

Out of the Closet and Into the Family Room

Same-sex Families Fight for Recognition

Debate over the recognition of homosexual families rages around the globe, as activists demand that such unions be regarded equally in law. In Ontario, an effort to legislate a progressive package of same-sex spousal benefits was recently defeated. Coinciding with the International Year of the Family, the debate over homosexual households is not solely about gay rights; it also calls into question traditional notions of the family and who can be considered one.

by Nicole Nolan

As evening falls on the gay district in downtown Toronto, they come in hundreds with their lovers and their placards. It is June 3. In six days, members of the Ontario provincial legislature will vote on the most extensive legal rights package for same-sex couples ever introduced in North America. Tonight, lesbians, gay men and their supporters gather in a show of political power.

If passed, Ontario's Bill 167 would amend the definition of "spouse" to include same-sex couples in 57 different statutes. Notable, the result would:

- require employers currently providing benefits to the partners of heterosexual employees to extend them to partners of homosexual employees;
- allow same-sex partners to change their names, enter into domestic contracts that grant the same property rights in the event of a breakup as heterosexual couples, and claim inheritance rights if the deceased partner has not written a will;
- change current adoption laws to allow gay men and lesbians both to adopt the children of their partners, and

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Bill 167 defeated: demonstrators carry an effigy of Lyn McLeod who refused to support the legislation. [Danny Ogilvie]

adopt unrelated children together.

Round one: leading up to the vote

Bill 167 was introduced in the Ontario legislature in May, 1994. After it passed the first reading, battle lines were quickly drawn in newspapers and on television sets. It proved to be one of the most passionate debates the province has witnessed in years.

On May 29, Toronto Archbishop Aloysius Ambrozic wrote a letter—read by parish priests to one million Catholic churchgoers—which condemned the bill and urged congregations to write letters to their provincial members of parliament. (Priests were instructed to provide paper and pens.)



Police protection: Bill 167 proponent Reverend Brent Hawkes is removed from Ontario Legislature by a latex-gloved officer. [Danny Ogilvie]

Opposition parties in the legislature made political hay out of the issue. In a dramatic flip-flop, Ontario Liberal leader Lyn McLeod reversed her earlier commitment to end discrimination against lesbians and gay men. She declared: "This bill goes beyond what the people of Ontario are prepared to accept and it goes beyond what I am personally prepared to accept..."

In letters to editors of newspapers all over the province, Ontarians against the bill pointed to the Bible, the sanctity of the family, and the innocence of children.

At the June 3 rally, demonstrators carried signs with slogans such as "Equal Taxes Deserve Equal Rights," to indicate the solid citizenship—and thus equality—of the homosexual community. They countered their conservative counterparts with banners that read "Hate is not a family value."

At the podium, speakers told of men and women being turned away from the death beds of long-term partners, of those who have no legal rights to the children they have raised, of life-long partners who receive no recognition of their commitment.

The day before the vote, in an eleventh-hour attempt to garner enough support from the opposition to pass the bill through parliament, the government removed the controversial clause regarding the rights of lesbians and gay men to adopt children.

On June 9, Bill 167 was defeated in the provincial legislature by a 68 to 59 vote. Several hundred gay advocates had gathered in the foyer of the parliament to hear the result. When it was announced, protesters called out "shame, shame." They were pushed out of the building by security guards wearing

latex gloves.

Round two: the fight for "family" continues

While the political battle in the legislature was lost, gay activists say the war is just beginning. Although Bill 167 failed to become law, it was crucial in giving the same-sex benefits issue a high political profile in Canada and in galvanizing support around legal rights for gay men and lesbians. The Campaign for Equal Families—an Ontario-wide coalition of individuals and groups seeking equity across Ontario formed in response to Bill 167—has no intention of breaking up and is busily preparing to assail same-sex family rights issues in the courts.

Groups connected to the Campaign for Equal Families have sprung up in small towns across Ontario which, before the introduction of Bill 167, had no organized voice representing homosexuals. And Liberal leader Lyn McLeod is paying a high price for her turnaround on gay rights. Hecklers follow her around the province, accusing her of hypocrisy and political opportunism.

