

BCTF > A Chronology of Advances in LGBT Rights in Canada, and in B.C.

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This review provides a brief summary of some legal and legislative developments in Canada, and then a summary of similar developments in British Columbia.

This material has been extracted, and adapted, from much longer articles previously prepared and updated by John Fisher, who was Executive Director of Egale Canada until early 2003. The full text of his two articles include information about legal changes in every other province and territory in Canada too. These articles are: [Outlaws or In-Laws? An overview of LGBT rights in Canada](#), and [The State of the Play: A Chronology of LGBT rights in each jurisdiction in Canada](#).

Federal (Canadian government bills and court decisions affecting federal laws)

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1977 - those provisions in the *Immigration Act* which had previously barred homosexuals from immigrating to Canada, were repealed.

1982 - Canada adopted the *Canadian Charter of Rights and Freedoms* as part of the new Canadian Constitution. The equality guarantees of the *Charter* came into effect in 1985, providing LGBT people with the tools to challenge any discriminatory law. The Supreme Court of Canada has since ruled that sexual orientation is deemed to be included as an identifiable characteristic, for purposes of protection or non-discrimination.

1992 - Parliament removed the prohibition on lesbians, gays and bisexuals serving in the military, as a result of a court challenge in *Douglas v. Canada*.

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recommendation by the Canadian Human Rights Act Review Panel in June 2000. However, the Canadian Human Rights Commission has indicated that it will receive complaints by transgender people on the ground of "sexual orientation".

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1999 - The Supreme Court of Canada ruled, in *M v H*, that it is unconstitutional to deny same-sex couples equality. Since that time, many governments across Canada have embarked on programs of wholesale legislative reform. Adoption rights, inheritance, spousal support "these and many other rights previously reserved for heterosexuals" gradually being extended to same-sex couples.

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The fight for spousal equality rights in Canada

After successive legal decisions and political lobbying (and sometimes as an attempt to stave off more inclusive legislation), some provinces have passed legislation to recognize some rights and responsibilities of same-sex couples. None of these includes "marriage", because marriage is in the federal jurisdiction.

The most unusual system is the regime adopted in **Alberta**. On June 1, 2003, Bill 30-2 came into effect, according rights and responsibilities to cohabiting "adult interdependent partners", whether or not in a conjugal relationship.

Two people, including a same-sex couple, are recognized as "adult interdependent partners" once they have together for 3 years, if they have a child together or if they have entered into a formal partnership agreement. These partners have rights and responsibilities under a wide variety of laws dealing with matters such as spousal support, inheritance rights, dependents' relief, medical decision-making, insurance rights, pension benefits, recognition under conflict-of-interest laws, change of name provisions, and protection from domestic violence.

In 1997, **British Columbia** passed the *Family Relations Act* and the *Family Maintenance Enforcement Act* to accord to same-sex couples the same custody, maintenance / support rights and responsibilities as those given to heterosexual couples, and to allow same-sex couples to register agreements relating to cohabitation and property division. In 1999 and 2000, BC added two *Definition of Spouse Amendment Acts*, thereby amending a total of 50 pieces of legislation, consolidating the definition of spouse to include a person who has lived with another person for a period of at least 2 years in a marriage-like relationship

Nova Scotia enacted the first registered partnership law in Canada. Effective June 4, 2001, it allowed same-sex couples to register their relationships in order to be treated equally with married spouses in a variety of laws dealing with such matters as spousal support, property division, inheritance rights, medical decision-making, insurance rights, and pension benefits. The province expanded the benefits available to registered domestic partners in areas such as dependents' relief and wills, public sector pensions, workers' compensation benefits. (Bill 75 also extended of rights and responsibilities to common-law same-sex couples who do not register their relationships, including spousal support, medical decision-making, income tax, pension and insurance rights.)

Quebec's National Assembly introduced Bill 84 on April 25, 2002, and passed it unanimously on June 7, 2002. This far-reaching Bill accords the responsibilities and rights of married couples to same-sex and opposite-sex unmarried couples who enter into a civil union. The rights extended include adoption, spousal support, matrimonial property division, inheritance rights, medical decision-making, workers' compensation benefits, insurance rights, pension benefits, recognition under conflict-of-interest laws, and a presumption of parental rights.

(Common-law partners who do not enter a civil union also have a number of rights, such as adoption and making medical decision-making, but they do not have rights and responsibilities of spousal support, inheritance or matrimonial property division.) Bill 84 also repealed a unique feature of the *Quebec Civil Code*, which had explicitly restricted marriage to opposite-sex couples only, although same-sex marriage remains an area of federal jurisdiction.

