyler-West noted that the Winnipeg chapter of CEM had a good connection with the media. This connection allowed CEM's message to reach more people than would otherwise have been possible. Mary-Woo Sims said that the media was important for presenting both sides of the debate and in her view the B.C. media maintained a neutral position while informing the public of the issues involved with same-sex marriage.

According to Reverend Hawkes, during the six weeks following the announcement that MCCT would be performing same-sex marriages under the authority of the publication of banns and before the actual marriage in January 2001, there was intense media coverage and on the day of the wedding there were some eighty media outlets and sixteen television crews from Canada, the U.S., Germany, and Japan. Most important, the media said they had never experienced such a huge shift in public opinion on any social issue in Canada. The story of the MCCT couples caught the public attention in a way that the legal cases had not. In a similar manner, according to Craig Maynard, at a point in time as the marriage cases were progressing, there was a clear shift in the types of questions that the press were asking. The questions moved from the legal side to the human interest side by inquiring about when the couples came out to their parents, what they did on the weekends, and how they thought marriage would change their lives. Given the diversity of the couples, there was a wide range of answers to these questions, but the main point is that the media began to present "real" people with "real" lives so that the couples were not some faceless threat demanding marriage.

A successful media strategy can be considered to exist if a movement gains media standing, meaning the movement “gains the status of a regular media source whose interpretations are directly quoted,” and increases the relative prominence of its meaning frame in the media (Gamson, 2002:9471). Using these two criteria, one could argue that Egale/CEM orchestrated a relatively successful media strategy. Egale/CEM were regularly quoted in the papers and, in fact, responded to media stories and queries almost on a daily basis. The very fact that the same-sex marriage debate was considered newsworthy is important; the mass media could have ignored or downplayed the importance of the debate and the activities associated with the challenge, thereby harming the movement’s efforts to have its position heard and to gain the support of Canadians for the right of lesbians and gay men to marry.

The media was an essential avenue for communicating the various arguments for and against same-sex marriage and for linking real people to the overarching demand for equality. In Quebec, also, the media was an important component to the organizations involved in seeking relationship recognition and marriage for same-sex couples.

### **Quebec’s Distinct but Complementary Path to Same-Sex Marriage**

Quebec’s distinct society identity shaped their involvement with the movement for same-sex relationship recognition and marriage. The conception of Quebec as a “distinct society” dates back at least to the Quebec Act of 1774 and the term entered into Canada’s political and constitutional dialogue with the 1995 preliminary report of *The Royal Commission on Bilingualism and Biculturalism* (Library of Parliament, No date). Characterizing Quebec as a distinct society recognizes that its laws, language, and culture are different from other parts of Canada (Library of Parliament, no date). These three

aspects of society were evident in Quebec's separate, although complementary, path to same-sex marriage. Activist organizations were self-contained provincially and had been advancing lesbian and gay rights for approximately two decades before setting their sights on marriage. In fact, in 1977, Quebec was the first province to add sexual orientation protection to its Charter of Human Rights, well before the next province, Ontario, in 1986.

In 1998, Irene Demczuk and Lauren McCutcheon formed La Coalition québécoise pour la reconnaissance des conjoints et conjointes de même sexe, The Quebec Coalition for the Recognition of Same-Sex Couples. The strength of the Coalition is that it brings together gay and lesbian groups with unions and a feminist group. Its members include Gai Écoute, the Fédération des femmes du Québec, the largest and most politically weighty feminist organisation in Quebec, and the three largest unions in Quebec: Centrale des Syndicats du Québec (CSQ), the teachers' union; Confédération des syndicats nationaux (CSN), the health care workers' union, and Fédération des travailleurs du Québec (FTQ), the largest with about 500,000 members representing among others, construction workers, university workers, and faculty members. Unions are a political force in Quebec and the unions in the Coalition have not only supported lesbian and gay rights, but have also been the Coalition's major economic contributors. Apparently, "Quebec has the most densely unionized economy in North America, with 40% of its workers belonging to a union" (Masse, 2004:no page number). Unique to Quebec is that many community sector organizations also hold sovereigntist ideals, which sometimes provides benefits in terms of access to political forces such as the Parti Québécois.



The first goal pursued by the Coalition was legal recognition of common-law status for same-sex couples, primarily to address the broad issue of lack of legal recognition of same-sex relationships. This initial objective was achieved in 1999. The Coalition then began to lobby the government (the Parti Québécois was in power at the time) to legally enshrine the concept of civil union for lesbian and gay couples. The Coalition was the centre of the activism for civil unions. There was a great deal of media involvement with the campaign for civil union law, and Demczuk and McCutcheon were interviewed often. When a Parliamentary commission to examine the notion of civil unions was created, the Coalition organized more than twenty different groups to speak on behalf of the proposed law.

The National Assembly passed the Civil Union Law unanimously, in 2002. The law also granted lesbian and gay couples the rights to parenthood, filiation (allows the names of two mothers to be entered on a birth certificate), and adoption. These rights had been demanded from the outset by the Lesbian Mothers' Association, a member of the Coalition that is committed to political action and to providing support and information for lesbians with or planning children. In addition, the law outlined property rights for dissolving civil union relationships, whereas common-law status has no such defined rights. The Civil Union law went as far as it could without actually calling the new status marriage.

The Civil Union Law is a particularly important piece of legislation because it goes beyond the couple to recognize same-sex families as equal in society, a change that carries significant social implications. Evangeline Caldwell, the current Coordinator of the Coalition, summed up the paradigmatic quality of the Law saying, when the state

recognizes a family that is based on a same-sex relationship as one of equal value and deserving of equal dignity, it means schools and others have to pay attention to the relationships and to the children of same-sex partnerships. The problem with the Civil Union Law is that it applies only in Quebec. Outside of Quebec the relationship is not recognized; marriage on the other hand, is recognized nationally and internationally. Thus, the Coalition next pursued marriage.

When the Coalition launched the marriage challenge, it deliberately changed its name to La Coalition Québécoise pour le mariage civil des couples de même sexe, the Quebec Coalition for Same-Sex Civil Marriage, because of the history of the Catholic Church in Quebec. For most people in Quebec, the word marriage is equated with church and the Coalition wanted people rather to think of the courthouse. Therefore, its strategy from the early stages of the campaign was to stress that lesbians and gay men were not trying to invade the domain of the churches; they were interested solely in civil marriage, an agreement with the state. So strong was the desire of the Coalition to disassociate itself from the churches that it did not even work with churches that offered support.

Only one marriage case was launched in Quebec, that of Michael Hendricks and René LeBoeuf, who started their legal proceedings in 1998. The Coalition intervened in the court case on behalf of the couple and, with a clear mandate from its member organizations, brought the force of almost one million people to bear on the issue. Hendricks and LeBoeuf had to win two arguments: against the federal working definition of marriage and for removal of the definition of marriage as one man and one woman from Article 5 of the Quebec Civil Code. Article 5 was put into the Civil Code when the Harmonization Act was passed in 2001 to harmonize Quebec Civil Code with Federal

laws. In March 2004 the Quebec Court of Appeal ruled unanimously in favour of Hendricks-Leboeuf and approved same-sex marriage.

Just as CEM worked with its partners, so too did the Coalition. Each member organization had a representative at Coalition meetings, but each member could determine the best time and way to communicate messages. Egale was a member of the Coalition and was represented at meetings by Claude Côté, an Egale Board member in Quebec. When CEM was formed, the line of communication shifted to CEM from Egale, although Caldwell communicated with both organizations as needed. The national perspective of Egale/CEM was useful for the Quebec activists. Egale and the Coalition communicated and were aware of what each other was doing, but for the most part they did not collaborate in Quebec. There are at least two reasons for this lack of collaboration: First, the role of Egale/CEM was not as central in Quebec as it was in other provinces because Quebec organizations were already doing similar work. In fact, no other province was as self-contained in its activism as Quebec. Second, there was, and continues to be, resistance to pan-Canadian groups directing Québécois groups.

An interesting benefit of the French language that dominates in Quebec is that the harsher evangelical rhetoric heard elsewhere in Canada generally was not translated into the Quebec newspapers. Evangeline Caldwell pointed out that whenever a statement was made in English, outside of Quebec, “it didn’t resonate or it wasn’t picked up by the media,” so in this sense what Caldwell terms the “language barrier” worked for the Coalition. Another reason for the lack of translation, beyond language, is that Quebec society tends to be intolerant of criticism, dogmatism, or extremism from, in its case, the

Catholic Church. Furthermore, the evangelical Francophone community in Quebec is very small and did not have the resources to organize.

