THE SOCIO-LEGAL STANDING OF THE LGBTQ+ POPULATION THROUGHOUT CANADIAN HISTORY

By

Celdric Payomo

Under the supervision of

Doug King

An Honours Project submitted in

Partial fulfillment

Of the degree requirements for the Degree of

Bachelor of Arts – Criminal Justice (Honours)

Mount Royal University

Date Submitted: April 2023

MOUNT ROYAL UNIVERSITY

CALGARY, AB, CANADA

Land Acknowledgement

Mount Royal University is located in the traditional territories of the Niitsitapi (Blackfoot) and the people of Treaty 7 which includes the Siksika, the Piikani, the Kainai, and the Tsuut'ina, and the Îyârhe Nakoda. We are situated on land where the Bow River meets the Elbow River, and the traditional Blackfoot name of this place is Mohkinstsis, which we now call the City of Calgary. The City of Calgary is also home to the Métis Nation.

Abstract

The recent decades have witnessed the emergence of the LGBTQ+ Canadians within mainstream discourse. Significant legal reformation that are aimed to address the marginalized experience that have characterized their lives for a long time within Canada were employed. This is accompanied by a greater celebration for the nuanced identities and diversity that the LGBTQ+ population brings to the broader Canadian society. Although, this modern queer phenomenon is a culmination of successful judicial case decisions that improved the legal statuses of sexual and gender minorities. These legal victories were due in part by an increased awareness of the public to the vulnerability that the LGBTQ+ population is experiencing as a result of state sanctioned provisions and measures. The Canadian government through its justice system and actors upheld a "heteronormative hegemony" that brought irrevocable harm to the community which reverberates to the present as it shapes the dominant societal discourse regarding sexual and gender minorities. Therefore, the recent progress made by the Canadian state serves as an act of reparation to amend the damage they have enacted within the past. Albeit the measures taken fall short of responding to the shortcomings of the past as there are issues that persist which continue to marginalize and harm the community.

Acknowledgements

To start, I want to appreciate my family who has been serving as the backbone of my entire journey within my Criminal Justice – Honours degree. I value the unconditional trust that they put towards me and my capabilities to make my dreams come into fruition. This thesis is a culmination of the support and love that I have received from them within not only my undergraduate journey but my life. Thank you for continuously acknowledging my efforts and empowering me to be the best version of myself to pursue my goals in life.

To my friends who have witnessed and been instrumental to the achievements in my life, I cherish the support that all of you have given me throughout the years. Listening and comforting me through writing my thesis is something I value as all of you understand how hard but rewarding this honours project have been for me. Moreover, the excitement and anticipation you all had for the end product drove me to put my best effort to create a body of work that my friends will be proud of. I hope that all of you continue to stay by my side within my future endeavours.

I would like to express my gratitude towards my Honours supervisor, Doug King, whose passion for teaching and discipline have inspired me within my personal academic and professional aspirations. Throughout the process of researching and writing this thesis, he has been enthusiastic and supportive which was validating and empowering for such an arduous challenge. Outside of this context, he is an excellent professor whose knowledge and expertise shapes students in being future competent criminal justice professionals. It was truly a delightful experience to have him both as my honours supervisor and as an educator within numerous of my criminal justice courses.

Lastly, I would like to acknowledge the Criminal Justice faculty and broader Mount Royal community who enriched my undergraduate experience. Specifically, I would like to recognize Ritesh Narayan, whose passion for his work continue to positively influence students like me.

Additionally, Liza Choi, who continues to be a great and supportive mentor despite the short time we have been working together. My time at Mount Royal University will be a memory I treasure as I am able to graduate satisfied with the opportunities I was able to experience and the people I have been able to meet.

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Social and Legal Statues of the LGBTQ+ Community in Canada

"Individuals' and communities' social statuses are constructed and informed by their legal statues – and vice versa" (Hebert et al., 2022, p. 16). Analyzing the socio-legal status of vulnerable population give insight into their legal problems and how it "shaped their access to resources, oppurtunities, and protections" (p. 16). Persons who identified with the LGBTQ+ community were historically maltreated by homophobic criminal provisions that criminalized queer sexual expressions which were sanctioned by the Canadian state to maintain a heteronormative society (Brooks & Bridgen, 2020, p. 158-159; Kirkup, 2021, p. 4 Smith, 2019, p. 66). These practices employed by the government served to control and regulate non-dominant "forms of sexuality and gender identity" (Brooks & Bridgen, 2020, p. 158-159). The actions held social implications in that queer individuals were labelled as "criminal" or "deviant" and it "shaped their identities and lives" for a significant amount of time within the Canadian social landscape (p. 158-159)Although, there have been substantial law reforms that were aimed to ameliorate the realities of LGBTQ+ people in Canada. The legal progress that the LGBTQ+ community were achieved through altering the dominant discourse surronding sexual and gender minorities; an informed general public led to a stronger advocation for a more equal and equitable legal status; demonstrating the instrical link between a population's social and legal statuses. This thesis analyzes the socio-legal statues of the LGBTQ+ community within Canadain history; exploring the progression of their rights within the legal landscape and how people view them in society throughout time. It is a nuanced inquiry on how Canada shaped the identities and realities of queer Canadians, recognizing the signifance of the state's actions in relation to the community.

Research Design for Thesis

A semi-systematic or narrative review approach will be adopted for the research project. The method is favourable due to the topic being studied differently by various disciplines which prevents a formal systematic review to be employed (Wong et al., 2013, p. 2). The nature of the research question requires collected data to span numerous fields such as sociology, criminology, and law. Thus, the chosen research design offers the flexibility required to synthesize differing research traditions to explain a complex and broad topic (p. 6). "A generic six-step literature review process" outlined by Templier & Pare (2015) will be followed which sets up a search strategy that reduces bias and maintains a standard of quality for the data gathered (Ogunmakinde et al., 2021, p. 901). In conducting a narrative literature review, the "existing knowledge on the subject" is illustrated which "creates an agenda for future research" (Onwuegbuzie and Frels, 2016, as cited in Ogunmakinde et al., 2021, p. 901; Synder, 2019, p. 335). Although this type of review is prone to criticism as it lacks methodological rigor and is susceptible to bias compared to systematic reviews (Templier & Pare, 2015, pp. 114-117), The search strategy adopted aims to resolve these shortcomings that are inherent with narrative reviews. Ergo, the chosen research design is the most appropriate to address the research question and will be conducted in a manner that minimizes the limitations of said method.

Conceptualization and Operationalization

The research question involves analyzing the socio-legal status of the LGBTQ+ community throughout Canadian history and investigating its impact on queer persons. Key ideas discussed within this semi-systematic review will be defined to understand the objective(s) of the research project (Templier & Pare, 2015, p. 6). LGBTQ+ people is the focus of the research and is an umbrella term that refers to individuals that identify as lesbian, gay, bisexual, trans,

questioning, and other sexually/gender diverse identities that are not heterosexual or cisgender (Denison., et al, 2020, p. 390; Brooks & Popham, 2020, p. 151). For this paper, "LGBTQ+" will be interchangeably used with other terms such as sexual and gender minority (SGM), sexually and gender diverse (SGD), and queer; they will serve as alternative labels (About SGMRO, n.d.; Gieseking, 2008, p. 737). On the other hand, "socio-legal standing" refers to the "position" of a person "relative to social norms and legal systems". The socio-legal status will be analyzed as it reveals how the lives of SGM are shaped by their social and legal dynamics (Hebert et al., 2022, p. 5). The social, cultural, and legal effects brought by the actions of the Canadian state will be the "implications" investigated within this paper. Similarly, the injustices referred to in the paper are the historical acts and present shortcomings of the government that disproportionately harmed LGBTQ+ persons (Smith, 2019, p. 78). The aforementioned terms are the main concepts discussed throughout the review and will guide the type of information sought within existing literature (Ogunmakinde et al., 2021, p. 901).