At a post-vote rally on June 23, Tom Warner of the Campaign for Equal Families told a cheering crowd of 700: "We have a message for all those people, those so-called proponents of family values. We're never going back." That night, the Campaign raised \$7,000 for a legal defense fund to take same-sex cases to court.

"There's a phenomenal amount of momentum in Ontario," says Bob Gallagher, Toronto coordinator for the Campaign for Equal Families. "I can't think of an issue outside of AIDS



Senator Joseph McCarthy believed homosexuals to be risks to national security.

that's had such support and endorsement."

Advocates say the simple fact that family rights eventually effect all lesbian and gay male partnerships has enabled the movement to garner widespread support. For Gallagher personally, Ontario's lack of recognition of same-sex relationships was brought home last year when he was denied leave from work to attend the funeral of his partner of many years.

Lisa Jeffs, office manager at the Campaign, was denied Unemployment Insurance when she gave up her job in London, Ontario to live with her lover in Toronto.

"Luckily I have a job, but I ended up being on welfare for two months because of that. If my partner was a man, even if we weren't married I would have got Unemployment Insurance." Jeffs appealed her case to an Unemployment Insurance tribunal and won. However, the government is currently contesting the tribunal's decision.

Jeffs says the current state of laws on same-sex partnerships affects not only her employment benefits, but also her plans for a family in the future.

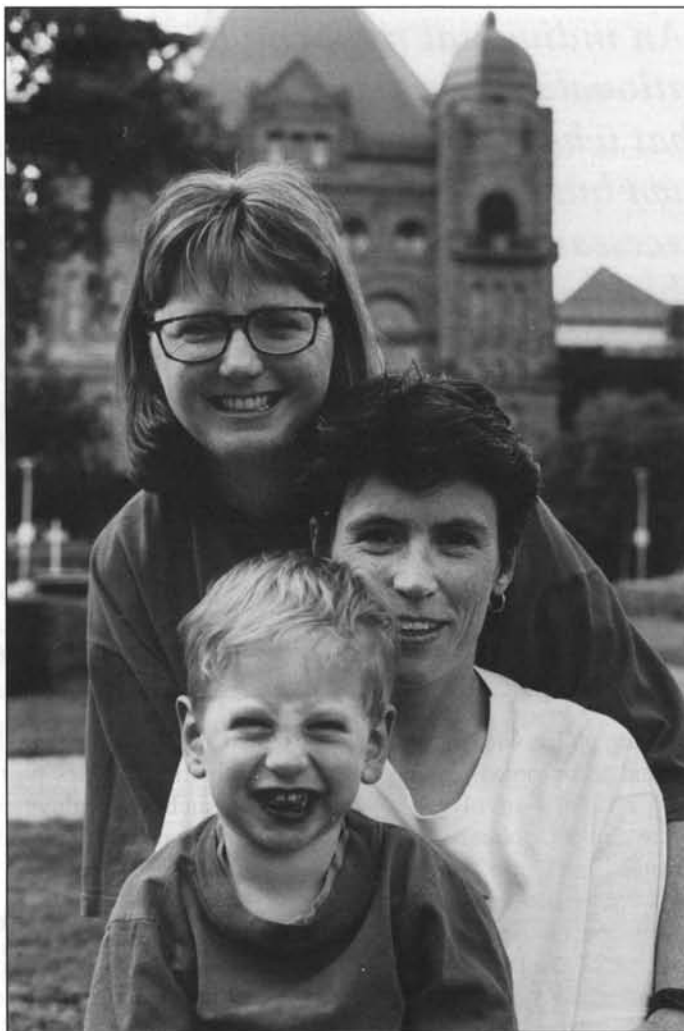
"My parents are strident right-wing conservatives. If I were to have a child and if something were to happen to me they would fight tooth and nail in the courts to keep the child and they would win. That prospect is terrifying to me. It's certainly a good enough reason for me not to have children, knowing my partner would have no rights."

Barricading bedroom doors from the state

The fact that same-sex benefits are being discussed at all is in itself revolutionary. Just thirty years ago, homosexual rights groups were so small and low profile that when the first American all-lesbian group, Daughters of Blitis, was formed in the mid-1950s, its members were not even aware that a similar gay rights group had been founded in 1950.