In terms of political support, Gilles Duceppe, leader of the Bloc Québécois, met with the Coalition and pledged his support. Justice Critic for the Bloc, Richard Marceau and Bloc MP Réal Ménard were also helpful in providing information, being accessible, and guiding the Coalition through political processes. In addition, Liberal MP Marlene Jennings was an important supporter in lobbying her colleagues. The Coalition was non-partisan and always tried to meet with both the Bloc and Liberal MPs. After Bill C-38 received Senate approval, the Coalition began to dismantle itself. There were, however, lasting benefits left by the Coalition: a network was established for future activism on social justice issues; the Coalition had provided a training ground for young activists; the members became more educated and knowledgeable about political action; and Coalition partners learned how to obtain a firm mandate from members in their organizations for political action.

## **Conclusion**

This chapter has presented the most common themes that emerged from the research interviews and highlighted the range of activities and support critical to the success of the campaign for recognition of same-sex marriage well beyond the confines of court and Parliament. While the battle for equal marriage was first fought in the courts, and then in the courts and Parliament, and finally in Parliament (Arron Interview, 2005), it is important to remember that the courts and Parliament act within and are influenced by society. Clearly, without the countless actions taken by individuals and organizations within and outside the gay and lesbian community, and by political leaders, faith groups,

and human rights organizations, same-sex marriage may well have not become law.

Thus, using the theory of political-cultural formation, I now turn to an explanation of how civil-society organizations emerged and established alliances to push for same-sex marriage legislation.

## **CHAPTER 4 – PCF AND SAME-SEX MARRIAGE**

The theory of Political-Cultural Formation (PCF) was formulated to explain political outcomes by studying the mediating determinants that operate between economic-structural processes and political-cultural formation: regional culture, state intervention, and leadership types (Otero, 2004). In this chapter, each of these concepts will be examined in the context of the lesbian and gay rights movement at large and/or the same-sex marriage challenge specifically. The central question raised by PCF is: how can subordinate classes, groups, or communities advance their interests to gain state interventions in their favour, while retaining their independence from the state and their political autonomy from other organizations? The degree to which we are able to answer this question provides a means to evaluate the usefulness of PCF for understanding the same-sex marriage challenge.

### **Economic-Structural Processes**

As outlined earlier, in PCF economic-structural processes are causally linked with regional cultures, state intervention, and leadership types, although the link is not specified as flowing directly from one realm to the other, as in economic reductionist versions of Marxism. A reciprocal influence between the economic-structural processes and the other realms of social life is recognized as a starting point, and yet PCF focuses on studying the role of culture, state, and leadership as mediating determinants of political outcomes.

Let us first examine the economic-structural processes that shape the lesbian and gay movement. In Canada, the lesbian and gay rights movement exists within an advanced capitalist society, characterized by a substantial middle-class of approximately 60 percent of the population (Beach and Slotsve, 1996:93). Without reducing the movement to one that serves the class interests of the middle-class, which is in fact quite diverse, it is necessary to consider “how the dynamics of capitalist development are engaged with the production and reproduction of ostensibly non-economic systems of domination and inferiorization” (Adam, 1997:46-47). The middle class is under pressure from neoliberal economic policies that seek to privatize and individualize social responsibilities by employing “family values” rhetoric (Adam, Duyvendak, and Krouwel, 1999). Thus, neoliberal corporate and state interests find that same-sex relationship recognition makes a good deal of sense in that lesbians and gays are offering to take on financial responsibility for the care of others (Adam, 2004: 272). At the same time, however, in seeking equality the lesbian and gay rights movement challenges traditional understandings of sexuality and family. Therefore, the movement’s attempts to achieve full citizenship for lesbians and gay men are resisted by conservative groups and even by some traditionalist liberals.

The lesbian and gay rights movement is a complex entity in that it reflects a fragmented network of organizations (Adam, 1999; Smith, 2004) and it has had to address disagreements between lesbians and gay men related to ideologies, identities, and strategies (Rayside, 2001; Herman, 1994; Warner, 2002). Even so, controversy within the movement does not negate a shared experience of an alternative sexual orientation that

both challenges hegemonic heterosexuality and patriarchy and marginalizes the lesbians and gay men who have such an orientation.

When a lesbian or gay man is publicly “out,” the result may be discrimination, marginalization, and/or oppression, which more often than not produce negative material (economic) results (Boyd and Young, 2003:771; Smith, 2004:102). Likewise, Kathleen Lahey emphasizes that “sexual minorities in Canada start out with greater obstacles in life, are disproportionately burdened by discriminatory norms throughout their lives, have lower incomes, thereby accumulating fewer assets, and receive less legal, social, and economic support for their relationships or for their children” (Lahey, 1999:342). Hedy Fry, Liberal MP for the Vancouver Centre constituency of British Columbia, spoke passionately about seeing the effects of discrimination in her medical practice in Vancouver where she served a large number of lesbian and gay patients. She summarised her thoughts by stating, “the social and economic environments in which people live affect their lives” (Fry Interview, 2005). Susan Boyd and Claire Young assert that achieving relationship recognition has brought material benefits to many lesbians and gay men (2003:771). Access to marriage, arguably, represents the definitive relationship recognition for same-sex couples.

While it is true that many lesbians and gay men are able to live within society with their sexuality undetected, their sexual orientation can become an issue when they choose to fully express themselves by not conforming to heterosexual norms and not suppressing their sexuality. James Chamberlain, a teacher in the Greater Vancouver Regional District, deliberately went back into the closet, when he moved from one school district to another, because he felt that being out was impacting the amount of work he



received as an on-call teacher. Only after he secured a firm contract at the new school did he come out to his principal, because then he could not be terminated because of his sexuality. GALE (Gay and Lesbian Educators) B.C. and the Rainbow Educators of Manitoba are examples of organizations that provide support to teachers; the support of these groups is deemed necessary because it is still risky to be “out” in the teaching profession. It is reasonable to assume that risk is not limited to the teaching profession, but is also present in the business world at large. Along with individual members of the lesbian and gay community, same-sex couples also had to deal with marginalization and lack of legitimacy, particularly prior to relationship recognition. Two of the three couples interviewed mentioned that they paid to have living wills and power of attorney documents produced to protect themselves in the event of a medical emergency. Specifically, the documents provided some level of protection to the couples so that family members, possibly estranged, would not have more say in a critical situation than a partner. But, the legal expense itself was necessary solely because of the couples’ subordinate same-sex partnership.

The examples just given are only a sample; there are, in fact, a multitude of ways in which lesbians and gay men experience discrimination, marginalization and/or oppression, which often results in economic disadvantage. The economic-structural location of lesbians and gay men is an important condition of organizing. By itself, however, this factor does not explain political-cultural formation in a unified front. Unification is particularly puzzling, from an economic reductionist point of view, given the wide diversity of class positions that exist within the lesbian and gay community. In fact, membership in this community crosses class lines, although perhaps the most active

members of the lesbian and gay rights movement tend to be from the socio-economic middle-class. The next three sections focus on the determinants mediating between economic-structural processes and political outcomes, as put forward by the theory of political-cultural formation: culture, state intervention, and leadership types.

## **Cultural Issues**

PCF posits that within given economic-structural processes, regional cultures shape “the varying contents of *demands and struggles*” (Otero, 1999:24), as well as the processes of collective-identity formation (Otero and Jugenitz, 2003). Key demands in the gay rights movement have been for recognition, rights, and equality; the fact that these demands have material consequences for lesbians and gay men underscores the reciprocal nature of the relationship between economic-structural processes and culture. In this study of lesbian and gay rights, culture will be presented in both of its main aspects as either dominant (the heterosexual paradigm) or subordinate (the quest for recognition of difference and equality of rights). The characterization of dominant and subordinate cultures borrows from the work of Stephen Engel (2001). Engel delineates culture as both a socio-political “environmental condition as well as an internal characteristic of identity,” which shapes framing (Engel, 2001:160).

Framing, or the way a group presents itself publicly, reflects collective-identity formation and relates to what Charles Tilly describes as “we-they boundaries,” a delineating process critical to shaping demands and to separating oneself from some specified others (2002:76). Shared identity, however, is meaningful in a discussion of social movements only to the degree that there is some collective, political action that

results in a sustained challenge to dominant social structures. Otherwise, it would be relevant only at the level of micro-social relations.

For PCF, framing relates to objects of struggle or demands on the state. In the case of the lesbian and gay-rights movement, struggles and demands go beyond framing a grievance as, for example, rights, to making demands for social equality and citizenship, as these are more directly related to the thickening of civil society. Framing demands and struggles is a strategic process, which works best when demands and struggles are presented in a way that conforms to existing cultural constructs (Engel, 2001:133), whether dominant or subordinate. For example, “gay liberationists took the already popularized feminist frame of ‘the personal is political’ and applied it to sexuality” (Engel:134).