There have been court challenges in Ontario, British Columbia, and Quebec, seeking **equality in marriage**. Although the cases were initiated in various provinces, the federal government is involved in each case, since it is the federal government which, under the Constitution, has jurisdiction over who can marry.

In **Ontario**, a court application was filed on behalf of 8 same-sex couples who were denied the right to marry. Metropolitan Community Church of Toronto also joined the court challenge, after the province refused to register the marriages of two couples in January 2001, employing the tradition of publication of marriage banns in accordance with Ontario's *Marriage Act*. The cases were heard in November 2001. On July 12, 2002, the Court ruled 3-0 that denying same-sex couples the equal right to marry is unconstitutional, and gave Parliament 2 years to fix the law. (Canada's Justice Minister announced the government would appeal the judgment. He also sent the issue of same-sex marriage to the Commons Committee on Justice and Human Rights for public hearings across Canada.) On June 10, 2003, the Ontario Court of Appeal unanimously affirmed that the prohibition on same-sex marriage is unconstitutional. However, the Court went further than previous courts, reformulating the definition of marriage to include same-sex couples and ruling that the new definition would have immediate effect. That same day, same-sex couples began to legally marry in Ontario.

In **British Columbia**, two court applications for same-sex marriage were joined and heard together "one brought by Egale and 5 BC couples and one brought by 3 other BC couples. (The former BC Government had initially made a supportive application but the newly elected BC Liberal government withdrew from the case.) The BC Supreme Court heard the cases in July - August 2001. On October 2, 2001, Justice Pitfield ruled that the exclusion of same-sex couples from marriage infringes equality rights under s. 15 of the *Charter*, but that this discrimination was justified to preserve the heterosexual definition of marriage. In a bizarre twist, he added that not even Parliament could legislate to recognize same-sex marriage without a constitutional amendment. His decision was appealed; the BC Court of Appeal ruled 3-0 on May 1, 2003 that the opposite-sex definition of marriage is discriminatory and unconstitutional. The Court also held that the law must change to allow same-sex couples to marry, and suspended the effect of its ruling until July 12, 2004. But after a related decision in Ontario in June, the BC Court of Appeal amended its order on July 8, 2003 to give immediate effect to the inclusive definition of marriage.

The federal government decided not to appeal the Appeal Court decisions in BC and Ontario, within the legal time limit.

In **Quebec**, a lawsuit was filed on September 14, 1998 by Michael Hendricks and René LeBlanc. Quebec Superior Court heard the case in November, 2001, and March 2002. This case challenged the opposite-sex definition of marriage in 3 statutes: the federal *Modernization of Benefits and Obligations Act*, the *Quebec Civil Code*, and the *Harmonization Act*, a federal statute which applies only in Quebec, defining marriage as the union of a man and a woman. In September 2002, Judge Lemelin ruled the opposite-sex definition of marriage to be an unconstitutional violation of equality rights, and gave Parliament two years to fix the law. Following the Appeal Court decisions in Ontario and BC, the federal government withdrew its appeal in Quebec, but the appeal, being maintained by the Catholic Civil Rights League (one of the intervenors in the case who oppose same-sex marriage), is to be heard by the Quebec Court of Appeal on January 26, 2004.

Following a meeting of the federal Cabinet, Prime Minister Chretien announced on June 17, 2004 that the government would accept the Court rulings, and would introduce a Bill to recognize same-sex marriages across the country, while also protecting the right of faith groups to refuse to perform marriages that do not conform to their beliefs. The draft legislation was referred to the Supreme Court of Canada, for its opinion on whether the draft Bill was constitutional and adequately protected religious freedom. The Supreme Court indicated that it would hear the reference in April 2004. However, Prime Minister Martin's government has said (January 2004) that it will send an expanded reference to the Supreme Court, which would include a question about the constitutionality of civil unions, as opposed to marriage. This process will likely mean that the Supreme Court's consideration of the matter will be delayed by several months.

An Opposition motion to "take all necessary steps to preserve marriage as the union of one man and one woman and the exclusion of all others", was defeated in the House of Commons, 137 - 132, in September 2003. Its intent was that government invoke the Notwithstanding Clause.

As of December 2004, same-sex marriage was legalized via court rulings in BC, Ontario, Quebec, Manitoba, Saskatchewan, Newfoundland and Labrador, Nova Scotia, and the Yukon. Over three thousand Canadian couples have been married to date. It seems inevitable that equal marriage will be uniformly available across Canada soon, whether by federal legislation or by court decisions. The Federal Government has recently announced that it will table legislation on this issue in late January 2005.