Data Collection Methods and Sources

Data Collection and Sources

For collecting the data, the narrative review followed the six-step process outlined by Templier & Pare (2015) and demonstrated within Ogunmakinde et al. (2021)'s semi-systematic review of circular economy pillars. With the research question guiding the search process, an extensive analysis of existing literature through electronic databases is conducted (Mount Royal University Library, University of Calgary Library, Google Scholar, Statistics Canada, Google, and Department of Justice Canada) (Ogunmakinde et al., 2021, p. 901). This identified relevant information and allowed one to understand the state of knowledge and consensus regarding the topic area (Webster & Watson, 2002, p. xvi). The search terms within the literature search are

variations of the concepts discussed earlier, resulting in primary and secondary data such as studies, scholarly articles, governmental material, and books. The data gathered were then screened and assessed to determine whether they pertained to the research question and maintained methodological rigor (Templier & Pare, 2015, p. 6). As a result, "all potentially relevant research" was included but a standard of quality within the study was ensured (Wong et al., 2013, p. 7-8; Synder, 2019, p. 335; Templier & Pare, 2015, p. 6).

Data Analysis

Once the data is ready to be analyzed, a combination of content analysis and thematic analysis is conducted. Content analysis "can develop a deeper understanding of a particular phenomenon through interpretation of textual data" (Kleinheksel et al., 2020, p. 127). The method of analysis is useful due to its "assumption that texts are a rich data source with great potential to reveal valuable information about a phenomenon" (p. 128). On the other hand. thematic analysis "offers insight into themes within collective experiences", illustrating common patterns in the lives of SGM that are brought by their socio-legal standing (Braun & Clarke, 2012, p. 57). Through employing thematic analysis, the answer to the research question that can seem conceptually vague is produced (p. 57-58). By choosing to apply both methods in analyzing the data, the concepts that are explored within the paper can be properly understood and a conclusion can be reached regarding the research question.

Limitations

Lack of Holistic Perspective

The literature accessible focused mainly on the issues and experiences of gay men within Canada. Therefore, it is a considerable gap within the literature review produced as it does not explore the historical accounts of lesbians during the era of social regulation and detail

contemporary issues that are specifically about the lesbian community in Canada. Only a handful of research exist that roughly points to forms of criminal control over lesbian sexuality and charges towards the Canadian lesbians due to their sexual/gender expression (Busby, 2020, p. 7-8). Resulting in the literature review's inability to be a holistic overview of the socio-legal standing of the broader LGBTQ+ community. This rings true for other members in the LGBTQ+ community as research about these identifiable groups were not presented within the literature review, thus, adding to the limitation of this literature review.

Intersectionality

The literature review fails to take into account of other factors that contribute to an individual's social standing like race, (dis)ability, class (Herbert et al., 2022, p. 15). These systems of oppression can have compounding effects on an individual, aggravating their discriminatory experience in Canadian society (p. 15). It can further shape the interactions a queer person can have within the judicial system (p. 15). Alas, there is no distinction made within this literature review which limits the depth and accuracy of research presented.

Required Ethical Approvals

There is no ethical approval required for the narrative review due to a lack of interaction with the persons that are the focus of the research. (Canadian Institutes of Health Research et al., 2018, p. 13-17). Furthermore, the data collected from public databases and scholarly libraries are conducted unobtrusively. Thus, it should be exempted from requiring an ethical review (p. 13-17).

History of Social Regulation

The socio-legal standing of the LGBTQ+ population within Canada had been marred by an extensive history of homophobic provisions that socially controlled queer behaviour and deemed such acts as deviant. These policies were coupled with a lack of substantial legal

protections for those who identified within the community which left them vulnerable to discrimination and ultimately led to their marginalized position within society. The following section illustrates the methods in which the Canadian state oppressed SGM and how it dictated their queer experience.

Criminal Code

"Criminal Code has long been a key mechanism within the regulation of queer sexual conduct" (Smith, 2019, p. 70). In 1892, Canada adopted Victorian sex laws within its Criminal Code such as "gross indecency, buggery, and the bawdy house" laws (p. 70). These prohibitions targeted the LGBTQ+ community and reflected the country's adherence to a heteronormative society (Kirkup, 2021, p. 10). Individuals engaging in behaviours that deviated from the heterosexual norm was marginalized and punished through legal means.

Buggery

Section 174 of the *Criminal Code* (1892) is the offence of buggery or anal intercourse as commonly referred to now, finds anyone committing "buggery" with another person or with any other living creature to be guilty of an indictable offence. The provision disproportionately affects gay men engaging in sexual activity as their conduct would be criminalized. Furthermore, the language is purposeful as it equated anal sex between human beings to bestiality within the law (Kirkup, 2021, p. 11-12).

Gross Indecency

Section 178 of the *Criminal Code* (1892) is the offence of gross indecency which applies to any man who commits "any act of gross indecency". Although, the *Criminal Code* did not specify what constitutes as gross indecency (Kirkup, 2021, p. 11). This freedom of interpretation allowed judicial actors to determine what forms of conduct should be "criminally prohibited", one

of which happens to be “non-heteronormative sexual relations” (Busby, 2020, p. 5; Kirkup, 2021, p. 11).

Everett Klippert.

“Everett George Klippert” was the last person in Canada to be convicted of gross indecency” (Kirkup, 2020, p. 266). He disclosed that he engaged in “sexual liaisons with other men” during an arson investigation which led to Klippert being charged and found guilty of gross indecency (Busby, 2020, p. 5). Afterwards, Klippert was deemed a dangerous sex offender and held in detention indefinitely due to his “so-called incurable homosexuality” (Kirkup, 2021, p. 21-22). The SCC upheld the trial decision which cemented homosexuality as immoral and rightfully criminalized under the law (p. 22). Although, the case became the catalyst for inciting reform regarding the socio-legal standing of the LGBTQ+ community in Canada.

1969 Amendments to Criminal Code.

In response to the Klippert decision, the Pierre Trudeau government amended the Criminal Code section on gross indecency and buggery which would “decriminalize” homosexual acts (Kirkup, 2021, p. 22; Smith, 2019, p. 70). Although, this “decriminalization” is partial as someone can be still charged if the sexual act is not done “in private” or if one of the particiaptions is below 21. (Busby, 2020, p. 5; Smith, 2019, p. 70). Therefore, same-sex relations in most situations remained criminalized as only the manner in which the LGBTQ+ community are prosecuted were changed (Kirkup, 2021, p. 23). The amendments put a greater emphasis on the ages of those who engaged in sexual activity and the “environment” in which queer persons have sex in.