In the marriage challenge, movement goals were interpreted in a way that conformed to existing cultural concepts in at least three ways. First, the extensive use of litigation was consistent with a legal “cultural frame” that had been established with the Charter (Smith, 1999:149). The movement’s challenge was to obtain legal rights by disputing existing legislation using the Charter’s precepts. Second, according to Reverend Hawkes, the debate was deliberately framed as polarized positions: the United Church, MCCT, Liberal Rabbis, and other supportive faith groups taking one side and the radical fringe and Catholic Bishops taking the other side. Third, the issue was strategically framed as equal marriage, rather than same-sex marriage, thus making it less about homosexuality and more about relationship status. The change in language also built on the concept of equality contained in the Charter, which itself is the result of the dominant culture that shaped the field of activism.

## **Dominant Culture**

Two primary aspects of the dominant culture - heterosexuality and liberalism - have shaped the struggles for same-sex rights. Perhaps the most influential aspect of the dominant culture in the struggles for relationship recognition and same-sex marriage is the hegemonic moral position of heterosexuality. It is an “institution,” imposed by the state, laws, medicine and gender roles, which produces differentiated and unequal subjects: heterosexual and homosexual individuals (Seidman, 2004:258). Engels suggests that one of the precipitators of social insurgency is a contradiction between a social value and social practice (Engel, 2001:132). Homosexuality has certainly been a practice distinctly at odds with heterosexual values. And the lesbian and gay rights movement’s challenge to heterosexism forms the basis of their demands on the state for recognition of same-sex partnerships.

A mitigating factor between heterosexual values and homosexual practice is the ideological hegemony of liberalism. Liberalism offers a forum from which to demand the right to express an alternate sexuality and to resist compulsory heterosexuality. Liberal values support human rights laws based on the assumption that society is pluralistic, with majorities and minorities, and that minorities require protection from the “tyranny of majorities” (Herman, 1994:38, 50). Liberal ideology is reflected in the political clout that has been afforded by the federal *Canadian Charter of Rights and Freedoms* and provincial Human Rights Codes. On the one hand, minority identity may be considered problematic in that it reinforces rather than challenges dominant cultural norms (Bernstein, 2002:533) and institutionalizes a liberal approach to reform (Herman, 1994:52; Kinsman cited in Rayside and Bowler, 1988:656). On the other hand, there is

acknowledgement that a minority identity has political power in challenging social norms and values (Gamson, 1999:403).

Pursuing rights provided an organizing frame from which “a minority group . . . could challenge Canadian society in terms of its own liberal values” (Smith, 1999:69). These values are reflected in 1980 and 1985 Gallup polls that “revealed 70 percent [of Canadians] in favour of extending human rights codes protections to lesbians and gay men” (Herman, 1994:36). This level of acceptance had risen from 52 percent in 1977. While public opinion, then and more recently, may have been favourable to the notion of equality, there was and is pervasive disapproval of homosexuality itself (Kinsman, 2001:219-220; Rayside, 2001:34; Rayside and Bowler, 1988). Notwithstanding public disapproval of the practices of homosexuality, the increased support for extending rights to lesbians and gay men represents a significant shift in hegemonic cultural attitudes. Several factors shaped the change in attitudes, in large part by dispelling myths and fears about homosexuality: more visible and mobilized lesbian and gay communities in civil and political society, extensive judicial activity, and increased media attention. Using a rights frame to challenge laws, lesbians and gay men obtained relationship recognition. After common-law status was achieved, marriage was the next step.

### **Subordinate Culture**

The identity and experience of individual lesbians and gay men is private and specific to each person’s life and the various domains in that life, but there is a shared culture or community in terms of sexual orientation, experience of homophobia, and resistance to heterosexual norms and patriarchal family ideals. Notwithstanding the fact that economic class positions in the community have been differentiated, a sufficient

level of unification was achieved for mobilization around common goals. A shared culture, albeit subordinate, provided a place from which lesbians and gay men could mobilize, articulate demands, and seek justice. As discussed in Chapter 2, the lesbian and gay rights movement has existed for several decades.

Social changes slowly developed, particularly in urban lesbian and gay communities. Pride Day was established and lesbian and gay media, social activities, and political organizations were formed (Seidman, 2004:247). There was also a greater willingness on the part of even the more radical members of the movement to push for legislative reforms (Rayside, 2001:26). Without these social changes legal openings, such as the Charter, would not have constituted a new political opportunity for the movement; that is, the Charter in itself would not “have been sufficient to generate equality-seeking” (Smith, 1999:135, 141). As political opportunities were presented, then, who recognized them as such and acted upon them?

It was the “out” lesbians and gay men who challenged laws (Warner, 2002:219) and who constituted themselves as politicized subjects (Herman, 1994:35; Smith, 1999:67, 142). Becoming political actors or subjects is termed political-cultural formation. Building on marginalization in the 1980s, a human rights strategy defined lesbians and gay men as having a homogeneous minority identity (Smith, 1999:38, 39). This strategy may obfuscate internal diversity, but it does present a place from which to challenge hegemonic social attitudes and discriminatory public policies with their material consequences (Herman, 1994: 44-45; Smith, 1999:155). That is, in spite of the inherent ideological, cultural, and economic heterogeneity of lesbian and gay social actors, there is an inevitable interconnection (Weeks cited in Ross, 1995:6) and, at some

level, a shared demand for recognition, validation, and a more adaptive social structure to meet shared needs that “cuts across class lines to some extent” (Rayside, 2001:27, 28). Thus, cultural oppression as a shared feature in this community helps it transcend socioeconomic diversity.

As mentioned earlier, the opinion has been expressed that the gay rights movement reflects a predominantly white, male, middle-class agenda (e.g. Smith, 1999:148; Warner, 2002: 218, 221). Activist Mary-Woo Sims disagrees. She speculated that the media contributed to the portrayal of same-sex marriage as white, middle-class, and male in that the men, such as Kevin Bourassa and Joe Varnell, garnered more exposure than the women, who tended to be more private. Sims believes, however, that the lesbian and gay community is as diverse as Canada itself. Therefore, gay rights are important to people from all socio-economic and ethnic backgrounds. Furthermore, as Michelle Ritchot noted, the issue of diversity is a topic in the lesbian and gay community at large and is not associated exclusively with seeking rights. As for the perception of male dominance in the movement, it is a fact, at least in British Columbia, that more lesbians than gay men have been married. As noted in Chapter 3, in 2004 female couples accounted for 57% of the same-sex marriages. Unfortunately, statistics are unavailable for the number of ethnic or mixed same-sex marriages and for the economic status of such couples.

As discussed in Chapter 3, the lesbian and gay community was not of one mind on either the necessity or the value of pursuing same-sex marriage recognition. A review of *Xtra! West* (Vancouver’s gay and lesbian biweekly newspaper) archives from 2000 to 2005 revealed several concerns that fall into four main categories. The first reflects

cultural concerns, most notably fear of losing queer culture to the mainstream norms and ideals of monogamy and marriage. Fundamentally, the concerns are based on the idea, indeed a critical identity feature, that LGBT people are not just like everybody else, that is, the heterosexuals. Many in the LGBT community are proud of a sex-positive culture that does not moralize about practices such as anonymous sex or polyamorous relations. Second, some arguments against same-sex marriage were based on feminist critiques of the institution of marriage and the related historical power inequality that has favoured men and oppressed and subjugated women. Essentially, these writers question the rationale for entering into a flawed institution. In addition, there are concerns with institutionalized partnerships related to income tax issues like GST (goods and services tax) credits and child tax benefits that can negatively impact low-income partners, especially women. Third, several writers denounced the need to have the state sanction, legitimize, or otherwise define their personal relationships. In fact, some people favoured the alternative of domestic partnerships for all non-religious marriages, an option that would get the state out of the business of marriage altogether for both same-sex and opposite-sex unions. Finally, there were criticisms of the normative nuclear family form of a married couple with children. A high value was put on the freedom to define same-sex relationships on their own terms, including the concept of chosen family. For those who are estranged from their biological families, friends often become family.

While most of the concerns expressed about same-sex marriage would have been present in common-law relationships, and in fact there was concern about the imposition of common-law status after a specified period of conjugality, it seems there was more anxiety about marriage. Nevertheless, in spite of these concerns, there was clearly a



general will for marriage, with the most cited reasons being to end discrimination and obtain equality in law, to be free to choose whether or not to be married, and to be considered full, rather than second-class, citizens. Interview participants widely acknowledged that marriage would not end homophobia and its attendant discrimination, but it is seen as a crucial step to creating a more tolerant society.

In PCF terms, lesbian and gay activists, by framing their grievance as equal rights to marriage, were able to create a collective identity and to make demands on the state for social equality and citizenship. Access to marriage, in turn, impacts economic-structural processes to the degree that same-sex marriage has both tangible and intangible material consequences - tangible consequences in terms of the rights and obligations associated with marriage and intangible in so far as marriage confers social legitimacy that mitigates material disadvantages resulting from expressed homosexuality. The latter thought posits that legitimating same-sex unions through legal marriage, and not merely offering the common-law option, advances the pursuit of societal acceptance for same-sex desires and therefore affects economic-structural processes by reducing the legitimacy of the hegemonic position of heterosexuality. The gay and lesbian alternative is rising in civil society in terms of recognition, acceptance and, through legalization by the state, in legitimacy.

