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**COUNTER-HEGEMONIC CITIZENSHIP, HATE CRIMES
AND THE SAFETY OF LESBIANS, GAYS, BISEXUALS AND TRANSGENDERED
(LGBT) PEOPLE IN CANADA, 1993-2003:
PERSPECTIVES ON VIOLENCE TARGETED AT LGBT COMMUNITIES
IN OTTAWA**

by

ANN-M. FIELD, B.A./M.A.

A thesis submitted to
the Faculty of Graduate Studies
in partial fulfillment of
the requirements for the degree of
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in Political Science

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Abstract

This dissertation examines how the citizenship of lesbians, gays, bisexuals and transgendered (LGBT) people can be extended in ways that allow LGBT people to enjoy substantive citizenship. My study focuses on Canadian citizenship and how the boundaries of this citizenship regime can be challenged to include groups who, despite being endowed with legal citizenship, remain outside the realm of substantive citizenship.

Citizenship is a useful lens to assess power relations, understand situations of oppression and develop strategies to challenge this oppression. Relying on the concept of citizenship regime (Jenson 1997) and informed by Mouffe's work on radical democracy (1993), I introduce the Gramscian notion of hegemony. In doing so, I propose a new way of thinking about citizenship. My model, counter-hegemonic citizenship, brings us to consider citizenship as a process, rather than a status or a set of rights, and to focus on meaningful struggles that can lead to the redrawing of the boundaries of the citizenship regime.

Violence targeting LGBT people is a reality with which this group is confronted daily. The presence of such violence is an indicator that LGBT people are denied access to substantive citizenship. Using Ottawa as a case study, I look at how the LGBT community has worked with the Ottawa police to reduce violence targeted at them. In this particular context, I claim that the liaison committee that was established, bringing together members from the police and LGBT communities, played a pivotal role in enhancing the citizenship of LGBT people in Ottawa. I argue that being safe is a necessary condition for the enjoyment of citizenship, a condition that is more easily met when a group is able to access police services.

This project came about following the passage of Bill C-41, the hate-crime sentencing enhancement measures. Having the state address the problem of targeted violence through a *Criminal Code* provision had given me hope that the safety of LGBT people and other targeted groups would be enhanced. Through this research, I make the argument that policies cannot guarantee access to substantive citizenship. Policies and laws that confirm the citizenship of LGBT people (such as the hate-crime sentencing measures, the *Charter's* equality clause, etc.), however, can be used as a resource by oppressed groups to force a shift in the boundaries of the citizenship regime.

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With the completion of this thesis, I am finally reaching the point at which a long held wish will be fulfilled. It has been a long journey that has involved countless efforts and numerous hours of work throughout which I had to remind myself that there was to be no "giving up" until I reached my goal. The graduation that will follow is meant as a celebration of knowledge and achievement; to me, however, it more importantly honours perseverance and determination.

Regardless of the amount of effort I have put towards this end, it would not have been possible to complete this project without the support of some, the contribution of others, and the help, encouragement, advice, and friendship of numerous individuals whom I would like to thank.

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insights, particularly on the topics of policing and community relations, which proved useful to my work. I thank Miriam Smith for comments on the thesis proposal.

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Introduction

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence of the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, or... (*Criminal Code*)

In 1994, the Canadian government introduced Bill C-41¹, an amendment to the *Criminal Code* stating that offences motivated by hate or bias would be subject to harsher sentences. The Bill which received royal assent in July 1995 was applauded by police services, community activists that work closely with targeted groups and others concerned about hate crimes. The amendment was viewed as an important step in addressing the problem of targeted violence. It sent a clear message that the Canadian government and society in general condemns hate and bias crimes. The new legislation offered hope that something was being done to stop hate crimes and that, as a result, targeted groups would be safer.

In advanced liberal-democratic states such as Canada, hate crime policies are part of a larger discourse on issues of difference, equality and social justice. Some of the greatest challenges faced by the public, governments, policy-makers, public institutions (including police services) and the judiciary have to do with the accommodation of differences and protecting people who are different from state discrimination and violence from other citizens. The debates raised when trying “to live together with differences” often focus on issues of equality, equity and social justice (Fraser 1997a). They are about access to citizenship, employment, social programs and lodging; they also are about fair treatment by the police, the judicial system and state authorities. They are

¹Bill C-41, *An Act to Amend the Criminal Code (Sentencing) and Other Acts in Consequence Thereof*, 1st Session, 35th Parliament, 1995 (assented on July 13, 1995).

about the entitlement to safety by all citizens and their right to be free from discrimination. Overall, these are issues that relate to the enjoyment of substantive citizenship by all in society regardless of differences.

The focus of this study is on citizenship as it is experienced by a group that is considered different. My main concern rests on the fact that in liberal democracies, including Canada, where citizenship is said to be universal —meaning that everyone who is a citizen benefits from the same treatment by the state and is entitled to the same rights²— groups that are considered Other on the basis of gender, sexual or gender identity³, race, ethnicity, religion, age or disability do not enjoy substantive citizenship. Despite claims of universal citizenship, large segments of society are unable to contribute fully to the political community, nor are they able to access the full benefits associated with citizenship. For those of us who deeply value social justice, this is a troubling situation.

When I speak of citizenship, I do not limit my focus to the formal-legal definition of citizenship⁴. Ultimately, I am not interested simply in whether one is entitled to vote, run for public office, carry a passport, or access health and welfare benefits. I am also interested in aspects of citizenship that are not necessarily tangible, or at least, not immediately visible. I am concerned with the barriers that prevent individual citizens from accessing the benefits of substantive citizenship or that prevent them from contributing to society. I am particularly concerned with violence —violence motivated

²As Christopher Pierson explains: “Modern states may not actually universalize citizenship, but they claim to do so. The idea of universality carries with it a presumption about equality, itself one of the most powerful devices of modern politics” (1996, 142-3).

³The use of the terms “sexual or gender identity” makes reference to lesbians, gays, bisexuals, transsexuals and transgendered people. I have kept the reference to gender on its own to refer to women, for this is how the term gender is usually used. However, in order to not exclude transsexuals and transgendered people, it is necessary to not simply refer to gender and sexual identity. It is necessary to also mention gender identity. See Namaste (2000, 140-1).

⁴Formal-legal citizenship is understood as a status that is bestowed on those who are full members of a political community and who, as a result of this status, enjoy rights (e.g. application of laws or legal codes) and benefits (e.g. socio-economic benefits of the welfare state) as well as responsibilities (e.g. political participation such as voting). Moreover, formal-legal citizenship usually corresponds to a given national identity.

by hate and bias targeting specific groups— and state actions to counter such violence. I view targeted violence as the clearest expression of the denial of substantive citizenship. Although targeted violence or the threat of such violence does not negate legal equality and entitlements associated with citizenship, it is likely to undermine substantive aspects of the citizenship of targeted groups (Lister 1997a, 43, 71-2; Phelan 2001, 5).

In this dissertation, the above arguments are developed through a focus on the citizenship of lesbians, gays, bisexuals and transgendered (LGBT) people. Even when they enjoy formal-legal citizenship, LGBT people are denied the benefits of substantive citizenship. Violence targeting LGBT people is a reality with which this group is confronted on a daily basis. Although the data available on hate crimes is not as accurate as for other crimes,⁵ we know that LGBT people are one of the main categories of victims of hate crimes. Violence motivated by hate or bias is oppressive for the entire group which is targeted, regardless of whether one is a direct victim of targeted violence or not. Targeted violence consists of random and unprovoked attacks on an individual or her/his property in order to humiliate and subordinate a group of people. The knowledge that one may become a victim at any given time makes this violence oppressive. In this regard, the presence of targeted violence is one indicator that LGBT people are denied access to substantive citizenship. As a result, I consider “being safe” a prerequisite for enjoying substantive citizenship.

I am interested in state action—or inaction—with respect to ensuring minimum levels of safety for targeted groups to access citizenship. One response to this violence has been an amendment to the *Criminal Code* that requires that crimes motivated by hate or bias be given harsher sentences (i.e. the adoption of Bill C-41 that led to the inclusion of s. 718.2 in the *Criminal Code*). This legislation mentions “sexual orientation” as one

⁵There is a discussion on the availability and reliability of data on hate crimes in chapter 3. I discuss the fact that hate crimes is a category of crime that tends to be underreported or misreported (a crime that is recorded as a simple assault or mischief instead of a gay-bashing or antisemite vandalism, etc.). Also see Janhevich (2001) and Roberts (1995).

of the groups it protects. Since LGBT individuals are denied substantive citizenship partly as a result of targeted violence, I ask if a public policy that aims to protect LGBT people—in this case through harsher sentences for hate crimes—can ensure or contribute to ensuring the minimum level of safety needed by LGBT people for substantive citizenship. In other words, has Bill C-41 resulted in ensuring the minimum level of safety needed for LGBT people to be able to participate and contribute in society as well as enjoy the rights and benefits of citizenship? Does the hate crime policy, which confirms the citizenship of LGBT people by mentioning sexual orientation as one of the protected categories, open up the concept of citizenship in ways that allow LGBT individuals to be included in a substantive definition of citizenship (in contrast to a formal-legal one, in which they are already included)? Does it send a strong enough signal to Canadian society that the state will not tolerate violence targeting LGBT individuals?

To assess these questions, I have chosen to examine policing practices. Police services are part of the law enforcement arm of the state. The police are central actors in the implementation of the *Criminal Code*. They are also a central institution of the state with respect to ensuring the safety of individuals in society. When the government brings about changes to the *Criminal Code*, such as the passing of Bill C-41, how police services follow through on such a policy has an impact on the groups whose safety is at stake. A close examination of police practices with respect to LGBT communities offers insights as to whether public policies that aim to protect LGBT individuals affect their citizenship.

Over the last 10 to 15 years, certain police services have established hate crime units or appointed officers to deal with hate crimes. Some police services also have liaison officers or liaison committees with the LGBT communities.⁶ I paid particular

⁶For example, specialized hate crime units have been created in various police forces including Toronto, Ottawa, British Columbia and more recently Edmonton and Montreal. Liaison committees between the police and LGBT communities have also been established in Ottawa, Hamilton, Edmonton, Calgary and

attention to a liaison committee between the police and community. The case study I present in this thesis is the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* (subsequently referred to as the Liaison Committee). I use the study of the Liaison Committee to understand how the boundaries of the citizenship regime were challenged to better accommodate the interests of LGBT individuals. Through the study of the Liaison Committee, I show that the Ottawa police, more specifically the Hate Crime Section, as a result of the partnership with LGBT individuals and community organizations, has been willing to work with a definition of crime and safety that corresponds to the LGBT communities' definition of violence or hate crimes. I look at whether this is key for challenging the boundaries of citizenship and ensuring minimum levels of safety to allow LGBT people to enjoy the benefits of citizenship and contribute to the political community. Although Bill C-41 does not seem to be at the origin of the changes that brought about specialized hate crime units and liaison committees, the case study helps to ascertain the role played by public policy in protecting LGBT people and enlarging their citizenship rights. My case study allows me to test whether the hate crime policy was used as a resource for LGBT individuals to access police services and hold them accountable for their safety, subsequently resulting in a contestation of the boundaries of citizenship giving LGBT people access to substantive citizenship.

Methodology

My approach is embedded in critical social research and therefore involves a critique of oppressive social structures: the structures that uphold the current citizenship regime.

more recently Toronto. Liaison committees are either intended to improve relations between the police and potential victims of hate crimes and (potentially) increase the reporting of incidents or to address problems of police harassment.

Critical theory is rooted in concrete social experiences—in this case, the problem of targeted violence and its impact on citizenship for LGBT individuals. It looks at a phenomenon in its specific historical context and identifies the prevailing social structures that relate to it. Since “social structures are maintained through the exercise of political and economic power” and that “such power (grounded in repressive mechanisms) is legitimated through its ostensive social structure and its ideological manifestations and processes” (Harvey 1990, 19), critical social research aims to uncover these mechanisms and propose insight that can contribute to the transformation of these structures. Critical social research is meant to uncover social problems, offer solutions and highlight mechanisms for social change. The end goal is to offer critical knowledge with a practical interest in emancipation (Young 1990a, 5).

By choosing a critical approach to social research, I am affirming my commitment to finding solutions that are in the interest of oppressed groups, in this case lesbians, gays, bisexuals and transgendered people. I am interested in developing theory that is pertinent to individuals from that given social group. As Viviane Namaste who wrote a pioneering work on the erasure of transsexuals and transgendered people in both social theory and in social institutions explains, for an analysis to be useful, it must account for how the given group’s life experiences are

shaped and ordered through specific social, cultural, economic and historical relations. [...The] theory needs to be explicitly linked to social practice. This requirement of social theory ensures that its production will emerge from the everyday social world, and therefore that the elements of a theory that focus on the transformation of social relations are constituted in and through the world as it is actually organized, rather than offering a programmatic or utopian vision of how things should be, or could be arranged (Namaste 2000, 28; also see Fay 1975, 109-10).

She goes on to explain that critical social research can play an active role in social change if it is based on these tenets. “The production of knowledge both describes and

legitimizes the world. As such, the articulation of a theory can play a fundamental role in a broader process of improving everyday life for people” (Namaste 2000, 28).

Since my focus is on sexual minorities, I explore LGBT people’s experience of citizenship and demonstrate how presumptions of heterosexuality associated with the “model citizen” makes citizenship oppressive—and, in reality, inaccessible—to lesbians, gays, bisexuals and transgendered individuals. Targeted violence serves as an indicator of citizenship. It is used here as a lens for assessing LGBT people’s relation to state actors and institutions. To this end, citizenship is conceived here through the concept of regime (Jenson and Phillips 1996) that allows for a better understanding of who benefits from citizenship. Because I am interested not simply in the barriers to substantive citizenship but also in understanding how to contest the current citizenship regime to better reflect the interests of LGBT people, the theoretical framework I propose for this reflection draws on much more than the concept of citizenship regime or the literature on citizenship. Although oppression is not commonly used to name injustices in the North American context, in part because it is usually understood as referring to harsh treatment, the exploration of Young’s model reveals that “oppression” does reflect the reality experienced by disadvantaged groups. It is useful for understanding LGBT people’s status as citizens. Having assessed citizenship as oppressive for LGBT people, I turn to Iris Young’s five faces of oppression (i.e. exploitation, marginalization, powerlessness, cultural imperialism and violence)⁷ (1990a, 39-65) to explain LGBT people’s experience of citizenship. I refer to the Gramscian notion of hegemony to explain how this oppressive citizenship regime is maintained. Finally, I draw from Chantal Mouffe’s work on radical democracy (1993, 1996) and Nancy Fraser’s discussion of the redistribution-recognition dilemma (1997a) to frame the concept of “counter-hegemonic citizenship” that I present as a model of transformative politics. This focus on proposing changes is central to critical social research.

⁷ See chapter 1 for a discussion of her framework.

To come up with a model of transformative politics requires that I account for the voices of the various actors involved. Violence motivated by hate and bias targeted at LGBT individuals needs to be understood as it is viewed by the oppressed group as well as by those actors who are called upon to intervene. In this respect, it was fundamental that my project include the voices of LGBT individuals and state actors, such as policy-makers that work on issues related to targeted violence, police officers and crown attorneys that are called upon to intervene. These “voices”, as I call them, represent situated knowledge (Barndt 2002, 84).⁸ For a project of critical social research to be successful, the researcher must come to an understanding of the lived experiences of a group and articulate a theory that reflects the situation as it is experienced, opening doors for the potential projects of transformative politics in which this group could engage. An accurate portrayal of lived experiences cannot be achieved without having carefully listened to the voices of all actors involved, including those most concerned and most likely to be ignored or left out in traditional research—the oppressed group. Sandra Kirby and Kate McKenna speak of doing research from the margins. As they explain, the problem is not that the people on the margins do not have knowledge, but rather that their knowledge rarely gets recorded (1989, 17-8). The work of bell hooks (1984) and Dorothy Smith (1990) are well-known for encouraging an approach from margin to centre or hearing voices from oppressed or disadvantaged groups in society, voices which are easily excluded from political debates and decision-making. As I explain below, this is why I have relied on interviews as an important source of information. I wanted to hear from those who are potential targets of violence and who can benefit the most from

⁸In an article entitled “Fruits of Injustice”, Deborah Barndt (2002) looks at how globalization is viewed from above (corporate agenda) and from below (the stories of lowest-wage women). Barndt’s account of globalization meshes the two perspectives by accounting for the local context while acknowledging social and historical processes that are in constant interaction with them. In a similar way, I look at how the state through its institutions, policies and police service perceive hate crimes and their role with respect to protecting targeted groups. However, I turn to local accounts of targeted violence to come to assess why previously proposed solutions and mechanisms to protect groups from hate crimes have failed.

better protection from violence, but who are often left out of discussions on political initiatives, policy making or administrative decisions.

As mentioned, I have focused my attention on a specific case study: the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities*. This brings into question the relevance of such an approach. Can the study of one case be useful for LGBT individuals in other Canadian cities? In an article that looked at safety audits done by a women's organization in a Canadian city, Fran Klodawsky and Caroline Andrew convincingly argued that the local knowledge produced by these women through safety audits needed to inform public policies that affect the use of urban space. As they explained, if public spaces are to be accessible to everyone, the knowledge of how the space works and what changes need to be made with respect to safety has to come from the most vulnerable groups' understanding of that space (1999, 162; see also Andrew 2003, 324). When we accept that grassroots knowledge (local knowledge, situated knowledge or knowledge from the margins) is an important and valid source of information, it becomes easier to uncover political projects that aim to change how things are done not simply on a local scale, but more generally. If struggles of specificity (struggles over what happens locally to a given group) can be transformed into struggles of connection (re-imagining the political project in ways that people beyond a given locale can relate to the issue or struggle), the potential for transforming the citizenship regime then becomes real. As Klodawsky and Andrew conclude: "It is [...] critical that local politics be redefined so as to make clear how the large issues of inclusion, democracy, citizenship play themselves out at this level" (1999, 169).

There are definite parallels between Klodawsky and Andrew's project and mine. I discuss in the thesis how the LGBT community in Ottawa has worked in cooperation with the police to address issues of safety for LGBT individuals. I look at why the Liaison Committee, which brings together LGBT individuals and organizations and police officers, has proven successful in improving the safety of LGBT individuals in the

city of Ottawa. I make the case that the changes achieved through the work done by the Liaison Committee broadens the boundaries of the citizenship regime; thereby, making a positive difference in the ability of LGBT individuals to enjoy substantive citizenship. Although on a small scale, the Liaison Committee contributes in making “a difference to the politics of social justice of daily life” (Andrew 2003, 313).

Applying Klodawsky and Andrew’s model, I ask whether the struggles of specificity (as described through my case study) can be transformed into struggles of connection. Can the lessons learned in Ottawa be applied elsewhere? And if so, can a political project emerging from local knowledge—that of the Liaison Committee in Ottawa—force the boundaries of the citizenship regime to shift in ways that will ensure a minimum level of safety for LGBT people to enjoy their citizenship in various cities across Canada? There is a definite need to assess the potential of this struggle to form the basis of an emancipatory movement. This is a central objective of any critical social research project—finding knowledge based on concrete experiences that can be used by groups that are oppressed to engage in projects of transformative politics. I want my thesis to be part of this tradition of scholarship.

I carried out the research starting in January 2001 through the winter of 2003. To fulfill my goal with respect to critical social research, the aim was first to gather sufficient information to provide a well-documented and contextualized analysis of the situation of LGBT people with respect to the issue of targeted violence and state protection in a given locale. Second, I wanted to hear from various actors involved, before coming up with an analysis of the experience of citizenship by LGBT individuals. I employed qualitative methods. They consisted primarily of formal and informal semi-structured interviews with LGBT individuals and individuals affiliated with LGBT organizations mostly in Ottawa, individuals and state actors called upon to intervene with respect to the safety of LGBT citizens. I also conducted extensive archival research of primary source

documents such as newspapers, documents from LGBT organizations, minutes from liaison committee meetings (police-community meetings held monthly), etc.

Given my limited resources and the need for an in-depth analysis in order to reflect the experience of the social actors, I made use of a critical case study approach (Harvey 1990, 59-64). This approach requires that the researcher determine the criteria of a case study that would be as favorable as possible for the confirmation of the thesis. Then, after having engaged in an empirical analysis to test the thesis, the findings are relocated in its wider framework to elaborate on the theoretical implications. With respect to my research project, this meant that I was looking for a case in which I foresaw potential for the shifting boundaries of the citizenship regime. After getting acquainted with the work being done in Ottawa by the police and LGBT communities, I selected the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* as my case study.

The Ottawa Liaison Committee had been around for some time (it was the first such committee established in Canada) and, despite a wealth of historical records (minutes of the monthly meetings and other documentation) to track its activities over the years, it had never been studied. Moreover, confirming that this case was attractive for my purposes, in 2001 the report from an extensive survey on the well-being of lesbians, gays, bisexuals and transgendered individuals in the Ottawa region was released. This research, called the Wellness Project, reported the findings of a survey that reached over 800 LGBT individuals in the Ottawa region.⁹ No comparable research (with such an elaborate sample) has been done in Canada. Of interest for my project were questions on safety, crime and harassment. The findings from the Wellness Project confirmed that the majority of respondents felt safe in Ottawa and that just over a third of respondents who had been victims of a crime indicated that they reported the crime to the police. General estimates for the reporting of crimes by LGBT individuals is usually around 10%,

⁹ I offer a detailed overview of this study in Chapter 6.

suggesting that LGBT individuals in Ottawa are more likely to report crimes to the police than in other locales (Wellness Project 2001a, 38-44). Since I was well aware that the Liaison Committee was set up in response to the anger of the LGBT community with the lack of police attention given to the problem of hate crimes and violence targeted at LGBT individuals back in the early 1990s, seemingly something had changed over the past 15 years or so. I was hopeful that a study of the Liaison Committee and the experience of citizenship by LGBT individuals in Ottawa would reveal what had changed to ensure minimum levels of safety for LGBT individuals to enjoy substantive citizenship.

The aforementioned factors are the rationale for selecting Ottawa as the locale for the focus of my study, paying particular attention to the work of the Liaison Committee. Ottawa seemed to be a likely case in which positive changes with respect to the safety of LGBT individuals was achieved and therefore could be considered a critical case. There was no evidence of positive changes in other cities to the same extent as in Ottawa. Ottawa clearly stood out as a more advanced case. Toronto and Ottawa are the two cities that were the first to set up hate crimes units. In Toronto, however, the current liaison committee is a new structure that is still struggling for legitimacy. Hamilton has a task force to liaise between the police and LGBT communities. It is not particularly active at this time. Montreal has neither a liaison committee nor a hate crime unit.¹⁰ I will elaborate more on the various situations later in the thesis. For the moment, I simply want to make the point that Ottawa seemed to be the most promising case to study changes in the citizenship of LGBT people and that is why it was selected as my case.

¹⁰At the time I was doing the research, Montreal had no hate crime unit. However, as I was completing the writing of this thesis, it was announced that an investigative branch of the Montreal police was to be renamed a hate-crime unit. This was the result of intense lobbying on the part of the Jewish community and ethnic communities in Montreal. Following a firebombing at a Hebrew elementary school on 5 April 2004, there was a meeting held between Jewish leaders, the Montreal police chief and Montreal Mayor. The request for a hate crime unit was renewed at that time. The Montreal police announced on 16 April 2004 that it was renaming an investigative branch of its service the hate-crime unit (CP wire, 16 April 2004, cited on CJC website: <http://www.cjc.ca/>).

The first part of my fieldwork consisted of archival research and attending LGBT-community events and meetings of the Liaison Committee. To understand the historical context in which the citizenship of LGBT people has evolved, I reviewed over three decades of gay presses. This includes every issue of *GO Info* (published from 1972 until 1994) and *Capital Xtra!* (published starting in 1993 and still the main LGBT community paper). These two publications are, to my knowledge the only “gay” presses that were published in the city of Ottawa. I also gathered documentation available on LGBT community organizations and went through all the minutes of the Liaison Committee as well as other supporting documentation available on the committee.¹¹ Taken together, these various sources of information provided me with an in-depth look at the historical context shaping the citizenship of LGBT people in Ottawa.

After getting well acquainted with the historical data, I proceeded with a series of interviews. As mentioned, I chose to do interviews to allow various actors to speak about how they understand their situation. I wanted to hear from LGBT individuals how violence motivated by hate and bias affects their group and how they perceive the role of the state (policies, criminal justice system, police services) in protecting them. I wanted to hear from police officers who are mandated to protect the community and apply the *Criminal Code*. I also wanted to hear from those who work in government departments that develop programs or policies that are aimed at preventing or stopping violence motivated by hate and bias. The interview process allowed me to gather information that could not be found otherwise. For example, LGBT individuals, as an oppressed group, have often been excluded from history or made invisible in the literature in social sciences and other disciplines. The objective of critical social research is to give a voice to oppressed groups who are often excluded. Using interviews is one way to meet this objective.

¹¹The Liaison Committee was founded in 1991. Minutes have formally been taken at the monthly meetings starting in 1994.

I identified the individuals I wanted to interview in part through information found during my archival research, in part by attending conferences and through word of mouth.¹² My sample is not random. It is based on strategic choices for obtaining needed information (Labelle, Rocher, Field 2004). I conducted 53 interviews¹³ in the period from 15 February 2002 until 4 March 2003. Most interviews lasted between 50 and 90 minutes, although in one case an interview was conducted in two sittings and lasted six hours in total. Of the 53 interviews, nine were conducted over the phone. This was the case of the six interviews with individuals in the western provinces and Hamilton and with three individuals in Ottawa with whom it was not possible to meet in person due to scheduling conflicts. These interviews were shorter, usually around 30 minutes. The questions used for guiding the interviews were approved, as was the project, by Carleton University's Ethics Committee.¹⁴ The research conforms to their policies and guidelines for doing research, including the use of consent forms for using the material obtained through interviews and keeping the tapes used for recording interviews under lock and key.

Overall I heard from twenty-six individuals in Ottawa who identify as LGBT or work in some capacity with LGBT individuals either in schools or universities, or in community organizations. Fourteen of them were involved at some point or other in the Liaison Committee either as a representative of an organization or as an individual member. I heard from nine individuals in liaison committees in other cities, including Toronto, Hamilton, Vancouver, Edmonton, and Calgary. I interviewed 13 individuals from police services. In Ottawa, I spoke to officers who were working in the Hate Crime Section when it was initially set up and spoke with several officers that have worked in the Hate Crime Section at various times since, covering the period from the time it was

¹²I ended each interview by asking if the person knew of anyone else they believe I should talk to. This is known as the "snow ball" technique (Faulkner 1997; Demczuk 1998).

¹³For a complete list of the individuals interviewed, please refer to the start of the reference section.

¹⁴Confirmation of approval was received on 19 July 2001.

set up until the time I did the research. I also spoke with individuals from police services in Gatineau, Montreal, Toronto and Calgary. I felt it was important to include interviews with police officers and individuals in other liaison committees across Canada in order to assess whether the Liaison Committee in Ottawa is similar to or very different from others. It was a way to validate my findings for the Ottawa case. This was key in determining whether the local struggle (struggle of specificity) could become a more widely shared struggle towards the safety of LGBT individuals in cities across Canada. Could the Ottawa case inform more widely LGBT communities in other Canadian cities? Could it be a case of a struggle of connection, to use the terms of Klodawsky and Andrew?

I also interviewed the two crown attorneys who have been involved with the Liaison Committee in Ottawa. Finally, I spoke to five individuals working in government on either programs or policies having to do with preventing or stopping hate and bias violence. Most of the interviews conducted in Ottawa were done between February 2002 and April 2002. All of the interviews that are peripheral to my case study were conducted after I had done most of the interviews in Ottawa. I went to Toronto at the end of May 2002 to do all of the Toronto interviews and conducted a few phone interviews in the winter of 2003 with people in Hamilton, Calgary, Edmonton and Vancouver. The interviews were all structured in a similar way, regardless of whether I was interviewing an individual, a police officer or a policy-maker. The questions aimed to establish how each actor perceived (if they perceived it as a problem) the problem of targeted violence. The interviews were also used to assess how they perceived the role of LGBT communities and organizations, policy, the police and criminal justice system for addressing the issue of targeted violence.

The material covered in the interviews was corroborated through my archival work. The interviews did provide me with insights and, overall, a deeper understanding of the issue that could not have been achieved otherwise than through direct questions

and informal discussions. All the persons selected were chosen on the basis of their credentials. They either were involved in some capacity with the LGBT communities or LGBT organizations or liaison committees; or they are police officers that have participated in liaison committees or have worked as liaison officers or in a hate crime section; or they are part of the public administration of a government working in some capacity on programs or policies that aim to address targeted violence. Each person I interviewed was knowledgeable of the issue and/or state responses to this violence. Piecing together the information and various accounts found through both archival research and interviews allowed me to provide a solid and contextualized account of targeted violence and its effect on the citizenship of LGBT individuals. From there, through an analysis of these stories, I mapped how the boundaries of citizenship were contested.

The time frame covered in this thesis is situated between 1993 and 2003. As mentioned, the interviews were done mostly in 2002 and 2003. Since then, the rights of lesbians and gays have been fundamentally altered over the course of 2004 and 2005 with the legalization of same-sex marriage. The citizenship of LGBT individuals is evolving and changing quickly, making it necessary to set a time frame in which a research project focuses. I identified 1993 as the starting point. This was the period around which the hate crime units started to be set up (Toronto, Ottawa and Montreal) and the work of the Ottawa Liaison Committee became formalized.¹⁵ This was also a time when hate crimes entered the political discourse with the Liberal party including this issue in its electoral platform (the Red Book). I end in 2003 for this is when I concluded my interviews and proceeded to the analysis of the data. Although it would have been tempting to assess all of the new changes that have taken place in the period following my fieldwork, to provide an in-depth analysis of the effects of the legal changes that have happened over

¹⁵ The Committee started meeting informally in 1991. In 1993, meetings were more regular and by 1994 minutes were being taken making the process more formal.

the course of 2004 on the citizenship of LGBT individuals will require a substantial amount of data-gathering, fieldwork and research. This material could be the basis of an entirely new research project which, although a possible continuation of the work started here, would probably require a slightly different focus.

Overview of the Thesis

Chapter 1 is the first of two theoretical chapters. In that chapter, I provide an overview of theories of citizenship and elaborate the concept of citizenship regime (Jenson and Phillips 1996) as a useful lens for understanding the injustices experienced by certain social groups, including lesbians, gays, bisexuals and transgendered people. After having established differences between formal-legal citizenship and substantive citizenship, it is obvious that LGBT people are left with the status of second-class citizens. I speak to how the formal-legal definition of citizenship means that LGBT people, who are Canadian citizens, enjoy certain rights (e.g. the right to vote) but not others (e.g. the right to marriage).¹⁶ This is in part the result of heterosexuality being embedded in the notion of citizenship. This chapter includes a discussion of violence targeted at LGBT people as an indicator of their diminished citizenship. The threat of violence targeted at LGBT people is one of the mechanisms that prevent LGBT people from enjoying or accessing the full benefits associated with citizenship (Young 1990a, 61-3). This chapter ends with a discussion of counter-hegemonic citizenship, a model I propose to challenge the injustices that have prevented LGBT people from enjoying fully their citizenship.

Having established in chapter 1 that the current citizenship regime is oppressive for LGBT people, in chapter 2 I turn to the concept of hegemony to explain how such a

¹⁶ This has changed over the course of 2004 as marriage, following court battles in a number of provinces and territories, became legal. This is discussed in chapters 1 and 2.

system is maintained. It is only through a critical approach that it becomes possible to understand how a regime that is oppressive is maintained and not directly challenged. I explore how the state upholds a system in which heterosexuality is the norm, thereby creating a system of sexual stratification (Connell 1995 and 1994; Cooper 1995; Richardson 1998 and 1996; Rubin 1993) in which heterosexuality is a condition for accessing the full benefits of citizenship. I focus on the role of state structures in maintaining sexual inequalities or reducing these inequalities. I limit my analysis to the state, although what I refer to as politics is defined broadly to include not simply formal governmental institutions. I account for public policy, law, the criminal justice system, and the police (which are part of the criminal justice system, but are nonetheless looked at more specifically in the context of my dissertation), looking at each in turn and discussing how they uphold or undermine the system of stratification by sexuality and how this affects the citizenship of lesbians, gays, bisexuals and transgendered people.

In chapter 3, I provide an overview of the legislative framework around the issue of hate and bias activities and discuss proposed solutions to stop activities motivated by hate or bias as they have been advocated by governments, community organizations that work with targeted communities and police services in Canada. I show that this discourse which centres on a “getting tough on crime” strategy is hegemonic because it is endorsed by all who are involved despite not being in the interest of the groups who experience targeted violence. Such an approach does little in terms of stopping the violence as it is experienced by targeted groups. Even if the strategy proved effective with respect to arrests and convictions in cases of severe gay bashings, a getting-tough-on-crime approach achieves little in terms of relieving LGBT people from the oppressive nature of homophobic activities encountered in the everyday context that denies the citizenship of LGBT people. I ask whether it is because the voices of those who are affected by the violence have been marginalized that the dominant discourse fails to

recognize solutions that have the potential for real change for those who experience this violence.

In chapters 4 through 6, I turn to the voices of individuals that are affected by violence targeting LGBT people or who are called upon to intervene on behalf of the state. I outline the perspectives on the issue of targeted violence and the role of the state in intervening when this violence occurs as they are discussed by state actors and institutions (Parliament, government departments, human right commissions, legislative decisions, etc.), police services and LGBT individuals. I account for these various perspectives when I propose in the final chapter a model of counter-hegemonic citizenship. Despite the fact that laws passed in Parliament and several government documents express a commitment to the protection of LGBT people from hate crimes, in chapter 4, I show that even parliamentarians are not shy of making derogatory comments towards lesbians and gays. These comments uphold age-old stereotypes such as the association between pedophilia and homosexuality. When debates in the House of Commons express messages of tolerance and inclusion, they can reinforce the citizenship of the groups mentioned while delegitimizing violence targeted at these same groups or acts of discrimination. In contrast, expressions of homophobia and heterosexism reaffirm the legitimacy of such beliefs, threatening the citizenship of LGBT people.