Future Challenges:

Although many challenges still lie ahead - notably in youth and education rights, censorship, policing of LGBT sexualities, and full legal equality for transgender people - governments, courts and the general public across Canada are recognizing the right of LGBT people to be treated equally.

British Columbia

1992 - BC amended its **human rights legislation** to include sexual orientation as a prohibited ground of discrimination, and extended workplace medical benefits to same-sex partners of government employees. (BC has not added transgender identity to its human rights, despite considerable pressure to do so since 1997. The North West Territories is currently the only Canadian jurisdiction to include transgender identity as an area of protection against discrimination.)

1996 - "Adoption Act" came into force, which enabled same-sex couples to apply to adopt as couples (rather than separately) for the first time in Canada.

1997 - BC amended the definition of "spouse" in the **Family Relations Act** and the **Family Maintenance Enforcement Act** to accord to same-sex couples the same custody, maintenance and support rights and responsibilities as those accorded to heterosexual couples, and to allow same-sex couples to register agreements relating to cohabitation and property division.

July 1998 - BC became the first Canadian jurisdiction to legislate **pension benefits** for the same-sex partners of all the province's public sector employees.

July 28, 2000 - the **Health Care (Consent) and Care Facility (Admission) Act** enables lesbians, gays and bisexuals to

make medical decisions on behalf of a same-sex partner who is incapacitated.

2000 - Under two *Definition of Spouse Amendment Acts, 1999 and 2000*, 23 amendments to various Acts came into force on July 28, 2000, and a further 27 amendments on November 1, 2000. These changes consolidated the definition of spouse to include a person who has lived with another person for a period of at least two years in a marriage-like relationship. This ensures that same-sex couples are treated equally in many areas such as inheritance, estates, property law, and conflict of interest provisions. They also standardize existing provisions that already included same-sex spouses (e.g.- the *Adult Guardianship Act*).

May 17, 2001- the Supreme Court of Canada released its decision in the case of *BC College of Teachers v. Trinity Western University*. The BC College of Teachers had not approved the private evangelical school's teacher train program, because it required students to sign an anti-homosexual document. In upholding an order that Trinity Western's teaching program be approved, the Supreme Court of Canada ruled that graduates from the University are entitled to hold "sexist, racist or homophobic beliefs", but are not entitled to act upon them.

January 2002 - in *Society Nixon v. Vancouver Rape Relief*, the BC Human Rights Tribunal held that a women's shelter had discriminated against a MTF transsexual by denying her the opportunity to act as a volunteer counsellor. The Tribunal affirmed that transgender people are protected from discrimination by the ground "sex" in human rights legislation. But the Supreme Court of BC overturned this decision on appeal, Dec. 2003. Nixon may yet appeal this ruling.

December 20, 2002 - Supreme Court of Canada ruled in the case of *Chamberlain et al v. Surrey School Board*. In April 1997, the Surrey School Board had banned the use of three children's books (*Belinda's Bouquet*, *Asha's Mums*, *One Dad Two Dads Brown Dad Blue Dads*), because they depicted same-sex parents. December 1998 "the BC Supreme Court ruled that the anti-gay resolutions were based on religious precepts and therefore violated the provisions of the *BC School Act*. September 2000 " BC Court of Appeal upheld the Surrey Board's appeal because it felt that the School Board resolution did not prevent the use of the books in the classroom if the teacher, in their professional judgment, felt that the books advanced the goals of the curriculum. December, 2002 - the Supreme Court of Canada ruled 7-2 that the School Board had been wrong to ban the books because of their same-sex content. The majority wrote that the books promoted tolerance and that "tolerance is always age-appropriate", and directed the School Board to reconsider the use of the books in accordance with "the broad principles of tolerance and non-sectarianism underlying the *BC School Act*".

March 7, 2007

Court Win for Straight Student Taunted as "Homo" and "Gay"

British Columbia's highest court overturned a lower court ruling that said a student could not sue a school board for homophobic bullying and harassment because he was straight. The B.C. Court of Appeal said that Azmi Jubran had been the victim of anti-gay bullying for five years and that Handsworth Secondary School in North Vancouver failed to stop the homophobic taunts of other students. It also reinstated a \$4,500 award set by a human rights tribunal and ruled that the North Vancouver School Board must pay all of his legal costs.

The lower court wrongly dismissed Jubran's allegations that he had been subjected to harassment on the basis of sexuality because he wasn't gay. This ruling sets a legal precedent in Canada. All Canadian school boards now have legal responsibility to protect ANY student from homophobic harassment at school.