### **State Intervention**

In PCF, “state intervention may assume either a favourable or unfavourable character from the perspective of subordinate groups, communities, and classes” (Otero and Jugenitz, 2005:5). An unfavourable state intervention in the same-sex marriage challenge would have occurred if the Liberal government, in 2003, had challenged the

Ontario court ruling or if parliament had preserved the opposite-sex definition of spouse; either decision would have reinforced heterosexual dominance. Favourable policies will occur either because the state coopts the movement or “because the movement has shown enough strength, alliances and/or public support to extract gains from the state” (Otero and Jugenitz:5). The movement for same-sex marriage reflects the latter situation. It should be clear that the new Conservative government could pose a serious challenge to the same-sex legislation, and that continued combativeness is a must for the gay and lesbian community.

In Canada, although the state is not a monolithic subject, nor can its influence be neatly identified all the time, it is a ubiquitous force in society and is implicated in all facets of social life. Germane to the discussion here, though, is that class and cultural struggles criss-cross the state and the instant that movements “threaten to change the [civil society] system in any fundamental way . . . they come up against the power of the state” (Sivanandan, cited in Mooers and Sears, 1992:66). While the state’s interventions will in general respond to hegemonic interests and values, in a democratic society the state will also reflect the interests of ascending classes, groups, and communities.

It is clear from the history of lesbian and gay rights that the government has never just given the community anything easily; there has always been some resistance to demands and the community has had to go to the courts time and again. The battle for relationship recognition played out in the courts, but in the end the same-sex marriage challenge involved both the courts and Parliament. The movement was successful in obtaining marriage rights, notwithstanding varying levels of support from the federal government and political parties, because pressure was brought to bear on the state. In

PCF, “state intervention affects people’s capacity to defend their interests and influences the character of their class, [group or community] organizations” (Otero, 1999:4). If the liberal government had challenged the 2003 Ontario court ruling or refused to table legislation, the status of same-sex marriage in Canada would have reflected a mosaic of provincial court rulings. Moreover, the movement’s relationship with the state would likely have been largely oppositional. Instead, the movement was both oppositional, in that it was struggling against the state’s attempts to decline to satisfy its demands, and popular-democratic, in that the state responded favourably to the movement’s demands, while movement organizations remained independent from the state.

### **Federal Government**

Canada elected a Liberal government in federal elections in 1993, 1997, 2000, and 2004 (Liberal Party of Canada, no date). The two Prime Ministers during this period, Jean Chrétien and then Paul Martin, were both influential in the eventual success of the campaign for recognition of same-sex marriage. The Liberal government, however, has not always supported same-sex marriage. As recently as 1999, the House of Commons adopted a Reform party resolution by a large majority (216 to 55) that affirmed the opposite sex definition of spouse (Egale, 2003; Real Women of Canada, 2005).

In 2003, however, Prime Minister Chrétien decided to not challenge the Ontario decision and declared his government would draft legislation changing the definition of marriage. The government first asked the Supreme Court of Canada to rule on three questions to ensure that the change was constitutional. The Supreme Court did not rule on the questions until after the 2004 election. In spring 2004, Paul Martin was elected in a Liberal minority government after using his support for same-sex marriage as a way to

distinguish his platform from that of the Conservative Party of Canada, led by Stephen Harper. Several opponents of same-sex marriage liked to remind Martin that in 1999 he had been one of the MPs voting for the traditional definition of marriage (CNEWS Forum, 2005). Although Paul Martin stressed his support for same-sex marriage, he was accused of “dithering” by adding a fourth question to the Supreme Court Reference, in January 2004 soon after he was elected leader of the Liberal party, and of being willing to drop the issue in 2005 prior to the summer session starting in return for the Conservatives supporting the Liberal budget (King, 2005). In the latter case, the NDP pressured Martin to resolve the same-sex marriage issue before Parliament broke for the summer and used its political position in the minority government to broker a deal.

Nonetheless, as MP Hedy Fry asserted, only a governing party could bring in the same-sex legislation, which the Liberal government did, and Paul Martin had to deal with disagreement within his caucus, including having one MP leave the Liberal party and another step down from cabinet in order to vote against Bill C-38. According to Fry, marriage was the most difficult legislation to pass because some people who had supported the idea of equal rights all the way to common-law could not accept same-sex marriage. MP Pat O’Brien, who stepped down from the Liberal caucus, probably would have supported legal recognition of a domestic partnership relationship, but he would not support same-sex marriage.

### **Political Parties**

In 2000, Andrew Petter, the Attorney General of the NDP government in B.C. launched a case in B.C. court to challenge the opposite-sex restriction to marriage (Egale, 2000b). It was an historic act because it was the first time that a government at any level

in Canada had expressed the opinion that same-sex couples should be allowed to marry (Egale, 2000b). Petter's motivation, in part, was to maintain a distinction between common-law status and marriage, so that people would have a choice between the two statuses (findlay Interview, 2005). In this case, however, political support was ethereal because when the Liberals came to power in 2001 the government dropped out of the case.

Nonetheless, Bob Gallagher, chief of staff for the NDP believes that the historical contribution of the NDP, across the country, to relationship recognition and same-sex marriage has been significant. The NDP's involvement with the lesbian and gay community includes influencing public perception and creating acceptance for relationship recognition; advocating, supporting, introducing, and voting for legislation; and being available for press conferences and attending rallies. Furthermore, when it came to the Parliamentary vote on same-sex marriage, federal NDP leader Jack Layton did not allow the caucus a free vote on what he believes is a human rights issue. Gallagher believes that Bill C-38 may not have passed had Layton not negotiated the budget deal based on NDP principles and accepted the political risks associated with that deal. If the vote had been put off until the fall, it is possible that the legislation would have died, because the summer would have given the opponents time to organize and to use the money being poured into Canada from the U.S. Furthermore, the likelihood that the Liberal minority government would fall, prompting another election, would also have had an effect on the legislation because all outstanding bills die when an election is called.

Can a small party like the NDP really make a difference? “The unequivocal support of a small party might do little except provide occasional visibility for the group’s demands inside the legislative arena” (Rayside, 2001:33). I would argue, however, that over the years the NDP has been influential in its support of gay rights as noted above. Certainly, more than one research participant praised Layton for taking a principled stand for human rights, for keeping pressure on the Liberal government, and for negotiating the budget deal that included a commitment that the same-sex marriage issue would be dealt with before the summer session was complete. There is no direct relationship between Egale/CEM and the NDP because Egale is non-partisan and CEM is multi-partisan, but of all the parties, the NDP alone had a stated party policy in favour of same-sex marriage. From a PCF standpoint, we could say that the NDP expresses the strengthened part of civil society that has come to represent the gay and lesbian community, even if its organizations are not formally affiliated with the party. The central point in this regard is as follows: to the extent that civil society becomes strengthened, some political expression within political society or the state will sooner or later have to respond in its favour.

As noted in Chapter 3, the Bloc Québécois was also an important ally of the marriage movement, not only in Quebec. On the other hand, the Conservative Party of Canada, and before that, its predecessor organization, the Alliance Party, has consistently and stridently opposed same-sex marriage. In 2003, following the Ontario ruling, the Alliance Party put forward a motion:

. . . to reaffirm that marriage is and should remain the union of one man and one woman to the exclusion of all others, and that Parliament take all necessary steps within the jurisdiction of the Parliament of Canada to preserve this definition of marriage in Canada (Equal Marriage, 2003).

The motion was subsequently voted down, but by a very close margin. Stephen Harper, leader of the Conservative Party also tried to use equal marriage as a wedge issue in the 2004 Federal Election, when he stated that ethnic communities were against it. Several groups responded immediately to discredit Harper's statement (CEM, 2005c). Even after same-sex marriage was legislated Harper maintained his position against it and in the 2006 election campaign, which his party subsequently won, continued to state that he would bring the issue of same-sex marriage to a free vote in Parliament if the Conservative Party formed the government.