Bawdy House Laws

The bawdy house offence was found in the 1892 iteration of the Criminal Code and its purpose was to “solely to prevent houses of prostitution” (Criminal Code, 1982, p. 274; Hooper,

2014, p. 69). Although, the provision was amended in 1917 to include "places for the practice of acts of dencency" (Criminal Code, 1982, p. 275; Hooper, 2014, p. 69). The broadened scope of the law allowed law enforcement to target the LGBTQ+ community within their establishments such as bathouses and bars through police raids (Busby, 2020, p. 8). Charging queer individuals with the bawdy house offence were justified by the criminalization of homosexual activity within specific parameters such as "sex in public" (Hooper, 2014, p. 70). The bawdy house law and the measures that the police took to enforce the law directly governed the relationship between the police and the gay community for decades to come (Hooper, 2014, p. 58-59).

Bathhouse Raids.

Queer establishments were a symbol for the "gay sexual liberation" during the 1970s-1980s in which gay men were allowed to express their sexuality (Hooper, 2014, p. 54). Although, these were the targets of the Canadian police forces that seeked to enforce the bawdy house provision, regulating queer sexuality yet again through another legal mean (Smith, 2019, p. 73). The raids culminated in February of 1981 in which "Toronto police raided four bathhouses and threw half-naked men out onto the street in the middle of winter" (Kirkup, 2021, p. 25). On that one night, 300 men were arrested and subsequently charged with bawdy house or gross indecency offences (Busby, 2020, p. 8). The mass prosecution of gay men exemplifies that the "decriminalization" of homosexuality in 1969 is an empty promise poised by a government that continues to uphold a "heterosexual hegemony" (Hooper, 2014, p. 56).

Age of Consent for Anal Intercourse

The age of consent for anal intercourse of 21 years old exemplies the state's inherent desire to a "heterosexual power structure" (Hunt, 2009, p. 16). Ever since the introduction of the Criminal Code in 1892 to the (partial) decriminalization of homsexuality, the age of consent for heterosexual

forms of sexual activities were the age of 14 (Sullivan, 1992, as cited in Hunt, 2009, p. 19). The provisions highlights that homosexuality were subjected to differential treatment under the law and it punishes queer youth from exploring and excersing their sexuality (Hunt, 2009, p. 30; Smith, 2020, p. 71). The disproportionate age of consent for queer minors infers that there is a preferred sexuality within society, one that is more reminiscent of a heterosexual nature.

HIV Non-Disclosure

The issue of HIV/AIDS is one that is closely intertwined with queer history as the condition became "synonymous with the supposed prosmicous lifestyles of gay men" during its emergence in the 1980s (Centers for Disease Control and Prevention, 1981, p. 30, as cited in Kirkup, 2020, p.273). Being first touted as the "gay plague", the HIV/AIDS epidemic only served to heighten the preexisting homophobia within society and perpetuate damaging misconceptions about the community (CBC Radio, 2014). In response, prosecutors and judges began to seek convictions of people living with HIV under existing Criminal Code offences (Chaisson, 2020, p. 494-495). These offences include but are not limited to "sexual assault, aggravated sexual assault, criminal negligence causing bodily harm, and murder" (Kirkup, 2020, p. 18). Hence, when an individual with HIV/AIDS wants to have sex with someone, they must legally disclose their status and gain an informed consent for the upcoming sexual activity if there is a "realistic possibility of transmission" (Department of Justice Canada, 2022, p. 1). Failure to disclose their HIV status when a realistic possibility exist constitute as a crime and will be charged under the aforementioned offences (p. 1). Although, the application of this law has been inconsistent and contributes to phenomenon of "HIV Criminalization" (Chaisson et al., 2020, p. 494-495; Department of Justice Canada, 2022, p. 1).

HIV Criminalization.

A growing phenomenon in which the legal system is being unjustly used to criminalize people with HIV based solely on their HIV status (Frequently Asked Questions: What is HIV Criminalisation?, n.d.; Chaisson et al., 2020, p. 494-495). The inconsistent application of the law results in the criminalization of indvidiuals with HIV when there is no tangible risk of transmission (Department of Justice Canada, 2022, p. 2). Furthermore, utilizing criminal offences to deal with HIV non-disclosure contributes to the stigmatization of people living with HIV (p. 2). As such, men who have sex with other men are negatively impacted by HIV criminalization as they are "disproportionately represented among those living with HIV in Canada" (p. 2). The issue of HIV non-disclosure is a queer issue as gay and bisexual men stand at multiple axes of oppression as they are more than likely to contract the disease and will be criminalized if they were to express their sexuality (Department of Justice Canada, 2022, p. 2; Kirkup, 2020, p. 269-276).

Non-Criminal Law

Despite the significant role that criminal law played in defining the socio-legal status of the LGBTQ+ community. There were other legal elements at play that left those part of the community unable to access the same societal benefits as their heterosexual counterparts. The following section will explore three forms of law that were critical at upholding the principle of cisheterosexism and prohibiting queer persons from being full-fleged participants within Canadian society.

Human Rights Law

Prior to the 1970s, there was a lack of human rights law that protected the LGBTQ+ community from discrimination, harassment, and hate crimes (Busby, 2020, p. 14). At the time, many queers were oppressed and became victim to bullying that were rooted in homophobia (Hooper, 2014, p. 26). SGMs were vulnerable to becoming "victims of crime" which is an nuanced

contrast as those from the community were often labelled as “perpetrators of crime” due to the stigma brought by the aforementioned Criminal Code provisions (Kirkup, 2017, p. 27). Thus, the LGBTQ+ population had no legal protections from discriminatory actions compared to other marginalized populations such as women, racialized persons, and etc. (Busby, 2020, p. 14).

The Purge.

From the late 1950s to the late 1970s saw the dismissals of public servants due to suspicions regarding their seuxal identity (Busby, 2020, p. 14; Mackenzie, 2022, p. 189). These suspicions were accompanied by a belief that homosexuals were “a threat to national security because they were vulnerable to blackmail and intimdiation by communists” (Busby, 2020, p. 14). The arbitrary action were touted as “the gay purges” and it was the largest-scale of dismissals witnessed in Canadian history (Mackenzie, 2022, p. 189). The lack of human rights code protection facilitated this form of injustice, queer people were vulnerable to termination of employment without much of a say in the matter (Busby, 2020, p. 14).

Marriage and Family Law

A significant barrier that hinder queer people from being equal standing to their heterosexual counterparts is that their relationships are not recognized under the law. The lack of same-sex marriage, access to spousal benefits, and custody of their children supports the notion that homosexuality and its corresponding “lifestyle” is a marked departure from what society deems as “normal”, thus, should not be permitted (Busby, 2020, p. 20-25; Kirkup, 2017, p. 28-32).

The Road of Legal Reformation

The queer rights movement started to take shape after the partial decriminalization of homosexuality, advocating for human rights protections and reimagining themselves within the criminal justice sytem (Kirkup, 2017, p. 26-27). The notion of a “respectable queer” who are

deserving of judicial equality like their cisheterosexual counterparts was an increasingly popular perspective throughout Canadian society (p. 27). The legal reforms that occurred over a 50 year period led to a construction of a "nuanced gay identity within the dominantly heterosexual public sphere" (Idreis, 2022, p. 56).

Criminal Law

Despite the (partial) decriminalization of homosexuality, the LGBTQ+ population remained in a perilous situation as there were remaining *Criminal Code* provisions that still recognized most queer sexual expression as illegal. Although, there was monumental SCC cases that shifted this reality and sparked an increasingly powerful approach to legal reform that emphasized queer liberation, veering away from dominant perspectives that dictated the experiences of the LGBTQ+ community within Canada in the past.