During the 1950s, a decade of the "traditional family" structure, homosexuals were for the most part invisible. The model family unit was composed of a married heterosexual couple—a working father and a mothering mother—and a few children.

Perhaps in an attempt to regain stability once the World War II dead had been buried, governments in North America and Western Europe enforced this societal norm. Homosexuality, considered a deviation from national ideals, was offered no



"Fighting to be a family": Chris Phibbs (middle) seeks to adopt Zak, biological son of long-time partner Chris Higgins. [Danny Ogilvie]

place in society, and fell under particular scrutiny and persecution.

In the United States between 1947 and 1950, 4,954 men and women were dismissed from the armed forces and civilian agencies on charges of homosexuality. In 1950, the Senate Appropriations Subcommittee, under the influence of Senator Joseph McCarthy, recommended that homosexuals be dismissed from government jobs on the grounds that they were poor security risks because of their vulnerability to blackmail. In Canada, the Royal Canadian Mounted Police (RCMP) mirrored the McCarthy era witch hunts, and sought out homosexuals also on the basis of their being security risks.

Throughout the 1950s federal agencies used lie detectors on men and women in government jobs to determine if they were communists or homosexuals. Homosexuality existed as a psychiatric condition, a crime, and as a police target. Even the American Civil Liberties Union declared in 1957 that it would not fight battles on behalf of homosexuals.

By the end of the 1960s—a decade of radical counter-culture social protest and civil rights movements—many governments in Western Europe and North America were liberalizing their rigid laws on such issues as abortion, obscenity and contraception. At this time, societal restrictions on homosexuality began slowly to be loosened. In 1967, after a decade of debate about issues of public and private morality, Britain decriminalized homosexual acts between adults. Throughout the decade, various states in the U.S. also began decriminalizing homosexual acts.

In 1969, Canada amended its Criminal Code to disallow prosecution of private sexual activity between two consenting adults. Then-Justice Minister Pierre Trudeau succinctly summarized the changing morality of the day, declaring that the "state has no place in the bedrooms of the nation." Though such legal turnarounds were considered revolutionary at the time, activists today argue that to tolerate acts as long as they remain invisible is a far cry from what should be full integration of homosexuals into society.

The shot heard around the world

Though protests sparked by police raids and officially sanctioned harassment of homosexuals were by no means

unknown, a new chapter of the gay liberation movement opened in the wake of the Stonewall riots in New York city in 1969.

During a New York mayoral campaign in June, 1969, police carried out a series of raids on gay bars in Greenwich Village. (Raids on gay bars were often used by incumbents during campaigns as an easy way to boost their public morality records.) On June 28, police raided the Stonewall Inn, a bar frequented by a working-class clientele of Puerto Rican drag queens and a few lesbians. But instead of quietly submitting as they had done in the past, the patrons of the bar staged a riot in the street, assailing police with bottles, cobblestone bricks, garbage, pennies and an uprooted parking meter. The riots lasted two nights, eventually involving a crowd of approximately 2,000 protesters and 400 police.

Stonewall was "the shot heard around the world" for gay men and lesbians, symbolizing an end to their silent endurance of discrimination by mainstream society and the beginning of an outspoken movement. This year marks the twenty-fifth anniversary of the landmark event, and it has recently been commemorated for its violent role in galvanizing a previously marginalized community.

By the beginning of the 1970s, organizations of gay men and lesbians had sprung up in cities and campuses across North America and Western Europe, and they began to make their demands known to governments. In a 1971 march in Ottawa,

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David Rayside

the homosexual community demanded some of the very rights which are being fought for today: the right to serve in the armed forces, a uniform age of consent for both heterosexuals and homosexuals, and equal rights for same-sex couples.

In Canada, discrimination on the basis of sexual orientation is not specifically forbidden by the Charter of Rights and Freedoms (adopted in 1982). However, homosexuals have generally been included under Section 15 of the Charter which covers groups not otherwise named. In Ontario, an amendment to the provincial Human

Rights Code took place in 1986 which includes specific non-discrimination clauses on the basis of sexual orientation in matters such as employment, accommodation and services. What the Code does not address is the issue of same-sex partnerships or the definition of "spouse."

Defining "family": the buck stops here

It is perhaps this issue of "spouse" and the corresponding need for politicians and society to re-examine the legal—and emotional—meaning of "family" that has proven to be the biggest stumbling block to the furthering of equal rights for same-sex couples.