PCF is concerned with the nature of state interventions: are state policies initiated by the state for cooptation purposes or do policies result from bottom-up pressures (Otero, 1999:20)? Given the contentious nature of the subject of same-sex marriage, it is not likely that any one politician or political party was imagining that a favourable ruling would coopt the movement by submerging the practice of homosexuality. In addition, the history outlined in Chapters 2 and 3 supports the view that the same-sex marriage challenge was not successful because of state policies initiated for cooptation purposes, but rather resulted from concerted efforts on the part of many, many people and groups in political and civil society to keep pressure on parliament. This is an indication of a civil society that thickens with the deepening of the democratic process. The lesbian and gay rights movement has a history of being an actor of some influence in civil society. As a politically-formed actor, the movement was able to 1) obtain a favourable intervention from the state in that same-sex marriage was approved, 2) increase its political strength in the face of considerable opposition, and 3) create alliances to enhance its public personae and increase public and political support for lesbian and gay rights. A fourth outcome,

perhaps less obvious, is the way the movement shaped the state. Arguably, the extent of the debates on same-sex marriage within parliament and the many politicians who spoke in support of same-sex marriage represents a significant breakthrough for the movement in that a faction of the state, through its politicians, was undermining the hegemony of heterosexism and responding to the political solidarity of lesbian and gay activists and constituents. What role did leadership play in these successes? I turn now to the final mediating variable.

## **Leadership Types**

In PCF, leadership types influence the kinds of alliances that are established in a movement and the degree to which central organizations such as Egale and CEM, retain their independence from the state and autonomy from other political organizations (Otero, 1999). There are two general questions to consider: (1) is the leadership accountable to its constituents and does it promote grassroots participation; or (2) is the leadership opportunistic and does it compromise the movement's goals or independence? Although Egale has been criticized as being a top-down organization (Smith, 1999), it presents itself on its website as a grassroots organization. Brad Tyler-West thinks that Egale represents the interests of most members of the gay and lesbian community, acts as a vanguard for legal rights, and raises issues that do not get addressed within local or regional gay and lesbian groups. While it cannot be said that Egale/CEM speaks for everyone in the LGBT community, and in spite of the concerns about same-sex marriage expressed by some people in the community, Egale estimates that "99% of the community supports equal marriage" (Egale, 2006). It was the goal of marriage that Egale/CEM pursued so passionately on behalf of its constituents. Essentially, early



reservations about the institution of marriage were supplanted by the fight for the place of LGBT people in society (Egale, 2006). Moreover, while CEM was designed to make quick decisions and thus decision-making processes were confined to the executive group, Egale encourages participatory decision-making through its elected regional representatives and its working committees.

Egale and CEM are “part of a complex web of interlocking networks of activism” (Smith, 1999:40). Unfortunately, there has not been a clear sense of how these networks interact. The following discussion should help to clarify this important relationship. In addition, it will show that Egale/CEM provided leadership that was always firmly focused on the goal of same-sex marriage and that the two organizations maintained their autonomy and independence from other political organizations. In fact, their leadership style as detailed below encouraged both grassroots participation and the autonomy and independence of their Chapter Coordinators and Coalition partners.

### **Members, Chapters, and Partners**

Egale is involved in activist networks across Canada and has “shown considerable skill in applying pressure, offering advice, and attracting media coverage, but with very modest resources” (Rayside, 2001:42). This skill was transferred to CEM because Egale resources, most notably people, were loaned to CEM. Moreover, Egale was the most influential member of the Coalition. As noted earlier, the decision made by Egale and others to create CEM was a strategic response to state intervention that moved the fight for same-sex marriage from the courts to the courts and Parliament.

CEM played a highly public role in government and media relations and it was able to use its national perspective to provide leadership and create solidarity at three particular levels: to Egale members, to CEM chapter or local coordinators, and to partner organizations. At the member level, CEM had access to Egale's membership list and communicated directly with members via email messages. Through the Internet, CEM encouraged member participation, requested donations, and ensured that the CEM website was updated regularly to communicate legal activities, public events, and media releases.

The leadership of the CEM executive group was vital to the success of the local chapters and/or member contacts. At the same time, the local chapters were critical elements in the organization of on-the-ground resources and activities. CEM provided knowledge, encouragement, and appreciation to its local chapters. In its leadership role, it facilitated regular conference calls with the chapter coordinators, which provided a forum for maintaining a focus on overall goals, exchanging ideas, and learning about successes in local mobilizing. In addition, CEM provided direction on the wording of media releases to ensure a consistent message was being presented to the public and, in order to make the best use of timing, provided guidance in the organization of rallies. Individual chapters, however, had the autonomy to decide what strategies and tactics would work best for their particular areas in terms of organizing meetings, holding town hall sessions, fundraising, disseminating information, and interacting with the media. In B.C., Mary-Woo Sims was well known in the Chinese community for her work with the B.C. Human Rights Commission, so the media often sought out her opinion. As well, she and others

had extensive email lists and contacts for social activists, which were used to mobilize people.

CEM's regional contacts were essential to organizing and lobbying and to shaping strategies and tactics to match local cultures and politics. Nowhere was this truer than in Quebec. Claude Côté is on Egale's Board of Directors and was the CEM contact for Quebec. In addition, he represented Egale and CEM in the Quebec Coalition for Same-Sex Civil Marriage. In Quebec, according to Côté, rallies would have been "out of the question" because people would not have shown up for such a demonstration, in part because of decreased mobilization following the Civil Union Bill of 2002, which had given many rights to same-sex couples. The Civil Union law, however, applied only in Quebec and thus marriage continued to be an important goal.

A francophone representative was also essential because Laurie Arron, perhaps the most visible CEM executive, is not bilingual. Without French language skills it is difficult to be effective in Quebec. More importantly, Quebecers are not generally responsive to direction from an organization from outside Quebec, especially as many activists are also sovereignists. Côté's presence in Quebec and his ability to both liaise between CEM and the Bloc Québécois and lobby hard for equal marriage through his political contacts were crucial. In early 2005, for instance, the Conservative Party was going to propose a private member's bill to maintain the opposite-sex definition of marriage. Côté sent a memo to Gilles Duceppe, leader of the Bloc, asking that the Bloc members vote against the Bill (even though there apparently had been an informal agreement between the Conservatives and the Bloc that private members bills would be supported). In the end, the Bloc members did not support the bill and therefore it did not

proceed to the House of Commons. It is possible to conclude that Côté's initiative stymied an intentionally disruptive action by the Conservatives and that CEM would not have possessed either the knowledge or the connections to take a similar action.

Alliances are critical for social movement success (Rayside, 2001:32). PCF takes the issue of alliances further than simply acknowledging their importance. The theory suggests that a social movement organization must not only create alliances, but also maintain autonomy from alliance organizations. In addition to leading its local chapters CEM was part of a Coalition organization. Among its partners were CUPE and PFLAG. Regular conference calls were held with the partner organizations, providing a forum through which CEM might offer leadership and support. For example, when Asian Canadians for Equal Marriage was formed, CEM was involved in a media-training day, wherein activists from the organizations involved were given instruction on how to organize news conferences, frame messages, and present consistent messages during media events. Egale/CEM did not direct the day-to-day activities of its Coalition members, but it did stay in constant communication to provide information on political processes, to share successes, to maximize timing of rallies and other public events, and to ensure a consistent message. If Egale/CEM had not fostered alliances it is likely that the support of CUPE and others would have had less impact because the alliance organizations would then have been speaking in somewhat of a political vacuum. That is, it was an effective movement strategy to have Egale/CEM connected by a formal relationship to its supporters.

To summarize, in PCF, leadership types is concerned with the responsiveness of the leadership to its constituency, the ability of leadership to establish alliances, and the

ability of the social movement organization(s) to become “popular-democratic” (Otero and Jugenitz, 2005:9). From the discussion above it can be concluded that Egale/CEM did respond to their constituency and effectively created alliances and worked with a variety of alliance partners. The third criterion is discussed in the final chapter, but briefly, the extent of support that was extended to lesbians and gays from various groups within civil society (as noted in Chapter 3, Supporters), would suggest that Egale/CEM did indeed move toward a popular-democratic form. Popular-democratic (Otero, 2004:333) in the sense that Egale/CEM was able to orchestrate a wide variety of collective actions that shaped state intervention in favour of its constituents, while retaining its independence from the state and other political organizations. To the extent that organizations of subordinate groups, classes, and communities consolidate themselves and their alliances, an alternative hegemonic project of a popular-democratic character may emerge and strengthen in civil society.

### **Political Engagement**

In speaking of the U.S. experience with lesbian and gay rights, Salokar notes, “the future leadership of the LGBT movement must be able to work at all levels of government – local, state, and national – and within each of the branches of government – judicial, executive and bureaucratic, and legislative – to direct the multiple tactics needed to effect political change” (Salokar, 2001:257). It is evident that Egale and CEM have people who are highly skilled in the political arena. Not only was the CEM executive monitoring and coordinating activities in every Province and Territory and providing almost daily media responses, individuals such as Laurie Arron were also busy lobbying MPs themselves. Mary Bernstein defines “political change as new advantages

(changes in laws or politics that benefit the constituency) and acceptance of the social movement organization by authorities” (2002:536). There is no doubt that Egale/CEM has fulfilled both requirements of this definition.

## **Political-Cultural Formation Outcomes**

The political-cultural formation of the lesbian and gay rights movement has made demands and attained successes at cultural and political levels: individuals and organizations have challenged cultural norms and values that privilege heterosexism and rights-seeking and the demand for equal treatment of same-sex partnerships have resulted in concrete political benefits in terms of changes in policy and law. These changes will ultimately have economic benefits as well.