Anal Penetration

The partial decriminalization of homosexuality in 1969 is exemplied by the offence of gross indenceny and buggery as it only provided an exception for which the act can be legally conducted. The lawful act must be in private and have two consenting adults that are over the age 21 (Hooper, 2014, p. 68). Deviations from this rigid structure is viewed as "grossly indecent" or as an act of buggery by the courts and is subjected to punitive measures (p. 68). In 1988, the Criminal Code was amended

1988 Criminal Code Amendments.

The two aforementioned offences were streamlined by repealing the offence of gross indecency and renaming the offence of buggery into "anal intercourse" under section 159 of the Criminal Code (Questions and Answers - An Act related to the repeal of section 159 of the Criminal Code; Smith, 2019, p. 70). The act of anal intercourse remained illegal except between a

married heterosexual couple or two consenting adults in private with an age of consent of 18 (Hooper, 2014, p. 77; Smith, 2019, p. 70). Thus, the issue of discrimination based on sexual orientation persisted.

Age of Consent

The 1988 Criminal Code amendments lowered the age of consent from 21 years to 18 years for anal intercourse, although, the legal inequality within the age of consent between heterosexuals and homosexuals still stand (Questions and Answers - An Act related to the repeal of section 159 of the Criminal Code, 2021). In light of the newly implemented Charter, "this legal inequality did not go uncontested in the courts" (Smith, 2019, p. 70).

R. v. C.M. (1995).

During 1995, the Ontario Court of Appeal addressed the issue of section 159 and its validity against the Charter (Smith, 2019, p. 70). It involved "an unmarried heterosexual couple who had anal sex when the woman was under age and and the man was prosecuted under the provision" (R. v. C.M., 1995). Two of the three justices concluded that section 159 violated the Charter due to its discrimination on age, although, the third justice which is the future Supreme Court Justice Rosalie Abella determined that it violated the Charter on the grounds of sexual orientation (Smith, 2019, p. 70). "Abella highlighted the fact that anal sex had been singled out for different treatment under the law" which disproportionately affects gay men as anal sex is "a basic form of sexual expression for them" (p. 71). Other provinces in Canada came to the same conclusion within their respective cases in that section 159 is unconstitutional due to its violation of the Charter's equality right, therefore, is not enforcable (Busby, 2020, p. 6; Questions and Answers - An Act related to the repeal of section 159 of the Criminal Code, 2021; Smith, 2019, p. 71-73). Despite the provision being found unconstitituional, the failure of the Parliament to repeal section 159 until decades later

became apparent as it "permitted certain jurisdictions to charge queers due to a lack of knowledge of relevant rulings as in the case of *Lucas* v. *Toronto Police Services Board* (2001)" (Casswell, 2004, p. 224-228; Smith, 2019, p. 72). Section 159 continued to be a "vehicle" for homophobic aggressions by the Canadian justice system and was left unaddressed by the federal government for years (Casswell, 2004, p. 228).

Bawdy House

Two decades of police raids continued to ensue on gay bathouses after the 1981 Toronto raid which furthered strained the relationship between the LGBTQ+ community and law enforcement agencies all over Canada (Busby, 2020, p. 8)**.** Despite the raids declining by the early 2000s, there were notable raids such as the 2002's Goliath Bathhouse raid that occured which had devastating impacts on queer individuals which forced them to plead guilty to avoid being outed to the public (Busby, 2020, p. 9; Hooper, 2014, p. 266; Ordonez, 2006). It was only until 2005 that two SCC companion cases of *Kouri* and *Labaye* that the "common bawdy-house/indencency law were radically reformed" (Busby, 2020, p. 9)

R. v. Labaye and R. v. Kouri (2005).

The cases concerned "two owners of heterosexual sex clubs within Montreal that were charged with the common-bawdy house/indecency offence (Busby, 2020, p. 9). Both argued that there were no "indecent" actions transpiring within their establishments, therefore, it turned into an oppurtunity for the SCC to interpret the term of "indecent" within the *Criminal Code* provision (Craig, 2009, p. 356-358; Busby, 2020, p. 9). Within the *Kouri* case, Justice Otis acquitted Kouri as she determined that Canadian society should not "condemn sexual modes of oppression" that "are not a source of social harm" (R. v. Kouri, 2005; Craig, 2009, p. 358). Subsequently, this "decision was affirmed by the Supreme Court of Canada" within the *Labaye* case (R. v. Labaye,

2005; Craig, 2009, p. 358-359). The outcome within the *Labaye* is more significant as it provided a framework in which activities can be considered "indecent". Post-*Labaye* era constituted the practitioners of the justice system to prove that the conduct being questioned to pose a "significant risk of harm to individuals or society in a way that is incompatible with proper societal functioning" (R. v. *Labaye*, 2005; Craig, 2009, p. 358-359). The cases ultimately nullified a tool that police services had been using to terrorize the LGBTQ+ community as raids within gay establishments stopped ever since post-*Labaye* (and *Kouri)* era (Busby, 2020, p. 10). These two companion cases echoed a growing "approach to the legal regulation of sexuality which recognizes the importance of challenging mainstream beliefs about sexuality or subverting dominant sexual norms" (Craig, 2009, p. 360).

Bill C-75 (2019)

Section 159 served as a spectre for queer oppression for decades to come. The effects of the provision remaining on the books is exemplified by 98 charges which resulted in 7 convictions under the law during 2013-2014 (Questions and Answers - An Act related to the repeal of section 159 of the Criminal Code, 2021; Nicol, 2017, p. 5). Regardless of this alarming reality, the federal government demonstrated its adherance to criminal regulation of sexuality despite years of promises to address its unconstituionality (Smith, 2019, p. 74). Bill C-32 was introduced in 2016 that would attempt to repeal section 159 and establish a uniform age of consent regardless of gender (Nicol, 2017, p. 6; Smith, 2019, p. 74). It did not advanced past initial discussion and was "reintroduced as Bill C-39 in early 2017" which "passed the second reading before it stalled in the House of Commons" (Smith, 2019, p. 74). Later being repackaged in 2018 as an omnibus bill of Bill C-75 that held the same objectives but added repealing bawdy house offences (Barnett, et al., 2018, p. 3, 27; Smith, 2019, p. 74). The Bill successfully received Royal assesent on July 21, 2019

which allowed persons to no longer be charged and/or convicted under the section; furthermore, the prohibitions regarding various activities within bawdy houses became non-existent as well (Legislative Background: An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, as enacted (Bill C-75 in the 42nd Parliament), 2022). The long awaited passing of such a bill marked the closing of an extended era of homophobic *Criminal Code* provisions that unfairly regulated sexual expression and conduct.

Legal Standing

The past 50 years have seen law reform became an important mechanism for allowing queer people move from the restricted quality of life that partial decrimination of homosexuality brought to the unrestrained contemporary reality that allows queer people to live out and proud lives (Busby, 2020, p. 25). This freedom being comparable to the privileges that cisheterosexual individuals have been enjoying since the beginning. Therefore, it is a bittersweet realization in that queer individuals do not have to worry about being criminalized in a majority of their actions but it took a significant amount of time to arrive to that situation.

Human Rights Law

During the 1970s, human rights protections for the LGBTQ+ community started to take shape by the implementation of anti-discrimination policies that protect queer persons (Kirkup, 2021, p. 35). The paradigm shift of queer persons being “perpetrator of crimes” to “victims of crime” is a central theme within the legal development of human rights for the LGBTQ+ community (Kirkup, 2017, p. 27). There was a heightened recognition of SGM’s marginalization through the hands of the Canadian government (p. 28). This newfound awareness of the vulnerabilities that the community was suffering from led to the legal developments that improved their social standing throughout the coutnry.