Read more about the case in [Lessons from Jubran: Reducing school board liability in cases of student harassment](#). Paper presented by Elizabeth J. Meyer at the annual meeting of the Canadian Association for the Practical Study of Law in Education, Montreal, 2006.

On the negative side, the BC government passed Bill 64 in October 2002. It dismantled the BC Human Rights Commission. Under the new law, individuals are still able to bring discrimination complaints directly before the BC Human Rights Tribunal, but a number of important functions of the Commission are lost, including the responsibility to promote public awareness of human rights, advance research and education programs and address systemic discrimination.

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In **British Columbia**, two court applications for same-sex marriage were joined and heard together "one brought by Egale and 5 BC couples and one brought by 3 other BC couples. (The former BC Government had initially made a supportive application but the newly elected BC Liberal government withdrew from the case.) The BC Supreme Court heard the cases in July - August 2001. On October 2, 2001, Justice Pitfield ruled that the exclusion of same-sex couples from marriage infringes equality rights under s. 15 of the *Charter*, but that this discrimination was justified to preserve the heterosexual definition of marriage. In a bizarre twist, he added that not even Parliament could legislate to recognize same-sex marriage without a constitutional amendment. His decision was appealed; the BC Court of Appeal ruled 3-0 on May 1, 2003 that the opposite-sex definition of marriage is discriminatory and unconstitutional. The Court also held that the law must change to allow same-sex couples to marry, and suspended the effect of its ruling until July 12, 2004. But after a related decision in Ontario in June, the BC Court of Appeal amended its order on July 8, 2003 to give immediate effect to the inclusive definition of marriage.

The federal government decided not to appeal the Appeal Court decisions in BC and Ontario, within the legal time limit.

In **Quebec**, a lawsuit was filed on September 14, 1998 by Michael Hendricks and René LeBlanc. Quebec Superior Court heard the case in November, 2001, and March 2002. This case challenged the opposite-sex definition of marriage in 3 statutes: the federal *Modernization of Benefits and Obligations Act*, the *Quebec Civil Code*, and the *Harmonization Act*, a federal statute which applies only in Quebec, defining marriage as the union of a man and a woman. In September 2002, Judge Lemelin ruled the opposite-sex definition of marriage to be an unconstitutional violation of equality rights, and gave Parliament two years to fix the law. Following the Appeal Court decisions in Ontario and BC, the federal government withdrew its appeal in Quebec, but the appeal, being maintained by the Catholic Civil Rights League (one of the intervenors in the case who oppose same-sex marriage), is to be heard by the Quebec Court of Appeal on January 26, 2004.

Following a meeting of the federal Cabinet, Prime Minister Chretien announced on June 17, 2004 that the government would accept the Court rulings, and would introduce a Bill to recognize same-sex marriages across the country, while also protecting the right of faith groups to refuse to perform marriages that do not conform to their beliefs. The draft legislation was referred to the Supreme Court of Canada, for its opinion on whether the draft Bill was constitutional and adequately protected religious freedom. The Supreme Court indicated that it would hear the reference in April 2004. However, Prime Minister Martin's government has said (January 2004) that it will send an expanded reference to the Supreme Court, which would include a question about the constitutionality of "civil unions", as opposed to marriage. This process will likely mean that the Supreme Court's consideration of the matter will be delayed by months.

An Opposition motion to "take all necessary steps to preserve marriage as the union of one man and one woman and the exclusion of all others", was defeated in the House of Commons, 137 - 132, in September 2003. Its intent was that government invoke the Notwithstanding Clause.

As of December 2004, same-sex marriage was legalized via court rulings in BC, Ontario, Quebec, Manitoba, Saskatchewan, Newfoundland and Labrador, Nova Scotia, and the Yukon. Over three thousand Canadian couples have been married to date. It seems inevitable that equal marriage will be uniformly available across Canada soon, whether by federal legislation or by court decisions. The Federal Government has recently announced that it will table legislation on this issue in late January 2005.

Future Challenges:

Although many challenges still lie ahead - notably in youth and education rights, censorship, policing of LGBT

sexualities, and full legal equality for transgender people “ governments, courts and the general public across Canada are recognizing the right of LGBT people to be treated equally.

British Columbia

1992 - BC amended its **human rights legislation** to include sexual orientation as a prohibited ground of discrimination, and extended workplace medical benefits to same-sex partners of government employees. (BC has not added “gender identity” to its human rights, despite considerable pressure to do so since 1997. The North West Territories is currently the only Canadian jurisdiction to include “gender identity” as an area of protection against discrimination.)