In the 25 years since Stonewall, demands for same-sex family rights have grown up alongside a variety of other gay rights issues, including movements to repeal sodomy laws and to incorporate sexual orientation in human-rights codes and non-discrimination statutes. However, gains in family rights have proven much more difficult to achieve than other individual rights issues.

David Rayside, a political scientist at the University of Toronto, believes family rights attract more opposition because they tap into public fears of homosexuality more than individual rights do.

"It's a more public thing. An individual right can be rationalized partially on the grounds that what one does in private is one's own business and one shouldn't be discriminated against on that basis. A relational right is necessarily a more public phenomenon and it involves family definitions. For all that the family in real life has changed, and not many people actually live in what people think of as the traditional family, people hold onto it as a symbol of some sort of golden age."

In addressing the rights of homosexuals, it seems, the buck stops with the establishment of legally recognized families. North American society refuses to equate a union of two people of the same gender with



"We're not going away": 1994 Gay Pride Day, Toronto.
[Danny Ogilvie]

that between two of the opposite. Not unlike the decades-old concessions to tolerate homosexual acts as long as they remained private, equality for gays stops short of the threshold of the family home.

At a time when divorce, the single-parent family, step-parents, common-law living arrangements, the realities of domestic violence and other incursions into the world of the white picket fence are on the rise, a bold reevaluation of this "golden age" is necessary to keep up with changing times. The traditional family unit is no longer an exclusive or accurate description of the way most people live. An increasingly common suggestion is that we have reached a time when this notion of "family" should be defined along lines of love, commitment and caring, rather than by the inclusion of certain pre-ordained components.

International precedents

Homosexuals' demands for rights and recognition are not limited to North America. Brazil, Argentina, Japan, and China are among the growing number of nations who have gay rights organizations. South Africa recently became the first country in the world to incorporate a provision in its constitution barring discrimination on the basis of sexual orientation. Nonetheless, most battles for equal *family* status are being pitched in legislatures and courtrooms in the United States and Europe—with varying degrees of success.

The most significant legal recognition of homosexual relationships in Europe occurred in Denmark with the passage of the Partnership Law in 1989. Pushed into parliament by the highly organized Danish homosexual organization (LBL), the law gives same-sex couples the option of entering into "domestic partnerships" that have the same legal effect as heterosexual marriage. In the first two years after the Partnership Law passed, nearly 2,000 such partnerships were registered in Denmark. However, the Partnership Law is far from legislating complete equality. For example, Danish lesbian and gay male partners cannot adopt children, and a church wedding remains off-limits.

The Danish law has inspired similar attempts at partnership legislation in Scandinavian countries and has sparked interest in other European Community countries where homosexual groups are carrying out their own campaigns for equal families. In August of 1992 over 250 lesbian and gay male couples in Germany submitted marriage applications in a mass protest of exclusive marriage laws. (All of the applications were turned down.)

In the United States, an increasing number of businesses and city governments are allowing employees to claim benefits for their same-sex partners. "In the last five years there's been an explosion of activity at the level of private employers and municipalities," says Evan Wolfson, a senior staff attorney at Lambda, a U.S. legal defense fund for gays and lesbians. "Most of the action has been with private employers doing it voluntarily in response to workplace organizing. In the last couple of years there's been legislative action where various cities and now one state [Vermont] have adopted

some measures to equalize the benefits [for state workers]."

Enter the courts

At the moment, same-sex benefits—such as pensions or health coverage—are the only area of gay family rights that most legislators have been willing to approve. However, issues of marriage, adoption, and same-sex parental rights are being treated in the courts. Since politicians, and the voters they aim to please, are unwilling to enact legislation, the courts remain the only solution. What many view as a fundamental human right will be fought out case by case.

Wolfson says judges are frequently more willing to make decisions in favor of same-sex rights than representatives with next-election jitters who run for the woods at the first sight of controversial legislation. "Almost certainly, equal marriage rights are going to come through the courts and not through the legislatures. That's because the discrimination is



A day in the park: official family picnic sponsored by the Campaign For Equal Families. [Danny Ogilvie]

so deep."