Charter of Rights and Freedoms

A crucial component of the queer movement is the introduction of the Charter of Rights and Freedoms during 1982 (Smith, 2019, p. 69). The Charter "guranteed many basic human rights and freedoms" and "allowed individuals to challenge government actions" or societal injustices that infringes on these guranteed rights and freedoms (Learn about the Charter, 2022). It became an "important tool in challenging the denial of formal legal equality" and the state's "insistence of heterosexuality" upon its citizens (Cossman, 2002, p. 223-224). The profound impact of the Charter for the gay rights movement can not be understated as it allowed those in the community to build a foundation for their human rights and secure a closer equal standing to their heterosexual counterparts (Idreis, 2022, p. 61)

Section 15 of the Charter.

Section 15 of the Charter is the equality clause which gurantees that every individual will not be discriminated against enumarted grounds of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability (Charter of Rights and Freedoms, 1982, s .15). "There were debates over including sexual orientation under" these grounds (Smith, 2019, p. 69). As such, it would only be inevitable before the Supreme Court of Canada had to decide on these matters and resolve other relevant discussions regarding the scope of Section 15.

Andrews v. Law Society of British Columbia (1989).

The first Supreme Court of Canada case that discusses the equality clause of the Charter and is fundamental in steering the "future direction of s. 15 interpretation' (Sharpe & Roach, 2009, p. 313). Andrew challenged the citizenship requirement for being admitted within the Law Society of British Columbia, he could not practice law due to his permanent residency status (Andrews v. Law of Society of British Columbia, 1989; Case Summary: Andrews v. Law Society of British

Columbia (1989), n.d.; Sharpe & Roach, 2009, p. 314). The majority of the SCC found that this requirement violated s. 15 of the Charter and could not be justified under s. 1 (Sharpe & Roach, 2009, p. 314). A framework was constructed to inform judicial practitioners on how to approach cases that deal with the equality clause, stating that the "differential treatment was discriminatory on the basis of a personal characteristic constitutuing an enumerated or analogous ground within section 15" (p. 314). The expanded scope of s. 15 allows for a more generous interpretation and "afford effective protection to members of disadvantaged groups" (p. 314). This fundamental legal component serve as the crux for the queer legal reformation in which the s. 15 of the Charter acts a vehicle for the "gay agenda".

Egan v. Canada (1995).

Egan challenged the refusal of the federal government for Egan to claim a spousal allowance for his partner through old age security payments on the grounds that they were not considered spouses (Cossman, 2002, p. 228; Pearson, 2017, p. 19). He proposed that "if he had been in a heterosexual relationship", he would have been able to receive the spousal pension benefit (Cossman, 2002, p. 228; Pearson, 2017, p. 19). Despite Egan losing the case, it became a monumental step for LGBTQ+ legal reform as the courts recognized that sexual orientation is an analagous ground for s. 15 within its decision (Cossman, 2002, p. 229; Pearson, 2017, p. 19). Retrospectively, *Egan* is a "partial victory within a defeat" as the "LGBTQ+ equality discourse" is becoming progressive but it is insufficient against the conservative nature of society and "heteronormativity of the law" (Cossman, 2002, p. 230).

Vriend v. Alberta (1998).

The case concerned Vriend who "was dismissed from a private religious college in Alberta due to his sexual orientation" (Pearson, 2017, p. 19). He challenged Alberta's *Individual Rights*

Protection Act "for failing to include sexual orientation as a prohibited ground of discrimination" (Cossman, 2002, p. 231). The Supreme Court of Canada determined that Alberta's human rights code violated s. 15 of the Charter "in its failure to prohibit discrimination on the basis of sexual orientation" and is not a reasonable limit under s. 1 of the Charter (p. 231). This decision is "ground-breaking" as the SCC recognized that discrimination of individuals based on sexual orientation is "not only a violation of s. 15 but it is not a reasonable limit within s. 1 of the Charter" (p. 231). Looking forward, the victory of *Vriend* symbolized as a sign of the upcoming times which is an empowered queer movement and the establishment of formal equality between SGMs and their cis-heterosexual counterparts (Cossman, 2002, p. 232; Idreis, 2022, p. 53-59).

M.v. H. (1999).

The case addressed "the constitutionality of the definition of spouse, arguing the exclusion of same-sex couples" within the Ontario's *Family Law Act* is a violation of s. 15 of the Charter (Cossman, 2002, p. 233, M. v. H., 1999). M. brought an application for spousal support against H. but the application was invalid as the support is only eligible to opposite sex couples, therefore, the two were not considered as "spouses" despite cohabiting for ten years (Cossman, 2002, p. 233, M. v. H., 1999). In response, the Supreme Court of Canada held that "excluding homosexual partners from spousal support" through the rigid definition of "spouses" discriminated on the basis of sexual orientation and is not reasonably justified under s. 1 of the Charter (Busby, 2020, p. 22; Cossman, 2002, p. 233). The case was an important step for the queer movement as it finally legitmized queer relationships within Canadian society through the implementation of legal protection.

Human Rights Codes

Sexual Orientation.

The Canadian Charter of Rights and Freedoms is accompanied by other human rights protecting mechanisms through provincial human rights codes and commissions (Idreis, 2022, p. 57). Even before the federal government addressed the issue of discrimination on the grounds of sexual orientation, Quebec already implemented a policy during 1977 prohibiting discrimination based on sexual orientation and incorporating it "into its provincial human rights legislation" (Smith, 2019, p. 69). From then on, "the other provinces, territories, and the federal government slowly followed suit over the next two decades" (Busby, 2020, p. 15). Although, "some governments" only implemented "inclusive human rights legislation" when forced by cases heard through their judicial courts (p. 15). Thus, depicting that the road to an inclusive environment throughout Canada was a multi-tiered approach of queer advocacy.

Gender Identity and Gender Expression.

The journey of transgender rights in Canada began with the question of whether "any of the existing categories of discrimination" fit into the reality of trans discrimination (Kirkup, 2018, p. 384). It was successfully argued that discrimination against transgender individuals fit into the existing grounds of sex within Quebec and disability with Ontario (Quebec (Commission des droits de la personne et des droits de la jeunesse) c. Maison des jeunes A-Ma-Baie Inc. (1998) as cited in Kirkup, 2018, p. 384; Hogan v. Ontario (Health and Long-Term Care, 2006)). Starting 2002, gender identity and gender expression slowly became included as grounds for protection within provincial and territorial human rights codes all over Canada (Cossman, 2018, p. 38). Provincines and territories who did not have explicit inclusion of gender identity and expression had "implicit protection, being interpreted as being included as existing prohibited grounds" (p. 39). Although, this development was a gradual process, therefore, transgender individuals were vulnerable up until recently. Additionally, the lack of federal response within the issue suggests a reluctancy to

recognize the harm that is affecting the population, perpetuating a cisgendered ideal within Canadian society.

Bill C-16.