In chapter 5, I turn to the voices of police services. I look at how police understand hate crimes, how they address the problem of hate crimes, whether changes to the *Criminal Code* have an impact on the work of police, how the relations between the police and targeted communities are perceived by the police and whether the police can contribute to the safety of LGBT individuals. This chapter raises a number of issues with respect to the traditional role of police services and expectations from society towards the police. As the police officers I interviewed explained, traditional policing techniques were not conceived to address hate crimes. To stop hate crimes requires much more than police intervention. There is a need for cultural changes to undermine the root causes of

heterosexism and homophobia, racism, antisemitism, etc. that allow hate and bias violence to take place. I question if this is a task for police services. Can we expect police services to play a role beyond that of protecting LGBT people?

In chapter 6, I turn to the voices of the LGBT individuals and organizations. I focus mostly on Ottawa, for this is where I conducted most interviews. Nevertheless, I do provide an overview of various reports to document how violence and discrimination is experienced by LGBT individuals in various Canadian cities. The interviews I conducted in Ottawa with LGBT individuals and organizations were extremely useful for presenting an understanding of LGBT people's expectations vis-à-vis the criminal justice system, including police authorities and expectations from policy, while the documentation provides an in-depth look at the problem of violence. Both sources help me answer how targeted violence affects LGBT individuals' status as citizens.

In chapter 7 I report on my case study: the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities*. In particular, I ask if such an initiative contributes to shifting the boundaries of the citizenship regime. As mentioned, I chose to focus on the Liaison Committee to test my concept of counter-hegemonic citizenship. Counter-hegemonic citizenship develops when oppressed groups identify with and engage in a political project that forces the boundaries of the citizenship regime to shift in ways that allows for the recognition of the interests of the previously marginalized, excluded or oppressed group. These political projects have to result in shifting the boundaries of citizenship in some way to expand the sphere of social justice of the citizenship regime to correspond to the realities of groups that experienced a form of injustice. To successfully contest the boundaries of the citizenship regime, the sources of oppression need to be identified. A strategy of political transformation, to be successful, must engage with or challenge the norms, policies and institutions that are the source of the oppression of a given group. In that chapter I address how cooperation between a police service and a group of LGBT individuals has resulted in making police

accountable for ensuring the safety of LGBT individuals in a given territory. This resulted in greater levels of safety, changing LGBT peoples' experience of citizenship in that particular setting. I discuss the implications of this small-scale effort in the concluding chapter that focuses entirely on counter-hegemonic citizenship.

Through this project, I make an important contribution to the literature on lesbians and gays in the Canadian context. This is an emerging field of which I provide an overview in chapter 2. The Canadian literature on gays and lesbians has dealt with issues of rights, use of the courts, activism and social movements. My contribution lies with addressing directly the citizenship of LGBT individuals. Others have looked at some aspect of sexual citizenship either in the context of Britain (Richardson 2000; Stychin 2003), Europe (Stychin 2003 and 2001) or the United States (A. M. Smith 2001a). In the context of Canada, there is a need for more in-depth look into this topic.

My contribution is not limited to the expansion of the literature on lesbians, gays, bisexuals and transgendered people. My work will be noticed as one of the first studies on hate crimes or targeted violence in the Canadian context. There is a small body of literature on hate crimes that focuses mostly on the U.S. context. To date, however, in Canada the literature on hate crimes mostly consists of police reports, government documents, human rights commissions' documents or reports, and some community studies. Moreover, because I approach the problem of hate crimes using citizenship as a lens, there is something to learn from this approach that differs from what is usually written on the subject. The dominant approach treats hate crimes through a penal framework. In contrast, I approach the issue from a social justice framework that, as I argue in the thesis, is more appropriate from the perspective of oppressed groups. It emphasizes solutions that push open the boundaries of the citizenship regime to include previously oppressed groups. Rather than reacting to crimes that have taken place, this approach is proactive and has a transformative potential.

This research is also an important project with respect to the discipline of political science. Considering that I am writing from the discipline of political science, the space spent on discussing policing issues is unusual. Nonetheless, it is a legitimate topic for this discipline. If we consider that political science focuses on states and their legitimate use of power, and that police services are one of the institutions within the territory of the state that has recourse to the legitimate use of force, it is surprising that more time is not spent within the discipline of political science on the study of the law enforcement arm of the state on its territory. In political science, the deployment of power and force by the state is usually studied at the international level. Political scientists pay little attention to the use of force by the state within its own territory (Bourgault and Gow, 2001), a subject usually left to be studied by criminologists. By looking at the role of police services from the lens of citizenship rights, I hope to contribute an understanding of the role of police services in ensuring minimum levels of safety for social groups that are targeted by hate and bias violence. For those concerned with the safety and security of the more vulnerable and oppressed groups in society, a better understanding of the coercive instruments of state power should be considered (Vickers 1997, 52-3). I hope this research can contribute by highlighting the importance of paying more attention within the discipline to this topic.

Overall, this project stems from my reaction to the passing of Bill C-41 (the hate-crime sentencing enhancement measures). The passing of Bill C-41 gave me hope that the state was interested in the safety of LGBT individuals (the hate crime sentencing measure includes sexual orientation as a protected grounds) and that, finally, something was going to get done to improve the safety of LGBT people and other targeted groups. Although initially I had great expectations that the policy would result in significant changes with respect to the safety of LGBT individuals, through this research I came to understand that this policy is a useful but not sufficient measure to ensure that police services address the

problem of hate crimes and for individuals to report these crimes. Through this research, I make the argument that policies cannot guarantee access to substantive citizenship for LGBT people. Nonetheless, policies and laws that confirm the citizenship of LGBT people (as do the hate crime policy, the Charter's equality clause, etc.) can be used as a resource to force a shift in the boundaries of the citizenship regime, a shift that is favorable to the status of LGBT people as citizens. This research is about identifying this potential for change in the hope that the challenge can be taken up by those it can benefit.

Chapter 1 - Citizenship, Exclusions and Violence Targeting Lesbians, Gays, Bisexuals and Transgendered Individuals

What is citizenship? Why focus on citizenship? Why has there been a wealth of literature on the subject of citizenship in the past decade? What has sparked an interest in this concept? Can my reliance on the concept of citizenship allow me to confirm the historical oppression of lesbians, gays, bisexuals and transgendered citizens in Canadian society? Or, are all citizens equal as it is often claimed in liberal discourse, making the concept of citizenship meaningless for assessing the situation of an oppressed group? Can a focus on citizenship help me identify the barriers to substantive citizenship for a given group and subsequently contribute to discerning effective strategies for contesting the boundaries of the current citizenship regime? The answers to these questions, explored over the next few pages, shed light on my use of citizenship as a lens for understanding the situation of lesbians, gays, bisexuals and transgendered individuals in Canadian society. I use the concept of citizenship to establish that LGBT people, as a group, are marginalized. After having recognized that lesbians, gays, bisexuals and transgendered individuals do not benefit from substantive citizenship, I focus on how and when citizenship changes. The process of contesting citizenship is central to a project of transformative politics that wants to remove the barriers to substantive citizenship and thereby allow LGBT individuals to be included in citizenship.

Citizenship Revisited: From a Legal Concept to a Quest for Social Justice

Before turning to the literature, I want to briefly look at the relevance of citizenship in our daily lives. I have discussed in the introduction that social theory, to be useful, must be informed from the everyday social world of the group on which it focuses. To keep

with the goal of critical social research of producing theory that is meaningful for oppressed groups (in this case lesbians, gays, bisexuals and transgendered people), I first explore the meaning of citizenship in the everyday context of LGBT lives before turning to the approaches to citizenship as they are outlined in the literature.

Although citizenship appears at first as a concept that refers to abstract notions, experiences that are associated with citizenship take place in everyday situations. As Chantal Mouffe explains, the way we define citizenship is intimately linked to the kind of society and political community we want (1992b, 25). Hence, several activities that are part of our daily routine are defined by our citizenship, meaning that our rights, obligations and responsibilities, as well as our participation in the community, are closely linked to, or are determined by, our status as citizens. In Canada, modern citizenship is as much about voting and running for elections, as it is about rights enshrined in the *Charter*. The vast range of rights and freedoms outlined in the *Charter* include equality rights (equality before the law and equal benefit and protection of the law without discrimination), legal rights (the right to life, liberty and security of the person), and freedom of speech, religion and thought (*Canadian Charter of Rights and Freedoms*). It is easy to see how these rights form, in part, our expectations as citizens. Citizenship is also associated with a national identity and holding a passport. Immigration policies, issues of national security, access to health and welfare services or education, all have to do with how we define the political community and are therefore identified with citizenship. The same goes for public policies that boast values and principles that define Canadian society, such as the multiculturalism policy, language rights, employment equity programmes, etc.

More specifically, if we focus on the citizenship of lesbians, gays, bisexuals and transgendered people as a group, we see that these individuals do not enjoy substantive citizenship. LGBT individuals benefit from some rights but are denied others to which heterosexual citizens are entitled. For example, until recently, LGBT people, in most

jurisdictions, were denied the right to marry.¹ With respect to their status as a citizen, it is pertinent to ask what impact this has. Does denying non-heterosexuals the right to marry compromise equality between citizens? Is it a hindrance to their full integration in society? Apart from legal entitlements, citizenship defines the relations between individuals and the state. If we consider that receiving medical treatments, attending school, going to court, dealing with the police are some of the ways that individuals come into contact with state actors and institutions, we should question how these everyday situations are experienced differently by LGBT citizens.

There is an assumption—present in the liberal debates on modern citizenship and which permeates popular understandings of society—that we are all equal as citizens. If this equality between citizens does not exist, however, it is likely that our status as a citizen has an impact on whether encounters with state actors or institutions are positive or if these encounters further the oppression or marginalization of individuals belonging to a given social group. Thus questions as to whether LGBT people can expect to receive adequate medical treatment and advice responsive to the particular health concerns as sexual minorities are an issue of citizenship. If LGBT individuals are valued citizens, it is likely that state-provided health care services would cater or be adapted to their needs.

¹At the time I was doing the fieldwork for this research, the right to marry was denied to LGBT individuals. Since then the legalization of marriage for same-sex couples has gained a lot of ground across Canada. Thus far, Ontario (10 June 2003), British-Columbia (8 July 2003), Quebec (19 March 2004), Yukon (14 July 2004), Manitoba (16 September 2004), Nova Scotia (24 September 2004), Saskatchewan (5 November 2004) and Newfoundland (21 December 2004) have recognized same-sex marriages following a court decision. The federal government has committed to passing a law to extend the equal marriage to provinces and territories in the course of 2005, pending of course that a change of government does not occur before the law is passed and that the government is successful in getting the equal marriage legislation through the House of Commons and the Senate. When Newfoundland joined the list of provinces and territories that have extended marriage to same-sex couples, 87% of Canada's population lived in areas of Canada where equal marriage rights prevailed (EGALE Canada, www.egale.ca/index.asp?lang=E&menu=30&item=983 (5 March 2005); EGALE, Press Release, 21 December 2004; *Globe and Mail*, 25 September 2004: A8; and *Globe and Mail*, 11 June 2003: A1 and A4).

Globally, there are few places where equal marriage is legalized. The Netherlands became the first country in the world to offer full legal marriage to same-sex couples on 1 April 2001. Belgium enacted a similar law in 2003. Canada became the third jurisdiction where changes were occurring, although there are currently some areas in Canada where equal marriage is not yet available (International Gay and Lesbian Human Rights Commission, www.iglhrc.org/site/iglhrc/ (5 March 2005).

The well being of LGBT individuals is partly dependent on receiving adequate medical care. With respect to schools, the curriculum has been changed in a number of schools to include anti-racism education. This is intended as a measure to prevent the harassment in schools of youths from ethnic and racial minorities. Can LGBT youth expect school authorities to take necessary measures (interventions in cases of harassment and bullying, changes in the curriculum to include anti-homophobia education, awareness activities and promotion of tolerance, etc.) to ensure that LGBT youth can learn in a safe environment? Failing to do so, what impact will this have on the future ability of LGBT individuals to participate in the political community?² Turning to the criminal justice system, how are LGBT people treated in courts? Can they expect to be treated as credible witnesses and victims by judges and crown attorneys if their sexual identity is known to the court? Can LGBT people expect “equal benefit and protection of the law without discrimination” as prescribed by the *Charter*? How do police services respond to hate crimes? Can LGBT people expect police services to do what is in their power to protect them from targeted violence? Given the right to security of the person and the rights to equal protection and equal benefit of the law (as stated in the *Charter*), LGBT citizens should be able to expect minimum levels of protection from violence and harassment and equal protection and equal treatment in the judicial system to allow them to enjoy their citizenship. Lacking this, we can conclude that LGBT citizens are not citizens in the substantive sense, but rather second-class citizens. As we can see from these questions and examples, our status as citizens matters in everyday situations.

²A recent feature article in the *Globe and Mail* documented how LGBT youth are bullied and harassed at their schools making it difficult for them to be successful students. Although a number of LGBT youth make it through the regular school system, others are unable to learn in such an environment. They may become depressed and even suicidal or may decide to drop out of school. The problem is at times compounded when parents find out about their children’s sexual identity. LGBT youth are often kicked out of their homes once their parents learn about their sexual identity. This has a tremendous impact on the ability of these youth to obtain an education and necessary skills to go on in life. To address these issues, in Toronto, an education program called Triangle aims to provide LGBT youth who could no longer face their hostile school environment an opportunity to get a high school education in a pro-LGBT setting. See Mitchell 2004: F6). For information on how violence, bullying, harassment affects the lives of LGBT youth, please refer to Lee (2000) or Dorais and Lajeunesse (2000). This issue will be discussed in more depth in chapters 2 and 6.

Considering the wealth of literature on citizenship that has been produced over the last decade or so, we can question what has brought on such interest in this topic. There are various factors that have contributed to a revival of citizenship as an important concept in the social sciences. Briefly, the re-emergence of citizenship in the literature can be attributed to a variety of political developments that include the intensification of the process of globalization, renewed nationalism, increased levels of migration, social movement activism, the prominence of mass media, increased importance and legitimacy of international bodies (e.g. UN, WTO, NATO) and international norms (including human rights as defined in various declarations and in international law), the emergence of new polities (e.g. European Union) as well as the collapse of states (e.g. Yugoslavia, U.S.S.R., East Germany), demands for regional autonomy and claims from Indigenous Peoples. It reflects the expansion of franchise entitlements and, subsequently, concerns with voter apathy. It also ensues from economic crises and the introduction of neo-liberalism, putting into question social rights associated with citizenship in welfare states (Lister 1997a, 1-2; Kymlicka and Norman 1994, 352-3; Hindess 2002, 140). It follows from attempts to better control the flow of people at borders and concerns for heightened security and breach of civil rights, a concern that has been even more pressing following the terrorist attacks of September 2001 (Bigo 2002; Faist 2002; Adelman 2002; Whitaker 2003a and 2003b; Bhandar 2004).

As we can see, there are numerous issues that have sparked an interest in citizenship. Considering that my interests centre on social justice issues and developing critical knowledge that can provoke social change, however, the aforementioned matters are not why I have chosen to make use of citizenship as a key concept to my work. As discussed, one factor that has sparked my interest in citizenship is that citizenship is a concept to which we find references in our daily lives. Although citizenship appears as a theoretical issue, the examples mentioned above attest to the fact that we experience

concrete manifestations of our status as citizens in everyday context. Our status as a citizen affects our participation in the political community and whether or not we access or are able to access the rights and benefits of citizenship. Moreover, an interest in citizenship can extend from a focus on social justice, which is the case here. Concerns about equality and rights are addressed in a number of theoretical debates through discussions on citizenship. As will be explored below, there is a whole literature on the substantive aspects of citizenship that is of interest to my particular project.

Finally, citizenship is an interesting concept because it can be contested. Richardson claims that:

[t]he concept of citizenship, along with questions of social exclusion and membership, has (re)emerged as one of the key areas of debate within both the political discourse and the social sciences. A central theme of these developments is that citizenship is a contested concept: it can be used in a variety of ways with different implications for understanding the context in which various social exclusion occur (2000, 8).

Richardson goes on to explain that the revival of the concept of citizenship has brought about a widening sphere for its use. Before, citizenship was discussed with an almost exclusive focus on the public sphere. Now, it is also discussed in relation to people's everyday practices (Richardson 2000, 8). This is how it will be used here.

To sum up simply, regardless of one's focus—be it political participation, social policies, security, inequalities or social justice—I consider that citizenship is usually discussed in one of two ways. We can either focus on citizenship as a concrete set of rights—formal or legal citizenship; or, we can focus on the substantive dimension of citizenship. Lister explains that “exclusion and inclusion operate at both a legal and sociological level through ‘formal’ and ‘substantive’ modes of citizenship” (1997a, 43). Formal citizenship refers to membership in a state and is symbolized by the possession of a passport. Substantive citizenship has to do with the full integration of all adults in the

political community regardless of their gender, sexual identity, race, ethnicity, religion, ability, etc. (Walby 1997, 178; also see Kofman 1995, 122).

The distinction between formal and substantive citizenship is in principle easily identified; yet, it is not a straightforward matter. A number of the rights and duties associated with citizenship apply to those who are not formal citizens. In Canada, for example, refugee claimants benefit from a number of protections stipulated in the *Charter* despite the fact that they are not citizens. Also, most civil, political and social rights are guaranteed equally to citizens and permanent residents. Only voting, mobility and language rights are affected by one's legal status as a citizen (Kymlicka 1992, 3). Moreover, substantive citizenship—or first-class citizenship—does not automatically follow from formal citizenship and may in fact be experienced in varying degrees by differently situated individuals. Indeed, the focus of this thesis is on how violence is an exclusionary process that undermines the substantive citizenship of lesbians, gays, bisexuals and transgendered individuals. Here, the threat or fear of violence prevents LGBT individuals from participating fully in the political community or to access their rights as citizens. Although violence does not alter the legal status of LGBT citizens, it works to exclude or prevent the substantive aspects of their citizenship. Other examples of how substantive citizenship is undermined include racial discrimination affecting Black citizens or religious intolerance and antisemitism working to undermine the citizenship of Muslims and Jews. Likewise, sexual violence has a controlling affect on women, compromising their access to substantive citizenship (Lister 1997a, 43).

Also blurring the line between formal and substantive citizenship are interpretations of citizenship by the general public. The idea of citizenship generally evokes references to membership and participation in the community. For the most part, people are unaware of the legal definition of citizenship. According to Kymlicka, various surveys have confirmed that citizenship rights are understood to be the civil, political and social rights that affect one's membership and participation, and this despite

the fact that these rights are also, for the most part, available to residents of the country who are not citizens. As he explains, “this everyday view of citizenship rights, while technically misleading, has become standard in the literature” (1992, 3). This is echoed in Walby’s work which claims that in popular discourse, citizenship is understood as the “full integration” of adults in the political community (1997, 178). Similarly, Lister et al in a unique empirical study on the meaning of citizenship—a study that looked at how young people talk about citizenship—found through a series of interviews that a number of young people speak of substantive citizenship not in terms of rights but as referring to individuals who take on responsibilities and who engage in some form of social participation in their local community (2003, 251).

Overall, as we can see, while the citizenship rights that are considered the basis for legal citizenship are not available only to citizens (they are accessible to residents that are non-citizens), formal citizenship does not translate automatically into substantive citizenship or, in other words, legal citizenship does not guarantee that one enjoys substantive citizenship. As a result, we can conclude that the matter of citizenship is neither clear cut, nor straightforward. It is in fact subject to numerous and varied interpretations as we will see in the literature on modern citizenship to which we now turn.

Legal Citizenship: T. H. Marshall’s Model—Praise and Critiques

In the literature on modern citizenship,³ the work of T. H. Marshall is considered central. Citizenship was conceived by Marshall as evolving over three stages starting with civil rights (i.e. liberty of person; freedom of speech, thought, and faith; and right to justice), followed by the acquisition of political rights (i.e. access to decision-making mainly

³For examples of surveys of the literature on citizenship, see: Delanty (2000), Lister (1997a), Pierson (1996, 127-54), Beiner (1995), Roche (1995), Kymlicka and Norman (1994), Kymlicka (1992), Turner (1990), and Barbalet (1988).

through the right to vote or running for political office) and finally social rights sustained by the development of the welfare state (i.e. economic-welfare and security, right to share social heritage) (Marshall 1950, 10-11). According to Marshall, whose model is based on the experience of British men, rights were cumulatively secured over three centuries. Civil rights were won in the 18th century, political rights in the 19th century, while the battle for social rights was in the 20th century (1965, 91) at the same time as the establishment of the post-war welfare state. Marshall's account suggests that "the welfare state is the culmination of a century's long and progressive history of expanding citizenship" (Pierson 1996, 136).

Following Marshall's pioneering discussion on the development of citizenship, modern citizenship has routinely been described as involving these three sets of rights (Hindess 2002, 138). The pattern of expanding citizenship rights can be found in most Western democracy and, according to Kymlicka, it "helped shape the nearly-universal development of the welfare state in these countries between 1945 and 1980" (Kymlicka 1992, 2). Scholars who focus on citizenship tend to agree that "more than anyone else, [Marshall] shaped postwar thinking about citizenship, and not only in Britain" (Lister 1997a, 14; also Kymlicka and Norman 1994, 353; Pierson 1996, 136 and Yuval-Davis 1997, 5). Most work in the literature on modern citizenship is either based on Marshall's model or refers to it.

According to Marshall,

citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to rights and duties with which the status is endowed. There is no universal principle that determines what those rights and duties shall be, but societies in which citizenship is a developing institution create an image of an ideal of citizenship against which achievements can be directed. The urge forward along the path thus plotted is an urge towards a fuller measure of equality, an enrichment of the stuff of which the status is made and an increase in the number of those on whom the status is bestowed (1950, 28-9).

Marshall's definition of citizenship is a useful one, even in contexts other than British society. Because Marshall outlines what citizenship is without specifying the rights and duties of citizenship, his general definition of citizenship can be used in a variety of contexts, adapted to reflect the particularities of the relationship between individuals and a specific state.

In other words, Marshall offers a functional definition of citizenship and a model that, although criticized on numerous occasions in the literature, remains useful for thinking about the complex relationship between individuals and the state and the wider society. It is an important and appealing framework because it offers a sociological and positivist framework rather than a moral and normative understanding of citizenship in contrast to most other accounts of citizenship (Barbalet 1996, 57). Marshall focuses on citizenship rights that exist in terms of institutions that are pertinent to them. The virtue of this approach, according to Barbalet, is that "it allows us to understand the history of citizenship through a grasp of the development and role of real institutions and not simply ideals and moral aspirations" (Barbalet 1996, 57). This is useful for the purpose of discussing issues of equality, social justice and inclusion in various settings. The study of citizenship, when using a functional definition of the term as offered by Marshall, allows us to uncover power relations that lead to inequalities, marginalization and even oppression.

Marshall wrote about the concepts of citizenship and social class. Central to his work were concerns about social equality. He believed that the most important aspect of citizenship was its assumption of equality (Lipset in Marshall 1965, x). Particularly for those of us who focus on issues of social justice and the substantive aspects of citizenship, Marshall offers a useful framework on which to base our analysis even in today's context. Marshall's model becomes a "benchmark from which we [can] evaluate the degree to which rights have been diminished and to which we should seek to return" (Kofman 1995, 125). It also allows us to measure if various groups in society enjoy the

same rights or if certain groups are deprived or do not have access to certain rights associated with citizenship. Moreover, Marshall's framework links citizenship to community rather than the state as is usually done in liberal definitions. This allows us to consider struggles against oppression (Yuval-Davis 1997, 22).

To think of citizenship as a concept that takes into account the relationship to community rather than being limited to the relationship between the individual and the state opens the door for thinking about issues of social integration in the political community. In this respect, it can be said that "what is involved [when discussing citizenship in this manner] is not simply a set of legal rules governing the relationship between individuals and the state in which they live but also a set of social relationships between individuals and the state and between individual citizens" (Lister 1997a, 14). This broader understanding of citizenship is needed when we want to assess not simply what happens when the state changes policies or grants rights, but the impact this can have on society. In other words, does the fact that the state extends right to a group or signals that it will not tolerate discrimination towards that group undercut the prejudices or social stigma held by segments of society towards that group? Can the state, through its policies and programs, weaken the legitimacy of individual actions that reinforce the oppression of the targeted group? Can it alter the relationship between individual citizens by upholding rights or policies that condemn social actions that lead to the marginalization or oppression of a given group? In sum, because our status as citizens is not simply defined by the state, but also in relations to other citizens, it is useful to think of citizenship in relationship to community, rather than strictly the state.

Although Marshall's framework is insightful for the reasons that have been discussed, his model is nonetheless limited in some ways. His model has been criticized for being historically specific and evolutionary, for being based on the presumption of the nation-state, for its assumption of universality and for the choice of rights associated with the completion of citizenship. We look at each of these in turn. The first set of criticisms

contend that Marshall's model is historically specific and evolutionary (Pierson 1996, 136-9; Birnbaum 1996, 64-5; Richardson 2000, 71-5; Barbalet 1996). He was writing at a time when it was necessary to justify the post-war establishment of the welfare state. He described the rights of citizenship as cumulative. Marshall's model of citizenship seems less appropriate five decades or so later, as we are experiencing a reorganization or (possibly) a rolling-back of the welfare state. A number of rights included in Marshall's model find themselves threatened or compromised by changes to the political context. The creation of the welfare state in the twentieth century was the leading factor in the institutionalization of social rights (Turner 1994, 157), and, according to Marshall's theory, should have been the hallmark of substantive citizenship. The establishment of the welfare state was a move towards equality; it was intended to undermine the inequalities associated with social class (a main preoccupation for Marshall). The social rights central to Marshall's model, however, were compromised by neo-liberal economic policies adopted in the 1980s by the governments of Thatcher, Reagan and Mulroney. A common aspect of late-twentieth-century projects of neo-liberal reforms lies in the "attempt to introduce market or quasi-market arrangements into areas of social life which had hitherto been organized in other ways" (Hindess 2002, 140). In this context, political rights remain, but their scope is restricted by market supremacy; and social rights are curtailed as the state lets markets take over provisions in the social realm.

In the case of Canada, in its first mandate, the Chrétien Liberal government (which came into power in 1993) that took over after Mulroney's government (in power from 1984 to 1993) solidified the neo-liberal tendencies when it considerably reduced the size of the state, cutting back on transfers to the provinces that were earmarked for social, health and welfare benefits. Instead of a socially committed government working to undo the damage to social rights done by Mulroney's Progressive-Conservative government, the Chrétien Liberals seemed to worsen matters by cutting back spending particularly in the realm of social policy (Bashevkin 1998, 200-30). In this context,

provinces struggled and are still struggling to maintain the education system, and health and welfare services (Rice and Prince, 2000; Doern 2003; Bakker, 1996; Brodie, 1996b). In other words, social rights were rolled back. Although they are likely the most fragile and easiest to curtail or reduce, partly because social rights require a certain level of state intervention and resources to be upheld, social rights are not the only type of rights that have been compromised over the course of the last decade. Particularly in the context of the post-September 11 2001, war on terrorism and the war in Iraq, increased security measures, border checks, tougher immigration procedures, and summary arrests, have imperiled civil rights (Adelman 2002; Lignes des droits et libertés 2003; Bhandar 2004).

As we began the 21st century, rather than closing in on the “battle for social rights” as suggested by Marshall in the 1950s and 1960s, the rights associated with citizenship are being redefined in a manner as to have citizens not expect state interventions, particularly in the realm of redistribution and social rights. In the post-welfare era, as we experience a political context dominated by neo-liberal ideas, citizens are socialized to expect less from the state. It now seems unlikely that citizenship will evolve in the way anticipated by Marshall. In Canada, in the post-war period, the state had an active role in promoting social justice. This role was entrenched in the Constitution in 1982 when the *Canadian Charter of Rights and Freedoms* was adopted. The *Charter* advances social justice by seeking to protect disadvantaged groups through the promotion of a number of individual rights and freedoms and protection from discrimination. The state was also active in economic and social programs. The federal government played a significant role in the establishment of the welfare state. In the postwar period, the federal government focused on making Canada a modern state. It oversaw the building of infrastructure (the St. Lawrence Seaway, the Trans-Canada Highway). It equalized access to resources between regions (equalization payments) and between citizens (health care, old age pension, unemployment insurance, family allowance). Moreover, to promote a sense of belonging or national pride, the federal

government set up pan-Canadian institutions (Canadian Broadcasting Corporation, National Film Board) (Field and Rocher 2000, 46; Jenson 1997). Thus, central to the concept of citizenship in the post-war period in Canada “is a strong and active federal government, providing and protecting social rights of individuals and the culture of Canada” (Jenson 1997, 634).

The post-war development of citizenship in Canada suggests that Canadian citizenship was evolving as anticipated in Marshall’s theory. The role of the state, however, has since been greatly diminished following the adoption of neo-liberal policies. Whereas citizenship came to be associated with the recognition that equity was a legitimate goal protected by the state, following the adoption of neo-liberal policies, the state’s role with respect to equity was fundamentally changed. The state no longer helps disadvantaged groups to guarantee their collective access to equity. Through a restructuration of its institutions, the federal government reconfigured the relationship between state and society in ways that diminished the access to the state available to certain categories of citizens.

For example, as part of the restructuration efforts, the Canadian Advisory Council on the Status of Women, which served as an advisory body to the federal government on matters that affected women’s interests, was abolished. The federal government abolished the Women’s programme that provided funding to support women’s advocacy groups. The federal government also eliminated other state programs that fostered the representation and advocacy of disadvantaged groups. Whereas the state used to play a role in ensuring that disadvantaged groups were able to guarantee their access to equity, in this new model of citizenship, it is assumed that the representation of disadvantaged groups needed to ensure equity for these groups is the responsibility of organizations in society rather than that of the state as it had been in the past (Jenson and Phillips 1996, 119-126). In sum, the adoption of neo-liberal policies by the Canadian government

fundamentally altered citizenship in Canada in ways that can be characterized as a bifurcation from Marshall's model.

Marshall has also been criticized for his assumption of the existence of the nation-state. His model of citizenship assumes a national economy, a national culture and national institutions. According to Roche, "the assumption of what can be called 'national functionalism' underpins not only Marshall's own analysis but also much of the new sociology of citizenship including much of the work on the social rights and gender themes" (1995, 716). In this respect, to reflect the current political context, Roche argues that we need to address political, economic, and cultural formations at both the sub-national and transnational level. Indeed, over the last decade, there has been a proliferation of literature on globalization and diminished sovereignty of states. Fueled also by debates on the European Union and the model of citizenship attached to such an entity, discussions have arisen about the possibilities of post-national or global citizenship (Kriesberg 1997; Smith and Guarnizo 1999; Drainville 1995). Unlike traditional models of citizenship based on belonging to a nation, these new concepts are based more on human rights rather than territorial considerations (Soysal 1994, 140).

Although thinking, as Marshall does, within the confines of the nation-state is no longer appropriate, we must not go entirely in the opposite direction and propose that citizenship is meaningless at the national level. A number of scholars have reaffirmed the role of the state as gatekeeper of citizenship and this despite challenges to its sovereignty (Labelle, Rocher, Field 2004; Basok 2004; Cameron and Stein 2002, 16; Wong 2002, 49; Castles and Davidson 2000, 15-19). Although world events, international norms (i.e. human rights), greater levels of immigration, increased diversity in given states, combined with transportation and communication technologies that allow individuals to maintain bonds in transnational communities, the state remains the privileged site of citizenship. It is not necessary to be a citizen to benefit from several protections of rights in given states. Nevertheless, we must keep in mind that the

recognition of rights (be it for citizens, permanent residents, refugees or immigrants) and their application remains mediated through the state apparatus.

In an empirical study that looks at migrant workers in Canada, Basok demonstrates that even though migrants in Canada and elsewhere have benefited from a nation-state's extension of legal rights to non-citizens, these developments should not prompt us into believing that national citizenship has been replaced by a post-national citizenship based on human rights rather than residency and nationality. Her study, which focuses on Mexican seasonal workers in Ontario, shows that despite the extension of rights to non-citizens, these individuals are often unable to claim these rights. In other words, although the legal framework is extended to include non-citizens, this does not alter the fact that seasonal migrant workers are socially excluded from the political community. The lack of membership in the community acts as a barrier to having legal rights upheld, confirming once more the importance national citizenship or the role of the state in mediating citizenship (Basok 2004). In the case of the European Union, a transnational community, the deterritorialization of identity raises a real challenge to national citizenship. Wong concludes, based on an exploration of the works of Kastoryano and of Castells, that, although states in the European Union have submitted to supranational norms and in this way have given up some of their sovereignty, the nation state remains the driving force behind the European Union (Wong 2002, 67).

Another criticism of Marshall's model focuses on the universality of the proposed framework of citizenship. Marshall's model is suited for a homogenous society, such as Britain at the time Marshall was writing, rather than a more diverse population. Although Marshall was concerned with inequalities, he focused mostly on inequalities resulting from class differences. He did not concern himself with issues of difference linked to identity (i.e. sexual identity, gender, race, ethnicity, disability, religion) and the inequalities (or disadvantages) that ensue from such differences. According to Birnbaum, it was in the late 1970s in Talcott Parsons' work that the question of how Marshall's

model applies to a population that is diverse, rather than homogeneous, first came to be asked. Parsons, who applied Marshall's theory in the American context, was confronted with the problem of the integration of Black Americans into the model of "universal" citizenship. He remained optimistic that by expanding Marshall's model to include cultural rights, that the model of "universal citizenship" could remain intact while insuring the integration of the Black population (Birnbaum 1996, 74-6).

Unlike Parsons, Iris Young (1990a; 2000), Bhiku Parekh (1992), Will Kymlicka and Wayne Norman (1994) and James Tully (1995), all writing at a later time, have been willing to move away from the dominant model of universal citizenship and propose, in the case of Young, a model of differentiated citizenship. Such a model aims to address the issue of diversity by expanding citizenship to recognize (or acknowledge) in the public sphere ethnic identities, race, gender, etc. For all of these writers, it is all too obvious that attempts to fit everyone into a universal definition of citizenship can only result in a situation of disadvantage or even oppression for groups other than the one upon which the model of citizenship is based. In other words, citizenship was typically structured to reflect the experience of the dominant able-bodied, white, and heterosexual man. Such a model of citizenship, by not reflecting the realities of those who are not part of that dominant group, excludes large segments of the population in its definition of citizenship. I will explore this point further below.