Furthermore, the same-sex marriage challenge politicized individuals from the LGBT community, along with their heterosexual allies, to become involved in the challenge, whether working directly with CEM or as individuals writing MPs and attending rallies. Tyler-West mentioned also that youth activists became involved because they wanted both to support the movement and to learn about and be mentored in methods of activism. In this sense, the movement has also acted as a major educational tool to reinforce its leading cultural values. Youth involvement and training is a notable outcome of political-cultural formation because future activists are created. While not all activists are visionaries, strategists, or leaders in the community, all are motivated by a desire to make society a better place both for those who experience a subordinate social position and for people in general. Most of the research participants have a considerable history of activism with a variety of organizations and are often involved in more than one organization. Activist experience and the training of new activists provide the

movement with the skills and political acumen necessary for making demands on the state and for pursuing social change.

A key criterion by which PCF assesses political outcomes is the degree to which social movement activities strengthen civil society vis-à-vis the state or political society. There is ample evidence that the same-sex marriage challenge had such a direct result. Michelle Ritchot, a CEM coordinator, mentioned that the Manitoba group reached out to other community groups such as the Sexuality Education Resource Center. Rabbi Mivasair believes that the organizing, coalitions, rallies, and letters promoted democratic process by encouraging participation and broadening the representation of opinions being heard in the public arena by politicians, the media, and the public. An unnamed human rights organization stated that CEM built a broad-based Coalition that brought together a variety of organizations to not only fight for marriage but at the same time to address other anti-oppression issues. The breadth of the support that was offered to those fighting for same-sex marriage was truly impressive: in 2002 to 2003, during the Justice Committee's cross-country hearings, approximately 274 individuals and organizations spoke in support of same-sex marriage; and, as mentioned in Chapter 3, there were over 150 individuals and organizations who publicly stated their support in CEM's advertising campaign. There was a coming together of people from all levels of civil society, from faith organizations, and from various ethnic communities in support of equality for lesbians and gay men. All of this points to the construction of an alternative hegemonic project with a popular-democratic character, well beyond heterosexism.

## Conclusion

Having provided an overview of the movement by using each of the key concepts in the PCF perspective to examine the same-sex marriage challenge, I now return to the overarching question that PCF asks and summarize how it is answered in my case study: how can subordinate classes, groups, or communities advance their interests by gaining state interventions in their favour? The analysis contained in this Chapter details the ways in which Egale and CEM, as influential spokes-organizations for lesbians and gay men, framed their struggles, responded to state interventions, provided leadership, and worked with grassroots individuals and organizations to advance the goal of attaining equal marriage. The lesbian and gay rights movement has been mobilizing for a number of decades and has achieved many substantive rights. There are, however, a few aspects that are unique to the same-sex marriage challenge: (1) the establishment of a separate organization, CEM, to champion the work and to keep a focus on the goal; (2) CEM's relationship with chapter coordinators and coalition partners; and (3) the number of non-lesbian and non-gay individuals and organizations who were motivated to participate and to publicly declare their support. Particularly salient was the support that came from faith groups, given that a great deal of organized opposition came from the Christian right. It is safe to say that the same-sex marriage challenge honed Egale's skills as a social movement organization and enhanced its reputation with members, the lesbian and gay community at large, other activist organizations, and the state.

Favourable state intervention, in this case gaining same-sex marriage rights, is not the end goal. Rather marriage is one more achievement in an overarching vision of full citizenship for lesbians and gay men. Institutional and policy changes, however, not just



organization and identity, can make the greatest differences in improving the life chances of a subordinate group, community, or class (Otero, 2004:330). I hope this study has shown that access to same-sex marriage affects the economic, political, and cultural conditions of lesbians and gay men by undermining or loosening heterosexual hegemony.

## CHAPTER 5 – PCF: A MORE INCLUSIVE THEORY

Previous chapters have presented a history of the lesbian and gay rights movement, described the major research findings of this study, and examined the conceptual framework of PCF using the specific example of the same-sex marriage challenge. This final chapter seeks to establish the manner in which PCF provides a more inclusive theoretical approach for understanding social movements than RMT, POS, or NSM alone.

Summing up 50 years of social movement activity, Roberta Garner defines a social movement as “processes of change, as purposive action (whether rational or irrational), and as noninstitutionalized challenges to institutions” (Garner, 1996:47). Another definition describes social movements as “interactions between temporarily connected (and often shifting) groups of claimants and the objects of their claims, with third parties such as constituents, allies, rival claimants, enemies, authorities, and various publics” and as a “campaign . . . [that] demands righting of a wrong . . . suffered by a well-specified population,” involving a collective and sustained challenge to authorities (Tilly, 2002:12, 88, 90). Regardless of the definition, social movements seek to promote alternative visions of society or parts of it through mobilization, lobbying, and other direct action means.

Social movement theorists seek to explain social movements by asking certain questions, the answers to which yield different understandings of how movements operate. Theorists ask the following types of questions, alone or in combination: *why do*

people engage in social movements, *how* do movement organizations as institutional actors make decisions, mobilize others, allocate time and money to achieve their goals, and respond to political opportunities, and *what role* do ideology and identity play in mobilization? The following theories, then, share the goal of elucidating social movements in various ways, but the aim here is to summarize the discussion of previous chapters as to how PCF is a more inclusive approach than RMT, POS, or NSM. PCF therefore provides a more comprehensive explanation of the same-sex marriage challenge.

In the next sections I will discuss certain variables from PCF in terms of aspects missing in RMT, POS, and NSM: PCF develops RMT by addressing not only how leaderships mobilize resources but also what their relationships are to their constituents; PCF elaborates POS by analysing not only existing political opportunities from the top-down, but also focuses centrally on how they can be opened from the bottom-up; and PCF expands NSM by examining state intervention and political-cultural formation. Yet, PCF is not merely an eclectic amalgamation of these three perspectives; rather, it is a systematic analysis of how civil society organizations emerge and become consolidated in the struggle for new hegemonic projects, within a Gramscian conception of the state.

## **RMT and PCF**

RMT was developed to address critiques of the classical models of collective behaviour such as the theory of mass society and relative deprivation theory, which provided a micro level analysis of irrational collective behaviour (Canel, 1992:22-24; Engel, 2001:168-175). In RMT, “resources” are of a material (i.e. labour, money, organizational) or non-material (i.e. authority, solidarity) nature, and “mobilization”

concerns the process by which a group assembles resources and uses them for collective action in pursuit of particular goals (Canel, 1992:40). RMT emphasizes the “how” of social movements, the manner in which pre-existing movement organizations mobilize people and manage labour, time and money to achieve goals (Canel, 1992:45; Engel, 2001:176-177; Gamson and Meyer, 1996:277). RMT does not pay attention, however, to identity issues or the question of why individuals participate, or to the structural stress that may cause social movements, or to the ways in which the political-structural environment affects the development of the movement (Engel, 2001:178; Gamson and Meyer, 1996:277). Furthermore, while RMT emphasizes the presence of internal organization, internal resources do not determine the success of a social movement (Tarrow cited in Engel, 2001:184). Also required are political opportunities and a leadership that is able to respond to the openings and strategize to achieve goals (Engels:184).

Nevertheless, resource mobilization is an essential dimension of any given movement and, in the case of the lesbian and gay rights movement, it is facilitated by a complex network of connections. RMT focuses on organizations, but “the gay and lesbian movement is not an organization; rather, it is a social movement community” (Engel, 2001:184) that operates through a series of networks. In Chapter 4, the variable of leadership types was used to examine the breadth of the external resources that supported Egale/CEM. “Tarrow asserts that ultimately the main problem social movements encounter is . . . social coordination. How are disparate organizations to present themselves to political elites and potential supporters as integrated, goal-oriented, and rational?” (Tarrow, cited in Engel:184). PCF examines the manner in which leadership

types shape the effectiveness of social movement organizations and their ability to represent constituents and build coalitions. The leadership in Egale/CEM created alliances both to strengthen the movement's political position and to increase the social capital of lesbians and gay men. CEM/Egale provided leadership to the Coalition and, with the public support of lawyers, partner organizations, and chapter coordinators created and presented a consistent message founded on liberal values and worked towards a clearly articulated goal of equal marriage. In the words of Charles Tilly, Egale/CEM effectively demonstrated that the supporters of same-sex marriage were worthy, unified, numerous and committed (Tilly, 2002:88-90).