Bill C-16 (2017) responded to the "pervasaive levels of discrimination, harassment and violence experienced by transgender and/or non-binary people by adding the 'gender identity' and 'gender expression' within the Canadian Human Rights Code" (Cossman, 2018, p. 37; Kirkup et al., 2020, p. 246; Kirkup, 2018, p. 8). Prohibiting discrimination against individuals based on those grounds. Furthermore, it altered the *Criminal Code* (1985) to recognize "gender identity or expression as identifiable group under sections 318 and 319 which conerns the offence of hate propoganda (Stacy, 2020, p. 350; Criminal Code, 1985, s. 318-319). The bill "also added gender identity and expression to section 718.2(a)(i)" of the *Criminal Code* (1985) to allow the consideration of these factors within the sentencing for hate crime offences (Stacy, 2020, p. 350; Criminal Code, 1985, s. 718). While the *Criminal Code* reform adds a layer of protection to the transgender community which have been prone to violent acts of discrimination and harassment, the bill only acts as an expansion to the work that the Canadian provinces and territories have done so far in including gender identity and gender expression within their human rights codes.

Marriage Law

The significant advancements within the human rights law of the LGBTQ+ individuals culminated to a dramatic shift within the legality of same-sex marriage (Rose, 2012, p. 90). According to Waaldijk (2001), Canada followed a "pattern" of legal reformations that naturally lead to the passing of same-sex marriage (p. 437-438). This proposed pattern includes the decriminalization of homsexuality, implementing anti-discrimination laws, and the recognition of same-sex partners (Waaldijk, 2001, p. 437-453; Rose, 2012, p. 90). The 1969 (partial)

decriminalizaiton of homosexuality, the Charter, and the aforementioned cases created an inclusive atmosphere for queer individuals which made the notion of same-sex marriage an inevitability (Busby, 2020, p. 24; Rose, 2012, p. 90; Waaldijk, 2001, p. 437-453). Thus, it is crucial to understand that the existence of queer marriage in Canada is brought by years of gradual progress fought rigorously by the LGBTQ+ community.

Civil Marriage Act (2005)

The Civil Marriage Act received royal assent and became law in July 2005, allowing the marriage of same-sex couples (Busby, 2020, p. 25; Jordan & White, 2020, p. 188). Consequently, it made Canada the fourth country to allow queer relationships to have the option to be married (Rose, 2012, p. 90). The act contributed to the perception that Canada being at "the forefront" of LGBTQ rights in the world" as "equal marriage" is conceptually a novel idea at the time (Smith, 2019, p. 69). Doctrinally, the passing of homosexual marriage fulfilled the agenda that the queer movement had been advocating for thus far. Queer people like heterosexual people should have the degree of freedom over their lovelife and should enjoy the same marital benefits such as "romance, strengethened commitment to their relationship, and financial security" that marriage symbolizes (Barbeau v British Columbia, 2003, para 3-4 as cited in Busby, 2020, p. 29).

Social Standing

The social standing of SGMs have made great strides into legitmizing and protecting their nuanced identity and expression. The progress made thus far being attributed to the persistent advocating of queer individuals who brought attention to their vulnerable and marginalized position within Canadian society. "The legal prohibiton of discrimination based on sexual orientation has been a long and slow process, and has received consistent opposition at every stage"; although, Section 15 of the Charter played a fundamental role in advancing the "queer

agenda" which granted the necessary protections for the community (Johnson & Vanderbeck, as cited in Pearson, 2017, p. 16). Similarly, the inclusion of sexuual orientation, gender identity, and gender expression in Canadian human rights codes succeded in enshrining unique queer and trans identities within the law that were often oppressed by dominant cisheterosexual identities (Kirkup et al., 2020, p. 250). Thus, despite of Canada's historical treatment of SGMs being characterized as exclusionary and oppressive, the recent transformative action taken by the Canadian government have allowed the population to partly thrive and flourish within their respective identities and expressions (Pearson, 2017, p. 19).

The State of the LGBTQ+ Within Canadian Society

Reparations

"The 2015 election of the Liberal government, opened the door to a renewed policy agenda for LGBTQ legal reform" (Smith, 2019, p. 73). The new era called for "healing and reconcialiation that is long sought for by the LGBTQ+ community" (Elliott, 2016, p. 12). It is a marked transition from the dramatic sociolegal restructuring that have been developing for the community. Although, Elliott (2016) argues that it is something long overdued as it can finally address the eroded relationship between Canada and LGBTQ+ Canadians due to the extensive history of power misue by the state (p. 12). Only through acknowledging the country's past crimes towards the community and employing decisive measures can both parties move towards a more harminous future.

Justin Trudeau's Apology

In 2017, Justin Trdeau's government brought forward an apology to LGBTQ+ Canadians for the country's historical criminalization of queerness in which the state would target the community through homophobic *Criminal Code* provisions and horrific acts of discrimination by

the police which were exemplified by the bathhouse raids (Kirkup, 2020, p. 270; Smith, 2019, p. 74). The apology addressed the need for an acknowledgement of the "full truth of historical queer injustice" as it is the only way that "substantive equality" can be achieved and "queer dignity" can be restored before the law (Elliott, 2016, p. 13; Smith, 2019, p. 76).

Expungement of Criminal Records.

On the same day of Justin Trudeau's apology, an expungement legislation was introduced and later passed by the Parliament on June 2018 (Kirkup, 2020, p. 271; Smith, 2019, p. 76). The passed legislation allowed an individual that was previously convicted of "consensual same-sex activitiy under the Criminal Code provisions of gross indecency, buggery, and anal intercourse" to be expunged of their criminal record (Smith, 2019, p. 76). It represents as a form of reparation to the individuals that suffered from the devastating effects of a criminal conviction to offences that were rooted in homophobia.

Compensation to Purge Victims.

A large class action lawsuit was launched by "former federal public servants and former members of the armed forces who were wrongfully terminated during "the gay purge" back in the late 1950s to the 1970s (Smith, 2019, p. 74). It was settled in 2017 which was accompained by Justin Trudeau's apology that referenced the "infamous 'gay purges' in Canada", he characterized the event as a "witch hunt" that wrongfully labelled homosexuals as a threat to national security (Mackenzie, 2022, p. 191). Compensation was aptly given to those that were affected by the systemic violence enacted by the Canadian government and it serves as restitution for the injustice that were done to them.

Present Socio-Legal Issues and Considerations

There have been extensive socio-legal developments concerning LGBTQ+ Canadians that have greatly improved their ability to live out proud lives. Although, there are lingering issues that continue to be a spectre for the community as it continues to impact their lives disproportionately within Canada. Ergo, the state of LGBTQ+ is marginally better compared to its initial position 50 years ago but there are enduring pains that continues to impair one's queer experience.

Increased Targets of Crime

Presently, experiences of discrimination and violence against those from the community persist (Department of Justice Canada, 2021, p. 4). SGMs experience "discrimination in a variety of settings including workplaces, health systems, and educational institutions" (p. 4). Similarly, the population is at a higher risk of suffering from violent victimization and unwated sexual behaviours compared to their cis-heterosexual counterparts (Jaffray, 2020, p. 3). This higher risk of victimization is coupled by the fact that hate crimes against SGM are more often violent in nature, communicating a real sense of danger for those who belong to the community (Wang & Moreau, 2022, p. 19). Literature indicates that forms of discrimination and violence against SGM are widespread in Canada and will continue to be so (Burczycka 2020; Cotter and Savage 2019; Jaffray 2020; Simpson 2018 as cited in Wang & Moreau, 2022, p. 19). Therefore, suggesting that the former prejudicial notions against the community that were prelevant within society and upheld by the Canadian state persist to this day.