The issue of difference not only puts into question the universality of citizenship, it also brings us to reconsider the linearity with which rights are seemingly acquired. The linear way in which a citizen was said to acquire rights dissolves when we apply Marshall's model to individuals other than dominant males in industrialized societies upon which this theory is based. Marshall's model is based on the cumulation of civil, political and social rights. Thus, if we consider for example the citizenship of women, we discover that women received legal political rights without achieving full civil rights (Lister 1997a, 66-8; Walby 1997, 171-2; Valentine and Vickers 1996, 166). In some

countries, women were granted political citizenship before they secured full civil rights central to the exercise of their substantive citizenship. Since for women, civil rights “include the right to choose when and whether to have sexual relations, bear children and/or have medical treatment” (Valentine and Vickers 1996, 166), it is clear that women obtained the right to vote (political right) prior to securing full control over their bodies (civil right).

Similarly, lesbians, gays, bisexuals and transgendered people gained political rights before securing full civil rights. Historically, LGBT people were openly discriminated against by the state. LGBT people were dismissed from the civil service, the military and the RCMP because of their sexual identity (Kinsman 2000, 143-4). Moreover, laws made the sexual practices of gay men illegal, contributing to making LGBT individuals vulnerable.⁴ It is only recently that LGBT individuals have gained access to several of the rights to which heterosexuals have been entitled, including the right to marry, immigration privileges as couples, same-sex benefits, etc.⁵ LGBT people were never denied the right to vote, a fundamental element of legal citizenship; yet, despite having been endowed with legal citizenship, the civil, political and social rights associated with citizenship were not fully enjoyed by lesbians, gays, bisexuals, and transgendered people. Still today, it could be argued that despite a tremendous amount of progress achieved in Canada with respect to upholding equal rights for LGBT individuals, fear of reprisal or discrimination for those LGBT individuals who demand to

⁴In the case of Canada, gross indecency (sodomy) was removed from the *Criminal Code* in 1969 (Kinsman). In the United States, up until June 2003, there were 14 states in which sodomy remained a criminal offence, four of which only criminalized homosexual sodomy. These four states were: Kansas, Missouri, Oklahoma and Texas (www.sodomylaws.org [consulted June 30, 2004]). On 26 June 2003, the U.S. Supreme Court struck down a Texas law banning homosexual sodomy, in effect ending all antisodomy laws in the United States (*Globe and Mail*, 27 June 2003: A1 and A11). Although the laws that make criminal sexual practices focus on gay men, they affect sexual minorities more generally (Wolfe 1997, 314). Negative social attitudes that stem from or are reflected in these laws and policies are not limited to gay men; they also affect how lesbians, bisexuals and transgendered people are viewed and treated. Moreover, in the case of Canada, despite the fact that sexual practices associated with gay men have not been criminal since 1969, the social attitudes associated with those laws (i.e. gay sex as repugnant and immoral) remain. My discussion of police repression in chapter 6 substantiates this point.

⁵As I discuss in more detail in Chapter 2, most of these rights were acquired through the court as *Charter* cases.

have their rights respected remains for some a deterrent and consequently a barrier to substantive citizenship.

Finally, Marshall has also been criticized for the selection of the rights he chose to identify with complete citizenship (Pierson 1996, 137). This has been challenged on a number of fronts. For example, “the civil rights deemed important by dominant males do not exhaust the rights that [women and other groups other than dominant males]⁶ need in order to be considered [...] full citizens” (Valentine and Vickers 1996, 166). In Marshall’s model, equality refers to being bestowed the status of citizen. This suggests that equality exists when individuals are granted the same civil, political and social rights and responsibilities associated with citizenship as defined in his theory. According to Marshall, “all who possess the status are equal with respect to the rights and duties with which the status is endowed” (1950, 28). Of course, this understanding does not account for the differentiated situations of the various segments of individuals in society. The situation of lesbians, gays, bisexuals and transgendered people shows that equality is not achieved simply by obtaining the status of citizen. It is not sufficient to be endowed with the rights associated with citizenship. These rights need to be upheld and need to correspond to the realities of differently situated individuals. This is why it is useful to move beyond Marshall’s framework and think about citizenship in substantive terms. The challenges to the universal model of citizenship indicate that Marshall’s framework has shortcomings for addressing issues of substantive equality and social justice.

Substantive Citizenship: Thinking Beyond Legal Rights

To think of citizenship in substantive terms requires that we not limit our focus to traditional citizenship theory or the study of the rights, membership and identity

⁶The original text refers to women and persons with disabilities, not LGBT people. However, the analysis can easily be adapted to refer to LGBT people.

associated with legal citizenship. We must, as suggests Marshall, look at civil rights (equality before the law, freedom of speech) and social rights (education, health and welfare). For a comprehensive understanding of our status as citizens, however, we must look beyond Marshall's model, and examine the structures and processes shaping and giving way to relations of power and inequality (Roche 1995, 715). Thus, while we continue to rely on Marshall's general framework to assess who enjoys substantive citizenship, we must also consider power relations that lead to inequalities, oppression and marginalization, or in other words, think of citizenship in substantive terms. Substantive citizenship speaks to some of the limits of a formal understanding of citizenship. The literature on substantive citizenship revisits the promise of equality stemming from a universal model of citizenship. It addresses the tension between difference and equality. It argues that despite claims of universal citizenship that should translate into equality for everyone, large segments in society remain excluded or marginalized. Thus, although we may be able to speak of equality in legal terms, the status of citizen does not guarantee substantive equality — or the ability to participate and contribute to the political community as well as access to the rights and benefits associated with citizenship.

In a piece on social power and citizenship, David Taylor argues that “the abstract liberal tradition of rights, must come to terms with feminist and anti-racist critiques which demonstrate the failure of citizenship rights vested in liberal democratic institutions to meet the needs of women and racialized groups and the socially and economically marginalized” (1989, 29). The concept of substantive citizenship has been developed and discussed in various bodies of literature. Feminist scholars have a well-established tradition of linking various sources of oppression in a common web, to address simultaneously sexism, racism, classism, heterosexism and other forms of oppression. Women of colour were the first to discuss the issue of intersectional or overlapping discrimination (Moraga and Anzaldula 1983; Hill Collins 1990; Mohanty

1991; hooks 1995; Brewer 1997; Flax 1992, Bannerji 1993; Maynard 1994). At a time when people were writing about identity politics, their work alerted us to the need of considering power relations as a dynamic system to inform our analysis. These writers argued that it is important to look at race or gender not simply as a difference, but to understand these as embedded in a system of power relations that highlight domination. They also insisted that race and gender could not be addressed separately to understand the oppression experienced by women of colour.

This literature has expanded to include the concept of citizenship. Using citizenship as a lens for understanding women's place in society,⁷ these works examine gender, sexism, racism, imperialism, colonialism and violence against women. They also explore women and the labour market, women and the welfare state, and the impact of westernization and globalization on women. Feminist theories of citizenship constitute a large and important body of literature. As Lister explains, "feminist political theorists have exposed the ways in which women's long-standing exclusion from the theory and practice of citizenship [...] has been far from accidental. The universalist cloak of the abstract, disembodied individual has been cast aside to reveal a definitely male citizen and a white heterosexual, non-disabled one at that" (1997a, 66). Feminists challenge the idea that citizenship is a universal concept by highlighting the ways in which gender serves to exclude them from citizenship. The debate around women's citizenship has often been stated in absolute terms. It is assumed that either women want to be treated the same (meaning equal) as men or differently. Yet, this equality/difference debate is too simplistic. It disregards thinking about citizenship in substantive terms. The choice

⁷Several of these feminist critiques include substantial reviews of the literature on citizenship. The year 1997 appears to have marked a flagship year for discussions on feminism and citizenship. One of the most extensive and comprehensive review on the subject is by Ruth Lister in her book entitled *Citizenship: Feminist Perspectives* (1997a). In the same year, another important book was published and two issues of academic journals dedicated to the subject. The book was by Sylvia Walby, entitled *Gender Transformations* (1997). As for the two issues of journals, they were: "Citizenship: Pushing the Boundaries", *Feminist Review*, 57 (1997) (see especially the editorial and articles by Lister and Yuval-Davis) and "Citizenship in Feminism", *Hypathia*, vol. 12, 4 (fall 1997). Other works that focus on feminist theorizations of citizenship include Young (2000 and 1990b); Longo (2001); Jones (1990), Dietz (1987), Pateman (1988), Einhorn (1993).

between being treated the same or different is a false choice. Feminists have shown that to treat women the same as men denies their gender identity by making women be like men. To treat women differently, however, runs the risk of reinforcing the sexual division of labour, the private/public divide and sex roles (Longo 2001, 270). Thus, feminist theories of citizenship tend to propose alternatives for thinking about citizenship.

In early writings, Mary Dietz (1987) argues for a feminist commitment to democratic citizenship. Dietz pleads for an active engagement in politics. Her commitment is not, however, to a politics of pressure groups. She demands enlarging the scope of politics to include issues that matter to women that are often not addressed as a result of the belief that they belong to the private realm. She discusses how feminists must transform their own democratic practices to allow a more comprehensive theory of citizenship to emerge, one that recognizes women (Dietz 1987, 17). Kathleen Jones (1990) argued that we must transform the practice and concept of citizenship to fit varied experiences rather than attempt to transform women to accommodate the practice of citizenship as it traditionally has been defined (1990, 811). Iris Young proposes a model of differentiated citizenship “as the best way to realize the inclusion and participation of everyone in full citizenship” (1989, 251). She argues that substantive citizenship requires the inclusion and participation of everyone in decision-making which can be achieved through mechanisms that allow group representation. Young reaffirms the need for a model of differentiated citizenship and inclusive democracy in her more recent work (2000).

Thus, although some of these writings date back over a decade, they are still pertinent today. For example, in more recent writings, Lister speaks of a women-friendly conceptualization of citizenship. Such a model of citizenship must challenge power as domination of both nation-states and dominant groups within nation-states that works to exclude both outsiders and subordinate insiders from substantive citizenship (1997a, 204). Many of the issues discussed in the early writings are still being taken up as we

continue to struggle for the social justice of groups that find themselves excluded from the dominant model of citizenship. Several of the tenets addressed by these writings will be discussed further when I propose my own model of counter-hegemonic citizenship. What we must keep in mind is that feminist theories of citizenship contribute to the understanding of the oppression of women in the political community, an analysis that can be easily expanded to look at the oppression of other groups, including LGBT people. This is possible because, in terms of women and citizenship, gender is articulated when it is the barrier to citizenship, equality and freedom. Gender is not always central to this struggle. Therefore, feminism is not a struggle for an empirically defined group, but for the equality of women (Mouffe 1993). This understanding shows that the analysis is easily adaptable for confronting the barriers to citizenship faced by other groups. Hence using citizenship as a lens, while being informed by feminist theories of power and oppression, “provides an invaluable strategic theoretical concept for the analysis of women’s subordination [or that of other groups] and a potentially powerful political weapon in the struggle against it” (Lister 1997a, 195), a position I entirely share.

In addition to the feminist critiques of citizenship, Marxist and neo-Marxist critiques have also posed a major challenge to traditional understandings of citizenship. Citizenship is said to be an expression of political equality within modern liberal democracies. Nonetheless, there are those who argue that “even the perfect realization of equal citizenship would fail to embody any worthwhile sense of universal human equality”. The essence of the Marxist critiques advances the claim that “*formal* equality of citizenship is itself the very basis upon which more deep-seated and *substantive* social inequality has been built” (original emphasis, Pierson 1996, 143). Neo-Marxists have come to the realization that not all inequalities can be explained with the concept of class. This literature recognizes that the issues brought forth by identity and equality-seeking movements or social movements (e.g. women’s, gay and lesbian movements, or native

nationalism) have to do with material inequalities. Large segments of the population are excluded from equality and social justice although for reasons other than class (Laclau and Mouffe 1985; Mouffe 1988; Butler 1997; Fraser 1997a and 1997b). This literature, rooted in the traditional Marxist framework, expands upon these principles to propose new ways of overcoming inequalities (i.e. model of radical democracy). These will be discussed further later in this chapter when I consider how to contest the boundaries of citizenship.

Citizenship as a Lens: Looking for Social Justice

My interest in citizenship is as a marker of inclusion/exclusion in the political community. Citizenship establishes who has access to the entitlements of membership in the political community. It determines how economic and social power is distributed (Jenson 1997, 628; Jenson and Phillips 1996, 113-4; and Taylor 1989, 26). Using citizenship as a lens, I assess the social inclusion of given groups in the political community. This understanding of citizenship is substantive, rather than formal-legal. I am concerned with the barriers that prevent certain groups of individuals from participating and contributing fully to the political community as well as accessing the rights of citizenship. More specifically, for the purpose of this study, I examine how violence or the threat of violence acts as a barrier to the substantive citizenship of the groups targeted by this violence. I develop my arguments by looking at the citizenship of LGBT individuals, focusing on the violence targeted at this group and state actions to counter such violence. Violence is thus understood here as an indicator of the citizenship of LGBT people, whereby the presence or threat of violence as well as the failure of the state to protect from violence confirms that LGBT individuals are not first-class citizens. Relying on Iris Young's framework to discuss oppression, I will first make the claim that citizenship, in its current form, is oppressive for lesbians, gays, bisexuals and

transgendered individuals. Then, turning to Jenson and Phillip's framework for understanding citizenship as a regime, I will look for strategies to contest the boundaries of citizenship to extend the latter in ways that will allow LGBT people enjoy substantive citizenship.

For the purpose of identifying barriers to substantive citizenship, citizenship is best understood as a regime (Jenson and Phillips 1996). Citizenship is a social construct that varies across time and space and that extends beyond the formal title of citizen. The notion of regime helps us consider other practices and institutions that shape the experience of citizenship. In Canada, the postwar citizenship regime evolved through the expansion of the franchise and elaboration of the welfare state, culminating in the entrenchment of the *Charter of Rights and Freedom* in the *Constitution*. The regime was institutionalized not simply through the *Constitution* and the *Citizenship Act*. Other pillars defining the citizenship regime included federalism and institutions of representation. Through the 1990s, neo-liberal policies gave way to a different regime than the one that took hold in the post-war period (Jenson and Phillips 1996).

More generally, Jenson and Phillips explain that citizenship regimes:

...exist as the concretization in a particular place of a general model of citizenship. Each regime is forged out of the political circumstances of a national state. Being a regime, citizenship does not alter quickly or even easily. Nonetheless, it does change at moments of economic and political turbulence. In such moments of fundamental restructuring of the role of the state, the division of labour between state and market, between public and 'private', and between civil society and the state are re-opened for discussion (1996, 113).

A citizenship regime is established through "the institutionalization of a set of practices by which states use public power to shape and regulate markets and communities" (Jenson 1997, 628). The state establishes a citizenship regime through a set of laws and public policies that regulates who is entitled to become a citizen (formal-legal citizenship) and who will have access to the rights and benefits that accompany

citizenship (substantive citizenship). The citizenship regime covers a given territory coinciding with the geographic borders of the state. Despite the fact that formal-legal citizenship is granted to most individuals living on a permanent basis in Canada, the full privileges of citizenship are limited to a smaller group of individuals.

By constructing the boundaries of the political community through policies and laws, a system of inclusion/exclusion is established. It operates on two levels. First, it distinguishes between inside and outside, by conferring the status of citizen to those who are inside the territorial boundaries of the state. This will not concern us in this thesis. Second, it distinguishes internally between persons who benefit fully from rights (or first-class citizenship) and some sort of second-class citizen status for those who, despite having legal citizenship, do not. In sum, the citizenship regime extends to all legal citizens; everyone within the territory is affected by the practices and policies of the regime whether or not they benefit from citizenship. Yet, substantive citizenship (or full access to the rights of citizenship) is limited to certain segments of the population. Thus, although lesbians, gays, bisexuals and transgendered people live within the territory covered by Canadian citizenship and most have formal-legal citizenship, LGBT people generally were excluded, until very recently, from important benefits and rights of citizenship, including the right to equality before the law, equal access to justice, health and welfare benefits and (still in some provinces and territories) the rights related to marriage or recognition of same-sex couples.⁸

Each regime defines citizenship. In a stable regime, the status proffered to citizens matches the status anticipated by citizens. Apart from widespread restructuring of the economy or fundamental changes in national or international relations that can culminate in changes to the regime, when large segments of society no longer recognize

⁸This is inspired from Carl Stychin's work. Stychin speaks of nation, nationalism and national identity, in conjunction with citizenship. For reasons that will become apparent throughout this thesis, I have purposely defined counter-hegemonic citizenship in terms of the state and citizenship, rather than nation (1995, 105). For a discussion on the separation of citizenship from nation, see Kathleen B. Jones (1990) and Nira Yuval-Davis (1997).

themselves in how citizenship is defined, it is likely that the boundaries of the regime will be contested by them. Because I am concerned with how individuals who are Other experience citizenship, the concept of regime is particularly useful. To think of citizenship in terms of a regime allows us to outline what is citizenship, to define the barriers to substantive citizenship as they are experienced by given groups and to contemplate what could be done to force changes in the regime to better reflect the interests of those who are excluded from the citizenship regime.

Rights are granted to those who conform to the ideal or model citizen embodied in laws and policies. As Jenson explains,

a citizenship regime encodes within it a paradigmatic representation of identities, of the 'national' as well as the 'model citizen', the 'second-class citizen' and the non-citizen. It also encodes representations of the proper and legitimate social relations among and within these categories. It locates the borders of 'public' and 'private'. It makes, in other words, a major contribution to the definition of politics by organizing the boundaries of political debate and problem recognition in each jurisdiction (1997, 632).

With respect to modern citizenship, initially, ideal citizens were property owners, mostly white men of a certain socio-economic class. Although the expansion of the suffrage has extended the status of citizen to a variety of other groups, it is well-known that a number of policies still privilege the needs and interests of those who first acceded to citizenship or those upon whom citizenship was modeled. This is why I am suggesting that we must consider citizenship beyond its traditional formal-legal form. To understand exclusions from citizenship and oppression in society, we must include substantive aspects of equality in our definition of citizenship. By considering citizenship in substantive terms, I am not simply interested in whether citizens are granted the same rights and responsibilities associated with a formal-legal definition; rather, I am interested in whether individual citizens are able to live free from discrimination.

Substantive citizenship suggests not only that citizens have rights (as is the case with formal-legal citizenship), but that these rights are respected and enforced to allow citizens the possibility to participate fully in the political community. Despite formal-legal citizenship being granted to most, lesbians, gays, bisexuals and transgendered people experience citizenship in a less than equal manner. LGBT people are often discriminated against in a variety of settings. They are also the target of violence and harassment from the state's coercive arm (criminal justice system, police, and military) and homophobic individuals. In many instances, they lack the protection that the state should guarantee as part of the right to security to which individual citizens are entitled. In other words, there are preconditions that need to be met for individuals to be able to enjoy substantive citizenship. I argue that physical security is the most basic one of these conditions, because without a minimum level of security, it is not possible for an individual to enjoy the full benefits and rights of citizenship, nor to contribute to the political community in a significant way.

To determine when individual citizens find themselves outside the realm of substantive citizenship, it is useful to rely on Young's framework of oppression. According to Young,

...oppression designates the disadvantage and injustice some people suffer not because a tyrannical power coerces them, but because of the everyday practices of a well-intentioned liberal society [...] Oppression in this sense is structural, rather than the result of a few people's choices or policies. Its causes are embedded in unquestioned norms, habits, and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules. [...] We cannot eliminate this structural oppression by getting rid of the rulers or making some new laws, because oppressions are systematically reproduced in major economic, political, and cultural institutions (1990a, 41).

Oppression is a concept that is rarely used to name injustices in North American political discourse because it is traditionally associated with harsh treatment. Oppression does, however, reflect the reality experienced by disadvantaged groups. In this respect, Young

urges that a major political project for those who identify with groups that experience such injustices is to persuade others that oppression does make sense of the social experience of these groups in our society (Young 1990a, 39).

Young identifies five faces of oppression that can clarify the experience of various oppressed groups. Her model is particularly useful for making sense of LGBT people's experience of citizenship. She speaks of exploitation, marginalization, powerlessness, cultural imperialism and violence. Exploitation is defined as the transfer of the result of the labour of one social group's to another. The most common example of this is the sexual division of labour which leaves men free to participate in decision-making and in remunerated employment precisely because of the labour of women who stay at home to raise children and free men from caring for the young, elderly and the sick and from domestic chores. Marginalization excludes an entire category of individuals from useful participation in social life. It prevents equal citizenship and often results in material deprivation. People are marginalized based on a number of factors including race, age (the old), poverty, and mothers and children (who are considered dependent). Powerlessness is the experience of oppression commonly associated with those who are not professionals in advanced capitalist societies. Those who are not professionals lack the authority to make decisions; they must take orders. The status of professionals is not limited to the work environment. It extends beyond that into everyday situations, meaning that one's status as a professional (or lack of status) affects one's status in other settings as well. Cultural imperialism is most easily understood as the stereotypes used to oppress a given group. And finally, violence is the most blatant form of oppression. Systemic violence controls not simply directly, but also indirectly. It is not only the violence itself but also the possibility of such violence taking place that controls the behavior of individuals and serves to oppress a group (Young 1990a 53-63). As Young explains, "to the degree that institutions and social practices encourage,

tolerate, or enable the perpetuation of violence against members of specific groups, those institutions and practices are unjust and should be reformed” (1990a, 62).

It is easy enough to make the case of how this model applies and is useful for understanding the citizenship of LGBT individuals. For example, LGBT people are marginalized by being prevented from participating in the political community. An obvious case is the stigma of their identity that still today prevents LGBT individuals from running for office or occupying some visible positions in society.⁹ Violence is another “face of oppression” experienced by LGBT people. Targeted violence prevents LGBT people from contributing to the political community as well as from taking advantage of the rights of citizenship. Cultural imperialism, which Young defines as the contradictory experience of being rendered invisible by not having one’s perspective heard while stereotypes mark out your group as Other (1990a, 58-61), corresponds remarkably to the experience of LGBT people. There are two aspects to cultural imperialism. First, there is exclusion or invisibility in decision-making. The interests of LGBT people are rarely, if ever, taken into account when policies are developed. Although this is not always explicit, policies are often structured in ways that reinforce the heterosexual norm and therefore oppress LGBT people (see chapter 2). Second, stereotypes do have an impact on how certain institutions function or on how regulations are applied. For example, the association made between homosexuality and sexual promiscuity has meant that gay and lesbian literature has been the object of regular

⁹It is more common today to hear of Members of Parliament or of Legislatures that are non-heterosexual (i.e. usually gay men). However, we should not assume that because a few individuals have had the courage to have their sexual identity revealed to a wide public that it is now an easy and accessible option for most LGBT people. If we make the comparison with women as a group, we still recognize barriers to women’s success as political figures or even as corporate leaders. Although some women have made it to the top, we do not assume that there are no barriers left for most women. Society is generally more open to gays and lesbians than it was one or two decades ago. Yet, discrimination on the basis of sexual identity is something that LGBT individuals struggle with on an almost daily basis. For a discussion of openly gay political figures, see David Rayside (1998 and 2001). In his discussion of the methodology for his study, Rayside recognized that white gay men are more likely to take part in party politics than any other segment of the LGBT communities (1998, xvi). This seems to confirm that although it is possible for a small percentage of LGBT individuals to participate in party politics, the political system is not yet open to all LGBT equally. For a discussion of sexual identity as a stigma that prevents the participation of LGBT individuals in politics and in the political community, see Paisley Currah (1995).

seizures by Canada Customs. Canada Customs aims to prevent the importation of obscene material into Canada. To do so, it has at times systematically intercepted literature destined to gay and lesbian bookstores.¹⁰ These examples of oppression either refer to state policies, institutions and practices or they focus on barriers to the participation of groups in social and political life. The above examples outline ways in which the status proffered to citizens does not match the anticipated status by citizens as it is experienced by lesbians, gays, bisexuals and transgendered people. The regime is oppressive for LGBT people who are unable to access and benefit from substantive citizenship.

The use of “citizenship regime” implies that citizenship is a social construction that extends beyond the formal title of citizen. The notion of regime helps us consider other practices and institutions that shape the experience of citizenship. Thus, citizenship becomes understood not simply as a set of rights and responsibilities, but also as a process or set of practices. Hence, when concerned with the citizenship of LGBT individuals, apart from looking at criteria for becoming a citizen or retaining one’s citizenship, we may consider how state policies uphold heterosexuality in ways that affect how citizenship is experienced particularly by non-heterosexuals. It is best to analyze citizenship not as a status but as a process. This allows us to account for the ability of individuals to access rights of citizenship and contribute to the political community, both of which are important aspects of the integration of an individual in society. Thus, to analyze exclusions from substantive citizenship, it is important to understand citizenship as a dynamic concept. Rules may be uneven, or as Rinus Penninx argues, “[r]ules may in the formal sense be equal and comparable, but practice may be unequal” (1999). For example, although lesbians, gays, bisexuals and transgendered people are legal citizens, they experience state practices that are discriminatory. And the

¹⁰This makes reference to the court challenge brought forward by the Little Sisters bookstore in Vancouver. For a discussion of this case and related censorship issues, see MacDougall (2000, 53-97).

state may fail to protect them from discrimination or harassment.¹¹ This demonstrates how the rules of citizenship are the same, but the experience of citizenship differs.

Penninx goes on to explain that the practice of citizenship must be examined from a top-down approach (how the state shapes citizenship) as well as from a bottom-up approach (how political actors shape citizenship). When assessing citizenship it is important to consider both the institutional framework as well as the possibility for mobilization or agency within a given state. One must assess how open the political system is to the accommodation of diverse groups and also whether these groups are able and willing to mobilize to have their needs and interests respected (Penninx 1999). It is with this in mind that we must consider how contesting the boundaries of citizenship can become a reality.

Counter-hegemonic citizenship consists of political action and projects that try to change how citizenship is experienced by forcing the citizenship regime to incorporate groups who had previously been marginalized and excluded from some of the benefits of citizenship. For example, the implementation of hate crime legislation that would punish those who unlawfully harmed LGBT people or challenging the *Criminal Code* section that makes it an offence to keep or be found in a bawdy house (a section that has been used particularly against gay bathhouses and gay and lesbian events) both aim at a shift in the boundaries of the political community and so contest citizenship. These contestations serve to increasingly legitimize the treatment of lesbians, gays, bisexuals and transgendered people as citizens rather than stigmatize them as deviants. Citizenship is understood here as the lens through which some injustices are addressed and marginalization contested. In sum, as it will be explained in the final section of this chapter, the essence of counter-hegemonic citizenship is the redefinition of the boundaries of citizenship in order to reach the promise of social justice implicit in the

¹¹For example, private relationships are not subject to state regulation unless laws are broken. So LGBT people may still be stigmatized by neighbours or families even when citizenship rights are defended.

idea of universal (or formal-legal) citizenship to the extent that it is within the state's scope. Before we look at how citizenship can be contested, however, I want to explore the citizenship of LGBT people, highlighting the pertinence of using citizenship for understanding the marginalization of LGBT people in the Canadian state.

Sexual Citizens in Canada

How does sexual identity alter the experience of citizenship? What does sexual citizenship mean? Although not much has been written in the literature on the matter of sexual citizenship, we know that there are several factors at play here that tend to work towards the exclusion of LGBT people from substantive citizenship. To speak of sexual citizens is to focus on how sexuality alters the relation of an individual with state actors and state institutions, as well as relations with other citizens. Sexual citizenship makes clear that sexual identities are regulated by the state (Binnie 1997, 238) and that sexual identity can affect one's status as a citizen. As the discussion below confirms, at best, sexual minorities are treated as second-class citizens.

It is only recently in the literature that the concept of sexual citizen has been discussed. Despite a wealth of literature that critiques the traditional theories of citizenship for being gendered, arguments have not been extended to discuss the sexualized nature of citizenship nor that the notion of heterosexuality is implicit in citizenship. There is a wealth of literature on social movements, including gay and lesbian activism. Yet, although some of this literature focuses on seeking equality rights for lesbians and gays or LGBT people, the claims highlighted by this literature have not been theorized in wider debates about citizenship until recently (Richardson 1998, 83). In the past few years, there have been a number of attempts to discuss sexual citizenship. Because both terms—sexuality and citizenship—are contested, there is no emergent

consensus in the literature as to the meaning of sexual citizenship (Richardson 2000). Regardless, it is important to consider how sexuality can alter the concept of citizenship. Before turning to this important point, I look at how sexual citizenship has been discussed in the literature.

David Evans was the first to bring together the notions of citizenship and sexuality. In his book *Sexual Citizenship* (1995), he discussed citizenship in terms of access to rights of sexual expression and consumption, as well as to responsibilities and obligations of citizenship. Although he looked at the impact of moral codes on access to citizenship (i.e. citizenship is defined by moral codes that can work to exclude sexual citizens), Evans' argument focused mostly on the citizen consumer (i.e. one's status as a citizen is determined by one's ability to consume). The emphasis on consumerism tends to favour experiences of citizenship by white gay men over that of other sexual minorities who are less likely to have the attributes associated with power and the ability to consume. In this respect, Evans' contribution is limited.

Maurice Kaplan (1997) sees the achievement of sexual equality for lesbians and gays as part of the unfinished agenda of modern democracy. He claims that it is necessary to emphasize the protection of lesbians and gays against discrimination. According to Kaplan, this includes the recognition of same-sex couples and their families. Although I agree with Kaplan that "lesbians and gays are entitled to state protection against discrimination based on their sexual orientation as a guarantee of basic rights of democratic political participation" (1997, 40), where I differ, for reasons that will be discussed below, is in the unproblematic acceptance of the heterosexual model of family that Kaplan wants to see extended to same-sex couples. Here, Kaplan fails to acknowledge that this kind of assimilation is possible for a number of LGBT people, but not for everyone, thereby resulting in the further marginalization of a minority already marginalized in part on the basis of their sexual identity.

Ken Plummer has coined the term “intimate citizenship” which he defines as “the analysis of public discourse and stories about how to live our personal lives” (2001, 238; 1995). “Intimate” refers to our desires, pleasures and ways of being, matters that are often overlooked when speaking of citizenship (Plummer 1995, 151). Plummer claims that the debates around citizenship continually confront moral boundaries that define who is inside or outside the model of good citizen. I would argue that Plummer’s work is not of interest for addressing issues of social justice. By turning to concepts of ethics, Plummer insists that we must decide upon a conception of the good to understand how to define the boundaries of citizenship. Unlike Marshall’s framework which I have presented as functional and defined away from moral principles or Young’s concept of oppression a measure that relies on understanding power relations rather than the moral good, Plummer provides us with a morally loaded term that does not clarify citizenship in terms of social justice issues.

Diane Richardson provides us the most comprehensive overview of the literature on sexual citizenship. In *Rethinking Sexuality* (2000), she dedicates three chapters to address directly sexual citizenship. She looks at whether citizenship is informed by normative assumptions about heterosexuality. She then explores the various ways that sexual citizenship has been discussed in the literature. Finally, she looks at the rights and obligations that are associated with sexual citizenship. Richardson argues that citizenship status is closely associated with the institutionalization of heterosexual and male privileges. She discusses the implication of such a close association on the social inclusion and exclusion of lesbians and gays.

Finally, Shane Phelan’s work is probably the most important piece in part because it does offer a theory of sexual citizenship. Phelan first discussed citizenship in a chapter of her book *Getting Specific* (1994) that focused on spaces of justice. She introduced the concept of outlaws and solid citizens to distinguish between lesbians who could emulate the heterosexual norms to be included as a model citizen and those who could not (1994,

100-103). She later dedicated an entire book to the concept of citizenship. *Sexual Strangers* (2001) introduces the concept of queering citizenship. This suggests having reached a point at which LGB individuals have not only acquired rights, but that they are also able to enjoy a cultural acceptance from the majority in the political community. Phelan argues that citizenship does not depend simply on rights, but also on willingness of the majority to acknowledge sexual minorities as members of the political community (2001, 139). According to Phelan, “citizenship strategies must combine legislative and judicial campaigns with social activism and education. [...This is because] citizenship requires acknowledgment and inclusion in institutions, but it also requires a public culture of acknowledgment” (2001, 148).

There are a number of other works that look at citizenship and sexuality, but these do not develop a theory of sexual citizenship. Nonetheless, they are influential, particularly in the context of the issue addressed in this thesis, and therefore deserve to be mentioned. There is the work of Carl Stychin that focuses on legal reforms and how the law can operate in both repressive and progressive ways, either regulating sexuality and even criminalizing it, or granting rights and protecting LGBT people from violence or discrimination (Stychin 2003, 3; 1998, 200; 1995, 7). Stychin argues that once sexual orientation is accepted as an illegitimate basis of discrimination, changes in who is included in the definition of substantive citizen will follow. He claims that “the definition of citizenship broadens and deepens along sexual lines” (1995, 103). Other important works include the work of Bell (1995) and Binnie (1997) in the discipline of geography. Both look at how space can be used to challenge the current model of citizenship. With respect to social policy, the works of Davina Cooper (1995) and Jean Carabine (1996a; 1996b; 1995) are of interest. I discuss these at length in the next chapter. However, for our purpose here, I can mention that Cooper and Carabine’s work looks at the intersection between citizenship, social policy and sexuality. They argue that social policy reproduces or shapes the model citizen in ways that exclude sexual

minorities. Notions of heterosexuality and heteronormativity that are reproduced through social policy are implicit in the model citizen.

Having reviewed the literature, I want to discuss how sexual identity alters the experience of citizenship. I will not propose a theory of sexual citizenship. Rather, in the last section I propose ways to contest citizenship to include sexual minorities. This is not a model of sexual citizenship. Rather, it is an understanding of citizenship that I have developed by looking at how a group who is excluded from citizenship struggles to reconfigure citizenship to have their interests and needs acknowledged and respected within citizenship. The proposed model of counter-hegemonic citizenship should therefore be of use for groups other than sexual minorities.