An important aspect of mobilization is the manner in which the movement leadership is structured both internally to communicate with its various constituents and externally to interact with the state and other organizations. In the case of the lesbian and gay rights movement, the connections between national leadership and local and regional human resources is a research area that has been largely overlooked. But, PCF provides the means to examine this important dimension of social movement organization by asking two questions: (1) is leadership accountable to its constituents and does it promote grassroots participation, or (2) is the leadership opportunistic and does it compromise the movement's goals or independence? Although there could be debate about whether or not Egale/CEM is a grassroots organization, I think it did represent its constituents and its ability to mobilize grassroots support was evident in the presence of Coalition partners, the regional CEM contacts, and faith groups and, perhaps most important, in the politicization of individual Canadians across the country who responded to calls for involvement.

Finally, PCF addresses the issues of independence and autonomy because they are vital to ensuring the continuity and sustainability of the movement (Otero, 2004). In this study, we saw that Egale/CEM remained independent from the state and autonomous from other political organizations. In a similar manner, the Coalition partners and chapter coordinators were provided a great deal of latitude by Egale/CEM in making decisions about how best to participate in their own environments.

## **POS and PCF**

POS expands RMT in that it takes into account changing opportunity structure, pre-existing organizations, shared identity, and interaction with political institutions to produce outcomes that either support or hinder the movement's goals (Engel, 2001:7). Resource mobilization is explicitly contained in POS, and both POS and PCF analyse the role of grassroots and formal organizations (McAdam et al, 1996:4). POS, however, is missing a cultural analysis (Engel, 2001:10) and does not delve into the effects of leadership types. As leadership types has already been discussed, cultural analysis will be the central topic of this section.

Opportunity is the substantive focus of POS, but theorists such as Gamson and Meyer maintain that "opportunity has a strong cultural component and we miss something important when we limit our attention to variance in political institutions and the relationships among political actors" (Gamson and Meyer, 1996:279). PCF adopts a more comprehensive approach by including culture as a key variable. This study touched on the effects of both dominant and subordinate cultures on shaping the movement and examined the role of national and local or regional actors in supporting Egale/CEM and

in encouraging an increasingly supportive social climate for pursuing lesbian and gay rights.

Examining the dominant or hegemonic culture and the subordinate culture revealed several important aspects in the struggle for same-sex marriage. In terms of the dominant culture, heterosexism was embedded in laws relating to relationship recognition and marriage. For instance, one of the arguments against same-sex marriage was that “historically gays and lesbians have been excluded from the institution of marriage, therefore civil marriage should be seen as synonymous with heterosexuality” (Canadian Human Rights Commission, no date). When laws are opposed to certain groups of people, there is discrimination in law and discriminatory laws have material consequences for lesbians and gay men. In *Walsh v. Bona* (December 2002) the Supreme Court ruled that marriage is fundamentally about choice (Canadian Human Rights Commission, no date); that is, a choice between common-law and marriage status. Without the ability to make this choice, same-sex couples “are denied access to the legal rules governing property division upon the dissolution of the relationship or upon the death of the spouse” (Canadian Human Rights Commission, no date). Lesbians and gay men challenged the social “fact” that marriage was the exclusive domain of one man and one woman. By challenging the laws that embed this notion, activists were not accepting “the given” but were in fact going back to the root cause of the discrimination (Laclau cited in Slater, 1997:262): laws based on religious principles.

Capitalizing on a dominant culture liberal ideology of constitutional human rights and equality, Egale/CEM continued an established social movement strategy of pursuing minority rights and sought to reframe the topic of the debate from same-sex marriage to

equal marriage. Framing was directed at the dominant culture in that changing the topic of the debate to equal marriage shifted the focus away from homosexuality and on to relationship recognition. Furthermore, framing the debate as the right to choose to marry was also aimed at mitigating controversy within the subordinate culture. That is, for the lesbians and gay men who did not want to get married and did not agree with pursuing marriage, the arguments used by those who supported equal marriage were that no one was forcing anyone to get married and that lesbians and gay men should have the same options of relationship status as straight people.

Finally, in terms of subordinate culture, the majority of research participants were activists from the lesbian and gay community who had a history of involvement with gay rights and/or other social justice issues. In this sense there was continuity in the movement, with the present being firmly rooted in past activities and connected to the future through the training of young activists who joined the movement for same-sex marriage.

## **NSM and PCF**

NSM theory was in part an attempt to “expand traditional Marxist ideas of collective action [beyond economic and class reductionism] by incorporating notions of the actors’ collective identity” (Canel, 1992:22-24; Engel, 2001:180). The idea being expressed here is that in advanced capitalist societies there is relative economic security and thus social movements strive towards political or quality-of-life issues (Engel:181). Rather than economic issues, the aim of new social movements is the development and defense of identity: group identities are derived from shared characteristics, such as ethnicity or sexual orientation and transcend class boundaries (Engel:181). NSM,



however, is not one theory, but rather “a group of theories [posited by theorists such as Habermas, Offe, Laclau and Mouffe, and Melucci] that share some characteristics such as the role of post-materialist values and the construction of collective identities” (Canel:25-32; Engel:182).

The strength of NSM theory is in explaining the “why” of social movements (Canel, 1992:38). The weaknesses of NSM theory are a “shift from the political sphere to civil society and the cultural realm” and an “emphasis on identity [that] comes at the expense of considering strategic questions” about the advancement from grievance to action and the organizational dimensions of leadership, recruitment, and goal setting (Canel, 1992:33, 35, 37). NSM theory also ignores the question of how a movement is sustained (Engel, 2001:182). Thus NSM falls short when it comes to describing the longevity of the lesbian and gay rights movement and its engagement with political action and political institutions and to describing the movement’s political-cultural formation.

Engel defines a social movement as “a political phenomenon whose target is the power wielded by the state”, but power also lies with cultural institutions such as schools and family; therefore the field of social movements is both state and culture (Engel, 2001:126). Mary Bernstein has shown “that the lesbian and gay movement alternatively and even simultaneously emphasizes both political and cultural goals” and she proposes integrating political process and identity theory to create a “political identity” approach (2002:532). She correctly observes that, “challenging dominant cultural patterns and attaining concrete policy reforms are now inextricably linked” (Bernstein, 2002:568). Her analysis, however, is fixed on the role of identity in achieving cultural and political

change and does not fully explore issues of leadership or the effects of state intervention in political-cultural formation.

As leadership types was discussed in the section on RMT, I turn here to the PCF variables of state intervention and political-cultural formation. State intervention allows us to examine the manner in which the state, in this case the prevailing Liberal government, and the political parties, have at varying times either decreased or expanded the openings for lesbians and gays to challenge structural problems and have influenced the form of social movement organization. PCF asks two questions about state intervention: are state policies initiated by the state, for cooptation purposes or do policies result from bottom-up pressures (Otero, 1999:20)? The courts forced the hand of the government by being the first major political space in which rights were achieved. While the NDP has been the most steadfast political supporter of lesbian and gay rights, the Liberal party has had a greater ability to control the fate of lesbians and gay men because the party has been the seated government during the most critical years of the marriage challenge. The research revealed a depth and breadth of activity that took place in the process of building public support and for the purpose of keeping pressure on MPs to vote in favour of same-sex marriage. I believe the leadership alone of Chrétien and Martin would not have ensured a positive outcome. The change in the legal definition of marriage resulted from the bottom-up pressure exerted by lesbian and gay individuals and organizations and non-lesbian and gay supporters.

Like NSM, PCF acknowledges the fact that the legitimacy of a movement rests on its ability to gain recognition of a shared identity and social position in relation to those of dominant groups (Otero and Jugenitz, 2004:509). PCF also provides a means to

analyze the ability of social movements to push for state interventions in their favour. “All social movements come up against the state, and those that have no strategy for confronting the state tend to be incorporated or defeated” (Moors and Sears, 1992:68). If we accept this statement, Egale demonstrated political astuteness in knowing when to form CEM and how to strategize to influence political leaders, the media, and the public to achieve legal and parliamentary endorsement of same-sex marriage.

Political-cultural formation is concerned with political outcomes and the question of whether the movement is coopted, repressed or its grievances not redressed, or the movement achieves its goals and retains independence from the state and autonomy from other political organizations. This thesis has stressed the point that Egale/CEM achieved success in the same-sex marriage challenge while retaining relative independence from the state, aside from the obvious engagement with political processes, and autonomy from other organizations. Most important, the movement engaged many other individuals and organizations thereby strengthening democratic process in civil society. It should be underlined that, in providing a theoretical framework for examining democratic outcomes, PCF addresses a component of social movement analysis that is often overlooked. According to Marco Giugni in his introduction to *From Contention to Democracy*, democratization “is a surprisingly poorly studied outcome in the light of the assertion . . . that movements are powerful sources of democracy” (1998:xii). Democracy here includes several of the elements that have been discussed throughout this thesis, including citizenship rights, policy changes, and systemic changes at the structural and cultural level (Giugni, 1998).