Barriers to Accessing Justice

Despite the progress of "greater legal protections and social equity for gender and sexual minorities in Canada", the population continues to face structural barriers within the Canadian criminal justice system that prevent access to justice (Department of Justice Canada, 2021, p. 9). A common contributor to these legal problems that SGMs endure are rooted in homophobic and

transphobic attitudes that hamper their experience within the criminal justice process (p. 49-51). More often than not, those in the community feel the need to advocate for their unique needs within legal system as legal actors are culturally incompotent to fulfill their responsibilities towards LGBTQ+ individuals (p. 39-42). This unsastifactory reality would lead to an unideal legal outcome which pertpetuates the harm and vulnerability that they already experienced prior to their contact with the justice system (p. 39-51). The inquiry to legal problems that the LGBTQ+ community face is a relatively new scholarly endavour that requires further investigation to understand the complexity of these structural barriers and provide solutions to the phenomenon (p. 49-52).

Policing of the LGBTQ+

The relationship between the police and LGBTQ+ individuals have long been an adversarial one. This is as a result of the former misue of power by law enforcement agencies that slowly chipped at the dignities of many queer Canadians (Elliott, 2016, p. 23). Through the past over-policing of gay men in enforcing homophobic *Criminal Code* provisions to the contemporary reality that many queers found themselves in, where they would be revictimized by the police due to a lack of cultural competency (Kirkup, 2021, p. 33; Hebert et al., 2022, p. 43-47). There is a current conundrum within Canadian policing in where the LGBTQ+ community simultaneously experience both over-policing and under-protection; indicating extensive reform is required to meet the needs of queer individuals in Canada and remove the inherent homophobia and transphobia embedded within Canadian police services (Kirkup, 2021, p. 51-52). Without doing so, the relations between the community the police will continue to erode and past misues of police power will happen again through contemporary means (p. 51).

Gay Panic Defence

"The Gay Panic Defence" is a legal defence that justify the murder of LGBTQ+ persons who have made real or percieved sexual advances to the person who perpatrated the killing (Chaisson et al., 2020, p. 455). The perpetrator is assumed to be a heterosexual person who succumbs to "homosexual panic" as a result of the sexual advances of the SGM victim (Fitz-Gibbon & Sheehy, 2019, p. 221). "The ordinary heterosexual person would lose the power of self control" which leads them to kill the LGBTQ+ individual in a fit of passion (p. 221). Although, it can be utilized towards all members of the community, the reality usually calls for a homosexual man "making" sexual advances to a heterosexual man (p. 221) Thus, it can prove easy for defence lawyers to potray an "aggressive gay sexuality" against the backdrop of homophobia and fragile masculinity (p. 221). Recent applications of the "gay panic defence" have not been successful demonstrating that "there is hope for social justice to be obtained for LGBTQ people in the future" (Faulkner, 2021, p. 238-241). Although, its potential utilization for the future remains, therefore, the "homophobic underpinnings" of the law remains for now (p. 241).

HIV Non-Disclosure

The issue of HIV non-disclosure can be devastating as it can lead to charges such as aggravated sexual assault and murder, resulting in an extended period of incareration, "lifetime registry as a sex offender, and for people without citizenship, deportation for criminal inadmissibility" (Hebert et al., 2022, p. 20; Kirkup, 2020, p. 18). This reality is further aggravated within the SGM population as they are disproportionately represented in HIV transmission and criminalization rates. It remains to be seen the manner in which the federal government will choose to address the issue and if the measures taken will be enough to alleviate the realities of those affected by HIV criminalization.

Federal Response.

In attempting to "reduce the harms associated with the criminalization of HIV non-disclosure", the Standing Committee published *The Criminalization of HIV Non-Disclosure in Canada* and presented it to the House of Commons in June 2019 (Kirkup, 2020, p. 275; Housefather, 2019). The report put forward recommendations that would allieviate the disproportionate impact that issue has on Canadian society especially the LGBTQ+ population (Kirkup, 2020, p. 275). The most noteworhthy takeaway from the publication is the "creation of a specific offence in the *Criminal Code* that addresses the non-disclosure of an infectious diseases (including HIV) when there is actual transmission, and that prosecutions related to such transmissions only be dealth under that offence" (Housefather, 2019, p. 1). But it seemed as if that the recommendations established by the report will never "find its expression within the Criminal Code" because no development occurred after the initial discussion (Kirkup, 2020, p. 275). Not until July 27, 2022 in which the Canadian government "committed to consult Canadians on the criminal justice response to the issue of HIV non-disclosure" in which these "consultations were led by" LGBTQ+ communities (Department of Justice Canada, n.d., p. 1). Although, the outcome of this consulation is up in the air as it can end up like the earlier attempt by the Standing Committee, leaving the many individuals affected by this offence to continue to be in a prolonged state of limbo.

Lacklustre Expungement Legislation

Complex Application Process.

Despite being a focal point of Trudeau's apology towards LGBTQ+ Canadians in 2017, the legislation have failed to meet its intended effect as only 41 applications have been received for expungement and only 9 of those 41 applicants have successfully cleared their conviction thus far (Maynard, 2021). This is alarming as the databases of the Royal Mounted Canadian Police

estimates that there are about 9000 individuals that are eligible for expungement (Harris, 2018). The lack of successful expungements can be attributed to the "onerous requirements for documentation" to prove one's eligibility for the legislation (Maynard, 2021). It requires extensive research to "assemble the required documentation" in which one will use for the application (Maynard, 2021). It is an unnecessary complication that puts a heavy burden on those that are convicted to once again advocate for themselves, defeating the symbolic purpose of the legislation.

Narrow Eligibility Criteria.

A glaring omission by the federal government in constructing the expungement legislation is not allowing those convicted of found in a bawdy-house offence to be included within the eligibility criteria (Smith, 2019, p. 77). Considering the maginutude that the offence was utilized by law enforcement agencies to target gay men at the time, "the ommission of offences such as the bawdy-house provisions from the expungement legislation was a troubling one" (Kirkup, 2020, p. 22). The federal government justified their decision to omit the bawdy-house offence by arguing the "law against queers had not been specifically ruled unconstitutional" at the time of making the legislation, thus, why it was excluded within the eligibility criteria (Smith, 2019, p. 78). The bill allows the government to add other grounds for the future but nothing has been to this day (Canada, 2018, as cited in Smith, 2019, p. 78). The choice to omit the bawdy-house offence from expungement is perplexing as the Justin Tudeau's apology "included specific references to the bathhouse raids and to the bawdy house provision", suggestting the government remain ill-equipped to fully acknowledge and address their former wrongdoing to the community (p. 78).

Discussion and Analysis

Content Analysis

Legal Statues

Canada's colonial legacy manifested itself through the first iteration of the Criminal Code (1892) which ultimately dictated the legal statues of the LGBTQ+ community throughout history. Sluggish progress of the legal statues of queer individuals in Canada put the population "at risk of punitive or otherwise negative consequences" for otherwise typical human activities such as sexual intercourse or attending certain public spaces (Hebert et al., 2022, p. 16). Understanding the extent of damage that these Criminal Code provisons had on the community is demonstrated by the brutal bathhouse raids on gay esbtalishments and the indictment and subsequent punishment of Everett Klippert for being involved in homosexual engagements. Further aggravating the legal realities of SGM is the absence of human rights protections that perptuated their vulnerable position within society; their unequal legal standing compared to their cisheterosexual counterparts depriving them of many societal access like marriage. Queer sexual conduct was successfully socially controlled and the phenomenon of heterosexual hegemony was upheld.