I have already established that if we use Marshall's framework to assess the citizenship of LGBT people, with respect to civil, political and social rights, it is easy to determine that LGBT people are not first-class citizens. Part of the difficulty for LGBT people to be regarded as first-class citizens or citizens in the substantive sense is that in the discourse on citizenship, there is an assumption that one needs to be deserving of that status.¹² In the 16th century in liberal states, citizenship was made available only to white men who were also property owners. As the idea of universal suffrage took hold, citizenship was extended over time to include more categories of individuals. The basic tenets associated with citizenship, expressed in universal terms, however, were never actually altered. Still today, in western societies, to some citizenship connotes able-bodied, white, heterosexual, male, worker, and/or economically-independent. The association of citizenship with work is particularly at odds with the identity of LGBT people which is associated with selfish pleasure. Phelan argues:

[t]he sexual body invoked by gay, lesbian, and queer political campaigns directly challenges the working body of the laboring

¹²I have mentioned earlier the work of Lister et al, an empirical study that examined how citizenship is understood by young people. The principle of being deserving of the title of citizen was identified as an important tenet. The people interviewed often spoke of their responsibilities as citizens and having to live up to them in order to be a deserving citizen (Lister et al. 2003).

citizen. Citizenship and labor both require discipline and renunciation. Although campaigns for equality do not emphasize sexual practice, the very identity that is stigmatized invokes sexual desire and the promise of pleasure (2001, 53).

Apart from the contradiction that opposes sexual identity (or identities of pleasures) to the deserving hard-working citizen, the connotation of the citizen as heterosexual is also an important obstacle for the citizenship status of LGBT individuals. Here, “[h]egemonic narratives suggest that we are not successful adults unless we are able to marry, have children, and establish economically independent family lives” (Lehr 1999, 168), all things that to many are associated with heterosexuality and legally restricted in some cases. The model of the heterosexual nuclear family is held as the norm. This not only creates a divide between heterosexuals and non-heterosexuals, but also creates divisions among LGBT people between those who can emulate the lifestyle of heterosexual family and marriage and those who cannot since, in the current citizenship regime, being able to comply with the heterosexual norm opens the door to being considered a respectable citizen. In this respect, the responsible queer favours long-term monogamous relationships, which in the case of lesbians may involve having a family, either children from a previous heterosexual relationship or children adopted or conceived as a result of reproductive technologies.

Apart from heterosexuality being a condition of citizenship, it should also be noted here that space can be heterosexual. It has been shown that power inequalities between men and women are reflected in how space is designed, occupied and controlled. According to Valentine, “the ability to appropriate and dominate places [as well as] influence the use of space by other groups is not only a product of gender differences; it is also how heterosexuality is expressed in space” (1993, 395). This control of space is in part what helps uphold the model citizen as heterosexual. To say that the public sphere is a heterosexual space means that the state uses laws and other instruments at its disposal to

control what might offend heterosexual members of the community (Richardson 1996, 14) or that it does not prevent individuals from controlling space to exclude or marginalize non-heterosexuals. As we will see in more detail in the following chapters, police repression and brutality against the LGBT communities has much to do with imposing normative heterosexuality in public places.

In liberal theories, citizenship is associated exclusively with the public realm. Liberal demarcations of citizenship pose a problem for a number of groups who find themselves excluded from citizenship. Feminists have challenged the public/private divide on that basis. Critics have recognized that substantive citizenship needs to be understood in broader terms than simply being contained in the public realm. One barrier to the substantive citizenship of LGBT people is the fact that the liberal model does not recognize that what happens in the private sphere also affects one's status as a citizen. As Richardson points out, there is a paradox at play here. To avoid violence, harassment and discrimination, a number of LGBT individuals keep their sexual orientation a private matter. Making themselves invisible, however, may further entrench the liberal attitude of disregarding what happens in private (i.e. tolerate "gays" as long as they are not "in your face"). It does not challenge the undue demands made on LGBT individuals to hide their sexuality, something heterosexual individuals do not have to consider doing to ensure their security. There are no ramifications for heterosexuals who let it be known that they are of that sexual identity. Especially for LGBT individuals, challenging this obligation to hide one's sexual identity is a condition of substantive citizenship; it is a prerequisite to participating and contributing freely in society (Richardson 2000, 87).¹³

¹³This is adapted from Richardson's work who argues that most claims of sexual citizenship are made on the basis of the right to privacy for sexual expressions (e.g. elimination of sodomy laws, changes in the age of consent, etc.) and that such claims are likely to further entrench the liberal practice of turning a blind eye towards what happens away from the public sphere. The right to privacy has played a minimal role in Canada. Here, the decriminalization of homosexual acts between men in 1969 was based on the premise of privacy. Since then, the privacy argument has played a minimal role in the Canadian discourse. This is not the case in other jurisdictions where criminal law issues are still important and it was not the case in the United States where antisodomy laws were in still in effect in 14 states prior to the June 2003 Supreme Court ruling that put an end to these laws. When sexual activities are criminalized, the right to privacy

When we speak of sexual minorities, there is an added ambiguity as to where the private ends and the public starts, which stems from the idea that sexuality should be private. Sexuality is usually associated with the private. For example, heterosexuals often say that they have no objections to lesbians and gays as long as they do not flaunt their sexuality. What heterosexuals fail to realize is that this assumption is based on the false premise that their own sexuality is private (Valentine 1993, 396). Commonly, heterosexuals engage in public in multiple expressions of their sexuality (e.g. the wedding band, the picture of the partner on the desk at work). Moreover, heterosexuality is institutionalized in marriage, immigration and tax laws, access to services, and numerous social policies (Valentine 1993, 396; also Richardson 1998, 90).¹⁴ Meanwhile sexual minorities are constrained to hide their sexuality or risk being victimized for having flaunted their sexual identity if they engage in similar day-to-day normal gestures that have a sexual connotation to them. These gestures are only considered an obvious expression of sexuality when they are done by LGBT individuals because they are then perceived by the majority (or heterosexuals) as transgressing the norm. A double standard is at play. Because space is constructed as heterosexual, the public/private divide differs for heterosexuals and sexual minorities. While for heterosexuals, the private sphere is usually associated with the home,¹⁵ in the case of LGBT individuals, the private is where it is possible to be oneself (i.e. to be out without concern for one's safety and not having to hide their one's sexual identity). This space is not automatically associated with the home. For example, young adults living with their parents may not be open about their sexual identity out of the fear they could be kicked out of their home

dominates claims for sexual citizenship. In Canada, claims are based most often on equality rights (Sanders 1994, 102-103)

¹⁴ As I discuss in more details in chapter 2, even as rights are extended to include lesbians and gays (or sexual orientation), Canadian law continues to valorize heterosexuality as the norm (Filax and Shogan 2003, 169).

¹⁵ I am not suggesting that the home is necessarily a safe haven. Women are often victims of violence in their own homes, including lesbians. However, the concept of private sphere is less likely to be problematized by heterosexual individuals than by LGBT persons who are threatened by a lack of tolerance towards sexual minorities in the public as well as private sphere, using the traditional definitions of these concepts.

or that their safety could be compromised. For LGBT people, the private is more likely to be delimited by a border of social tolerance. It is better defined as where one is safe.

Speaking of how space is upheld as heterosexual, Namaste comments that “[one] of the remarkable things about the study of violence against sexual minorities is the way in which such aggression can be linked to common sense assumptions of what constitutes public space, who has the right to occupy it, and how people interact therein” (2000, 141). Since public space is organized as heterosexual, attacks against lesbians and gays are a mechanism to defend that space as the domain of heterosexual (men). Same-sex couples and transgendered people pose a challenge to heterosexual space which is also defined and secured by upholding the specific gender traits of femininity and masculinity that both of these groups transgress simply by their presence (Namaste 2000, 142). Violence targeted at LGBT people is often a mechanism for upholding the integrity of heterosexual spaces. LGBT people always enter spaces at their own risk, for any sign of contravening with the principles of masculinity and femininity associated with heterosexuality may be met with violence.

If we think of the intersection between citizenship, sexuality, and violence, it should be clear that for LGBT individuals the democratic right to privacy will not guarantee their access to first-class citizenship. Rather, if LGBT individuals are to be considered citizens in the substantive sense, they need to secure safe spaces for the expression of their sexuality. Safe spaces are about more than tolerance —situations in which non-heterosexual identities are accepted as long they remain hidden.¹⁶ Safe spaces require more than an absence of violence toward LGBT people. Safe spaces require the recognition of alternative communities and practices. They are places in which it is possible to identify as LGBT without the constant fear of reprisal or discrimination.

¹⁶Even small gestures such as holding hands or mentioning one’s partner are considered by some heterosexuals as flaunting simply because they identify LGBT individuals as different.

If LGBT individuals are to enjoy fully the rights and privileges associated with first-class citizenship, granting civil rights and changing policies to reflect the realities of this group will not be sufficient. There is also a need for a complete shift in public culture. Citizenship is not simply about rights, it is also about public acknowledgment as a member of a political community (i.e. the removal of stigma) (Phelan 2001, 148-9). For LGBT people to be perceived as equal citizens in the substantive sense requires challenging the assumption that public space is heterosexual. It also requires challenging heteronormative principles in which, for example, the nuclear family is held as the norm. Even in states like Canada, in which the legal obstacles to substantive citizenship are quickly eroding, as we will see in chapter four, the discourse of members of Parliament on sexual minorities still portrays lesbians and gays as Other, or, in other words, stigmatizes them. The recent debates in the House of Commons included several references to sexual orientation as a disease and referred to homosexuals as pedophiles, predators and sick individuals. Considering that parliamentarians echo views held in society, even if they do so imperfectly, we are far from a situation in which citizenship can be practiced by lesbians, gays, bisexuals and transgendered people who openly express their sexuality in the public sphere.

Exclusions from Citizenship: Violence Targeted at LGBT People

The violence experienced by LGBT individuals is the most basic consequence of the exclusion of any group from substantive citizenship. Violence undermines the substantive aspects of the citizenship of those it targets, denying them citizenship's most basic value (Lister 1997a, 43). Although LGBT people, like women, racial minorities, Native Peoples, person with disabilities, now have legal rights of citizenship, the fact that they experience violence means that they are not, in substantive terms, citizens. If people

do not feel comfortable in public spaces, because they tend to be victimized or they fear violence, it is questionable whether these individuals can be regarded as first-class citizens (Painter and Philo 1995, 115).

This idea of violence as an exclusionary process has been discussed in the literature by feminists looking at the impact of violence against women on the citizenship of women. Lister discusses how women's freedom is constrained in the public sphere as a result of male violence against them (Lister 1997a, 127-8). Women avoid going out at night or going to certain areas of town to ensure their safety. As Jackson explains: "Fear of sexual violence and harassment is [...] one means by which women are policed and police themselves through a range of disciplinary practices: for example restricting their own access to public space, where they choose to sit on a bus", etc. (1996, 30). The freedom of women is therefore compromised by this fear of random acts of violence targeted at women in certain public places.

Women's citizenship is of course also diminished by violence in the domestic realm. Intimate violence, which mostly happens within the home at the hands of partners, also undermines the citizenship of women by denying them the most fundamental rights of citizenship including bodily integrity, security, and control over sexual relations and reproduction. Vickers explains that "although states promise security to their women citizens, many do not deliver, especially when violence occurs in the private sphere" (2002, 223). In Canada, some progress has been achieved with respect to having the state intervene to protect women. Violence against women has been successfully put on the political agenda into policies and practices at various levels and in agencies of government. Police services in various jurisdictions have mandatory arrest policies in domestic assault cases. Typically this is used to arrest men who abuse their female partners. This policy of mandatory charging has gone some way to make police consider the matter seriously enough to intervene when called in for domestic

violence.¹⁷ These are recent enough changes. If we think back 15 or 20 years ago, domestic violence was perceived as a private matter and police were reluctant to intervene unless a situation had really gotten out of hand. In those days, we could say that the citizenship of women was further compromised by the reluctance of the state to step in to protect them.

LGBT people's experience with respect to issues of safety in many ways is similar to the experience of women. Like women, LGBT individuals' citizenship is diminished as a result of targeted violence or the threat of such violence. Violence targeted at LGBT people does not only work to control victims, but the entire community. Its effect is not limited to the movement of people. It goes beyond that to control behaviour, to reinforce shame of being LGBT, to deny LGBT people the freedom and right to equality and dignity in a variety of situations. Although, gay-bashings are simply the most obvious and blatant form of this process, violence is only one of several mechanisms used to uphold heterosexism and homophobia and to maintain power inequalities in society.

LGBT people are expected to self-discipline to avoid situations of violence. Solutions to the problem of heterosexist violence place the responsibility on LGBT people, requiring them to avoid certain areas or to hide their sexuality so as to not attract attention to themselves on that basis. Through self-disciplining activities, attention is displaced from looking at the root causes of heterosexism to avoidance tactics (Stanko and Curry 1997, 525) that deny LGBT people their freedom while giving credence to the heteronormative lifestyle. It is expected that LGBT people hide their behaviour and activities, and monitor their bodies for signs that would allow them to be identified.

¹⁷Women may not always be better off as a result of this policy. If we consider the criminal process that follows and the consequences of this process (financial or emotional), it is not a given that the situation has improved overall. The positive impact is that police have been forced and now do take domestic violence seriously.

In his discussion of space and sexual minorities, Ingram outlines some of the most important processes at work to deny “open” LGBT-identified spaces. They include homophobic and misogynist violence, police repression, privatization of public open spaces (e.g. parks),¹⁸ and censorship of relevant cultural representations. As he explains:

[t]he dynamic geography of dyke and gay bashing and murders has had a huge impact on the *mental maps* of most people who are sexual minorities. Sometimes it takes a great deal of extra thought and energy to minimize the possibilities of being targeted. These internalized defensive maps have an influence on where we choose to go and to live and on the subsequent physical forms of our neighbourhoods and communities. Police surveillance and repression [...] have reinforced strategies of avoidance (original emphasis, 1997, 44-5).

This outlines one of the ways that violence operates as a mechanism to control the behavior of LGBT people and works to diminish their citizenship by limiting their freedom. It goes to show that the control exerted by such violence does not only happen when an individual is directly confronted with violence. As is the case with women (see Vickers 2002, 226), the threat of such violence or even simply the awareness of such violence is sufficient for LGBT people to develop their own “mental maps” of places to avoid in order to keep safe.

The link between safety, the status of LGBT people as citizens and the role of the state was discussed recently in the Senate when the hate propaganda provisions were being debated. The Honourable Noël Kinsella explained that people in society who are vulnerable to targeted violence need the law (and the state) to recognize this

¹⁸In the case of Ottawa, Rémic Rapids, an area favoured by men for sexual encounters, is managed by the National Capital Commission (NCC). For a number of years, the NCC has systematically been clearing areas that have a lot of bushes. Gay men and individuals who use of the park for sexual encounters feel targeted by this policy. They perceive this has a measure aimed at making it less attractive for these men to meet there. Although for security reasons, both the police and women’s groups requested that a number of trees near the pathway be removed, the clearing of the areas away from the pathway, combined with other strategies used by the police and park authorities (parking tickets, closing the park after 10pm, etc.) supports the claim made by LGBT activists that the clearing of areas in the park was meant to discourage the use of the park by those who may engage in sexual acts (LC Park Sub-Committee 1998; Interview Carroll Holland, 15 February 2002; Interview Bruce Watts, 26 February 2002).

vulnerability. Formal-legal citizenship disregards that certain members in society are in a subordinate position. It makes invisible the disadvantaged position in power relations between groups that leads to targeted violence. As he eloquently stated:

Formal equality refers to the equality in the form of the law and assumes that equality is attained if the law in its form treats everyone the same unless they are differently situated. Clearly, for a disadvantaged group, this theory poses several fundamental problems. It fails to deal with the reality that some groups in society are more subject to hate and violence than other groups. It defines equality as a question of sameness and difference rather than, honourable senators, as a question of dominance and subordination. It makes disadvantage invisible.

On the other hand, substantive equality means equality in the substance of one's condition. Therefore, the hate provisions of the *Criminal Code* explicitly state that the hate expressed against racial or religious groups is to be explicitly proscribed. In order to provide for the substantive equality to freedom from victimization for sexual orientation to be enjoyed by such an identifiable group, this explicit provision is required (Senate, 24 September 2003, 1750).

This explains clearly why hate crime and hate propaganda provisions must recognize the lived experiences of LGBT individuals and also suggests that protection by the state is a condition of substantive citizenship.

The historical reluctance of the state to protect LGBT citizens reveals several commonalities with the experience of women. The level of progress achieved by women, on the issue of domestic violence to cite but one example, has not however been reached by LGBT people. As we will see in more details in chapter 4, when Bill C-41 (harsher sentences for hate crimes) was discussed in the House of Commons in 1995, the opposition to this bill was mostly geared toward the fact that the Bill included sexual orientation as one of the grounds protected. Those opposed to this bill did not question whether race, national or ethnic origin, language, colour, religion, sex, age, or mental or physical disability should be included or not. They objected to the inclusion of sexual orientation. The reluctance of some political representatives to protect LGBT people

from targeted violence indicates that LGBT individuals are not first-class citizens. It sends the message that LGBT people are stigmatized and therefore not worthy of the same protection as other members in society.¹⁹ This reluctance to protect LGBT individuals is not only evident in parliamentary debates, but also in the treatment received by agents of the state, i.e. police. In chapter 7, I discuss police brutality and harassment as an example of an institution of the state refusing to protect LGBT people.

Young refers to violence as one of the faces of oppression. She explains that many groups systematically suffer oppression from violence. Individuals from certain groups, such as LGBT people, but also women, ethnic, racial or religious minorities, “live with the knowledge that they must fear random, unprovoked attacks on their persons or property, which have no motive but to damage, humiliate, or destroy the person” (1990a, 61). She goes on to argue that what makes violence a face of oppression is not so much the acts in themselves, although reprehensible, but the social context surrounding these acts that make them possible and even acceptable. This violence is systemic because it is directed at individuals randomly simply on the basis that they (appear to) belong to a given group (Young 1990a, 61-2).

Michel Wieviorka (1998), in an important work that looks at racist violence, concludes similarly to Young that targeted violence is systemic and oppressive. He explains that this violence does not happen in a vacuum or a social void. It is the product of the social and political context in which it takes place. He explains that incidents of racist violence take place, or are averted, depending on whether the socio-political environment allows for them or not. Racist or targeted violence is more easily judged, repressed and dealt with than systemic racism which tends to be less overt and more difficult to identify and address. Because the state holds the monopoly over the legitimate use of force (repression), Wieviorka makes the claim that racist violence is a

¹⁹In the United States, the idea of LGBT as citizens with a lower status is made even clearer. A number of states enacted hate crime legislation that do not protect LGBT people (Jenness and Grattet 2001, 54-62; Herek and Berrill 1992).

function of the state. In this respect the state is affected when racist or targeted violence takes place, and it is responsible for its extension or its repression (1998, 67). This is why I can claim that the state has a role to play in insuring the safety of its citizens. Its legitimacy depends on it.

Thus, the state's role in the institutionalization of power relations must be recognized. In this respect, when violence targeting a group goes unabated, the state is responsible for its legitimation. Connell claims that "[t]hrough laws and administrative arrangements, the state sets limits to the use of personal violence, protects property (and thus unequal economic resources), criminalizes stigmatized sexualities, and organizes violence in policing, prisons and war" (1994, 148). Laws that focus specifically on sexual assault, partner assault, or hate crimes send a message that the state will not tolerate these specific forms of personal violence. Of course it is not sufficient for these laws to exist; they must also be enforced through policing and the criminal justice system.

Protection against violence is a minimal guarantee for citizenship, and also a minimal condition for the legitimacy of the state (Phelan 2001, 23; Lahey 1999, 150-1). If the state does not grant equal protection from violence to all of its citizens, the inability of these citizens to access other rights that are considered fundamental to citizenship weakens citizenship for all. As Phelan explains,

[w]ithout this guarantee [of being protected from violence], individuals have no reason to believe themselves within civil society at all. This is true not only in a social contractarian view of the state, but in any community. The fundamental requirement of any political community is sufficient common purpose and solidarity among members to value and protect one another, whether directly or through a state apparatus. When some are denied this solidarity, they are in effect expelled from the political community. Their physical and verbal presence does not make them members (2001, 23-4).

Although the right to live free from violence is rarely discussed as a right of citizenship, since without adequate safety and protection the other rights of citizenship are undermined or rendered inaccessible, security should be considered as a basic requirement for citizenship. The state's most basic role is the protection of its citizens. The freedom to walk down the street or move around in public spaces "is fundamental to the functioning of a state that considers itself to be 'democratic' " (Lahey 1999, 150). In light of the discussion of how citizenship spans both the private and public sphere, this freedom must extend to the private sphere (e.g. freedom from partner assault, abuse in the home, etc.). By denying protection to LGBT people or by letting violence against them continue, the state sends a message that LGBT people are so stigmatized that the political community can legitimately exclude them.

When we consider violence as a process of exclusion, I am referring to violence within a context of systemic inequalities that allow for this violence to take place. In other words, I am interested in structural violence, rather than individual forms of violence. There is a tendency to individualize violence and present problems such as hate crimes as the actions of certain individuals. This does away with thinking of targeted violence as a social problem, as violence that is enabled through systems of power relations that maintain heterosexism, sexism, racism, etc. in our society (Sloan and Gustavsson 1998). Cogan and Marcus-Newhall claim that hate crimes are not "the product of innately sick and dangerous psychopaths. They are more an outgrowth or extension of societal conditions and institutions" (2002, 9). Often, structural violence manifests itself through individual actions (such as gay bashings), but these actions reinforce systems of oppression. For the purpose of this research, I am interested in violence that upholds heterosexism and marginalizes LGBT people. Violence needs to be understood as part of a complex web of power relations that take place when there is an enabling environment. Hate crimes or violence targeted at LGBT people are a way to maintain power inequalities between LGBT people and others in society. By upholding

heterosexism, it denies LGBT individuals first-class citizenship. In agreement with Wieviorka, I argue that the state must intervene when such violence occurs and should aim to prevent these incidents. If not, it must shoulder the blame for targeted violence on its territory. It is a process of social control. Targeted violence is also the product of certain discourses. Violence targeting LGBT people only makes sense in a context in which heterosexuality is privileged over other forms of sexualities.

Violence targeting LGBT people is criminal; but the prejudices that contribute to the structural violence are not. They are a social problem rather than a criminal one. Yet, one source of this violence is the discourses that uphold heteronormativity. To counter violence targeting LGBT individuals, it is therefore necessary to challenge the discourses and the institutions that uphold heterosexuality as the norm. It is for this reason that I focus on the intersection between citizenship and sexuality. It is not only the repression of violence that will open spaces for the citizenship of LGBT people. Substantive citizenship for LGBT individuals also requires challenging the boundaries of the current citizenship regime to undermine the notion of heterosexuality implicit in citizenship. Only then can it become possible for LGBT individuals to be safe in public and be themselves without fear of violence and discrimination.

***The Radicalization of Citizenship:
Theoretical Discussion of “Counter-Hegemonic Citizenship”***

Above, I discussed how citizenship can be used as a lens to understand marginalization. I also suggested that citizenship is a central point for launching projects of political contestation or developing counter-hegemonic projects that will result in the inclusion in citizenship of groups disadvantaged by the current citizenship regime. By mapping the inclusions/exclusions delineated by the citizenship regime we can understand that certain groups have been marginalized and illuminate some strategies to overcome such

exclusion and oppression. Although this will not allow me to explain why LGBT people are stigmatized and subsequently excluded, it allows me to focus on how to change the situation. To discuss why stigmatization takes place is a broad subject that spans beyond what can be addressed in this thesis. Instead, I focus on the state's role with respect to targeted violence. As I have argued in the previous section, the state must make targeted violence its responsibility and work to prevent it to fulfill its duty in granting equal protection from violence to all of its citizens.

When does counter-hegemonic citizenship take place? How can the current citizenship regime that valorizes heterosexuality be challenged? How are counter-hegemonic projects realized? What pushes individuals or groups to come together to seek changes in citizenship? What strategies are successful? These are some of the questions I am aiming to address in this sections. My model of counter-hegemonic citizenship is inspired in part by Chantal Mouffe's work on radical democracy. Her focus on radical democracy emphasizes an element that is too often absent or minimized in the current political context,²⁰ but is nevertheless necessary for contesting the boundaries of the citizenship regime. To pursue goals of reconfiguring the citizenship regime to enable the pursuit of social justice, it is not sufficient to propose radical democracy as a model of politics. Mouffe's project of radical democracy ignores how differently empowered groups can engage in a politics of contestation. The model of radical democracy disregards some of the power relations that led to a project of counter-hegemonic citizenship in the first place. It is not sufficient to identify exclusions from citizenship. Strategies of contestation must account for the fact that groups and individuals are positioned differently and that this affects their capacity to mobilize and contest the boundaries of citizenship.

²⁰One simply needs to think about falling voter turn out or general apathy towards traditional political channels. Yet, participation is a necessary aspect of a politics of contestation, which is why the differentiated model of participation proposed by radical democrats is an important aspect to consider.

To overcome this lacuna, Nancy Fraser's paradigm of "recognition-redistribution" is useful. Superimposing these two paradigms helps us understand how strategies of counter-hegemonic citizenship can be developed and executed in ways that will result in access to social justice by the excluded groups. In this section, I first explore radical democracy as a model of politics, outlining its advantages and limits. I then turn to Fraser's paradigm and propose how an amalgamation of these two political models can inform a project of counter-hegemonic citizenship. This discussion makes clear that there is no intrinsic contradiction between an agenda of radical democratic approach to difference and progressive redistributive agenda (A.M. Smith 2001b, 113)

My concept of counter-hegemonic citizenship is inspired by the work of Chantal Mouffe. Her project of radical democracy recognizes that, despite claims of universal citizenship, large segments of society (such as LGBT, ethnic and racial minorities, women, people with disabilities) remain excluded. Established liberal democracies such as Canada have failed to realize the promise of equality implicit in their universal model of citizenship. This is in part attributed to the fact that their public policies and laws reflect the needs and interests of the ideal citizen rather than accommodate the needs of an increasingly diverse population.

The departure point for a project of radical democracy is the development of a political system that accounts for diversity by rethinking political participation. To come to terms with diversity, radical democrats strongly emphasize the participation of citizens as central to the process of politics (Mouffe 1993, 60-71). Aware that social inequality and misrecognition of differences are major impediments to political participation (Fraser 1996, 197; A. M. Smith 1998, 31-35), radical democrats favour differentiated ways of participating in politics.²¹ Rather than recognizing only common forms of political participation such as voting or running for public office, as is the case with most political

²¹Although Young's work is not a project of radical democracy, one of the strength of her model is that she also favours differentiated political participation (2000; 1990a)

systems, radical democrats encourage individuals to take part in politics in ways best suited to their needs, interests and capacity. Thus, instead of relying only on formal political participation such as voting, participation in political parties, and running as candidates,²² radical democracy encourages more decentralized participation. Some groups may turn to the courts rather than political parties. Others may favour grassroots politics or community networking, such as in the Ottawa Police Liaison Committee with the Lesbian, Gay, Bisexual and Transgendered Communities which I discuss in chapters 6 and 7. In a radical democracy, such means of political participation are not marginal; they are recognized as legitimate ways of doing politics and occupy a central place in the realm of politics. Diversified and decentralized participation is understood as a more inclusive form of political participation and therefore necessary to accommodate the needs and interests of a heterogeneous population.

Although radical democrats recognize diversified political participation, a radical democracy is based on a consensus around a set of ethico-political principles within which conflicts are played out (Mouffe 1996, 135). The workability or success of a model of radical democracy depends on the respect for these principles, or rules of the game, by all the members of the political community. Thus, although the boundaries of inclusion/exclusion in the political community are constantly being renegotiated to accommodate the diverse publics taking part in politics, the framework used for the articulation of these conflicts remains unaltered. For example in Canada, the three main pillars of the political framework are federalism, the constitution and the *Charter*. A model of radical democracy would assume that this framework is accepted and respected by all and that whenever conflict occurs, it will be resolved in compliance with the principles enunciated by federalism, the Constitution and the *Charter* (Cairns 1995; Field

²²For a discussion of how ethnic groups, visible minorities and women are marginalized by formal political participation, using Canada as an example, see Canada, Royal Commission on Electoral Reform and Party Financing, *Women in Canadian Politics* (1991) and *Ethnocultural Groups and Visible Minorities in Canadian Politics: Question of Access* (1991).

and Rocher 2000). These pillars or rules of the game are not to be contested. Only the boundaries of citizenship are. Here the state provides a framework of common practices to guide political conduct.

It is vital to come to a consensus on the political framework. It should also be clear that the end goal of radical democracy is not the elimination of conflict within the political community. In fact, as Mouffe explains:

... central to this approach is the awareness that a pluralist democracy contains a paradox, since the very moment of its realization would see its disintegration. It should be conceived as a good that only exists as a good as long as it cannot be reached. Such a democracy will always be “to come”, as conflict and antagonism are at the same time its condition of possibility and condition of impossibility of its full realization (1993, 8).

According to radical democrats, equality or social justice are always something “to come” and are dependent upon active participation in democratic politics. Through the politics of contestation, people define the boundaries of citizenship to insure, at least momentarily, their access to social justice. Hence, conflict is central to the dynamics of radical democracy and is viewed in a positive light. In contrast, harmony (a situation of non-conflict) is considered negative, since its presence likely signals the end of diversity. Harmony results from either assimilation of individuals considered Other (for example, demonstrating that same-sex relationships are like heterosexual ones) or the relegation of differences to a sphere considered non-political or private (for example, hiding ones sexual identity in the workplace in order to avoid discrimination from co-workers or employers). This is considered contrary to a politics that aims to accommodate diversity by denying, making invisible, or smoothing over impediments to substantive citizenship.²³

Radical democracy is a tool for the management of conflicts. It assumes that conflict is essential to move closer to the ideal of social justice. Conflict encourages the

²³Although I have not presented the republican model of citizenship, for those familiar with this theory, we can see that radical democrats are presenting a model that runs counter to the republican idea of hiding differences or relinquishing them to the private sphere.

active participation of citizens and leads to the renegotiations of the boundaries of citizenship. Since diversity means that conflict can never be entirely eliminated, the ideal of social justice is never fully reached. In this, radical democracy and counter-hegemonic citizenship agree and this is why counter-hegemonic citizenship is a continuous project that requires the constant renegotiation of the boundaries of citizenship and its sphere of social justice. It is a project to come and must remain so.

The model of radical democracy appeals to those concerned with overcoming the exclusion or marginalization of groups from citizenship (Epstein 1996, 128) because the legitimization of various methods of participation in citizenship is a good way of encouraging the active participation of citizens. Mouffe's work attempts to come to terms with principles of difference in a democratic context in part by ensuring the meaningful participation in politics by non-elites. In her model of politics, there is an overture toward the politics of social movements and an insistence on the decentralization of political decision-making. This shift is necessary to promote the inclusion of various groups. Differentiated political participation and decentralized decision-making create a political space in which the voice of those who have traditionally been marginalized by the formal political framework can finally be heard.

A second appealing aspect of this model is that equality is understood not as treating everyone the same, but rather as the equitable treatment of every citizen (Field and Rocher 2000; Rocher 1998). Consequently, rather than establishing public policies and laws that aim to eliminate differences to treat everyone equally, in radical democracy, pluralism and difference are upheld as a necessary condition for the achievement of social justice. This defense of pluralism is not viewed as a threat to the social cohesion of the political community; rather, it is an element that enhances its richness and value. In radical democracy, LGBT people would not have to prove that their relationships are like those of heterosexual couples to be recognized in the law, but would be recognized simply because they are fulfilling and worthy of recognition,

although different from the dominant heterosexual model. In other words, LGBT people would not have to transform themselves to accommodate the norms of the current model of citizenship. LGBT people would not be constrained to eliminate their differences or work to emulate heterosexuals. Rather, citizenship would be transformed to be more inclusive (Jones 1990).

Nevertheless, the model of radical democracy has limits,²⁴ especially the lack of clarity about how the ethico-political principles (or rules of the game) are established and why they would be respected. Moreover, it is not certain that a pragmatic framework of conflict management is a sufficient condition for the cohesion of the state. We need only to think of Canada's constitutional crises over the last thirty years or so. Despite the fact that the rule of law and democratic principles are well respected, the constitution and principles of federalism are constantly being challenged. Repeated attempts have been made to change the very framework designed to manage our conflicts. Thus, one of the main obstacles for adopting a model of radical democracy in Canada is that the political actors disagree on the political framework. Canadian politics revolves in many respects around disagreements about the principles of federalism (e.g. Meech and Charlottetown and the Social Union Framework). Rather than limiting conflicts within the political framework (such as conflicts over who controls immigration or whether aboriginal self-government is possible), much energy is spent on tinkering with the political framework itself.

Even assuming a consensus on the rules of the game could be achieved, individuals may well refuse to comply with the political framework. What is to be done about those who do not respect diversity and differentiated participation (e.g. hate groups)? How would they be dealt with? Limitations and impediments to participation also are for the most part overlooked by radical democrats. This is especially true with

²⁴For a general discussion of the limits of radical democracy, see Warren (1996, 241-270). For a direct engagement with Mouffe's work, see Cooper (1993, 149-71).

limitations resulting from capitalist or patriarchal exploitation. Radical democrats for the most part overlook material realities in the development of their model of politics. Feminists, among others, argue that an open and contested form of democratic citizenship might not necessarily remedy inequalities. As Anna Marie Smith who has engaged extensively with the work of Laclau and Mouffe explains, “those who are disempowered under capitalism... are locked in exploitative conditions... because of the institutionalized structures of inequality that are integral to the capitalist system” (1998, 19). The same is true of women who are stuck in a situation of working double-days (caring and domestic chores as well as paid employment) under conditions of patriarchal exploitation (Lister 1997a). Thus, if the radicalization of citizenship occurs while material oppression continues, those traditionally without access to power may well remain marginalized within new emerging citizenship regimes. Fraser’s paradigm of “recognition-redistribution” is a necessary corrective.

We need to keep in mind that the project of radical democracy is not a theory of citizenship. To think of the project of radical democracy in reference to the concept of citizenship is however useful because it repoliticizes citizenship (Delanty 2000, 36). The politics of radical democracy are based on the formation of collective identities around a common goal. In this, radical democracy is able to bring “a more meaningful dimension to citizenship as not only participation in the civic polity but also the self creation of society” (Delanty 2000, 38). This is what is needed for the radicalization of citizenship. It is the essence of counter-hegemonic citizenship. When citizenship is imposed from above—when it is understood as a set of rights, similar to the model presented by Marshall—citizenship is passive. In contrast, when citizenship is developed from below, when it is contested, challenged and reshaped from below—as it is when social groups are successful in their mobilization around an identity—then citizenship becomes radical (Turner 1994, 18) or, as I call it, counter-hegemonic.