## Conclusions

Theories are used to illuminate, describe, or explain particular aspects of society in order to contribute to an understanding of certain social processes. But theories are conceptual tools and evaluations are always shaped by certain variables that come under the scope of research (Engel, 2001:11). Thus, “no theoretical model is collectively exhaustive” (Engel, 2001:10). With this in mind, I have attempted, in the above discussion, to show the ways in which PCF provides a synthetic and therefore more comprehensive view of the same-sex marriage challenge than RMT, POS, or NSM alone. While PCF provides a comprehensive framework for analyzing social movements, it also offers flexibility in terms of allowing, depending on the movement being examined, closer focus on one or more of the variables contained in the theory. In this thesis slightly more attention has been paid to leadership types. Gerardo Otero, the designer of PCF, has also paid closer attention to certain variables in his various analyses of social movements. When he first posited PCF, he was searching for a way to understand the role of regional culture in shaping political-cultural formations (Otero, 1999). Later, in a comparison of two social movements in Latin America, he paid closer attention to the effects of state intervention (Otero and Jugenitz, 2005).

The application of PCF to the study of the same-sex marriage challenge has proven to be valuable in another area. The literature review uncovered a dichotomy that has existed between understanding liberationists as involving grassroots activism and assimilationists as being largely political interest groups. PCF allows us to move beyond this dichotomy in that it clearly allows for an analysis of the role that both grassroots activists and political interest groups played in achieving the goal of same-sex marriage

recognition. In addition, PCF addresses the micro, meso, and macro levels of the movement: individual participation, movement organizations, systems, and resources, as well as the relationship between the state and social movement actors (Engel, 2001:159). The same-sex marriage challenge was an extension of the lesbian and gay rights movement and therefore did not stand alone. It was grounded in an activist past and connected to a future of activism that will address cultural issues such as equality for trans people, ending homo, bi, and transphobia, and creating safe schools for lesbian, gay, bi, trans, and questioning youth (Egale, 2005e; 2005f). When I began my research I hoped one of the benefits of this study would be that activists would learn some of what worked in the movement for same-sex marriage and use this new knowledge to facilitate future endeavours. Egale and CEM played critical roles in organizing, coordinating, and supporting the efforts of many individuals and organizations.

The question one must ask now is: what is the future of the lesbian and gay rights movement? There are a few scenarios that are not mutually exclusive. First, the movement will need to defend or protect its legislative achievements. As Reverend Hawkes said, “the price of freedom is eternal vigilance.” Second, it must work to bring social acceptance and practice into accord with what the new legislation formally acknowledges. Third, given that the possibility of achieving social change through legal means is more or less exhausted, Egale’s ability to engage and lead local activists will be more important than ever in addressing the future challenges related to social equality for LGBT people. In each of these scenarios, the lesbian and gay community must continue to be a politically-constituted actor.

How then can these scenarios be examined from the vantage point of PCF? Given that rights can be taken away, as indeed the new Conservative government, elected in January 2006, has pledged to do, it will be necessary for the movement to continue to influence the dominant culture by increasing public acceptance of homosexuality and support for lesbian and gay rights. The three decades of movement activities preceding the substantive fight for same-sex marriage had raised public awareness and acceptance to the point where a January 2005 poll result showed that 54% of Canadians supported equal marriage (Environics, 2005). Public support is essential because individuals, organizations, and the media influence judicial representatives and politicians. It would also be useful for the movement to understand and be able to quantify the ways in which the economic-structural location of LGBT people affects the individual's life chances because social discrimination, oppression, and marginalization are over-used and vague terms.

Next, while there is a great deal of political expertise in the LGBT community, the movement would benefit from increasing the number of its trained activists who understand the political realm and who are capable of analyzing the import of state interventions and of developing strategies and tactics that will serve LGBT goals. A younger LGBT generation, those in their teens and early 20's today, has grown up in a much more liberal society than the one experienced by people in their 40's and beyond. One condition created by a Canadian society characterized by a higher level of tolerance for diversity may be apathy to the social injustices that will require work to correct in the coming years. A cadre of trained activists will ensure that the remaining issues continue

to be addressed as more seasoned activists lose energy or leave the realm of political engagement.

Finally, as *the* pan-Canadian organization representing a wide range of LGBT issues, Egale has served its community well. There is, nevertheless, a great deal of work still to be done and thus Egale must assume the responsibility to maintain and expand its leadership role. As the leading LGBT organization in Canada, Egale would be wise to expand its democratic-participatory decision-making processes so that it engages the maximum amount of grassroots participation. In the same-sex marriage challenge, for instance, the regional contacts were critical to establishing a lesbian and gay presence across the country. Furthermore, encouraging, building, and protecting alliances will continue to be an important use of Egale's leadership skills because an expansive network of organizations helps keep lesbian and gay rights issues visible in civil society and, more importantly, the network links lesbian and gay issues with intersecting issues of race, ethnicity, and class.

### **Limitations of PCF**

This thesis has argued that PCF provides a more inclusive theoretical approach for explaining a social movement than RMT, POS, or NSM alone. There are, however, two limitations to its effectiveness. First, RMT, POS, and NSM tend to selectively examine particular aspects of a movement, that is, organization, political opportunity, and identity, respectively, while largely ignoring other aspects. It is possible that PCF misses important details of a movement by being more inclusive and attempting to explain the mediating determinants between economic-structural processes and political-cultural outcome: culture, state intervention, and leadership types. Second, it would be useful to

be predictive in terms of specifying the types of political-cultural formation outcomes one could expect given certain combinations of culture, state intervention, and leadership types; PCF does not make such predictions. Given that this is the first time that PCF has been applied outside of a Latin American context, however, there will be plenty of opportunities to continue to finesse this theory and its predictive ability.

### **Future Research Agenda**

One possible application of PCF to the lesbian and gay rights movement is to produce a comparative account of the same-sex marriage challenge in the United States to that in Canada. A few research participants observed that the Canadian movement has been more successful because it laid important relationship recognition groundwork before pursuing marriage. The component of economic-structural processes could be held constant, assuming that the location of lesbians and gays does not differ significantly between the two countries. The framework of PCF could then be used to gauge which of the mediating determinants has perhaps been more instrumental in the political-cultural outcomes in the two countries. It is possible that state intervention and leadership types would figure most prominently. A similar idea, to examine the Canadian experience more closely, would be to compare the movement for same-sex marriage in Quebec to that in Ontario using PCF. In this second case, the issue of culture may be more salient. Either research agenda would provide the opportunity to test PCF in another context and to produce further empirical information to begin to formulate the predictive ability of PCF.



## APPENDIX – INTERVIEWEES

The following people were interviewed:

Arron, Laurie	Director of Advocacy for Egale and Political Coordinator for Canadians for Equal Marriage.
Buckingham, Janet	Director of Law and Public Policy and General Legal Counsel for the Evangelical Fellowship of Canada.
Caldwell, Evangeline	Coordinator of the Quebec Coalition for Same-Sex Civil Marriage.
Calisto, Manny	Spouse to Brad Tyler-West.
Chamberlain, James	Spouse to Jean-Marie Russell.
Chambers, Richard	Associate Executive Minister in the Justice, Global and Ecumenical Relations Unit of the United Church of Canada.
Chambers, Tanya	Spouse to Melinda Roy. Tanya and Melinda were one of the B.C. couples in Egale's marriage case.
Côté, Claude	Egale Board member and local contact for Canadians for Equal Marriage in Montreal, Quebec.
Courtney, Joe	Research Branch, Canadian Union of Public Employees.
findlay, barbara	Vancouver lawyer who represented the <i>Barbeau</i> case and member of the December 9 <sup>th</sup> Coalition.
Fry, Hedy	Liberal MP in Vancouver Centre.
Gallagher, Bob	Chief of Staff for the New Democratic Party.
Hawkes, Brent	Senior Pastor at the Metropolitan Community Church of Toronto.
Hay, Eldon	Local contact for Canadians for Equal Marriage and PFLAG leader in Moncton and Amherst, New Brunswick.

Maynard, Craig	Local contact for Canadians for Equal Marriage in Vancouver and member of the December 9 <sup>th</sup> Coalition.
Mivasair, David	Rabbi of Ahavat Olam congregation in Vancouver.
O'Brien, Pat	Liberal Member of Parliament, Ontario.
Ritchot, Michelle	Local coordinator for the Manitoba chapter of Canadians for Equal Marriage.
Roy, Melinda	Spouse to Tanya Chambers. Melinda and Tanya were one of the B.C. couples in Egale's marriage case.
Russell, Jean-Marie	Spouse to James Chamberlain.
Sims, Mary-Woo	Local coordinator for the British Columbia chapter of Canadians for Equal Marriage.
Tyler-West, Brad	Local coordinator for the Manitoba chapter of Canadians for Equal Marriage and spouse to Manny Calisto.
Williams, Kay	PFLAG Board member and PFLAG leader in Saskatoon, Saskatchewan.
Name Withheld	Representative from a human rights organization.

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