Contemporary Legal Status.

There were significant judicial victories that have occurred over the past decades that elevated LGBTQ+ individuals' legal standing within Canada. Granting the community rights and freedoms that cis- heterosexual persons have been enjoying since the beginning such as marriage or human rights protections. These developments were informed by the growing erosion of heteronormative discourse maintained by state-authorized policies and actions (Cossman, 2002, p. 238). Normalizing queer individuals as "victims of crime" within the legal landscape paved the way for an ideological transformation that challenges conventional attitudes towards SGM (Cossman, 2002, p. 238; Kirkup, 2017, p. 27). The tenacity of the gay rights movement to advocate for LGBTQ+ acceptance within a cisheterosexual public sphere redefined the demeanor in which they are viewed upon, gaining sympathy and mobilizing a larger force of support for their cause

(Idreis, 2022, p. 57-59). Therefore, exemplifying how social discourses can influence a population's legal standing within a nation and how it can radicalize prejudical dominant modes of thinking, vindicating one of their state-imposed restrictions.

Social Status

The enforcement of Canada's criminal and non-criminal law by its legal agents and systems against the LGBTQ+ community situated queer persons' positon within the social hierachy, shaping the oppurtunities available to them. Historically, discrimination against the SGM is permitted and promoted within society as there were laws that systemically excluded them, indicating that there is a preferred sexuality, gender identity, and expression in Canada. Those who fall beyond these accepted parameters are deemed to be offenders due to their "immoral" and "deviant" behaviour. Therefore, the general consensus for a significant period of time is that queers were mentally ill and perverse human beings whose sole purpose revolves around their insitiable sexual desires (Kirkup, 2017, p. 15-19). This sentiment demonstrated itself through the large-scale dismissals of LGBTQ+ Canadians within the public sector in which false notions about their sexuality led to their unreasonable dismissal. Despite the improvement of the relative social standing of queer Canadians; the homophobic, transphobic, and cisheterosexism attitudes that were perpetuated by the Criminal Code provisions of the past and harmful actions of judicial practitioners echoes even to this day.

Contemporary Social Status.

The revamped social statues of the LGBTQ+ population lends to empowered sense of identity that allows them to celebrate their nuanced uniqueness proudly. Furthermore, there are now existing protections and freedoms that permits them to ideally live their lives to their best truth which was unlike the case before. Additionally, the pervasive homophobic/transphobic

attitudes of before has decreased which can be explained by the paradigm shift within the legal landscape, promoting a sense of belonging for those who identified with the LGBTQ+ community; a stark contrast to the previous exclusionary approach of the state that authorized discriminatory practices and actions. This is a by-product of the legal developments that have occurred over the past few decades which disloged the prevailing heteronormative ideology at the time. The incorporation of LGBTQ+ values within the justice system legitmized their existence within Canadian society, ushering a new era of acceptance and empathy.

Thematic Analysis

Heterosexual Hegemony

Instrically linked to the discourse of "homophobia, public attitudes, and social control of sexuality" is the concept of heterosexual hegemony (Brooks & Bridgen, 2020, p. 158-159). The concept is defined as the "practices" that uphold heterosexuality to be the norm and deem the LGBTQ+ as "deviant" within society. These employed actions can include "coercive laws, police practices, 'queer bashing' and limited social options", all of which lends heterosexual to be mandatory to avoid "punitive or negative consequences" (Garry Kingsman, 2006, p. 103 as cited by Brooks & Bridgen, 2020, p. 158; Hebert et al., 2022, p. 16). The punitive nature of the Criminal Code provisions discussed restricted the expression of queer sexuality within Canada. Moreover, the aggressive policing of the gay establishments further reinforced the notion that heterosexuality is the norm within Canadian society and should be followed to refrain from suffering from legal consequences. This contributed to the erasure of queer identities, legimitatization of the status quo and construction of social attitudes concerning sexual and/or gender diverse persons (Brooks & Bridgen, 2020, p. 158-159, Department of Justice Canada, 2021, p. 4). The power imbalance

brought by institutions that upheld heteronormativity and the inferior position of the LGBTQ+ community is key to understanding the marginalized experience of queer individuals.

Paradigm Shift

Following the high-profile prosecution of Everett Klippert and the heavily publicized Toronto bathhouse raids, there was an heightened awareness of the oppression that the LGBTQ+ population was facing in their daily lives. The era of queer legal reformation was faciliated by a paradigm shift within the general public that recognized the fallacies surronding the community which communicated harmful notions that hold no factual basis. The interpretation for the cases discussed successfully identified the methods in which existing legal provisions and judicial actors were contributing to the marginalization of the LGBTQ+ community. These means were then addressed by the Supreme Court of Canada which limited the methods in which an heteronormative ideology can be maintained. Likewise, the introduction of S. 15 of the Charter alongside "the new respected queer subject within Canadian law discourse" produced the necessary circumstances to develop other forms of law concerning the population (Kirkup, 2017, p. 29). The crux of the gay rights movement is to instill a change of perspective within society, allowing them to be more empathetic of their struggles and recognize the ways in which the government is responsible for their marginalization. The monumental progress achieved during the era of queer legal reformation is a testament to the success of the movement and the tenacity in which queer advocates were fighting for their equal standing and equitable protections.

Paradoxical Actions of the Canadian Government

In seeking reparations for the irrevocable harm that they have enacted upon LGBTQ+ individuals, the Canadian government employed measures to address the shortcomings of the legal system towards the population and mend the damage that was done. Regardless of their noble

intentions, the action taken remain contradictory as they fall short of fully addressing the issues concerning the community. This can be encapsulated by the issue of HIV non-disclosure and the contemporary policing of the LGBTQ+ individuals. These issues are not isolated incidents but rather, long-running problems that continue to be a spectre for SGM. The state's "inability" or "unwillingness" to provide a substantial response for these issues demonstrates a persistent homophobia/transphobia that can be traced to their historical roots. Justin Trudeau's government "celebrating its atonement for its past actions" is premature and inappropriate considering the measures adopted are paradoxical in that they achieved success but not to the degree that many would hope for. This sentiment mirrors that of Pierre Trudeau's decriminalization of gay sex, it lacks the fundamental elements to make it a hollistic and significant solution to Canadian queer issues.

Conclusion

Exploring the history of the LGBTQ+ community within Canada under a socio-legal lens provided the necessary framework to understand the role that the government played in dictating queer experience. For quite some time, the state through its actions and provisions persisted in maintaining a cisheteronormative ideology which marginalized alternative sexualities and gender identities. Only through the "gay agenda" being realized through queer advocacy did the dominant discourse change, leading many to question the manner in which those from the LGBTQ+ community is being being treated by the justice system. Despite the tremendous progress that has achieved, the prior acts of the state and their persistent homophobic/transphobic attitudes continue to shape the realities of the queer persons today. There are numerous gaps within the measures that the government have taken in addressing the community's marginalized position. This thesis highlights issues that are critical to the the population as they prolong the injustices of the past.

Ilustrating the flawed contemporary reality of LGBTQ+ Canadians, the spectres of the past endured and have manifested itself through different iterations; the government needs to not only be reponsive to these problems but proactive to prevent the cycle of discrimination and exclusion that have characterized the queer experience in Canada thus far.

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