I have argued that Mouffe's model of radical democracy requires the corrective of the "recognition-redistribution" issues discussed by Fraser. Radical democracy attempts to do away with impediments to democratic participation by opening up the system and recognizing different ways of participating and decentralizing decision-making. To overcome the exclusion of certain groups, however, it is not sufficient to open up participation. There is a need to account for factors that prevent the participation of certain individuals and groups. It is necessary that we consider the cultural and material aspects of injustice. This is why turning to Fraser's paradigm can contribute to the project of counter-hegemonic citizenship. To address one or the other or both without thinking of both the material and cultural impact of given strategies may work to reinforce oppressions or exclusions rather than opening spaces for social justice.

In recent years, concerns with inequalities and injustices have been articulated by the Left within a paradigm focusing mainly on recognition (e.g., Mouffe's radical democracy), rather than on redistribution, as was traditionally the case. As Fraser explains, "group identity supplants class interest as the chief medium of political mobilization. Cultural domination supplants exploitation as the fundamental injustice. And cultural recognition displaces socioeconomic redistribution as the remedy for injustice and the goal of political struggle" (Fraser 1997a, 11). What is to be done with this shift in focus within the Left from interest, class, and redistribution to culture, identity and recognition? In agreement with Fraser, I would say that increased representation, even when conceived as differentiated and decentralized as it is by Mouffe, cannot on its own translate into social equality for all. We must conclude that social justice today requires both recognition and redistribution. It is therefore mandatory to understand the politics of difference not simply through the lens of recognition, as do most models of radical democracy. It is necessary to include a material analysis in order to come to terms with causes of marginalization and impediments to mobilization (Fraser 1997a, 12-3).

Most inequalities result from problems of both redistribution (material conditions) and recognition. For the purpose of outlining clearly her conceptual schema, Fraser presents redistribution and recognition as two distinct analytical paradigm of justice. She also creates three ideal-typical categories of social groups that are likely to be confronted with the dilemma of dealing with injustice. Her ideal types are placed on a spectrum whereby at one end the ideal-type case represents a category of individuals whose injustices are rooted in the political economy (e.g. the working class), and at the other end there is a group of individuals whose injustices are rooted in the cultural-valuational structures of society (such as despised sexuality, e.g. gays). In the middle, we find a bi-valent category, informed as much by problems of redistribution as problems of recognition (e.g. women and racial minorities). Fraser clearly states that although it is useful to think of these as separate categories to understand how to elaborate strategies to contest injustices, the distinction between economic and cultural injustices is simply analytical. In practice, the two are always intertwined (Fraser 1997a, 15-23) Thus, even though the working class or gays are presented as univalent ideal-typical cases, Fraser is fully aware that considerations of both material and cultural aspects must be made in all cases.

Fraser considers the inequality experienced by LGBT people as an example of misrecognition (inequality rooted in identity). Yet, she states that “struggles for recognition occur in a world of exacerbated material inequality” (1997a, 11). Sexuality, in the ideal-typical case, is presented as a mode of social differentiation whose roots are in the cultural-valuational system. Gays and lesbians are not an exploited class per se. They can be found throughout the entire class structure of capitalist societies. The injustice LGBT people suffer stems from heterosexism and homophobia, both of which are quintessentially matters of recognition. To overcome homophobia and heterosexism requires that we change the cultural valuations that favour heterosexuality. This does not deny however that LGBT people suffer from economic injustices (Fraser 1997a, 18-19).

Fraser, in her theoretical outline, presents the ideal-typical case of “despised sexualities” as univalent and therefore requiring only remedies that have to do with cultural valuation. On several occasions, however, she reminds us that the reality requires that we think of material and cultural injustices simultaneously. She explains, that “insofar as real-world collectivities mobilized under the banners of sexuality and class turn out to be more bivalent than the ideal-typical constructs posited above, they too should prefer socialism plus deconstruction” (which refers to the doubly transformative solution Fraser prescribed for the bivalent categories in her model) (Fraser 1997a, 32). For example, although LGBT people represent an ideal-type case of misrecognition, we could argue that until recently, the fact that lesbians, gays, bisexuals and transgendered people were denied a number of family-based social welfare benefits, and were disadvantaged by tax and inheritance laws (Fraser 1997b, 282), confirms that misrecognition has real material consequences. Thus, Fraser’s theory informs us that we should question this emerging tendency to favour either cultural and identity based issues over material concerns or vice-versa. Fraser’s model acknowledges simultaneously cultural and economic injustices that she situates in a material paradigm. As Fraser explains, “the essence of misrecognition [is] the *material* construction through the institutionalization of cultural norms of a class of devalued persons who are impeded from participatory parity” (original emphasis, Fraser 1997b, 283). It is therefore possible from such an analysis to come to terms with appropriate remedies - recognition or redistribution, while valuing both type of injustices as important sources of oppression, rather than valuing economics over culture or vice-versa.

When we look at sexuality, relying on Fraser’s analysis implies that we give considerations to matters that are not simply cultural, but also material. Lesbian and gay activists have pushed on with the claim for same-sex marriage reforms and the recognition of same-sex couples. This is done in an entirely bourgeois framework. Claims for same-sex couple recognition is framed in terms of access to employee benefits

on the same term as heterosexual couples. It disregards that a large number of individuals do not have access to such benefit packages to start with and that, moreover, homophobia contributes to the over-representation of sexual minorities within the lower income brackets (A.M. Smith 2001b, 103).²⁵ As Anna Marie Smith explains, “one of the virtues of [Fraser’s] analysis is that it eschews deterministic claims. By specifying homophobia as an effect of status-oriented exclusions in the Weberian sense, [she] mobilizes the argument that homophobia is unjust even though it is never purely an epiphenomenon of the economic” (2001b, 112). LGBT people do suffer from economic injustices as a result of their identity.

Fraser insists that we not limit our focus on either recognition or redistribution. When looking at oppression, the tendency in the past had been to focus on material considerations. Marxist work insisted on the primacy of the struggle of the working class, often disregarding the experiences of women and people from ethnic or racial minority background. Sexism and racism were not given enough consideration. More recent work has gone in the opposite direction. Recognition has been given a central place, often at the expense of one’s class status and other material consideration. For Fraser, identity politics becomes “problematic when it displaces the redistributive struggles altogether or promotes authoritarianism in the name of cultural authenticity” (A.M. Smith 2001b, 113). Fraser’s model offers a corrective that is important, reminding us that we need to look at both at all times. Even her idea-typical cases, in practical terms, experience oppression from both sources. Relying on Fraser’s model as a complement overcomes a limitation of Mouffe’s work by pointing out that opening up

²⁵With respect to sexuality, Anna Marie Smith presents an example that I consider even more powerful, but which I did not refer to in the text since it has to do with women’s reproductive rights, rather than sexual identity. She claims that when American liberals think of the politics of sexuality, their ideas are framed in individualistic and narrow terms. She says that “many defenders of *Roe v. Wade* aggressively oppose bans on late-term abortions, mandatory parental consent, and compulsory waiting-period laws, but for all their important issues, they often tend to neglect the economic dimensions of reproductive rights. Less attention is given to the legislation that prohibits Medicaid funding for abortion and the welfare policies that severely violate the privacy rights of poor single mothers” (2001b, 103). With respect to her claim that LGBT individuals are penalized for their sexual identity, A.M. Smith cites two studies that present data on income/class of LGBT individuals in the United States.

participation, though necessary, is not a sufficient condition for groups to eliminate their material disadvantages which obviously translate into impediments to political participation.²⁶ This of course is an important consideration when trying to develop a paradigm capable of addressing a variety of interlocking oppressions. Especially in the case of radical democracy, because participation is a prerequisite to the success of the politics of contestation, it is important to examine closely the impediments to mobilization, including material aspects.

In sum, radical democrats, in their quest to decentralize and differentiate the methods of participation by which political actors can gain agency, have for the most part overlooked the fact that increased participation cannot of itself remedy situations of social injustices. One needs to also account for the power relations that have served to marginalize various segments of society prior to engaging in counter-hegemonic projects. As Fraser explains, depending on the source of oppression (misrecognition or inequality), the strategy to counter oppression will differ. This is why it is important to understand Mouffe's model of radical democracy in conjunction with Fraser's analysis of sources of inequalities. Together, these form the framework of counter-hegemonic citizenship, paving the way for counter-hegemonic projects that will adequately force citizenship regimes to shift.

²⁶Assessing different legal strategies for "homosexuals" to access citizenship (and non-discrimination), Paisley Currah claims that the best strategy is to argue that political participation is a fundamental right which is denied to gays, lesbians and bisexuals, for the ability of individuals from that group to participate in politics is mitigated by the stigma of their identity. Therefore, this exclusion justifies that the state should protect individuals from discrimination on the basis of sexual identity that is then understood as the recognition of the right to participate as a full member of the community. This serves as another example demonstrating the interconnectedness between recognition and redistribution (Currah 1995).

Sexual Citizens in Canada: In or Out?

I have argued that undermining the links between citizenship and heterosexuality is necessary if LGBT people are to participate as full members in the Canadian political community and benefit from substantive citizenship. In the rest of this thesis, I will explore attempts to contest the boundaries of Canadian citizenship. I have selected the concept of citizenship regime because it illustrates well that citizenship is combination of laws, rules and regulations, as well as state processes. Moreover, social processes also support it. The idea of regime suggests that citizenship is set to a certain extent and cannot be changed easily; however, paradigm shifts do happen. I will try to determine ways to contest the boundaries of the current regime of citizenship to allow spaces for the citizenship of LGBT people to build toward an eventual paradigm shift. What resources do LGBT people have at their disposal to challenge the current citizenship regime? Can the hate crime sentencing measure serve as a tool for contesting citizenship? Can LGBT people cooperate with police in ways that can contribute to creating safer cities?

Although some progress in terms of relative safety has been achieved over the last decade or more in Canada, there are still a number of risks associated with being a sexual minority. These risks are real and work to deny LGBT people the possibility of realizing their full potential as citizens. As a society, we all pay the hidden cost of keeping a segment of the population from fully contributing to the political community. If only because social justice is denied, we must try to understand how we can challenge the current citizenship regime to allow LGBT people in. As I have already said, the essence of counter-hegemonic citizenship is the redefinition of the boundaries of citizenship in order to truly realize the promise of social justice implicit in the idea of universal (or formal-legal) citizenship. The remainder of this thesis will serve to come to terms with the concept of counter-hegemonic citizenship.

Chapter 2 - State and Sexuality: Making Citizens

The lived experiences of lesbians, gays, bisexuals and transgendered citizens are shaped by the state upholding a system in which heterosexuality is implicitly understood as the norm to which all worthy citizens must conform. Heterosexuality is embedded in the citizenship regime; consequently, LGBT people remain excluded from full citizenship. In this respect, we can speak of heterosexual hegemony. Through public policies, social programs, rules, regulations, bureaucratic practices and the *Criminal Code*, the state creates, defines and maintains a system stratified by sexuality in which heterosexuality is presented as natural and normal and all other forms of sexual expression are deemed abnormal and, at times, even criminal.

Heterosexual hegemony is maintained in a variety of ways either through the non-recognition of sexual minorities, policing practices and application of laws and regulations in ways that reinforce the oppression of LGBT individuals, and historically, through the criminalization of acts considered as deviant. Some of these mechanisms were more repressive in earlier times; others are still with us today. Historically, heterosexual hegemony was upheld when sexual expressions or acts other than heterosexual ones were criminalized or when laws were applied in ways to discourage homosexuality. The police and local authorities, more generally the criminal justice system, played a significant role in implementing a moral order in which heterosexuality was the norm. People who were suspected to deviate from the heterosexual norm were under surveillance by state agents in ways not experienced by heterosexuals. Policing of parks, public washrooms, gay events and bathhouses, and laying charges of indecent act and bawdy house against men engaging in consensual sex are some of the most obvious examples of the willingness of the state to police the sexual activities of a class of individuals it deems deviant. Repression at the hands of police is still a reality for LGBT

individuals in today's context, although to a lesser degree.¹ Certainly, one area in which heterosexual hegemony remains almost unchallenged is the realm of social services. The state promotes a system in which heterosexuality is dominant when it denies services to non-heterosexuals or makes them invisible as recipients or clients in social programs and policies. For example, health care workers are usually unaware of the particular health needs of LGBT individuals, be it safe-sex practices or hormone therapy. Moreover, because they do not receive training that would alert them to violence targeting LGBT people, they are unlikely to detect such violence when individuals come in to seek treatment following a gay-bashing incident or partner assault.² This is not seen as unprofessional or inferior service because it is the norm. Moreover, the law is applied by a criminal justice system that is often unaware of the needs and interests or concerns specific to LGBT individuals. For example, with respect to custody cases, lesbians have often had to forgo having relationships with women or lose the custody of their children if they do, a condition for custody that would never be put on heterosexuals (Robinson 1998, 48).

Having shown in chapter 1 that the citizenship regime in Canada is oppressive for LGBT people, in this chapter I turn to the concept of hegemony to explain how such a system is upheld. Why is it that LGBT citizens continue to experience oppression despite the fact that, in legal terms, they are citizens? I rely on the concept of hegemony to explain how a citizenship regime that is unfavorable to sexual minorities is maintained. I show that heterosexuality is a condition to access first-class citizenship.

¹ In chapter 6 I discuss raids on gay establishments or events that have happened in the last five years that are examples of continued police harassment. I mention the raid at the Goliath Sauna in Calgary, and the Pussy Palace and Bijou in Toronto. In each case, charges were laid for being found in or to keep a bawdy house.

² If we consider violence against women, health care workers are now more aware of this issue and can play a key role in detecting this type of violence. This means that they are more likely to inform victims of various services available to them. This level of awareness has not been reached for hate crimes and same-sex partner abuse. For information on the role that health care workers can play in confronting the problem of hate-motivated violence, see Hierlihy (1996). For a discussion of same-sex partner abuse, see Taylor and Chandler (1995).

To do so, I first discuss early representations of homosexuality to help us understand some of the factors contributing still today to the oppression of LGBT people. I illustrate that negative representations of homosexuality that were common in the period after World War II still dictate to some extent how LGBT people are perceived today. Then I review Canadian social science research on lesbians and gays. Most of these studies focus mainly on right-based equality-seeking strategies, political mobilization to achieve equality in the courts or political struggles for legislative changes. There are a few exceptions, however, that are informed by political projects of social transformation that attempt to explicate heterosexism and challenge this system of stratification by sexuality. In these studies, it is assumed that a transformation of laws, policies, political institutions and social practices is needed to challenge a system in which heterosexuality is the norm and to allow LGBT people to benefit of substantive citizenship. My work is situated in this second category.

After the review of literature, I explore the system of stratification by sexuality in the Canadian context. My goal is to contextualize my case study of the LGBT community's work, in cooperation with local authorities, to make Ottawa a safer place for LGBT people, in this way redrawing the boundaries of citizenship to include LGBT people. I argue that the state plays a central role in maintaining a system of heterosexual hegemony and that it is necessary to go beyond rights to challenge this hegemony, if LGBT individuals are to enjoy fully their citizenship. I look specifically at how the state upholds this hegemony. I focus on the role of public policy in excluding non-heterosexuals, the role of the law in promoting formal rather than substantive equality for LGBT individuals, and finally how the state polices its citizens by imposing heterosexual hegemony. Taken together, this overview outlines the various ways sexuality and the Canadian state overlap and collide to shape sexual citizens. It offers insights into what it means to be a sexual minority in Canada and how to challenge this heterosexual hegemony.

*Early Representations of Homosexuality and the Invisibility of Heterosexuality:
Two Legacies Still With Us*

To understand the oppression of LGBT people in today's context, it is useful to be aware of how homosexuality was discussed in earlier times. In both North American and European contexts, the politics of lesbian and gay or LGBT movements are still shaped by the heritage of Christianity and by earlier medical, scientific and legal views of sexuality (Blasius and Phelan 1997). Although much of what was said in these settings has been contested and LGBT people are able to live more openly, the fear and hatred generated from these discourses still permeates in certain settings (including parliamentary debates as I discuss in chapter 4) and remains in some instances a justification for violence targeting LGBT people.

Briefly, with regard to religion, in modern Christian-dominated societies,³ same-sex relationships are prohibited and those who persist in taking part in these are stigmatized. They are perceived as sinful. Religion plays a key role in upholding family-values and subordinating those who deviate from these values. Some ultra-conservative Christian traditions claim that sex is inherently sinful and can be tolerated only if performed within marriage for procreative purposes. These ideas may have had a greater role in an earlier period, but Rubin argues that they have taken a life of their own and may not rely directly on religion to prevail in modern times (Rubin 1993, 11-15). Although it is necessary to recognize that the ability of the church to impose a set of moral values has greatly been diminished in the last thirty years, religious doctrines still affect to a certain degree how LGBT people are generally perceived in society and these

³Although Christianity is not the only religion that does not accept or tolerate homosexuality, for the sake of clarity, since my focus is on Canadian society, a society whose heritage is mostly informed by Christian religion, I only discuss Christianity.

still impose guidelines of proper behavior (i.e. heterosexual relationship) on everyone in society.

Religious doctrine is not the only discourse that subordinates homosexuality. In the period following World War II, scientific, medical and legal establishments presented homosexuality as signaling abnormality, moral inferiority or deviance (Blasius and Phelan 1997; Kinsman 1996; Seidman 1995; Rubin 1993). At the time, homosexuals were excluded from the military and government jobs. Many governments, including the Canadian and United States governments, viewed homosexuality as a sign of corruption. Homosexuals could not be considered responsible individuals, acting respectably. They were generally understood to be unsuitable for positions in government and the military, constituting a security risk (United States Senate 1950, reproduced in Blasius and Phelan 1997, 241). In the early 1950s in Canada, a U.S.-inspired national security campaign against homosexuals was underway. It included changes to the Immigration Act to keep homosexuals out of the country by treating homosexuals as subversives,⁴ anti-homosexual purge campaigns aimed at government employees and increased police activity against homosexuals. Hundreds lost their jobs in the civil service, military and RCMP because they were considered a national security threat (Kinsman 1996, 170-177).

Also during the period following World War II, the American Psychiatric Association's (APA) official position was to consider homosexuality a disease (Blasius and Phelan 1997, 239). The psychiatric condemnation of homosexuality served to invoke concepts of mental and emotional inferiority associated with homosexuality. This gave credence to government actions meant to exclude homosexuals from state employment (not only in the United States, but also in Canada). The APA removed homosexuality from its list of mental disorders in 1973 after a long political struggle (Rubin 1993, 12; Kinsman 1996, 290). It should also be mentioned that homosexual acts were

⁴The 1952 *Canadian Immigration Act* barred homosexuals. The clause barring homosexuals was only removed in 1977 (Kinsman 1996, 170).

criminalized, contributing to making homosexuals an easy target for blackmail and police persecution (I discuss this in more details towards the end of this chapter).

Taking into account the various representations of homosexuality after World War II, Kinsman, whose work provides an analysis of the Canadian situation, concludes: “[h]omosexual ‘deviance’ is investigated with the aim of our elimination, containment, or control. [Medical and scientific knowledge] has been produced so that ruling institutions can formulate legal codes, policing policies and social policies” (1996, 31). More generally, Blasius and Phelan argue that “[w]ith a widespread social consensus that homosexuality was abnormal, gays and lesbians had to choose between being sinners, being criminal, and being sick” (1997, 239; see also 1-4, 240-1). As a result negative representations of homosexuality, the homophile movement of the 1950s and even the mainstream lesbian and gay movement of the 1970s were left to confront the stereotypes associated with homosexuality and even defend the normality of homosexuals (Seidman 1995, 116; also Blasius and Phelan 1997, 239). The heritage of Christianity and earlier medical, scientific and legal views of sexuality affected how LGBT people were perceived by the general population, views that were often reinforced by laws, public policies or social services that worked to exclude or marginalize LGBT people. These earlier representations also influenced the choice of politics that the homophile, lesbian and gay or LGBT movements have engaged in to claim their place in society. LGBT people still today find themselves confronted with some negative remnants of the elements of these past representations which they must challenge to gain access to their rightful place as citizens. Although in Canada, laws that openly discriminate against LGBT people are almost a thing of the past, the stereotypes and views informed by these negative representations still contribute to the stigmatization of LGBT people in society.

While homosexuality was presented in highly negative terms, this is only half the story. At the same time, within social and political theory, heterosexuality was, and still is,

rarely mentioned. Heterosexuality is presumed to be a private matter and not to be discussed in the realm of politics, policies, rules and regulations. Rarely will anyone talk about how underlying models of the family presuppose heterosexual couples or how heterosexuality is assumed in policies, in programs and services offered by the state. Heterosexuality is normalized through this process of problematizing the Other and through discourses that portrays homosexuality as a problem, never even questioning why heterosexuality is said to be natural, good, or normal. While lesbians and gays are defined “primarily as sexual beings, placed outside [...] or at the margins [...] of the social realm”, heterosexuality is upheld as the model to which people must comply or be treated as deviants. “[H]eterosexuality’s naturalization means that it is rarely acknowledged as a sexuality, as a sexual category or identification” (Richardson 1996, 13). As I discuss later in this chapter, this is why we can speak of heterosexual hegemony, for people adhere to it without questioning it and this even when it is not in their best interest.

More recently, feminist and queer theorists have interrogated the way that heterosexuality encodes and structures everyday life. These theorists have also highlighted the impact that ignoring or excluding heterosexuality has had on the development of social theory (Richardson 1996, 1). When starting to think about a system of sexual stratification,⁵ it is important to recognize that sexuality is not something that is strictly private and personal (and natural and normal). Sexual orientation needs to be problematized in a context of social relations to understand how it is used to control heterosexuals and oppress LGBT individuals. Although the erotic component of sexual relations most often takes place in private, sexual relations may

⁵The term “sexual stratification” is often used by feminists to look at the differences between women and men. Gayle Rubin, one of the first theorists to question heterosexuality, has used the term to speak of sexual identity. At the time she was writing, back in the early 1980s, she claimed that the work of most feminists focused on gender oppression. Sexual stratification, according to Rubin, refers to a system of sexual oppression that considers the privileged position of heterosexuality when ranking erotic groups on a system of sexual stratification. A system of sexual stratification is comparable to modern systems of racism, sexism and class inequalities. It is used here to alert us to the privileged position of heterosexuality, a system that ranks sexual orientation or identities, but nonetheless cuts across other forms of social inequalities, including gender, race, ethnicity, religion, ability, class, etc. (Rubin 1993 [1984], 18-22).

have a definite public aspect to them, evident in everyday context as when couples hold hands or kiss in public.

For LGBT individuals, these simple, everyday aspects of sexuality in public are not inconsequential. LGBT individuals often have to negotiate whether they can or should reveal their sexual identity; they must assess if doing so will result in negative consequences such as discomfort, resentment, ostracization, discrimination, and even violence on the part of family, friends, peers, co-workers, employers, landlords, social service providers, police officers, lawyers, judges, and strangers. Routine gestures of heterosexuals, gestures which are done naturally without consideration to their implication or meaning, become strategic, even political choices, for LGBT individuals. When LGBT individuals engage in these same routine gestures as heterosexuals, they are immediately labeled as deviating from the heterosexual norm. In other words, people in their entourage are made aware that these individuals are not heterosexuals. For LGBT individuals, to hold hands on the street or kiss a partner carries the possibility of violent reprisal, physical or verbal. Being in a same-sex relationship always tends to complicate things at the hospital, in the courts, at the bank and so on. Taken for granted privileges built on the assumption of heterosexual relations, as well as numerous rules and policies that reinforce the assumption of heterosexual privilege, all mean that same-sex couple and individuals who identify as LGBT must often justify their legitimacy, worthiness or be denied the access and privileges that heterosexual people take for granted and which their citizenship supposedly guarantees them. This shows that heterosexuality encodes and structures every day life (Richardson 1996, 1).

*From Rights to Contestations:
Canadian Literature on Lesbians and Gays*

Before turning to an explanation of how hegemony operates, I want to explore how the lack of access to the privileges of heterosexuality, a condition of citizenship, is dealt with in the literature. I review below the Canadian literature on lesbians and gays mostly from the disciplines of political science, legal studies and sociology, since these are the works that concern themselves with (directly or indirectly) the citizenship of LGBT individuals. It is worth noting that the inequalities resulting from a system that privileges heterosexuality are rarely analyzed. Speaking in 1984, Gayle Rubin complained that while the inequalities of class are well known, and that racism has been explained, there is no equivalent for sexuality. At that point, she argued there was no system of stratification by sexuality identified in the literature (1993 [1984]), let alone discussions of its impact on citizenship. The development of queer studies since the mid 1980s suggested that heterosexism was finally going to be challenged in the literature that focuses on lesbians and gays. Yet, little was written on the concept of heterosexism as a barrier to substantive citizenship. More recently, Irène Demczuk in the introduction to a collection of essays lamented, as had Rubin fourteen years earlier, that still today little is written on normative heterosexism and the impacts of a system of stratification by sexuality. As she says: "We cannot but notice that the study of heterosexism has not to date interested scholars and this despite the fact that heterosexism is as powerful a system [of oppression] as sexism or racism" (1998, 10).⁶ The growth in research on the subject of racism and sexism has not been emulated for the subject of heterosexism.⁷

⁶My translation of the following original passage: "On ne peut manquer de constater, en effet, que l'étude de l'hétérosexisme n'a, jusqu'à présent, guère suscité d'intérêt chez les chercheurs bien que cette idéologie semble aussi puissante et efficace que le sexisme ou le racisme."

⁷The comparison is somewhat unfair if we consider the number of individuals that are directly affected by sexism and/or racism. However, my aim here is to suggest that heterosexism can have effects that are as devastating as sexism and/or racism for those who experience heterosexism. In this respect, heterosexism should be considered with as much seriousness as are racism and sexism.

Considering that political projects of social transformation launched by LGBT movements require an analysis and exploration of heterosexism, as has been done for sexism and racism, it is difficult to understand why so little attention has been given to this topic. While the emergence of queer studies put the contestation of heterosexual privilege on the agenda, its impact was limited. Queer theory focuses on the cultural and literary terrain (Kinsman 1996, 14); not much is said in queer theory of the political and legal situations. As a result, no real progress was achieved. Thus, the rise of queer theory and its questioning of heterosexuality as a privilege did not lead to questioning either social institutions or state structures. No theory of social change was formulated within these discussions.

Despite a growing literature that documents how race, class, and ethnicity interact with sexuality in the case of lesbians and gays, little has been said about heterosexuality (Richardson 1996, 2). There is a substantial literature on the interaction between heterosexuality and gender elaborated by feminists.⁸ While feminist theorists make a convincing argument for analyzing heterosexuality critically, presenting institutionalized heterosexuality as a system of male domination (Jackson 1996, 21-2), they do not usually extend this argument to speak of heterosexual hegemony as being counter to the interests of sexual minorities. Rarely does anyone question how heterosexual hegemony upholds a citizenship regime counter to the interests of LGBT people. This is one of the main issues this chapter aims to address.

Moving Towards (Formal) Equality

In Canada, the focus of my research, more recently there have been a number of studies that focus on gays and lesbians. These do not however necessarily question heterosexual hegemony, nor do they discuss the role of the Canadian state in upholding a system of

⁸For a review of how heterosexuality is dealt with by feminist scholars, see Jackson (1996).

stratification by sexuality. I am referring to the works by Didi Herman (1994), David Rayside (1998), Kathleen Lahey (1999), Miriam Smith (1999), and Bruce MacDougall (2000) which I review below. Even when concerned with issues of gay rights and equality, these studies focus on strategies to access and secure rights, rather than engaging in political projects that challenge the status of LGBT people as second-class citizens. There is an assumption, at times implicit, that changes will follow the acquisition of rights. Political pressures that result in the extension of rights for LGBT people are perceived as improving the status of LGBT people by making them more equal to heterosexuals.

I certainly am not suggesting that equality-rights are not important, but I want to argue that in the everyday context of the lives of LGBT individuals, changes in legal rights and public policies may have a limited effect if they are not part of a larger strategy for change that recognizes heterosexuality as the norm embedded in the citizenship regime and challenges its domination. Rights do not necessarily lead to the elimination of discrimination and hate-motivated violence targeting LGBT individuals. Nor do rights automatically translate into state action to provide safer social environments for LGBT people. Changes in rights and policies can be used to further ends other than equality. While they may be useful in supporting a project of social transformation, this is rarely discussed in studies that focus on equality-seeking strategies. These studies often fail to consider if rights or changes in public policies can help to undermine heterosexism. Liberal agendas for change usually involve an extension of rights and, to be fair, also often promote cultural changes. However, the changes sought are usually framed in assimilationist terms. In other words, they aim to open up mainstream social forms to LGBT individuals (such as marriage) rather than challenging the structures that have historically worked to exclude LGBT individuals (Chasin 2000, 22). If the dominance of heterosexuality in the citizenship regime is not considered, social change and real (or substantive) equality is an unlikely result. When rights are gained while homophobia and

heterosexism are left unchallenged, LGBT people remain second-class citizens because they are unable to fully enjoy their citizenship as a result of prejudice and stigmatization that prevents them in doing so. In the review of literature that follows, I look at each contribution briefly highlighting the limits of thinking within that framework. This will be followed by an exploration of why challenging heterosexual hegemony must be part of any strategy that aims to produce real changes.

Herman's *Rights of Passage: Struggle for Lesbian and Gay Legal Equality* (1994) is one of the first books to focus on LGBT people in Canada. Herman offers insights on the advantages and limits of struggles for equality, arguing that when rights are won (acquired), they offer tangible benefits. She argues that they also send a message to society that the state will not tolerate discrimination. At the same time, symbolically, they send a message to LGBT people that they are included in citizenship (1994, 4). Rights do not automatically translate into equality. Herman gives the example of a teacher being fired. Even when sexual orientation is rejected as a legitimate ground for discrimination, a teacher who has been outed and whose work environment has become unbearable as a result of her/his sexual orientation being discovered is unlikely to access the judicial system to remedy the situation. This suggests that rights gained through the inclusion of sexual orientation as a prohibited grounds for discrimination in employment do not end prejudices. They do not immediately change people's ideas and values with respect to how they feel about homosexuality. It may be necessary for state agencies to undertake education and awareness campaigns to slowly undercut stigmatization and prejudice.

If LGBT people do not access the judicial system, the rights of LGBT people will not be protected. Therefore, Herman concludes, the inclusion of sexual orientation in human rights legislation has a limited effect on the lives of LGBT persons. I would add that the extension of rights to LGBT people is a necessary but not sufficient cause for changes that will enable the citizenship of LGBT individuals. Herman does not

discourage mobilization for the pursuit of equality rights. She recognizes that the message of inclusion signaling that the state will not tolerate discrimination has positive results. Herman does warn that “rights are difficult, complicated tools for social change” (1994, 149), in part because the pursuit of a right-based equality-seeking strategy often fails to question “the power relations that shape the terms of equality” (1994, 149). Undermining the system of sexual stratification is “a necessary part of any larger project of social transformation” (1994, 148). Herman does not however indicate how to engage in such a project.

Rayside’s *On the Fringe* (1998; also see 2001) presents an interesting overview of political struggles comparing Canada, England and the United States. His focus is on political struggles. He explores the use of legislative politics to achieve equality for gays and lesbians. Rather than focusing on legal strategies, Rayside discusses the role of openly gay parliamentarians in advancing claims on behalf of lesbians and gays; he also examines legislative struggles around bills meant to further the equality of gays and lesbians. Rayside depicts the engagement of gays and lesbians and their social movements with mainstream politics as an essential entry point for the achieving of legislative gains. His comparative study highlights how mainstream openings in the political systems of Canada, England and the United States might promote policy changes that are favourable to LGBT people. This study helps us understand a particular process: political struggles for legislative changes to further the equality of lesbians and gays. Rayside does not, however, question what is meant by equality achieved in this way, nor ask about the impacts these changes might have on the lives of LGBT people. Do these changes further entrench formal equality or do they also result in substantive equality for LGBT people?

Like Herman, Lahey focuses on rights, asking *Are We ‘Persons’ Yet?* (1999). She argues in this work that despite increased recognition in human rights and in the *Charter*, LGBT people remain outside substantive equality in Canada. She claims that

laws that discriminate on the basis of sexuality remain legitimate unless challenged and proven otherwise through long court proceedings. LGBT people are not denied legal citizenship, such as the rights to vote, obtain a passport, receive an education, etc., because of their sexual identity. They are denied however some basic features of substantive citizenship (1999, 131-151), notably the right to security and equal protection and benefit of the law without discrimination. For example, let us consider whether juries perceive a LGBT witness as credible and the reluctance of the state in protecting LGBT from hate propaganda.⁹ These are ways in which LGBT individuals are denied substantive citizenship.

Lahey's contribution is important. She shows how the courts may be responsible for limiting the rights sexual minorities enjoy. First, courts construct concepts and erect limits through their judgment that become entrenched in subsequent judgments as well as in our thinking about these issues. She concludes:

Courts bear a great deal of responsibility for having created this overly regulated status quo, and for having constructed the heterosexual presumption that has so powerfully eaten away at any ordinary legal rights that could be claimed by sexual minorities. But ultimately I do think it will be the courts that can dismantle that jurisprudential space labeled "sexual orientation" (343-344).

Moreover, Lahey adds that the problem for LGBT people is not limited to how judges define sexual orientation or make use of the concept. She says in fact that the problem is not with the lack of rights, but rather with the lack of privileges for accessing these rights. In this sense, she recognizes that the second-class status of LGBT people is an impediment to their equality. She also stresses that court proceedings are not accessible, are time consuming and expensive. Yet, despite an awareness of these limits of the legal framework, Lahey does not go beyond the legal system in her analysis of how to access equality. In this way she contributes little more to the development of a model of

⁹ Sexual orientation was recently included in the hate propaganda provisions of the *Criminal Code* when Bill C-250 became law on 29 April 2004 (www.parl.gc.ca/LEGISINFO/) (30 September 2004).

substantive equality that is meaningful for LGBT people, despite hinting this to be the goal of her political project.