Lawmakers in Hawaii got a shock last year when the state's highest court ruled that a ban on same-sex marriages may well violate Hawaii's prohibition against sex discrimination. Ruling on a suit brought by three same-sex couples, the state supreme court did not strike down the ban outright. But they did send it back for review to a trial court and instructed the government to provide a "compelling state interest" that justifies the ban. If the case is lost in trial court, Hawaii will be set to become the first U.S. state to recognize same-sex marriages.

Courts in other states are also beginning to recognize lesbian and gay male couples as families. In a highly publicized case in Minnesota in 1991, a woman won an eight-year battle to become the legal guardian of her severely disabled lover. Karen Thompson and Sharon Kowalski had lived together four years when a car accident in 1983 rendered Kowalski quadriplegic. Thompson's application to become Kowalski's legal guardian was blocked by Kowalski's parents, who denied

With no comprehensive federal legislation in place to grant equal status to same-sex unions, homosexual rights advocates are not always winning in the courts. In Colorado, for example, in 1992 the state took action to preempt any guarantees of civil rights for lesbians and gays.

One step forward...

Advocates in Canada and the U.S. say that cases decided in favor of same-sex couples in the courts will act as a wedge to force elected representatives into changing the law. In Canada, where the Campaign for Equal Families hopes to pave the road to the legislature with court victories, response to same-sex rights cases in the courts has been mixed. Despite laws forbidding discrimination on the basis of sexual orientation in eight out of ten provinces, Canadian courts have often ruled against same-sex recognition.

In 1988, the courts struck down a Toronto library worker's appeal for provincial health insurance coverage of her partner and her partner's child. In 1989, the Canadian Human Rights Commission ruled in favor of Brian Mossop, when his employer refused to give him leave to attend the funeral of his lover's father. However, a Federal Court of Appeal struck down the ruling in 1990.

Currently, the Ontario Campaign for Equal Families is attempting to fill in a deficiency in Canadian court cases on adoption by aiding a court appeal by a lesbian to adopt the natural son of her partner. Chris Higgins and Chris Phibbs have been together for nearly ten years. Recently, Phibbs filed a request to adopt Zak, Higgins' biological son. The court battle to follow is like the struggle which will be undertaken by many who are "families" only by their own definition.

Says Gallagher, "In terms of any major legislation, it's going to be some time before we see something on the level of Bill 167 again, so in the near future our focus will be on court battles. We need to build up another load of court cases to force the legislature into action."

Despite considerable opposition, lesbian and gay advocates say they're certain that it's only a matter of time before same-sex families can claim treatment equal to those composed of a man and a woman.

"Most of us have a sense that this is going to be a lifelong battle," says Wolfson. "There's going to be enormous gains within our lifetime just as there have been in the last few years. But with every gain there's a huge backlash, so we'll probably be fighting over these issues for the rest of our lives...I think we have to see it as a long term historical battle."



[Kirk Anderson]

she was a lesbian. Kowalski's parents moved her to a nursing home in Northern Minnesota, far from her partner.

Although Kowalski was able to indicate she loved Thompson, her parents, supported by the courts, refused to allow Kowalski and Thompson to see each other. For years, Kowalski was denied rehabilitation treatment (unavailable at the northern Minnesota nursing home) and separated from her partner. Finally, in December of 1991, a Minnesota appeals court granted Thompson custody of her partner.

In 1989, New York state's highest court recognized same-sex couples as family for the purposes of rent control. Currently, a variety of adoption, marriage and custody cases are before U.S. courts. However, in a nation where homosexuality is still a criminal act in 26 of 50 states, and only eight states provide civil rights protection for gay men and lesbians, the process of gaining recognition for same-sex families is slow. "It's still very much a state-by-state, court-by-court battle," remarks Lambda's Wolfson.

Suggestions for Further Reading

Lillian Faderman and Margaret Cruikshank, *The Gay and Lesbian Liberation Movement*. (Routledge, 1992).

Aart Hendriks, Rob Tielman, and Evert vander Veen, eds. *The Third Pink Book—A Global View of Lesbian and Gay Liberation and Oppression*. (Prometheus Books, 1993).

Randy Shilts, *Conduct Unbecoming—Gays and Lesbians in the U.S. Military*. (St. Martin's Press, 1993).