1996 “ **Adoption Act** came into force, which enabled same-sex couples to apply to adopt as couples (rather than separately) for the first time in Canada.

1997 - BC amended the definition of “spouse” in the **Family Relations Act** and the **Family Maintenance Enforcement Act** to accord to same-sex couples the same custody, maintenance and support rights and responsibilities as those accorded to heterosexual couples, and to allow same-sex couples to register agreements relating to cohabitation and property division.

July 1998 - BC became the first Canadian jurisdiction to legislate **pension benefits** for the same-sex partners of all the province’s public sector employees.

July 28, 2000 - the **Health Care (Consent) and Care Facility (Admission) Act** enables lesbians, gays and bisexuals to make medical decisions on behalf of a same-sex partner who is incapacitated.

2000 - Under two **Definition of Spouse Amendment Acts, 1999 and 2000**, 23 amendments to various Acts came into force on July 28, 2000, and a further 27 amendments on November 1, 2000. These changes consolidated the definition of spouse to include a person who has lived with another person for a period of at least two years in a marriage-like relationship. This ensures that same-sex couples are treated equally in many areas such as inheritance, estates, property law, and conflict of interest provisions. They also standardize existing provisions that already included same-sex spouses (e.g.- the *Adult Guardianship Act*).

May 17, 2001- the Supreme Court of Canada released its decision in the case of **BC College of Teachers v. Trinity Western University**. The BC College of Teachers had not approved the private evangelical school’s teacher train program, because it required students to sign an anti-homosexual document. In upholding an order that Trinity Western’s teaching program be approved, the Supreme Court of Canada ruled that graduates from the University are entitled to hold “sexist, racist or homophobic beliefs”, but are not entitled to act upon them.

January 2002 - in **Society Nixon v. Vancouver Rape Relief**, the BC Human Rights Tribunal held that a women’s shelter had discriminated against a MTF transsexual by denying her the opportunity to act as a volunteer counsellor. The Tribunal affirmed that transgender people are protected from discrimination by the ground “sex” in human rights legislation. But the Supreme Court of BC overturned this decision on appeal, Dec. 2003. Nixon may yet appeal this ruling.

December 20, 2002 - Supreme Court of Canada ruled in the case of **Chamberlain et al v. Surrey School Board**. In April 1997, the Surrey School Board had banned the use of three children’s books (*Bobbi’s Bouquet*, *Asha’s Mums*, *One Dad Two Dads Brown Dad Blue Dads*), because they depicted same-sex parents. December 1998 “ the BC Supreme Court ruled that the anti-gay resolutions were based on religious precepts and therefore violated the provisions of the *BC School Act*. September 2000 “ BC Court of Appeal upheld the Surrey Board’s appeal because it felt that the School Board resolution did not prevent the use of the books in the classroom if the teacher, in their professional judgment, felt that the books advanced the goals of the curriculum. December, 2002 - the Supreme Court of Canada ruled 7-2 that the School Board had been wrong to ban the books because of their same-sex content. The majority wrote that the books promoted tolerance and that “tolerance is always age-appropriate”, and asked the School Board to reconsider the use of the books in accordance with “the broad principles of tolerance and non-sectarianism underlying the *BC School Act*”.

March 7, 2007

Court Win for Straight Student Taunted as "Homo" and "Gay"

British Columbia's highest court overturned a lower court ruling that said a student could not sue a school board for homophobic bullying and harassment because he was straight. The B.C. Court of Appeal said that Azmi Jubran had been the victim of anti-gay bullying for five years and that Handsworth Secondary School in North Vancouver failed to stop the homophobic taunts of other students. It also reinstated a \$4,500 award set by a human rights tribunal and ruled that the North Vancouver School Board must pay all of his legal costs.

The lower court wrongly dismissed Jubran's allegations that he had been subjected to harassment on the basis of sexuality because he wasn't gay. This ruling sets a legal precedent in Canada. All Canadian school boards now have legal responsibility to protect ANY student from homophobic harassment at school.

Read more about the case in [Lessons from Jubran: Reducing school board liability in cases of student harassment](#). Paper presented by Elizabeth J. Meyer at the annual meeting of the Canadian Association for the Practical Study of Law in Education, Montreal, 2006.

On the negative side, the BC government passed Bill 64 in October 2002. It dismantled the BC Human Rights Commission. Under the new law, individuals are still able to bring discrimination complaints directly before the BC Human Rights Tribunal, but a number of important functions of the Commission are lost, including the responsibility to promote public awareness of human rights, advance research and education programs and address systemic discrimination.

A Union of Professionals