In *Lesbian and Gay Rights* (1999), M. Smith also focuses on equality-seeking strategies but does so by examining more closely the political rather than legal ramifications of the struggles for rights. She looks at how the *Charter* has affected the gay and lesbian movements' struggles at the federal level in terms of their organizing and the strategies they employ. She concentrates on how institutions shape and influence activism. Her main emphasis is on the impact of the *Charter* on gay and lesbian activism. Focusing on the shift in strategy of the gay and lesbian movements with the advent of the *Charter*, Smith limits her analysis to theorizing why gay and lesbian organization have focused on formal equality rights rather than pursuing gay liberation more broadly conceived. She argues that the advent of the *Charter* gave gay and lesbian organizations a new venue to influence state policies, but also changed the values that the movements advocated. Organizations like EGALE now saw accessing legal rights as end in itself rather than part of a larger project of political mobilization, as it had been with gay liberationist activists. She argues, "this type of equality-seeking was quite different from the early gay liberation emphasis on social transformation and sexual liberation and freedom. EGALE's push for equality and antidiscrimination measures was not connected to any broader social and political analysis of power relations affecting sexuality and sexual identity" (1999, 85).

Smith provides an application of social movement theory to the Canadian gay and lesbian movements, an analysis of the political impacts of the *Charter* on the struggles for equality rights (something that is usually overlooked in the legal literature as Smith points out), and a summary of the goals of social transformation that were central to the gay liberation project in pre-*Charter* times. Smith examines specifically those who engage in *Charter* cases and federal lobbying. While critical of the limits of rights-based equality-seeking strategies, she does not discuss the potential for a transformative project

when equality rights are achieved through *Charter* cases, limiting her analysis to explaining how social movement theory can explain the shift in focus by gay and lesbian social movements from gay liberation to equality-seeking strategies. Her analysis is focused on a very specific segment of these movements, neglecting those still focused on gay liberation or projects of transformation and emancipation aimed at broad social change.

For the purpose of this thesis, the fact that the *Charter* did not wipe out gay liberation objectives for all LGBT people and their organizations needs to be clearly stated and the potential for such change must be explored. In the following section and subsequent chapters, I show that other projects exist along side the rights-based equality-seeking strategies Smith studies and that some have objectives of transforming society broadly. For example, if we consider the changes made to sentencing provisions for hate crimes (Bill C-41 in 1995), we can see that changes to the *Criminal Code* (although in some respect similar to rights-based equality-seeking strategies) are used to support changes in relations with the police by some LGBT activists. The recognition of sexual orientation in these provisions helped some communities to access police services by having the police recognize that hate crimes targeted at LGBT people are a serious matter. Here, legal changes are the basis for a political project of transformation aimed at providing LGBT people the security they need to access substantive citizenship. It is important to give some consideration to the potential of such projects that may appear to focus strictly on equality-seeking, but which nonetheless work toward some aspect of social transformation.

The last work I look at here is Bruce MacDougall's *Queer Judgments* (2000). MacDougall presents a multifaceted look at the courts' treatment of LGBT people. He looks at LGBT people's access to the courts, why they turn to the courts, how judges, lawyers, juries react to LGBT people in the courts when they are victims, witnesses or pursuing a cause, what judges say, whether homophobic violence and systemic

discrimination are recognized by the courts, and so on. MacDougall does question why some LGBT people choose to pursue equality rights through the courts when it is well known that the historical treatment of lesbians and gays by the court system has not always been positive, fair or unbiased. He stresses the importance of turning to the courts, despite the various instances of homophobic expressions that he documents as part of the experiences of LGBT people with in the court system. He asserts:

The law has been formally and practically hostile to gays and lesbians [...]. The law [...] is still infused with language and attitudes of disapprobation for homosexuality and homosexuals. Given the history of censorship and censoriousness, how can gays and lesbians look to the law for any sort of solace or protection? [...] the legal is the only generalized societal structure, other than the political, that can give that protection. [...] The importance of legal protection is especially significant for a group that will always be a minority (2000, 95-97).

Once more, the emphasis is on the importance of accessing equality through the legal system. MacDougall does not question how that equality is defined and whether this affects LGBT people's status as citizens.

Beyond Rights: Thinking About Projects of Social Transformation

The overview in the above section presented major works taken from the Canadian social science literature on gays and lesbians which focus on equality-seeking strategies. Although each of these studies make a significant contribution to the understanding of equality-seeking struggles, because I am interested in changes that go beyond accessing formal equality, I find these studies leave several questions unanswered. These studies fail to ask what kind of equality will be achieved when rights are extended to include LGBT people. Will the extension of these rights result in substantive citizenship for LGBT people, or without a direct challenge to the heterosexuality embedded in the citizenship regime, will LGBT individuals remain second class citizens?

With Herman, Lahey, M. Smith and MacDougall, I agree that gaining rights is important for improving the citizenship of lesbians, gays, bisexuals and transgendered people. While rights-based changes may be a necessary condition for changes in the citizenship of LGBT people by signaling to state actors and institutions, social institutions and society in general that discrimination aimed at LGBT people will not be tolerated, if equality rights are an end in themselves rather than part of a broader strategy to challenge the heterosexual norm embedded in citizenship, it is unlikely that LGBT people will achieve substantive citizenship.

In *Virtual Equality* (1995), Urvashi Vaid, a long-time gay-rights activist, presents a reflection, informed by her experience, on the gay and lesbian movement in the United States and how this movement has evolved and changed over time. Although her work is based on the American experience, she makes an important contribution in presenting the differences between equality-seeking strategies and liberationist strategies, a distinction that offers insights that are useful for our purposes. She clearly argues for the need to move beyond a civil rights (or equality rights) framework of mainstream integration and equality. It is important to focus on strategies that produce social change. The early gay movement began to claim equality rights, choosing legal reforms, political access, visibility and legitimation over long-term goals of cultural acceptance, social transformation, understanding and liberation (Vaid 1995, 106). It is, however, important to move beyond equality rights to a broader and more inclusive commitment to cultural transformation. She states:

What political history illustrates is that rights-oriented movement can coexist with prejudice against lesbian and gay men. It can even advance while homophobia is intact. This is possible because civil rights can be won without displacing the moral and sexual hierarchy that enforce antigay stigmatization: you do not have to recognize the fundamental humanity of gay people in order to agree that they should be treated equally and fairly under the law (1995, 179).

Vaid recognizes the benefits of equality rights. She is aware, however, that rights do not change the system that upholds the oppression of LGBT people; they change only the privileges of the groups asserting their rights. Rights do not challenge homophobia, because homophobia does not originate from a lack of equality rights. Homophobia and heterosexism arise from the social construction of legal, political, sexual, racial and family systems (Vaid 1995, 183) that upholds heterosexuality as the norm.

Heterosexual hegemony is embedded in the citizenship regime and equality-rights cannot on their own challenge this. Changes are possible when the boundaries of the citizenship regime are contested by groups who are oppressed. Such political mobilization can aim to make the state accountable for what is needed to access full citizenship. My case study is an example of LGBT individuals holding the state accountable for minimum levels of safety needed to access substantive citizenship. Contesting citizenship through the articulation of counter-hegemonic projects leads to social change, something that is rarely achieved through equality-seeking strategies. There are a few studies in the Canadian social science literature that discuss projects of transformative politics to challenge heterosexual hegemony. I turn to these before speaking directly to the concept of hegemony in the next section.

To start, there are a number of books that offer histories of gay and lesbian communities in Montreal (Chamberland 1996; Demczuk and Remiggi 1998) and in Toronto (Ross 1995). I mention these because, despite the fact that they do not engage with proposals for social change or transformative politics, they nonetheless provide necessary insights for understanding how a system of stratification by sexuality came to be. Reclaiming this history is an important first step in engaging in the politics of contestation and in this way contributes to our understanding of strategies that can lead to social change.

Demczuk and Remiggi (1998) tell the story of gay Montreal to provide the local gay and lesbian communities their own history. They wish these communities to

celebrate their own history rather than rallying around icons that are centered on American events, such as the Stonewall rebellion. Local histories of marginalized or oppressed groups, such as LGBT communities, are often hidden because of repression and also because archival material is rare and frequently destroyed. Through the various articles in Demczuk and Remiggi's collection parts of this history are recaptured. They speak to the emergence of gay and lesbian cafés, bars and other meeting places in Montreal and the various networks and communities that evolved from that. They also speak to police repression, criminalization of homosexual acts, and repression from state authorities zealously implementing morality campaigns prior to Expo 1967 and again for the 1976 Olympics, two events that put Montreal in the spotlight on the international stage. The articles present various ways people hid or expressed their sexual identity. They speak to rifts within the Montreal LGBT communities (between anglophones and francophones, between lesbians and gays, etc.) and how these were reflected in the strategies of mobilization and the types of demands that were put forward by the various groups, as well as in the alliances made to move ahead on certain issues. Taken together, the various articles in this collection give us a sense of how oppression came to be embedded in state structures, and at times illustrate how changes have come about.

Ross' book is anchored in a critical project that discusses social transformation. Through a historical and sociological account of the lesbian community in Toronto, she challenges heterosexuality's predominance (1995, 5). Her case study valorizes the collective memory of the lesbian community in Toronto. It highlights the different experiences of lesbians and gays. While both experience discrimination on the basis of their sexual identity, lesbian oppression is more likely to be organized through sexual and moral regulation than through criminalization. Gay men are more likely to be "managed by the *Criminal Code* and police activity through obscenity and gross-indecency status," while lesbians are more likely to be affected by child-custody laws, laws that govern medical and health insurance, inheritance, pensions etc. (Ross 1995, 6). Ross depicts the

particular realities with which lesbians are confronted. She also uses her findings taken from that particular experience to elaborate more generally on the achievements and the remaining challenges faced by gays and lesbians in Canada and abroad.

Apart from these local historical studies, there are a few other works in the Canadian social science literature that focus on challenging the dominance of heterosexuality. They are studies by Gary Kinsman (1996), Ki Namaste (2000), Tom Warner (2002) and an edited collection by Irène Demczuk (1998). I explore their contributions in the following paragraphs before turning to a full discussion of heterosexual hegemony in the Canadian context.

The *Regulation of Desire* by Kinsman (1996) is the first work in Canada that offers an elaborate discussion of how heterosexual hegemony is defined and discusses how to engage in projects of social transformation. Kinsman's main focus is on lesbian and gay oppression and resistance. He uses a historical approach to study social forces that have organized the oppression of lesbians and gays and those that have made it possible for them to resist. Such an approach, states Kinsman, when combined with contemporary accounts of gay and lesbian experiences, can help us understand how oppression is currently structured, a necessary first step to engaging in acts of resistance (1996, 8).

Kinsman explains that over time lesbians and gays have won important legal and social battles and also now benefit from more widespread tolerance and acceptance. Yet, despite such progress, sexual policing remains. Police officers still lay charges of indecent act or bawdy house against men engaging in consensual sex. Sexual censorship by Customs Canada against gay and lesbian books and magazines is common. And of course, hate crimes and violence targeting LGBT people acts as a form of policing or control over LGBT people. Moreover, "there is also a more vociferous minority opposition than ever before, which often has important support within State relations", says Kinsman referring to police forces and certain politicians. He concludes that "[w]e

(lesbians and gays) are closer than ever to winning our abstract formal rights but, at the same time are also still criminalized and face denial of our sexualities and our relationships” (1996, 5).

Kinsman relies on the concept of hegemony to explain how formal equality is being won, while LGBT people are still denied substantive citizenship. Heterosexuality is unchallenged when LGBT people acquire formal equality rights. Kinsman argues that not only does the achievement of equality rights not challenge the dominance of heterosexuality, it may even further entrench heterosexual hegemony. He explains that a small professional elite among gays and lesbians, those who most benefited from the equality struggles of the 1980s and 1990s, have developed their own interests as respectable and responsible lesbians and gays (1996, 6). This small elite sees its interests fulfilled through equality rights, highlighting disparities between those who are willing to conform to the norm of heterosexuality (i.e. the professional elite) and those who cannot or choose not to emulate the heterosexual model. These claims of respectability are made by pointing to similarities with the desired model (i.e. heterosexuality, heterosexual couples and family) and by pointing to differences with undesirable segments of their presumed communities. In other words, claims of respectability are made by pointing to similarities between lesbian and gay lifestyles and the lifestyle of the good heterosexual citizen. These claims are also made by differentiating the gay and lesbian lifestyle from that of the irresponsible queers or the dangerous homosexuals. Good or respectable citizens will want their same-sex relationships recognized, while laws that oppress bad citizens—those who go to bathhouses or have sex in the parks— can be enforced at will. Whether they are establishing families or not, there is an increasing number of the LGBT individuals that are professionals, living in upscale neighborhoods and who see themselves as respectable citizens. They distinguish themselves from the less respectable individuals, bad or dangerous queers who, they claim, give gays and lesbians a bad name by going to bathhouses, engaging in sex in the park or flaunting their sexual identity at

the gay pride parade (Kinsman 1996, 6; Warner 2002, 294-5; Phelan 1994; A.M. Smith 1994). As a result, because respectable gays and lesbians are able and willing to assimilate into heterosexual mainstream social space, those who do not or cannot are further marginalized and portrayed as deviant, unworthy, undesirable, outcasts, etc. This contributes further to legitimizing a worldview in which heterosexuality is supreme.

Kinsman claims that “a grounded historical materialist analysis of lesbian and gay oppression and the construction of heterosexual hegemony provides a non-essentialist historical basis for the social making of lesbian and gay experiences” (1996, 378). By keeping focused on power relations, understanding oppression and defining heterosexual hegemony, it becomes possible to assess whether a strategy of resistance can succeed. It becomes possible to sort out what will be gained by pursuing certain goals and whether this will enable the citizenship of LGBT people. Here, for example, we can see that while same-sex benefits are perceived by most as an important advance with respect to gay rights, a focus on hegemony sees such a move as potentially further entrenching heterosexual hegemony to the degree that it endorses rather than challenges current relations of sexual regulation, not to mention class and gender organization (1996, 382).

Kinsman’s contribution with respect to an elaboration of the concept of heterosexual hegemony is invaluable. In light of Ross’s argument (mentioned above) in which she distinguishes how lesbians and gay men have different types of encounters with state authorities, I would however suggest that Kinsman’s work does not fully account for how the state regulates women differently from men. The framework he presents is nevertheless adequate for this type of analysis. Thus, the situation of lesbians, bisexuals and transgendered people can and should be examined with through his approach. This would contribute to the understanding of the oppression of all LGBT individuals.

Demczuk in *Des Droits à reconnaître: Les lesbiennes face à la discrimination* (1998) brings together a collection of essays about the realities of lesbians’ lives in

Quebec. This collection not only documents and analyzes the experiences of lesbians, it also highlights how heterosexism has sustained discrimination and exclusion of lesbians in Quebec society. As Demczuk explains, although the Quebec government was one of the first to make sexual orientation a prohibited ground for discrimination in its human rights legislation, this did not stop the prejudice and discrimination resulting from heterosexism in Quebec society as experienced by lesbians. The collection reveals laws, institutional practices, and values that favour heterosexuality. It also shows how heterosexism continues to have devastating effect on lesbians (1998, 11). The essays examine lived experiences of discrimination in wide array of areas, including law, health and social services, the workplace, family relations and in their communities.

The personal accounts of discrimination that make up the collection speak volumes as to what it is like to live in a society that disapproves of you because you do not conform to the heterosexual norm. These personal accounts are substantiated through a number of supporting studies that offer empirical information about lesbians' interactions with institutions of the state. *Des Droits à reconnaître* makes an important contribution to the understanding of how sexual stratification works and the impact it has on people in their everyday lives. Like Kinsman, Demczuk insists on relying on an understanding of power relations to explain the oppression experienced by lesbians. Heterosexism is central to Demczuk's analysis. She avoids more psychological discussions on the fear of the Other or self-loathing as a control mechanism or form of discipline. Instead, she concentrates on social relations and institutions that work to maintain this heterosexual hegemony. This is the basis for an analysis that helps to account for oppression and resistance.

Namaste's *Invisible Lives* (2000) focuses on the challenges faced by transsexual and transgendered people in Canadian society, with goals similar to Demczuk's collection, but focused on transsexual and transgendered individuals rather than lesbians. Namaste, through a number of case studies, illustrates how transsexuals and

transgendered people (TS/TG) can be and often are erased in culture and by institutions. In other words, programs, services, research, information-gathering are all conceived and/or undertaken as if transsexual and transgendered people do not exist and so could not possibly be clients. The book documents how TS/TG are erased. As with the work of Kinsman and Demczuk, understanding the sources of oppression (and erasure) of TS/TG is key for formulating strategies to contest these exclusions which have real and negative consequences on the everyday lives of TS/TG people and on their status as citizens. Namaste concludes that “[e]rasure is the most significant social relation in which transsexuals and transgendered people are situated” (2000, 267). The data she presents throughout the book illustrates that state services and programs are conceived, developed and offered as though TS/TG people do not exist. Resistance must therefore be anchored in projects that challenge this erasure in the areas that matter most to the daily lives of transsexuals and transgendered people.

Namaste’s work makes an important contribution, not only in her analysis of how heterosexual hegemony works to exclude or erase TS/TG people, but also in developing social theory that matters to those who are oppressed. In this way, the underlying intention in my own research reflects Namaste’s concern with producing knowledge that is meaningful to the people who are studied. While most work on transsexuals and transgendered people have until now focused on how TS/TG people ought to identify, live and organize, Namaste has taken the task of gathering information about how TS/TG people are located in the world. She explains that “[r]esearch and theory in psychiatry, the social sciences, and the humanities are preoccupied with issues of origin, etiology, cause, identity, performance, and gender norms” (2000, 1). Although these questions are worthy of an exploration, the answers found in these works do not explain how the lives of TS/TG people are shaped. They offer no insights as to how TS/TG people negotiate daily to attend to their needs in a world that has erased TS/TG people. What are their everyday lives like (i.e. going to the doctor, changing legal documents, looking for a job,

trying to get a date, working in the sex-trade, learning to inject hormones, etc.)? Are their encounters with state institutions and actors positive or do they contribute to the oppression of TS/TG people? What effect does the erasure of TS/TG people have on their ability to enjoy their citizenship? Does this erasure translate into second-class status for TS/TG citizens?

Warner in *Never Going Back* (2002) is concerned specifically with the liberation of LGB people rather than legal equality. Warner, a long time gay activist, is critical of equality-seeking strategies anchored only in rights-based *Charter* cases and human rights battles. He believes this focus on the *Charter* and human rights is at the expense of fighting repressive sex laws that are used to oppress gay men without questioning what type of equality (substantive or formal) is achieved when successful. For example, if we consider the recognition of same-sex couples, the problem is that the equality-seeking groups that bring forward this issue aim to have the same-sex relationships recognized in the existing heterosexist structures. Rights-based equality-seeking strategies do not problematize the social relations that are the result in part of second-class citizenship. The extension of equality without challenging heterosexism achieves limited results (Warner 2002, 220 and 245). The strategy rewards those who are able to conform to heterosexual norms despite their sexual identity as non-heterosexuals, i.e those least abnormal or those least stigmatized. Formal equality will be achieved by those who can emulate the heterosexual model, while LGBT people who fail or refuse to comply to this model continue to be persecuted and marginalized. As I argued in the previous chapter, the LGBT community becomes divided into good and bad or undeserving citizens. In sum, heterosexuality is normalized and those who fail to comply are further stigmatized.

Warner also examines theories about the causes of oppression and discusses the impact of heterosexism on LGB communities. *Never Going Back* focuses on activism and organizing. It is a historical account of queer activism in Canada. It is also a testimony to the successes that have been achieved through organizing and activism.

Warner's main contribution is to distinguish equality-seeking strategies from gay liberation. He highlights the importance of working towards gay liberation. He sees in emancipatory projects the potential to change not only institutions but also changing minds. Challenging heterosexism is central to any such endeavor. Rights do not necessarily do away with over zealous police officers or social conservatives and their campaigns to oppress gays and lesbians. As Warner says: "Coming out, feeling safe, and being visible are as difficult for many gays, lesbians, and bisexuals today as they were more than three decades ago, and continue to require the deployment of the now 'old' liberationist strategies used so effectively since the early 1970s" (2002, 246). What Warner hints at is much broader than what can be gained through projects of transformative politics or counter-hegemonic citizenship. Whereas I am proposing a model of counter-hegemonic citizenship through which LGBT people hold the state accountable for minimum levels of security, Warner wants to address root causes of violence (heterosexism, homophobia) so that all LGBT citizenship can feel safe. This is a much broader project in which liberation follows having successfully challenged the sources of oppression that prevent LGBT people from enjoying their citizenship.

Hegemony: Heterosexuality Embedded in the Citizenship Regime

The studies reviewed in the previous section discussed various aspects around the concept of heterosexual hegemony. Now I turn to theories in which the concept of hegemony is developed. I have argued that although equality-seeking strategies are important and may even be necessary to achieve the type of change I propose through projects of counter-hegemonic citizenship, changes that will have an effect on the status of LGBT citizens will not happen without directly challenging this heterosexual hegemony. Thus, before turning to what is meant by heterosexual hegemony in Canada,

it is necessary to define hegemony and explore how it works. This is the focus of this section.

The Gramscian notion of hegemony is useful for understanding how this system of stratification by sexuality functions. Unlike Marx who focused primarily on the economy as the determinant of relations of power, Gramsci understood that the state was actively involved in the construction of hegemony of the dominant class through the formation of ideological apparatuses (Carnoy 1984, 117). Hegemony means that the norms imposed correspond to the interest of the dominant group in society, however, classes other than the one whose interests dominate the state also uphold this norm, even when not in their best interest. Gramsci outlined the role of the “superstructures” in reproducing the necessary conditions for the relations of production to continue unchallenged and in perpetuating the unabated dominance of the bourgeois class. While for Marx the real foundation of society was the economic structures defined as the sum total of the relations of production, for Gramsci the real foundation of society was the civil society upon which rose the juridical and political superstructures and to which consciousness corresponded (Gramsci 1988, 189-221; Carnoy 1984, 65-7). Although both Gramsci and Marx focus on civil society to understand capitalist development, Marx included it in society, while Gramsci located it in the state or superstructure. This distinction underpins the concept of hegemony. For Gramsci neither force nor the capitalist logic could explain the acquiescence of the masses to a system counter to their interests. He concludes that the system’s real strength is not in violence or repressive state apparatus; it is in the hegemony of the system or, in other words, the acceptance of a conception of the world by the ruled that belongs to the rulers (Carnoy 1984, 68). Gramsci uses the concept to show how the ruling class rules through ideology.

According to Laclau and Mouffe, the concept of hegemony emerged from a realization that economism could not explain political struggles. In the 20th century, societies rarely were clearly divided along class lines, so hegemony helped to explain

how subject position existed across class (1985, 66-69). The explosion of social movements following the 1960s indicated that conflicts between people and regime could no longer be understood through a traditional Marxist two-class system. Laclau and Mouffe deepen our understanding of a project of transformative politics that is pertinent to this research. In *Hegemony and Socialist Strategy* (1985) they assert that it is important to perceive power in terms of hegemony. Power is constructed through the various social struggles or contestation. It is not concentrated either in the state or a dominant class. Consequently, “the problem of power cannot [...] be posed in terms of the search for the dominant sector which constitutes the centre of hegemonic formation, given that, by definition, such centre will always elude us” (Laclau and Mouffe 1985, 142). This is not to suggest however that we should revert back to pluralist theories of power for understanding power relations. As they warn us, pluralist theories would not provide us with an analysis of the structures shaping these struggles. Hegemony should be recognized for its potential for radical and plural democracy. There is a need to accept that the social is open and contested and never fixed nor fully defined. In this context, the field of politics is a space not for a zero-sum game, but rather a game in which the rules and the players are never fully explicit (Laclau and Mouffe 1985, 193). Both agency and structure and the dialectical process between the two are necessary to grasp the full essence of social systems of hegemony. I have already discussed in the previous chapter how radical democracy, a model explored in Laclau and Mouffe’s work and further developed by Mouffe in *The Return to the Political* and other pieces, offers some suggestions as to how to challenge heterosexuality which is embedded in the citizenship regime or, in other words, heterosexual hegemony. In this respect, Laclau and Mouffe’s work is useful for mapping strategies to contest the boundaries of the citizenship regime.

The concept of heterosexual hegemony supposes a system in which heterosexuality is implicitly made to be the norm. Here, it is important to recognize the role of the state in

upholding heterosexuality as the norm; laws, policies, regulations and means of coercion (law-and-order mechanism such as the police) uphold heterosexuality as the norm. It is also necessary to look beyond the state, to consider the role social relations and institutions play in reinforcing this hegemonic system. Many sources (Kinsman 1996; A.M. Smith 1994; Katz 1990; Carabine 1992, 1995, 1996a, 1996b; Valentine 1993; Warner 2002; Connell 1994 and Blasius 1995) agree that heterosexuality is institutionalized in the state system and social relations. It is also embedded in the citizenship regime (Richardson 1996). As discussed in the next section where I look closely at the state, heterosexuality is upheld in public policy and social programs, in laws, and through the coercive arm of the state. Heterosexuality is promoted in the educational system (a state institution). It is also endorsed by religious institutions, and reproduced through family values learned at home. For example, while curricula in schools do not discuss homosexuality or alternative forms of families (e.g. same-sex couples with children), religious doctrines present homosexuality as sinful, and families pressure their children into founding traditional nuclear families.

The discourse and institutions that uphold heterosexuality as the norm often do so in an implicit fashion. Behaviours associated with homosexuality are not necessarily directly criminalized and laws may not specify textually that they exclude LGBT individuals or couples. For example, although laws do not explicitly prohibit lesbianism, women's sexuality is controlled through heterosexuality, family and marriage (Carabine 1992, 27 and 35; see also Connell 1994). It is implicit that women, to be good citizens, must comply not only with the demands of the state (that favours through its policies and laws heterosexual relations and marriages as well as nuclear families), but also with those informal institutions that contribute to the definition of citizenship.¹⁰ The reach of heterosexual hegemony extends beyond what is controlled through state policies.

¹⁰For a discussion on how citizenship exerts social control, see Phelan (1994, 99-113) who discusses how citizenship is often conceived as a dichotomy of outlaw and solid (good) citizen.

Heterosexual hegemony exists in a system of power relations, practices and institutions that are not entirely under the direct control of the state, but which functions, at times in a contradictory fashion, to uphold heterosexuality as the norm.

We are all subject to this system of stratification by sexuality regardless of our sexual identity. The system of sexual stratification favours heterosexuality or, in other words, makes everyone “choose” what is considered normal. Those who choose or conform to the heterosexual model are rewarded through their access to substantive citizenship. As Rubin explains, “economic sanctions, family pressures, erotic stigma, social discrimination, negative ideology, and the paucity of information about erotic behavior, all serve to make it more difficult for people to make unconventional sexual choices” (1993 [1984], 31). These elements come together to promote heterosexuality and to encourage everyone to choose normalcy. They constrain sexual choices to prevent people from engaging in or preferring deviant forms of sexuality. Not conforming to heterosexuality means being part of a group in society that is not normal. In this respect, gays, as a class of people, have less power than the majority in society that is heterosexual. The status of LGBT people is constructed in a set of social relations that favour heterosexuality as the norm (Peers and Demczuk 1998, 78) and as a result marginalize those who do not identify as heterosexual.¹¹

Heterosexuality is considered normal while other modes of sexuality are abnormal. That is, heterosexual hegemony relies at least as much on its power of normalization as on the state’s coercive ability. As Anna Marie Smith argues, heterosexual hegemony is a hegemony of normalization rather than a hegemony of domination (1994, 242). That heterosexuality is normal is embedded in common sense or popular knowledge. It is everywhere. It is in the media, in the school system, in religious belief, in the family structure, in the work place. It works to exclude LGBT

¹¹I am contrasting the status of heterosexuals and non-heterosexuals. It should be noted, however, that access to full citizenship is also determined by ones’ gender, race, ethnicity, religion, ability, etc.

people in ways that are often so subtle that they are not even noticed by those who are heterosexual (Peers and Demczuk 1998, 78). The concept of hegemony of normalization borrows from Foucault's concept of power/knowledge. Anna Marie Smith explains:

Like any target of oppression, the lesbian and gay communities experience themselves as the objects of tremendously intensive and extensive surveillance. Anyone who deviates from gender and sexual norms in the slightest becomes immediately hyper-visible as a suspect queer; placed within the panopticon of compulsory heterosexuality, lesbians and gays have to deal with a degree of scrutiny which our heterosexual counterparts will never know (1994, 234).

With respect to heterosexual hegemony, we can see how part of what contributes to upholding heterosexuality is the practice of self-policing. Homophobia is not only external to LGBT communities; it is also experienced within. It is difficult to avoid internalizing the message that homosexuals are not normal, sick or sinful individuals. As a result of trying to make oneself fit, a lot of self-hatred goes on within the LGBT communities. This self-hatred is responsible for suicides, alcoholism and drug abuse, all of which are more common among LGBT people than heterosexuals. This internalized homophobia is also responsible for the self-blaming that goes on by some victims of gay-bashing. For example, a person coming out of a gay bar who is attacked by a group of youths may decide not to report the incident, blaming himself for "tempting" the youths by being in a gay-identified setting late at night. When victims do come forward, the police or authorities in the criminal justice system may question whether these victims provoked their attack, rather than focusing on the perpetrators' behavior and actions as the real problem to be considered. In many respect, this presents similarities with the experience of women who have been raped.

That the police might question if the victim provoked the attack may seemed far fetched. Yet, the highly sensationalized death in the United States of Matthew Sheppard

in 1998 as a result of a gay-bashing illustrates this to be the case. Some news report asked if Matthew had provoked his own death by coming on to one of the “men who later brutally beat him to his death” (*Globe and Mail* 13 October 1998: A14). That such a question was raised says a lot about homophobia in the U.S. media and also in the Canadian media since the issue was covered here as well. Although I refer to this example because it is almost common knowledge in LGBT communities, it is often the case that people’s reaction to a gay-bashing, as reported by one officer, is to say that “gays are asking for it, they are flaunting their sexuality, what can they expect?” (Interview Yves Martel, 28 February 2002). How can coming on to someone authorize beating to death a person? The person is being punished for transgressing the norm of heterosexuality. The person who transgresses the norms of gender — the person in a subordinate position of power, is being punished for actions taken by the person who has more social power (Namaste 2000, 139). This violence is one of the mechanisms used to make people conform to the norm of heterosexuality.

Different segments of the LGBT communities will respond differently to this concept of hegemony as normalization. Some internalize homophobia which may result in self-hatred, substance abuse and other similar negative behaviours. Others may react to this normalization process by trying to assimilate into the dominant model, becoming as much as possible like heterosexuals. Briefs presented before the courts in *Charter* cases, for example, make reference to how similar same-sex couples’ relationships are to those of heterosexual couples (M. Smith 1999, 136). The briefs substantiate the longevity of relationships and the fact that these relationships are monogamous to counter the stereotypes about LGBT people as hyper-sexualized individuals who have multiple partners, kinky sex, open relationships or several short-term monogamous ones. The

latter corresponds to the image of an irresponsible lifestyle that revolves around sex, confirming the stereotypical understanding that people generally have of LGBT people. They assume that for LGBT individuals sex is central to their lives and that LGBT people are defined by their sexuality. LGBT people may or may not define themselves in this way, however. They may first see themselves as women and people of color, people with disabilities or people of Jewish or Catholic faith, mothers, sisters, brothers, professionals, police officers, health care workers, teachers and so on. Just as few heterosexuals define themselves primarily in terms of their sexual relationships, LGBT people have identities other than those defined by their sexuality. By trying to demonstrate that some LGBT individuals are capable of living up to the standards of heterosexuality by having monogamous long term, stable relationships, some employ the “we are normal” premise to argue that they are entitled to the same benefits or privileges as heterosexuals. This in no way challenges the dominance of heterosexuality.

Moreover, heterosexual hegemony has the double function of regulating the heterosexual majority, while stigmatizing those who are outside the norm of heterosexuality. With respect to the majority, because heterosexuality is privileged in terms of social policy, laws, social norms, etc., most people comply with the norms and behavior associated with heterosexuality, thereby entitling them to the benefits associated with it. As for sexual minorities, we must consider how heterosexual hegemony works to exclude an entire class of individuals from the privileges associated with citizenship. We need to question how this system legitimizes discrimination, harassment and even violence from the state, employers, and other members of society against LGBT people. This is not simply a theoretical exercise since it offers insight into the daily experiences of lesbians, gays, bisexuals and transgendered individuals and explains some of their

choices, such as why they do or do not access the criminal justice system, the courts, or the police, the places that they choose to live, work or frequent to diminish possibilities of violence. It can also explain that LGBT people revert to being invisible as a strategy to ensure that they are not at the receiving end of harassment, discrimination, and violence. A system that privileges heterosexuality has a real impact on the daily lives of everyone, but particularly for LGBT individuals who often lack the privileges that heterosexuality, and those who conform to it, are able to access.¹²

Briefly, I illustrate how heterosexual hegemony affects, and even controls, both heterosexuals and sexual minorities. Since my main concern in this study is on how violence excludes LGBT individuals from citizenship, I will use violence to explore the double function of heterosexual hegemony. Anti-LGBT violence is not a matter that affects only LGBT people; it is an issue for heterosexual people as well. When a violent incident occurs, the victim is usually chosen on the basis of the image they project. Following an analysis of targeted violence, Namaste concludes: “[t]he connotations of the pejorative names used against individuals who are assaulted—names like ‘sissy’, ‘faggot’, ‘man-hater’, ‘queer’, ‘pervert’—suggest that an attack is justified not in reaction to one’s sexual identity, but one’s gender presentation” (2000, 141). Aggressors do not confirm that their victims are lesbian, gay, bisexual or transgendered; rather they determine on the basis of gender cues the sexual identity of the victim. They are likely to choose as victim men they consider effeminate and women they consider masculine.

¹²I present the differences here in a simplified manner for the purpose of focusing specifically on heterosexuality. It should be noted, however, that access to some of the privileges of heterosexuality differ if one is male or female. Gay men are more likely to benefit from the advantages that are associated with their gender. Lesbians, on the other hand, tend to suffer both from the disadvantages of being a woman and a sexual minority. Moreover, while invisibility is a strategy available to hide one’s sexual identity, for Blacks and other ethnic or racial minorities, for women and people with disabilities, this option does not exist. Hence, while gay men can at times hide their difference to access the privileges of the dominant

Although the motive of the attack is sexual identity, gender norms are used to identify their victims. This demonstrates how gender and sexuality are intertwined. It also implies that we all have to conform to the gender norms associated with heterosexuality—models of femininity and masculinity—in order to avoid being the target of anti-LGBT violence. This is not a matter left simply for LGBT people. In this respect, anti-LGBT violence is an issue for both the heterosexual majority and sexual minorities. It makes the majority conform to gender norms to avoid anti-LGBT violence and also suggests that LGBT individuals should transgress as little as possible these norms if they do not want to be identified as LGBT individuals. Although LGBT people are more likely to develop an awareness of gender norms, we are all controlled by them regardless of whether we are heterosexual or belong to a sexual minority.

Focusing on the effects of normative heterosexism, rather than individual cases of homophobia or discrimination, allows for an understanding of systemic oppression. This is key to a project of political transformation. It shows that the oppression of LGBT individuals is experienced not as individuals but as members of a class. In other words, the study of heterosexism helps us understand that it is not sufficient to change laws and policies of the state, if societal values with respect to LGBT people remain demeaning. Legal changes while necessary are not a sufficient condition to change the status of LGBT citizens from second-class to substantive citizenship. As we will see in the chapters that follow, the study of heterosexual hegemony does help us understand what solutions can be sought to undermine this system of oppression. Using the concept of heterosexual hegemony to guide our inquiry, we need to ask what is it about this system that leads to the oppression of LGBT people and how we can work to change the

group, this opportunity does not present itself to those whose difference is also characterized by their

enabling conditions for this oppression. Knowing that LGBT people fear the police, are often harassed by them, and historically have had bad relations with them, prevents LGBT individuals from accessing police services that are central to ensuring minimum levels of safety for enjoying their citizenship. This has led me to inquire into how police practices can be changed to accommodate this reality. Thinking about violence targeted at LGBT individuals as taking place in a social system in which relations of inequality and social power are present allows me to point to different sources of oppression and identify some of the mechanisms at work to exclude, marginalize and oppress LGBT individuals.

The Canadian State and Heterosexual Hegemony

We must keep in mind that the state is not a monolith. Western states operate on a number of fronts that are not working towards coordinated ends; contradictions in how states operate are not uncommon. States involve both a set of institutions and processes (Pringle and Watson 1998; Cooper 1995; Connell 1994). The modes of state influence operate on a number of fronts. First, in part as a result of its power to define what is legal or illegal, states explicitly and implicitly encourage or discourage identities and behaviours. I have already mentioned how the criminalization of sexual expressions associated with homosexuality dissuades people from engaging in these sexual activities. States are effective in institutionalizing these various forms of discourse and practice (Ballard 1992, 106). I have also mentioned how the heterosexual family is central to

gender, race, ethnicity, and disability, a marker of identity that cannot be hidden.

social policies of the state and that this is a disadvantage to those who do not conform to that model of family.

Cooper asserts that states intersect with sexuality on three levels. On one level, states impose a model of sexuality (Cooper 1995, 1). Through concepts such as age of consent, sexual education in school curriculum, marriage laws and other policies, the state upholds heterosexuality. Sexual minorities may resist through litigation or political struggles to have laws and policies changed. The works of Herman, M. Smith, Lahey, and MacDougall reviewed in an earlier section attested to progress made in terms of equality rights. However, while gains have been made in respect to policies and rights, A. M. Smith argues that the state has taken on an even greater role with respect to disciplinary functions. She states:

[...] two contradictory post-welfare trends are articulated together, namely the shift towards the reduction of state intervention in the family and civil society where redistribution is concerned, and the shift towards the intensification of state intervention in the terrain of morality and sexuality (2001b, 317).

Aiming to diminish expenses, the universality of social programs has progressively been replaced by targeted programs. States have become more and more intrusive in what used to be the private sphere and areas concerned with morality. Ontario's *Safe Street Act* (1999), an anti-begging law and Alberta's *Protection of Children in Prostitution Act* (2000), an anti-prostitution law, are two examples of a law that criminalizes acts of survival in a context where cuts in social programs have resulted in making women, racialized people, immigrants, children and youths more vulnerable (Sheehy 2004, 80).

Although sexuality is in part controlled by the state, on a second level, sexuality inscribes itself onto the state. It is a disciplinary force that shapes state forms and practices (Cooper 1995, 1). For example, the Christian doctrine¹³ of reproductive sexuality within a family structure is reflected in social programs and more generally the

¹³This is true of other religions as well.

development of the welfare state. Finally, sexuality and state also intersect when political contestation destabilizes the current system of sexual stratification (Cooper 1995, 2). The political struggles to eradicate the clauses used in criminal law to persecute men having sexual encounters with other men are an example. A victory would mean that the police would be deprived of their ultimate weapon of choice to target or harass LGBT people, especially gay men.

Connell explains how the state's control is operationalized. Although he is speaking of gender, his analysis is suggestive with regard to sexuality. He argues:

The state is indeed the main organizer of power relations of gender ... Through laws and administrative arrangements, the state sets limits to the use of personal violence, protects property (and thus unequal economic resources), criminalizes stigmatized sexuality, embodies masculinized hierarchy, and organizes collective violence in policing, prisons and war (Connell 1994, 148).

In subsequent work, Connell draws from a wide range of feminists and gay and lesbian literature to provide an understanding of the role of the state in producing categories such as homosexuals or prostitutes and how states regulate a gender order. Connell is concerned with the capacity for change. Proposing the concept of "democracies of pleasure", he looks at sexuality as a social practice, suggesting that sexual liberation should be understood as achieving equality and empowerment. He sees sexual liberation not as a lack of social constraints (1995, 390). Rather, he is concerned about how sexual liberation promotes empowerment and social equality. This is necessary when thinking about transformative projects. The end goal for gay liberationists is not so much to make homosexuality acceptable. It is to empower LGBT people and to open up spaces in society where they will be considered as equals. As with my model of counter-hegemonic citizenship, this is a project of social justice, not one of equal rights. It is about challenging the boundaries of the citizenship regime.

Transformation cannot have as its end result simply the tolerance of lesbians, gays, bisexuals and transgendered people. It is not sufficient that some equality rights are inscribed in human rights codes or the *Charter* or that there are more gay characters on television or that the Pride Parade in Toronto or that Black and Blue (a mostly gay event held in Montreal organized by the Bad Boys Club) are attracting large crowds of people. Although in some sense these are advances, most same-sex couples still refrain from holding hands or bringing their partners to office parties, teachers still lose their jobs, people get evicted, and for many the streets are still not safe because LGBT people still have less social power than heterosexuals. Until heterosexism is challenged, it will not be possible for LGBT people to be sufficiently tolerated to be safe (i.e. less likely to be victims of targeted violence), to keep their jobs, etc. Transformative politics or counter-hegemonic citizenship must aim to destabilize this heterosexual hegemony. To understand how to go about this, it is necessary to look at how heterosexuality is upheld as the norm by the state. Before I move on, I want to clearly state that I am not arguing that the state is homophobic. Rather, in part because heterosexuality has been normalized, heterosexuality is embedded in the citizenship regime, in state policies and in laws without us always recognizing it as such. As with the decriminalization of sodomy, the passage of the hate-crime sentencing laws (that mentions sexual orientation) and gains with respect to equality rights attest, the state is not fundamentally homophobic.

Below, I look at how heterosexual hegemony is upheld, examining the state, more particularly the Canadian state, in its functions as a legislator, a regulator and an enforcer. I first turn to social policy and consider how the state imposes heterosexuality through policy and social programs. I then focus on laws highlighting how heterosexuality is promoted, other forms of sexualities repressed, and how sexual orientation is defined in law. Finally, I turn to the coercive arm of the state and the policing of its citizens. I discuss encounters with the police and access to the criminal justice system for sexual minorities.

Public policy plays an important role in defining what is acceptable in society. Yet, as Carabine, who has done ground-breaking work on the issue of sexuality and public policy, points out, the intersection between sexuality and public policy is rarely examined. She notes: “little material exists which critiques heterosexuality either as taken-for-granted in social policy practice or as an issue for social policy as a discipline” (1996a, 31). This is unfortunate considering the place, even if implicit, sexuality occupies in our policies and the impact that these policies have on everyday situations of the lives of citizens. In the current context, social policies and laws play a central role in giving heterosexuality staying power. It is in part through social policy that heterosexuality becomes inscribed in the functioning of the state and society.

For LGBT people, one of the problems with sexuality being taken-for-granted in social policy is that it makes them invisible. As a result, their needs and interests are not recognized. In her study on transsexuals and transgendered individuals in Quebec, Namaste (2000) showed how conflicting administrative practices work, for example, to undermine the full social integration of transgendered people. To obtain changes of name and sex on their identification papers, individuals must have undergone sex-reassignment surgery. For this type of surgery to be authorized, gender-identity clinics require that individuals prove their social integration in the sex to which they are going to be reassigned. Access to employment and education however, frequently require official documents that indicate the individual’s transsexual status. This of course works as a barrier to their full integration into the sex to which they will be reassigned (Namaste 2000, 257). Here, an administrative rule creates a barrier to the citizenship of transgendered individuals, not by being explicitly discriminatory, but by not acknowledging the interests of sexual minorities. Other common examples of the invisibility of sexual minorities as clients for state social services are the lack of services available for men in violent same-sex relationships (Round Table Against Violence

Against Women, *Minutes*, 21 March 2001), the lack of battered-women shelters that accept lesbians in need of such shelters (Women's Action Centre Against Violence, 1994), and a prison system that denies transgendered access to their hormones and forces them to be admitted in the facilities that correspond to their biological sex rather than the gender¹⁴ in which they present themselves (Gender Mosaic 2000; Nasmaste 2000).

Social policy nonetheless regulates sexuality, since it assumes heterosexual relations as normal and works to reproduce and legitimize heterosexuality. Social policy disciplines individuals into following certain rules and respecting sexual and gender norms. How do social policies grant privileges to heterosexuals and encourage people to follow this path? Carabine (1996a, 33) notes that because sexuality is viewed as private, sexuality is often ignored by social analysts. Feminists demonstrated that what happens to women in the private sphere is deeply political (Gotell 1997, 40), pushing the state to intervene.

Carabine directs us to examine power relations that surround sexuality. In the same way that feminist efforts have led the federal government and some provinces to use gender-based analysis in policy-making to see its differentiated impact on women and men, similarly sexuality based effects also need to be recognized to see the impact of supposedly universal policies on non-heterosexuals. Policy-makers may want to consider how "appropriate and acceptable sexuality is as the means for establishing access to and eligibility for welfare benefits and services, such as a criterion for eligibility to benefits in the critiques of cohabitation rule" (Carabine 1996a, 33).

¹⁴Although the use of the terms sex and gender may seem confused, we need to keep in mind that for transgendered individuals, the gender in which they present themselves do not always correspond to their biological sex. Moreover, transgendered individuals do not all go through sex reassignment surgery. For those individuals presenting themselves in a gender different than the one corresponding to their biological sex, official documents, such as a driver's license, medical insurance card, and a passport that identify the biological sex of the individual tend to create problem situations. When dealing with transgendered individuals, medical staff, police officers, and other state authorities do not always respond positively to the discordance between the sex stated on the official identification papers and the gender in which the person presents herself/himself. Such situations are likely to lead to misunderstandings, possibly hostility, discrimination and even outright violence towards the individual.

Carabine suggests that theorizing and critiquing the influence of dominant sexual discourses on social policy may also be needed. So sexuality becomes the lens through which policy is developed. Policy both shapes sexuality and is shaped by the dominant discourse of sexuality upheld by policy; it is also shaped by social institutions (religious institutions, families, schools, media, etc.) and values in society (family values, religious doctrines, etc.). If the model of the heterosexual family is reproduced through our social policies, it is in part because religious doctrines of reproductive sex in the family context became embedded as the model.

When we consider how sexuality intersects with social policy, we can see that sexuality is omnipresent in a large number of policies even though it may not be recognized as such. This is in part possible because heterosexuality is understood as natural or normal and its presence or reinforcement through policies is never, or rarely, put into question. It also reveals that social relations of power are structured by these social policies. This is the crux of a system of heterosexual hegemony. If LGBT people are oppressed and marginalized, it is often because they are excluded from the privileges and benefits of certain policies or denied access on the basis of their sexuality. Their status as second-class citizens acts as a barrier to substantive equality. Finally, looking at sexuality and public policy, we can see how public policy is shaped by the dominant discourse of sexuality. By uncovering each of these factors, we are better able to substantiate how heterosexual hegemony is upheld through social policy. It also points to venues for undermining the latter.

Laws also define normal sexual practices and attempt to regulate what is outside that norm (Stychin 1995, 7). Laws are definitely the “tool” of choice in terms of imposing this system of sexual stratification in which heterosexuality is privileged. Sex laws are probably the most powerful pillar of this system of sexual stratification. For one, they

are harsh and unjust (Rubin 1994[1983], 19).¹⁵ Sex laws have been used for centuries to persecute categories of individuals that engage in victimless crimes. For example, Kinsman has traced the criminalization of homosexuality to the founding of the colony of Canada. Early legal sanctions and policing were modeled on those of Britain. Starting in 1859, the Consolidated Statutes of Canada made “buggery” with a man or beast punishable by death. After Confederation, Canada needed a new criminal code. With minor changes, the *Criminal Code* was entirely based on English statutes (Kinsman 1996, 128-9). Kinsman reproduces an exchange that took place in the House of Commons in 1892 about the *Gross Indecency Act*. I am reproducing it here for it is telling of how homosexual men were dehumanized and degraded for transgressing the norm of heterosexuality:

Mr. Mills: All these offences against morality have crept into the common law from earlier ecclesiastical law, and they were rather sins than crimes, not being attacks upon property or life, or upon any members of the community. [...] it is a question whether this sort should be punished by long terms of services in the penitentiary. I do not think that they should. I think that flogging, or something of that sort, and discharge of the prisoners is preferable, and a far better deterrent than anything else.

Sir John Thomson: There is a distinction, I think. We only punish them as crimes when they are offensive to people or set a bad example. As to section 178, relating to acts of gross indecency, I have no objection to reducing the term of imprisonment, considering that whipping accompanies it (quoted in Kinsman 1996, 131).

More recently, sodomy laws, before the decriminalization in 1969, were used to oppress gay men.¹⁶ Today, gross indecency and bawdy house regulations are used to impose surveillance by police on LGBT people in ways that would not be tolerated by

¹⁵Rubin also extends her analysis to sex laws that control prostitution. As she explains, “the underlying criminality of sex-oriented business keeps it marginal, underdeveloped, and distorted. Sex business can only operate in legal loopholes. [...] If sex commerce were legal, sex workers would be more able to organize and agitate for higher pay, better conditions, greater control and less stigma” (1994 [1983], 19).

¹⁶It should be noted that the negative stereotypes produced by sodomy laws did not disappear with the decriminalization of sodomy. Although the oppression is no longer direct, it is still present.

heterosexual people. These laws (except sodomy) do not interfere in private lives. They are used to maintain public order. Because the public sphere is identified as a heterosexual space, laws control what offends heterosexual members of society. Society rarely objects to laws that aim to keep homosexuality out of the public eye (Richardson 1996, 14; Kinsman 1996, 214-5). Laws regulating sexuality force many people to hide their sexuality to conform to heterosexual norms. Sex laws punish those who are arrested, giving them — often gay men — criminal records which bar them from employment, limit their travel, and deny them the possibility to emigrate to some countries.

Sex laws reproduce a moral code that privileges heterosexual activities between consenting adults. Sex laws indicate that some sexual activities are sinful, in bad taste, not desirable, and even repulsive to the point that they should be punished by law even when these acts happen between consenting adults. Rubin argues that such a system is similar to legalized racism;¹⁷ these sex laws persecute an entire class of individuals on the basis of their erotic preference. The criminalization of homosexual activities has made homosexual men part of a criminal strata in society. Even when sodomy laws, bawdy house and gross indecency charges are rarely used or irregularly enforced, the fact that these laws exist can be used and lead to arrests reminds the members of the criminalized sexual communities that they are part of a class subject to the state agents' whims to enforce or not. The occasional enforcement of these laws keeps an entire class of individuals in a position of fear that is likely to have them refrain from attending certain events, going to certain places and to freely enjoy their sexuality.¹⁸ In other words, these

¹⁷For a discussion of how race regimes work, see Vickers (2002).

¹⁸As I discuss in chapter 6, the recent raid of the Goliath bathhouse in Calgary had a chilling effect on gay communities in Calgary and across Canada. There had never been a raid in Calgary prior to the one that took place in December 2002. It seems that all the progress that had been achieved in terms of improving relations between the LGBT community and the police in that city were undermined by this incident. It is as if just when the LGBT communities were starting to "trust" the police, that the police showed once more who holds the coercive power of the state (Interview Stephen Lock 16 January 2003).

laws restrict the freedom of men who engage in sex with other men (Rubin 1994 [1983], 20-21; Currah 1995).

By criminalizing sexual acts associated with a sexual minority, sodomy laws strengthen this association between sexual deviants and sexual minorities. Despite the fact that sodomy laws do not regulate their sexual activities directly, lesbians are also targeted by this negative association. A. M. Smith points out,

The absence of lesbians in criminal discourse is not due to a special benevolence towards lesbians on the part of judicial and parliamentary discourses. This lack, on the contrary, constitutes a deeply misogynist strategy, namely the erasure of the very possibility of any autonomous female sexuality (1994, 209).

Even if not mentioned directly, sodomy laws and other sexual legislation stigmatize an entire class of people: all LGBT individuals. Although other aspects one's identity (*i.e.* race, ethnicity, religion, and other factors) may vary the degree to which an individual is affected, all LGBT people are stigmatized by these laws.

The criminalization of a class of individuals has meant the police and LGBT communities have had difficult and often oppressive relations, punctuated by violent and discriminatory practices. Namaste (2000), in her study on transgendered people, discusses relations with the police. Focusing on transgendered prostitutes, she explains that they never access the services of the police. Because of frequent police harassment and brutality, and also in an effort to maintain harmonious working conditions on the street, these transgendered prostitutes do not access police services (2000, 173).¹⁹ I raise the issue of policing to remind us of the coercive side of the state and also to highlight that LGBT people are definitely in a situation of inequality when it comes to dealing with the police.

Laws do not have only repressive and disciplinary functions. As Stychin points out:

¹⁹ The relations between the police and community will be discussed at length in chapters 5, 6 and 7.

While law may be (and has been) a repressive force, it is also a regulatory one which plays a role in constituting and maintaining coherent sexuality. At the same time, regulation is never entirely successful, for gaps and inconsistencies are left within legal discourse. This creates spaces of resistance against, and opposition to, the legal and sexual hegemony (1995, 1; also see 2003).

I have been critical of strategies that aim, as an end goal, to achieve equality rights, arguing that equality rights alone do not necessarily make LGBT people safer or freer of discrimination, harassment and violence. In the past, struggles for equality rights have been organized by gay liberationists. Miriam Smith asserts that the mobilization of gay and lesbian communities around the struggle for these equality rights, as well as the increased awareness that legal cases promote, may be more important for some groups than actually winning the court battle (M. Smith 1999). The awareness that is developed around a given case helps change social values and perceptions of LGBT people. Social change requires changes in values about LGBT by society in general, however, not just winning a court case.

The law can be constraining. As we have seen, it constructs what is a normal sexuality and regulates all that is not. Legal discourse creates categories; it designates, for example, what is a sexual minority identity. The understanding proposed by reading sexual orientation into the *Charter's* in the equality clause (section 15) does not translate into all sexual minorities being equally protected. Filax and Shogan conclude that:

As a consequence of legal decisions based on the *Charter*, lesbian and gay group identity and same-sex couples have been legally recognized. Other sexual minorities such as bisexuals, and transgendered people have not benefited in the same way from the *Charter* (2003, 169).

Canadian law valorizes heterosexuality, excluding other sexual orientations. In such a context, "it is not possible for sexual minorities to be fully protected or acknowledged by the law" (Filax and Shogan 2003, 173).

Moreover, legal struggles make the boundaries of identity quite rigid by forcing those who make claims to fit into boxes or categories. The law is ill-equipped to recognize intersectional identities. For example, a Black lesbian may prioritize at times her identity as Canadian, while at other times, her experience as a woman, a Black person or a lesbian. All these identities intersect to influence how she negotiates social relations in various contexts. However, battles for equality rights require the person making the claim to do so within a defined category. This approach fails to acknowledge complex social identities while homogenizing the group to which a category speaks. Claims that are made on the basis of sexual orientation have a tendency to eclipse other interests (i.e. class, gender, race, ability) of the claimant (Iyer 1993).

While the law can be constraining, Stychin offers insights on how equality rights struggles can have a transformative effect. He argues that the law can be used to contest the boundaries of the terms it defines. It is through these struggles of contestation that the law can become a subversive tool. When the law accepts that it is illegitimate to discriminate on the basis of sexual orientation or that hate crimes targeting LGBT people are finally recognized as serious crimes, the boundaries of citizenship are changed to include sexual citizens as legitimate individuals or legitimate citizens worthy of the state's protection. As Stychin says:

Once sexual orientation is accepted as an illegitimate basis of discrimination and recognized as a legal, political, and cultural identity worthy of protection, then the definition of citizenship (and correspondingly the composition of the nation) broadens and deepens along sexual lines (1995, 103).

The law not only defines standards for equality. It can also legitimize certain situations while criminalizing other forms of behaviour, sending a message that these will not be tolerated. Although this can be oppressive, as we have already seen with laws that criminalize sexual activities that take place between consenting adults, the law can also be disruptive of certain norms by making illegal certain types of violence that aim to

reinforce power relations between certain groups. Merry looks at domestic assault as an example, arguing that rights can be used to disrupt the linkages between masculinity/violence and femininity/subjugation. The recognition of opposite-sex domestic violence as a criminal offence can render this type of violence unacceptable. The law redefines the boundaries between legitimate and illegitimate behaviour. Although this shift does not prevent partner assault from taking place, it does offer women recourses, and when women use it they challenge their subordinate status and contest their second-class status. This has a disruptive effect (Merry 1995).

It is my hypothesis here that the recognition of sexual orientation in hate crime sentencing provisions may send the message that hate crimes targeted at LGBT people are not considered acceptable to the state. Including sexual orientation in the list of groups in the hate crimes sentencing provision clearly makes these forms of violence illegitimate. As with human rights legislation and equality clauses, although the inclusion of sexual orientation aims to disrupt the power relations of this system of sexual stratification, laws do not eliminate violence and discrimination targeted at LGBT people. They do give LGBT people some ability to disrupt their subordination. This is not revolutionary, if only because access to the courts depends on resources (time and money). Similarly, the fear of secondary victimization by police, court personnel, employers, landlords and others who may be made aware of these proceedings limits recourse to these rights. The fact that the state is making hate crimes targeted at LGBT people an illegitimate form of violence, however, is a necessary step for using the law for subversive ends as I will demonstrate in subsequent chapters.

State and Sexuality: Sexual Citizens in Canada

A project of social transformation to undermine heterosexual hegemony and achieve social justice for LGBT people “requires not only the elimination of the heterosexist apparatus of sexual policing and the establishment of full civil and human rights for [LGBT people], but also the removal of social and family policies that have placed heterosexuality at the centre of State policy” (Kinsman 1996, 383). This means that the battle against heterosexual hegemony must be waged on a number of fronts. It is not sufficient to focus on equality rights achieved through the *Charter*. It is necessary to also fight *Criminal Code* procedures that have been used to police sexual activities of gays and lesbians. It is necessary to challenge police forces that use liquor license rules to enter gay events and subsequently lay “bawdy house” and “gross indecency” charges against patrons and organizers of these events and police forces whose “morality” squads zealously rake gay-identified city parks. It is also important to get homophobia and heterosexism discussed in schools as are racism and sexism. It is necessary to have sexual orientation inscribed in all human rights and civil rights legislation. Sexual orientation also needs to be a protected ground for hate crimes and hate propaganda.

Because I am analyzing heterosexism in terms of systemic oppression, it is necessary to challenge state policies which inscribe heterosexuality in their model of family and relationships. I have already argued earlier on in this chapter with respect to the recognition of same-sex couples that LGBT people would be better off, in the long run, not to argue that they are capable of emulating the heterosexual norms, but rather to challenge the model of family proposed in public policies.

Heterosexism is embedded in society, in state structures and institutions in ways that make it difficult to achieve any sort of progress on an individual basis. This suggests that when we are fighting for formal equality rights, we are not fighting the right battles. The shift away in the gay and lesbian movement from liberation to equality in individual

rights is not a positive change. Rather than embracing empowerment and self-respect, equality rights translate into assimilation. As Connell argues, social equality is what defines the radicalism of sexual politics, not equal rights (1995, 395). True change, substantive equality and citizenship will require more than equality-rights.

Richardson makes an interesting point about how the private and public realm is conceptualized differently depending on whether you are heterosexual or not. As she explains: “[for] lesbians and gays the private has been institutionalized as the border of social tolerance, as the place where you are “allowed” to live relatively safely as long as one does not attempt to occupy the public” (1996, 15). For heterosexuals, the private is differently constructed and the public is not contested terrain. With this in mind, LGBT people should not only be seeking the democratic right to privacy. A right to privacy will only allow comfort in bedrooms, without the privilege of holding hands while walking down the street. LGBT people need to hold the state accountable for the minimum level of security needed to allow them access to substantive citizenship—to participate and contribute to society and to access the rights of citizenship. This is asking for more than tolerance (whereby it is acceptable to be queer as long as you are in the closet or do not flaunt it) or a lack of gay-bashing (not being a victim of violence) (Richardson 1996, 15). It is the opportunity of being oneself safely regardless of one’s sexual identity.

Chapter 3 - Hate Crime Legislation: a Hegemonic Response to the Problem of Violence Targeted at LGBT Citizens.

Concerns linking issues of security, immigration and citizenship have been heightened following the events of 11 September 2001 (Daniels, Macklem and Roach 2001; Adelman 2002; Faist 2002; Bigo 2002 and 1998; *Ligues des droits et libertés* 2003; Bhandar 2004). Terrorist attacks are fundamentally different from hate crimes. The events of 2001 are of interest, however, because they were followed by several hate-motivated incidents in Canada targeting mostly people who looked Arab, Muslim or Jewish (Canadian Race Relations Foundation, n/d; Toronto Police Services 2001, 22) and because values and beliefs that can lead to hate crimes may have been reinforced in the aftermath of September 11 (Adelman 2002; ICLMG 2003; Léger Marketing 2001b).

There was a substantial increase in the number of hate crimes reported to various police forces in the months immediately following the terrorist attacks of 2001.¹ In its 2001 annual report, Toronto's Hate Crime Unit reported a 66% increase in hate-crimes from the year 2000 to 2001. The report states that the Toronto Police Service received 121 hate occurrences directly related to the terrorists attacks, a figure that corresponds to 90% of the total increase in hate crimes. The number of hate crimes during the course of the year 2001 peaked in September and declined steadily to normally observed levels by November (Toronto Police Services 2001, 4, 11 and 21-22).

Heightened concerns with security and measures undertaken by the state are likely to have reinforced prejudices and stereotypes in society, while simultaneously undermining the state's role in protecting all citizens. Airport and border security checks are said to be more thorough. The compilation and use of biometrics information has

become more widespread. Immigration procedures have also been changed to prevent would-be terrorists from entering the country and to reduce the number of refugees. Some individuals have been detained or put under surveillance because of suspicions that they might be associated with terrorist networks or activities. Civil liberties may have been jeopardized in the name of national security (*Ligue des droits et libertés* 2003). In the current political context, there is a tendency to associate criminality or threats to security with immigrants (Adelman 2002). These security measures seem to have reinforced prejudices towards individuals who are Other or who are different. And since the coercive arm of the state is believed to be involved in a number of these procedures, including racial profiling, surveillance, detention without a fair hearing, etc., I would argue that the role of the state in maintaining minimum security levels for all its citizens is compromised. In this context, discussing hate crime legislation, security and citizenship could not be more timely.

In this chapter I discuss one aspect of the state's responsibility towards the groups targeted by hate/bias² violence. I argued in chapter 1 that protection against violence is a minimal guarantee for citizenship and the legitimacy of the state. A democratic state must guarantee the equal protection of all its citizens. I explore one of the ways the Canadian government has chosen to uphold this responsibility towards its citizens with respect to the issue of hate or bias-motivated violence. My purpose here is not to assess whether the hate crime sentencing legislation and other similar policies are effective, but rather I want to establish whether the hate crime legislation (a *Criminal Code* provision

¹For newspaper coverage of incidents following September 11, see Sallot (2001).

² The term hate/bias is commonly used in government documents and structures most discussions on solutions and measures to address hate or bias-motivated violence and activities in that literature. Hate/bias refers to acts that are criminal, but also includes some that are not. Because the focus of this chapter is specifically on this literature, I am making use of this terminology throughout this chapter.

that can be used in court when hate crimes have been committed) can contribute to enlarging the boundaries of the citizenship regime in ways that allows for the inclusion of citizens targeted by such violence. I first discuss how hate crimes became a policy issue. I follow up with an exploration of the legislative framework in place to address hate and bias-motivated violence. I then review recommendations that have been made over the last decade by governments, NGOs and academics working on countering hate/bias violence.

From this review of recommendations on how to address hate/bias violence I conclude that the privileged approached in the literature is a law and order agenda in which criminal law is to be used to punish offenders. I argue that this is a hegemonic response to hate crimes. Criminal law is understood as providing the best solutions for tackling the problem of hate/bias violence even by NGOs or community organizations who work closely with targeted groups. I propose that a focus on criminal law diverts our attention away from solutions that would be more appropriate for upholding the citizenship of targeted groups. Although I do believe that a *Criminal Code* provision such as the hate crime sentencing provision is a necessary step in addressing hate crimes, I caution that it is not a sufficient tool for upholding the citizenship of targeted groups. *Criminal Code* provisions cannot on their own guarantee the minimum levels of security needed to enjoy fully one's citizenship. They may, however, have a positive effect with respect to enlarging the sphere of citizenship to those groups the legislation protects.

Citizenship and Security: The State's Responsibility in Protecting Citizens against Violence.

Although hate crime laws originated in the Canadian government's concern for social cohesion and race and cultural diversity, in part because the discussions on social cohesion and multiculturalism did not originate with making Canada more tolerant of sexual minorities, I will not explore that history here. Instead, by focusing on hate crime legislation as an example of state protection, I will examine the links between first-class citizenship and the state's responsibility in protecting equally all citizens from violence.

Canada attempts to manage diversity in various ways including laws against hate crimes. Violence is a dimension of oppression (Young 1990a, 61). Violent manifestations of hate, or hate crimes, are extreme examples of oppression; they often lead to the marginalization (Young 1990a, 54) of the group towards which the hatred is aimed, by preventing an entire category of individuals from useful participation in society. Violence motivated by hate or bias promotes the exclusion of targeted groups and denies them their citizenship. It is a widely accepted notion that apart from their deleterious impact on individual victims, hate-motivated activities undermine the goals of promoting a just, fair and equitable society (Cogan 2002; Banks 1999; Sloan and Gustavson 1998; Major 1996; Roberts 1995). By discouraging those who are victims of hate from participating in the social and political life of their community, violence motivated by hate and threats of violence in hate messages affect the way people relate to society. They undermine the citizenship rights of those targeted by denying or limiting their security.

Despite the term "hate crime" being more commonly used today, there is little consensus as to the exact meaning of the term (Janhevich 2001, 8; Jenness and Grattet

1996, 130). The use of the term in the literature, in legal codes, by community organizations, police services, or the media differs widely. For example, the acts that correspond to the definitions used in criminal law in Canada and elsewhere encompass a wide variety of acts. Moreover, “[e]xisting studies classify hate crimes differently and various academic disciplines incorporate different paradigms to explain and define hate crimes” (Janhevich 2001, 8). Police services across Canada do not use a common definition of hate crimes. In a review of definitions of hate crime used in Canada at the time that the hate crime sentencing provisions were being discussed in the House of Commons, Roberts (1995, 8-9) listed ten different definitions that were used by police services across the country. They varied in the groups that were protected and in the acts that they included. Since the hate crime sentencing enhancement measures were added to the *Criminal Code* in 1995, followed by the endorsement of this definition by the Canadian Association of Chiefs of Police in 1998, we can say that there is greater uniformity in the use of the term, although there is no real consensus on its meaning (Interview Toronto Police Officer, 30 May 2002; Janhevich 2002, 4).

Despite some degree of uniformity in the definition used by police services (which does not necessarily translate into a uniform application of this definition, as will be discussed in chapter 5), reports that present the views of community organizations (Faulkner 1997; Hall and Sefton 2001) also put forward their own definitions that are likely to differ from the *Criminal Code*. As I explain in chapter 6, targeted groups and NGOs that represent these groups, are more likely to use a broader definition of hate crime than the one found the *Criminal Code* or used by police. Stanko, in a study that looked at how violence is experienced (1995 and 2001), suggests that a more appropriate term to use is targeted violence rather than hate crime. She claims that targeted violence

conveys better how this violence is experienced by targeted groups. It reminds us that those who are subject to targeted violence are less powerful groups; they are second-class citizens. It also includes ordinary violence that has an impact on the daily lives of individuals, but which may not be captured in a law enforcement framework (Stanko 2001, 315). What Stanko is suggesting favours the use of a holistic approach to prevent intervening or giving consideration to violence only when it has escalated to the level of hate crime. She wants us to consider the social context in which the hatred develops.

It should be noted that if the literature makes abundant use of the term hate crime, this is in part because the individuals who are writing on this issue are writing in their capacity as actors involved in law enforcement or from the discipline of criminology. In this respect, Stanko's work reminds us that the problem that has been labeled hate crime is not strictly a law enforcement issue. It is a social problem. Substantial aspects of the violence, as experienced by targeted groups, are likely to go unnoticed by the criminal justice system. Victims may not want to turn to the criminal justice system (Stanko 2001, 314-5; Roberts 1995), either because they fear the police, retribution and revictimization, because they feel the matter is not serious enough or because they consider the case a private matter. Stanko's definition brings us closer to thinking about citizenship. Her concern is with social power or how targeted violence maintains power relations in society, keeping targeted groups outside substantive citizenship. She is less concerned with the acts themselves than the process that leads to these acts and the outcomes with respect to how they affect targeted groups.

The *Criminal Code* defines hate crime as any crime in which there is "evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual

orientation, or any other similar factor” (*Criminal Code*). It also defines hate propaganda in sections 318, 319 and 320 of the *Criminal Code*, sections that deal with advocating genocide, public incitement of hatred, and willful promotion of hatred against an identifiable group. Overall, there is a variety of definitions that are used to refer to hate crimes depending on the context and who defines hate crimes and to which ends.

This thesis employs the term hate/bias-motivated violence or hate crimes. These terms refer to acts that are criminal and that undermine the citizenship of the targeted groups. The severity of these acts can vary widely, from murder or violent beating, to acts of vandalism against one’s property, threat of physical force or hate messages (hate propaganda as it is called in the *Criminal Code*) that are likely to incite violence but are not physical acts in of themselves. I also speak of hate/bias incidents or targeted violence to refer to acts or attempts by an individual to undermine the citizenship of the targeted group. These acts or attempts make evident the hostility toward that group because of an identifiable characteristic. As it is explained in British Columbia’s *End Hate Crime: Hate/Bias Crime Policy Guide*, “most hate/bias incidents, and most racist, homophobic or sexist acts, while abhorrent in nature, are not *Criminal Code* offences” (BCAG 2000a, 2; 1998). Hate/bias incidents are best dealt with through human rights legislation, harassment policies, and other similar mechanisms. Hate/bias incidents have a similar function to hate crimes and must therefore be considered within the context of this study, for my aim is not to focus solely on criminal acts, but on all actions that work to undermine the citizenship of targeted groups, whether or not these are criminal. Although the prevalence of sexism, heterosexism, racism and other similar ideologies and prejudices are conducive to acts that oppress and marginalize targeted groups, unless they are acted upon, they are not crimes; yet they are still evidence of oppression. Moreover,

this thesis focuses on citizenship; it does not look into how to eliminate heterosexism, sexism and other prejudices.

Canada's obligation to combat hate and bias activities is laid out in the *Convention on the Elimination of All Form of Racial Discrimination* (CERD) to which Canada has been a signatory state since 1966.³ Regardless of the international norm that is set out in the CERD and other international documents to which Canada is a party, I argue that Canada has a responsibility as a democratic state toward all of its citizens to ensure that they benefit from legal rights as outlined in the *Charter*, including the right to liberty and security. Canadian citizens are also entitled to equality rights, including the right of equal protection and equal benefit from the law. Within its own domestic framework, the Canadian government has set for itself a responsibility toward its citizens to ensure the conditions that will allow them to benefit from these rights.

One of the ways that the state can offer protection from violence is to use criminal law to express its disapprobation of actions and behaviours (Banks 1999, 19) that undermine the citizenship of a certain category of people. The hate crime sentencing enhancement principle is one such measure. By including a specific provision that addresses hate crime, the state sends a message that it will not tolerate individuals who partake in criminal acts, particularly when these acts are motivated by hate or bias. Similar arguments have been put forward with respect to the hate propaganda provisions. Until recently, sexual orientation was not included in the list of identifiable groups, which meant that hate propaganda targeting LGBT people was not criminalized. This was the case despite the fact that LGBT people are often the target of hate propaganda. The inclusion of sexual orientation in the hate propaganda provision indicates to society

³Canada signed the Convention in August 1966 and ratified it in October 1970 (Leblanc 1994).

that hate propaganda directed against LGBT people is unacceptable; it also indicates to sexual minorities that they are full fledged members that the state is willing to protect (Major 1996; Banks 1999). With this in mind, I argue that the hate crime legislation seeks the intended goal of enhanced security for Canadians who are targets of hate/bias-motivated violence by increasing penalties for such crimes. Similarly, hate propaganda provisions seek to protect sexual minorities by singling out in the *Criminal Code* these particular acts.

The remaining sections of this chapter will lead us to question whether the hate crime legislation contributes to protecting individuals from hate/bias-motivated violence. I am not concerned with whether or not the policy is effective. Rather, I want to assess, with respect to the citizenship of LGBT individuals, whether the hate crime legislation, which recognizes the citizenship of LGBT individuals, can be used to enlarge the boundaries of the citizenship regime to open up access to first-class citizenship to LGBT individuals.

Hate Crimes: the Emergence of a Public Policy Issue

Hate crimes and bias activities are not new problems; what is new is the concern and discussion by government, NGOs and academics found in reports, articles and research notes. The existence of laws and policies is also new. Hate crimes were inscribed in criminal law in both the United States and Canada mostly in the late 1980s and early 1990s (although in Canada hate propaganda provisions were put in place in the late 1960s). The issue of hate crimes came to the fore as a result of heightened sensitivity

around issues of prejudice and discrimination based on race, ethnicity, religion, gender, and sexual identity. As two U.S. legal scholars explain, “hate crime statutes extend the drive against prejudice to matters of crime and punishment” (Jacobs and Potter 1998).

Hate crime legislation is rooted in the U.S. civil rights movement, extending controversial programs such as affirmative action and other initiatives that promote equality, or prevent discrimination, based on one’s identity (Jacobs and Potter 1998). Although prejudice and hate are not criminal until acted upon, hate crime legislation aims to deter actions that are used to reinforce these prejudices and the social inequalities that follow from these prejudices. In this respect, I claim that hate crime legislation is one mechanism that can contribute to the enlargement of the boundaries of the citizenship regime by inscribing itself on the list of initiatives that aim to promote equality and prevent discrimination, and in this case, ensure the security of targeted groups. Merry explains that the criminalization of hate corresponds to the institutionalization of a set of cultural practices (Merry cited in Grattet, Jenness and Curry 1998, 287). Making new laws and developing legal categories can be understood as a social process by which the condemnation of hate/bias activities becomes institutionalized and inscribed in the public imaginary.

In the United States, in the late 1970s, lawmakers started to introduce a novel legal strategy to address the perceived escalation of intergroup conflict. Regardless of whether the number of hate-motivated crimes was truly increasing in the United States, hate crimes had become “a highly visible social problem that [garnered] national attention and elicited community activism as well as both federal and state lawmaking” (Jenness and Grattet 1996, 131). Targeted groups were demanding legal reforms to prohibit such violence and to punish those who perpetrate it. Throughout the late 1980s

and into the mid-1990s, most U.S. states and the federal government passed some kind of hate-crime legislation (Jenness and Grattet 1996, 132-133). The general justification for hate crime legislation has been that criminal acts “are particularly dangerous and socially disruptive when motivated by bigotry” (Grattet, Jenness, and Curry 1998, 286). Jenness and Grattet have drawn up a list of hate crimes legislation passed in the United States. Their inventory reveals that there is little consensus on how to address this problem in that country. Legislative efforts include both criminal provisions and civil remedies. They range from data collection, to harsher sentences for hate-motivated crimes, and include specific types of crimes such as institutional vandalism, cross burning, etc. Jenness and Grattet conclude that “[t]he diversity of approaches used by states throughout the United States reflects each state’s struggle to respond to hate-motivated violence while also attending to civil liberties-related concerns and remaining sensitive to the sociopolitical particularities of the state” (Jenness and Grattet 1996, 134; also see Grattet, Jenness and Curry 1998).

In Canada, hate crimes were first discussed in public policy circles in 1992, when the *Federal-Provincial-Territorial Working Group on Multicultural and Race-Relations in the Justice System* brought together representatives from the Federal Department of Justice and Ministry of the Solicitor General and from most provinces to identify justice system issues of concern for ethnic and racial minorities. A major concern identified was how the criminal justice system could more effectively address criminal behaviour motivated by hate or bias (Nelson and Kiefl 1995, iii). Since then, government departments, policy-makers, academics, and non-governmental organizations have

produced documents and reports on this issue.⁴ The media have also contributed to a greater awareness and concern of hate crimes through their coverage of hate crimes and the criminal justice system dealing with such crimes (Bittle 2001).

Although the concept of criminal behaviour motivated by hate or bias, as discussed in public forums and documents, can be traced back to the 1966 *Cohen Committee Report on hate propaganda* (Canada, Cohen Report 1966), it is only in the last ten years that statistics have been gathered on hate crimes by some police services and that hate crime units have been established in a number of police forces across Canada to respond to hate crimes. Also, hate crimes were codified in 1995 in the *Criminal Code* (s. 718.2(a)(i) which mandates sentencing enhancement when a crime committed is motivated by hate). I explore how measures to address hate crimes have evolved.

Events and activism in both Toronto and Ottawa led police services there to respond by establishing hate crime units and collecting data (Interview David Pepper, 22 March 2002).⁵ The Ontario provincial government followed suit when the Attorney General issued directives to Crown Attorneys about hate crimes (Ontario, Ministry of the Attorney General, 15 January 1994) and the Solicitor General and Correctional Services

⁴The Department of Justice Canada has been a major contributor to research in this area. The studies this Department has sponsored or coordinated include a legal analysis of the use of criminal law to combat hate and bias (Gilmour 1994); a national survey of the perception of criminal justice personnel on the extent and nature of hate crimes (Nelson and Kiefl 1995); an assessment of available empirical data and discussion of the contribution these data make to our understanding of the problem of hate crimes (Roberts 1995); and a survey of lesbian and gay men on the issue of antigay violence used to evaluate the needs of victims of hate crimes (Faulkner 1997). Some community organizations and police services have also contributed to the development of literature on this issue. For example, *Moving Towards a Distant Horizon* (1994a) is a report of an action plan produced by David Pepper and Carroll Holland for the Ottawa Police Services. The League for Human Rights of B'nai Brith Canada publishes a yearly audit of antisemitic incidents.

⁵As Pepper, who headed the Gay and Lesbian Task Force on Violence, explained, when the community started to mobilize in Ottawa, in 1989, following the death of Alain Brosseau (a man targeted because he was perceived to be gay) the use of the term hate crime then was always met with a blank stare by police. The term was not part of the discourse used by politicians at that time either (Interview, 22 March 2002).

issued new policing standards for hate crimes and hate propaganda. The guidelines to Crown Attorneys reiterated case law and stressed the need to have the principles outlined in these cases upheld. The directive specified that, when a crime was suspected of being racially motivated, the Crown counsel was to bring this factor to the attention of the trial judge at sentencing and request that the sentence be more severe. This directive was clearly stated in the 1977 Court of Appeal case which declared that a racially-motivated assault is more heinous and that “the sentence imposed must be one which expresses the public abhorrence for such conduct and their refusal to countenance it” (*R v. Ingram* cited in Ontario Ministry of the Attorney General, 1994). Moreover, the memo stated that in cases of gay bashing, “the same principles apply to deliberate assaults against homosexuals as to racially motivated assaults” as the Ontario Court of Appeal determined in the Atkinson case (Ontario Ministry of the Attorney General, 1994). The policing guidelines were modeled on those developed by the Toronto and Ottawa police services (Ontario Ministry of the Solicitor General, 1994).

The federal Liberals promised in the 1993 General Election campaign to introduce measures against hate-motivated crime. The 1993 Red Book stated:

Every person has a right to personal security, and a Liberal government will move to protect that right. Particular attention must be paid to those who today, by virtue of gender, race, religion, age or sexual orientation, are more likely to be targets of violent crimes (Liberal Party 1993, 84)

The inclusion of this issue as part of the platform of the Liberal Party was in response to the pressures from groups victimized by this type of violence (Rock 1994).

Bill C-41 was passed in 1995 (the hate-crime sentencing bill) in response to efforts of groups and organizations representing the communities most affected by hate crimes, including the Canadian Jewish Congress, B’nai Brith and EGALE. These groups

were aware that the system often failed the victims of hate crimes by not offering them appropriate services and by failing to prevent such incidents (Ottawa-Carleton Regional Police Bias Crime Unit and the Liaison Committee 1995, 2). These groups hoped that by adding hate crimes as a category in the *Criminal Code* the criminal justice system would see to the protection of targeted individuals and in this way provide them with minimum levels of security to enjoy their citizenship.

Codification of hate crimes and hate propaganda represents the extent of the measures undertaken by the federal government, although Canadian Heritage organized a series of Hate and Bias Activity Roundtables, in 1997 and 2000. Through these consultations with police services, community organizations and several government departments, the federal government aimed to find appropriate ways to combat hate-motivated activities. Despite numerous recommendations gathered through these consultations, no concrete initiatives have followed these meetings.

In the past decade of increased public awareness and research on hate crimes and incidents, a common assumption is evident in the literature and in public discussions. The argument is that hate crime legislation is a necessary and progressive response to the problem of hate crimes. This agreement between civil rights and victim's rights movements,⁶ and the presence of a socially-conservative forces in Parliament (i.e. mostly the Reform party and a number of Liberal backbenchers whose views will be discussed in chapter 4), resulted in the general acceptance of tougher sentences for crimes, including for hate crimes. Considering that a number of these groups generally lobby for rights and greater civil liberties (e.g. EGALE, B'nai Brith, etc.), support for a law-and-order agenda

⁶This has been documented for the United States by Maroney (1998).

makes me question whether this approach to hate crimes is in the best interests of the targeted groups.

Since the early 1990s, Canadian federal and provincial governments, local authorities, non-government groups and academics have made various recommendations for legislative change. Most of the recommendations made in the literature focus on law enforcement measures, although measures other than legal ones are also proposed. The legal recommendations aim either to amend current laws, create new ones, or eliminate those perceived as inadequate. Although a number of recommendations focus on human rights legislation and policy changes, *Criminal Code* amendments were the main focus of these recommendations. Proposals with respect to the *Criminal Code* usually increase penalties for crimes motivated by hate, create new categories of crime to criminalize specifically hate-based actions such as the desecration of religious institutions and cemeteries or membership in hate groups, and change the list of protected groups in the hate propaganda provisions.

I conclude from a review of this literature that the proposed recommendations are not sufficient to extend the citizenship of targeted groups. I discuss how a focus on criminal law diverts attention from solutions that would contribute to contesting the boundaries of the citizenship regime. I show that the criminal law discourse is a hegemonic response to hate crimes and hate/bias-motivated activities.

*Responding to Hate/Bias in Canada: an Overview of
the Current Legislative Regime and Proposed Recommendations*

In this section I offer a brief overview of the current legislative regime to show that the mechanisms in place to address hate/bias crimes and activities are not limited to the hate crime sentencing guidelines and hate propaganda provisions. Appendix A offers a comprehensive list of the laws in place to address hate/bias crimes and activities. The legislative regime against hate/bias activities includes international, federal, provincial and municipal dimensions.⁷ This is followed by a survey of recommendations made in the literature to address hate/bias crimes and activities. The purpose in outlining these proposed solutions is to provide sufficient information to assess whether they are appropriate if one's goal is to find ways to enlarge the boundaries of the citizenship regime. It is important to take stock of what governments, activists, and NGOs or community organizations are doing and proposing to think critically about whether the ends pursued meet the needs of the targeted groups as identified by them (see chapter 6 for an elaboration of how LGBT communities define the problem of targeted violence). This is a necessary step for a research project such as this one that inscribes itself in a tradition of critical social research.

Recognizing that hate crimes are an international problem, various treaties have been enacted by the international community to help combat these crimes. Canada is a signatory to several. These conventions have had a profound effect on Canada's response to hate crimes. After WWII, the *Convention on the Prevention and Punishment*

⁷Sources that provide a good overview of the legal framework include Jeffery (1998); CACAA (Community Advisory Committee on Anti-Hate and Anti-Racism) (1996, 45-54); BCHRC (British Columbia Human Rights Commission) (1999); Mock (1998/9).

of the Crime of Genocide (1948) was enacted by the United Nations and signed by Canada in 1952, and in part to fulfill its obligation under this convention, Parliament introduced the offence of advocating genocide (s. 318 of the *Criminal Code*) (BCHRC 1999). The UN *International Convention on the Elimination of All forms of Racial Discrimination* was also signed by Canada in 1966, requiring countries to implement “immediate and positive measures” to eradicate all incitement of hate or discrimination related to race-based discrimination (CACAA 1996; BCHRC 1999). Some have argued that the convention requires governments to enact legislation that specifically deals with hate/bias crimes. A counter-argument has been made by some who claim that there is no need to create a specific crime category; they claim that the *Multiculturalism Act*, the *Charter*, hate propaganda provisions and the statement of hate crime as an aggravating factor at sentencing are policies sufficient to uphold the *Convention* without creating a new crime category (Gilmour 1994).

Canada is also a signatory to the *Universal Declaration of Human Rights* (1948), the UN *International Covenant on Civil and Political Rights* (1976) that endorse human rights guidelines and prohibits hate crimes (Kallen 1998, 2). These international treaties subsequently led to the adoption of further measures to counter hate crimes (see Rosen 2000). In many respects, the Canadian case confirms that being signatory to these international conventions translates in concrete national measures to combat hate/bias at the national level. In sum, the initial endorsement of international conventions can be considered a first step in dealing with the problem of hate crimes.

Federally, the *Charter of Rights and Freedoms*, and more generally the Canadian Constitution, outline fundamental values of Canadian society. For example, the statement of equality (s. 15) and the endorsement of multiculturalism and respect for

diversity (s. 27) are meant to guide the development of public policy at the federal level. They also define Canadian political culture and values. In this way, the *Charter* confirms that respect, equality, security, fairness and democracy are fundamental aspects of Canadian society.

Unlike the *Charter* that sets out the parameters or general context in which issues are to be addressed, the *Criminal Code* sanctions specific actions.⁸ The provisions in the *Criminal Code* for responding to hate-motivated crimes are of two kinds. One focuses on hate-motivated crimes; the other on hate propaganda, also a crime. When a criminal offence is found to be motivated by hate/bias, section 718.2(a)(i) states that judges must consider this as an aggravating factor in sentencing. It says:

A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor.

The goal of this section is to help ensure that when criminal acts are motivated by hate/bias motivation, these are to be consistently considered for increased sentences.

Section 718.2(a)(i) has been used only a few times since its inclusion in the *Criminal Code*. To date, the most notable of these cases is *R v Miloszewski* [1999], in which the five accused were motivated by prejudice to attack Mr. Gill, a Sikh temple

⁸For a detailed examination of legal remedies, see Jeffery (1998) or Gilmour (1994). Jeffery's report discusses sections of the *Criminal Code* and various legal mechanisms that can be used to respond to hate crimes including private law, human rights legislation, class actions and other mechanisms that are not directly intended for victims of hate-motivated crimes but that can often be applicable to such cases. Gilmour's report examines more specifically the role of criminal law in responding to hate/bias crimes. For an overview of the legislative framework for addressing hate propaganda, see Rosen (2000); Manwaring, (1992); Racicot et al., (1997); or Samson (1995).

caretaker. Other cases in which s. 718.2(a)(i) was successfully used include *R v Gabara* [1997] in which racial bias motivated the assault, and *R v Peers and Wilson* [1999] in which prejudice based on sexual orientation motivated the crime.⁹ One recent opportunity to use the hate-crime sentencing provision appears to have been missed. The murder of Aaron Webster, which took place at the entrance of a well-known gay stroll in Stanley Park (Vancouver, B.C.), was initially labeled by police as a hate crime. Mr. Webster was found naked; he had been brutally beaten to the head with baseball bats and a pool cue by a group of four youths (*Globe and Mail*, 19 November 2001: A8; and *Capital Xtra!*, 13 March 2003: 7.). When the case was before the courts, the Crown declined to call Webster's murder a hate crime. The judge, upon handing her sentence mentioned that her sentence must be based on evidence and that the Crown had not produced any evidence to explain why Mr. Webster was naked at the time he was killed (*Globe and Mail*, 9 February 2005: A6 and 28 January 2005: A7).¹⁰ It is still too early to determine what the full impact of s. 718.2(a)(i) in dealing with hate/bias crimes will be, however, it is likely that its use will increase over time as it becomes part of the developing case-law. It is natural that there is a delay between the adoption of legislation by Parliament and common use by judges of this legislation. This is why it is not possible at this point to assess fully the effect of s. 718.2(a)(i) on trial court practices.¹¹

⁹For an overview of these cases, see British Columbia, Attorney General and Minister Responsible for Multiculturalism, Human Rights and Immigration (2000a).

¹⁰The Vancouver LGBT communities mobilized around this case to signal their outrage at the fact that the case was not prosecuted as a gay-bashing or hate crime. Svend Robinson, who as an MP managed to get sexual orientation added into the hate propaganda provision, said about the Webster case that: "[c]learly there is a huge learning curve for the Crown. They didn't get it, or they chose not to apply these [hate-crime] provisions. If ever there was a crime that cried out for hate-crime designation, this was the case" (quoted in *Globe and Mail*, 9 February 2005: A6). For information on the sentencing of the other three individuals involved in the case, see *Globe and Mail*, 11 December 2004: A2; *Globe and Mail*, 19 December 2003: A1 and A9.

¹¹Establishing whether or not section 718.2(a)(i) has been used successfully is difficult to assess, in part because no study has been done on the issue at this point. The Department of Justice Canada, which has

Hate propaganda is addressed in three sections of the *Criminal Code*. Section 318 (advocating genocide), s. 319 (public incitement of hatred) and s. 320 (distribution of hate propaganda) all seek to protect identifiable groups from being targets of hate propaganda.¹² One of the measures recently added to the *Criminal Code* is mischief relating to religious property (s. 430.4). It was included when Bill C-36 (the Anti-terrorist measures) passed the House of Commons in the fall of 2001. Some sections in the *Criminal Code* that do not directly address hate/bias nevertheless can also be useful. For example, s. 181 of the *Criminal Code* prohibits spreading of false news that causes or is likely to cause injury. It has been used to fight hate propaganda cases.¹³ There are a number of other measures available at the federal level to address hate/bias crimes and activities. They include some sections of the *Canadian Human Rights Act*, *Immigration Act*, *Broadcasting Act*, *Customs and Tariffs* and *Canada Post Act* (see Appendix A).

Provinces have also developed different tools and responses to hate/bias crimes and activities. In British Columbia, the prohibition of hate crimes is set in a number of laws, including the *Human Rights Code*, the *Multicultural Act* and the *Civil Right Protection Act*. In Ontario, the *Ontario Human Rights Code* protects individuals from discrimination at work, in housing, in services used and in unions, trade or vocational associations or contracts. In addition, the harassment provisions of the *Ontario Human*

produced a number of studies on hate/bias activities, has yet to engage in a review or assessment of the outcome of that particular change to the *Criminal Code*. It is unfortunately beyond my expertise and the mandate of this research to engage in such an assessment.

¹²For a detailed examination of each of these provisions see Racicot et al. (1997, 84-6 and 88-98).

¹³The most famous case involving s. 181 is *R. v Zundel*. Having failed to obtain the Attorney's General consent, a necessary condition to go ahead on charges under s. 319 (against public incitement of hatred), rather than abandoning the case, the Canadian Holocaust Remembrance Association decided to proceed with the prosecution by using s. 181 of the *Criminal Code*. According to Manwaring (1992), convictions are difficult to obtain by using section 319 of the *Criminal Code*; obtaining the Attorney General's consent is not an easy task. The Zundel case took another turn when, as a result of public pressures, the Crown eventually took over the prosecution from the Canadian Holocaust Remembrance Association and more appropriately tried Zundel under s. 319 (1992, 109-110).

Rights Code protect individuals from being harassed, threatened, or insulted (CACAA 1996, 87). Other mechanisms include the *Discriminatory Business Practices Act*, which protects individuals in a business context from discrimination and the *Insurance Act* (revised statutes), which addresses discrimination in the context of insurance coverage. In addition, the Ontario Ministry of the Attorney General's directive to Crown Prosecutors on hate/bias crimes (Ontario, Ministry of the Attorney General, 15 January 1994) urged Crown counsels to signal hate/bias motivations to judges as an aggravating factor at sentencing. To ensure Crown counsels apply the same principles to assaults motivated by homophobia as to racially motivated ones, directives specifically note that gay bashing should be addressed by using the same principles as for racially-motivated crimes. Crown counsels, in their capacity as law officers of the Crown, are urged to take effective action against these incidents (CACAA 1996, 54).

Most other provinces and territories deal with the issue of hate/bias crimes through human rights legislation which are comparable in their aims and goals. According to one analyst, the broadest provincial provision with respect to hate propaganda is s. 14 in the *Saskatchewan Human Rights Code*. It says:

no person shall publish or display in a newspaper, through a television or radio broadcasting station or any other device or in any printed matter or publication or by means of any other medium that he owns or controls, any notice, symbol, emblem, article, statement or other representation which exposes, or tends to expose, to hatred, ridicules, belittles or otherwise affronts the dignity of any person because of his or their race, creed, religion, colour, sex, marital status, disability, age, nationality, ancestry or place of origin (reproduced in Racicot *et al* 1997, 87)

This provision has been upheld constitutionally suggesting that the less-stringent anti-discrimination provisions of other provinces are also likely to be found constitutional (Racicot et al. 1997, 87).

Municipal agencies that deal with the issue of hate/bias crimes within their jurisdiction include housing boards, school boards, and police services. While reports of hate/bias crimes such as graffiti or vandalism to municipal authorities are not uncommon, most municipal offices have no mechanism to keep track of them. This is a definite problem in terms of having a concerted approach to counter hate/bias activities. A study revealed that apart from not having mechanisms in place to receive and document hate/bias crimes, jurisdictional wrangling is a common problem at the municipal level (Mock 1996). For example, a graffiti incident may involve the police, the property owner and the city, making it unclear which party is responsible for handling the report. Increased coordination and cooperation is needed to ensure that the incidents are reported and dealt with in an adequate manner (Mock 1996, 44). In general, problems in addressing hate/bias crimes and activities at the municipal level can in part be attributed to the lack of regulation that specifically outlines how municipal authorities should deal with hate/bias crimes and activities. Changes will be necessary to allow municipalities to deal adequately with hate/bias crimes and activities in their territory.

Despite a fairly extensive legislative framework (that extends beyond a few *Criminal Code* provisions), numerous recommendations have been made for further legislative changes and amendments to address hate/bias crimes and activities in reports and research notes prepared by governments, NGOs and academics (see Appendix B). Overwhelmingly, the literature considers the legal framework as central to combating hate/bias. The *Criminal Code* is the main focus of the majority of legal recommendations and most recommendation. Common recommendations made in the literature include, for example, demands for changes in the list of protected groups in the current hate propaganda legislation, harsher penalties than the ones mentioned in s. 718.2(a)(i),

putting in place data-collection mechanisms and looking into using civil law as a recourse for victims. The few sources that focus on human rights legislation narrow in on the definition of hate propaganda. Concerns are also raised about the processing of human rights cases as there are indications that the system is not efficient. Having an adequate process for addressing hate/bias through human rights legislation is essential.

Most reports see criminal law as the most powerful means by which to condemn hate/bias crimes. It is interesting to note that despite the fact that human rights legislation is more likely to address situations that are more common in our everyday lives, the literature values overwhelmingly what is prescribed by the *Criminal Code*. It is the provisions in the *Code* that are presented as ultimately delineating acceptable behaviors and condemning others. It should be said, however, that the cases addressed by criminal law are the most severe cases of hate/bias-motivated violence and criminal acts, rather than the more routine acts of hate/bias that are more likely to affect people in their day-to-day context. Although criminal law provisions should not be ignored, it would be beneficial to stress the use of provisions and policies that can address the more basic ways in which hate/bias activities affects people daily.

More recently, a number of reports have spoken to non-legal measures to respond to hate crimes and activities. This reflects that there are two ways to view the problem of hate crimes and activities. One is to perceive hate/bias crimes and activities strictly as a law enforcement issue. This is the case when reports focus on legal sanctions to address hate/bias crimes and activities. Another approach is one that views the problem of hate/bias crimes and activities as a larger issue (McCaffery 1997, 3) requiring public education and community mobilization.

The non-legal measures identified in the literature fall into four categories: research and data collection, public education and community action, implementation and enforcement, and, finally, new media. Briefly, proposed recommendations include: national guidelines for collecting data to allow us to develop a better understanding of

where there are problem areas and to establish what resources are needed to prevent hate crimes; education campaigns to raise awareness about racism, antisemitism, sexism, homophobia (heterosexism) and other biases and to emphasize the importance of reporting hate/bias crimes to the police; etc.¹⁴ Recommendations that focus on implementation and enforcement emphasize training of police forces and better cooperation within the judicial system to improve the effectiveness of the legislative tools for dealing with hate and bias activities. Recommendations concerning new media focus on a combination of measures that include regulation of the medium, codes of conduct for users and providers, and using software to block and filter offensive content (De Santis 1998, 16; see also Matas 1997).

Hate Crime Legislation as a Hegemonic Response

In this section I want to assess whether the current legislative framework and proposed recommendations to address hate crimes, as outlined in the previous section, can contribute to enlarge the boundaries of the citizenship regime. Considering the consensus of governments, community organizations and NGOs on the proposed solutions, if the mechanisms in place or proposed are unlikely to improve the citizenship of the groups targeted by hate/bias violence, then I would argue that the discourse on hate/bias crime is hegemonic. I qualify the discourse as hegemonic because it is endorsed by the organizations that represent the targeted groups despite the fact that the

¹⁴A Metropolitan Toronto study showed a relationship between the amount of advertising of services that are intended to assist victims and the awareness of victims concerning the availability of these services (Mock 1996, 29). The antiviolence project of The 519 (a LGBT community centre in Toronto) sees its number of reported cases fluctuate in relation to the outreach efforts (Interview Howard Schulman, 29 May 2002). The study also revealed that the profile of the Metropolitan Toronto Police Hate Crime Unit was raised through public education, and particularly through school programs that inform the public of the

proposed solutions do not address the problem of hate/bias as identified by these groups. Since most of the reports and research notes focus on the law to address and prevent hate/bias-motivated violence, I first ask why the authors of these works believe legal sanctions to be central to preventing hate crimes and activities. I present below the various reasons offered in the literature to support a focus on legal sanctions. It is necessary to explore this particular aspect to better understand whether criminal law and legal sanctions can meet the needs of the targeted groups or if this focus diverts our attention (and resources) away from more appropriate solutions. When the literature converges into overwhelmingly proposing certain types of solutions and these solutions are upheld by groups whose interests are not met by those measures, we can say that the response is hegemonic.

Hate/bias crime started to be seen as a problem in the 1980s (Jacobs and Potter, 1998). In the late 1980s and early 1990s, legal measures to address this problem were proposed. In recent years, there has been a shift away from understanding hate/bias as simply a law enforcement problem to viewing hate/bias as a broader social issue requiring an array of legal and non-legal measures to effectively combat it.¹⁵ Proposals for a holistic approach to combat hate/bias represent a fundamental shift in the agenda. Considering how this issue has developed, it is likely that most work on this issue in coming years will be on how to address more comprehensively this problem. Most

existence of the unit and importance of reporting hate crimes (Mock 1996, 29). Toronto is not atypical case; the same is true for other services and hate crime units across Canada.

¹⁵In my review of the Canadian literature on hate/bias crimes and activities, I have found that most of the reports that advocate the use of both legal and non-legal measures have appeared in recent years (see BCHRC 1999; CJC 2000; CACAA 1996; Canada, Department of Canadian Heritage, 2000; Faulkner 1997; MCCC 1996; Mock 1996). While a few reports offering both types of recommendations did appear prior to 1996 (Pepper and Holland 1994a; C. Smith 1993; Canada, Federal/Provincial/Territorial Working Group on Multicultural and Race Relations in the Justice System 1994a and 1994c), most reports issued before 1996 focused on the best way to use legal remedies to combat hate crimes (Gilmour 1994; Rosen 1989).

documents reviewed for this analysis agree that the law is an important tool for responding to hate/bias violence. The role they attribute to the law in combating hate/bias crimes and activities is not limited to crime control. The authors in the reports reviewed also claimed that legal sanction served to distinguish hate/bias crimes from other types of crimes; to define community values that demarcate between acceptable and unacceptable behavior; to raise awareness of the problem of hate crimes; to deter potential perpetrators; to mandate law enforcement personnel to address hate/bias; to ensure the equal protection of all members in society; and finally, to reaffirm the citizenship of the groups targeted. I explain each of these roles in turn.

Some have argued that the key reason for legislating against hate/bias crimes is that hate crimes are said to be different from other crimes on two bases. First, the injurious effect of hate/bias crimes is felt not just by the individual victim but also by the group to which the victim belongs, and, potentially, society as a whole (Banks 1999, 8; see also BCHRC 1999; Roberts 1995; Weisburg and Levin 1994). Second, hate crimes convey a message to a whole community that a targeted group is not wanted in society. Banks argues that hate/bias activities infringe upon the targeted group's cultural identity, reputation and sense of security (Banks 1999, 8). The presence of hate messages or incidents makes the whole group aware that each and every member is vulnerable to attacks. The harm done extends beyond the victim to the entire community that is also intimidated by this violence. As Petersen states in reference to violence targeted at LGBT individuals, "[e]very queer-bashing incident serves to remind each of us that we could be next" (1991, 248). By sending a message of rejection and hatred to an entire segment of society, hate crimes divide society along religious, racial and sexual lines. Some argue that they undermine the social cohesion of society (Roberts 1995, 3). The

presence of hate messages and hate/bias incidents over time diminishes the targeted group's contribution to the political culture of the political community, as it withdraws from societal involvement (Banks 1999, 8). In other words, certain segments of the population will find their citizenship diminished by these actions. Further, by excluding and denigrating certain groups, hate/bias activities undermine the goals of equality, multiculturalism and tolerance central to Canadian political culture and society.

A second distinguishing feature of hate crimes justifying its inclusion in the law is that victims experience additional feelings of anger and vulnerability following the incident compared with other crimes. In a study comparing LGBT victims of hate crimes with other victims, Herek, Gillis, Cogan and Glunt (1997) found that because victims of hate crimes are targeted due to an aspect of their identity, they are more likely to experience psychological distress. As they explain:

Bias crime assault survivors were more anxious and angry than others, experienced more symptoms of depression and PTSD [posttraumatic stress disorder]. They also displayed less willingness to believe in the general benevolence of people and rated their own risk for future victimization somewhat higher than did others. [...] the present findings are consistent with Garnets et al.'s (1990) hypothesis that hate crimes—by attacking the victim's identity as well as her or his person or property—can inflict psychological damage beyond that associated with nonbias crimes (1997, 210).

Another reason that has been put forward to justify legal sanctions for hate/bias crimes and activities is that the law is said to reinforce social values. Garofalo and Martin (1993) argue that the law's primary function is to reinforce social values by defining what is acceptable to society. By stating specifically that hate/bias crimes will be punished more severely, the state sends a clear message that it will not tolerate such behaviour (also see Elman 1994, 643; EGALE 1994). This particular role of the law was

noted in the Cohen report (*Special Committee Report on Hate Propaganda* 1966), which claimed that in addition to legislating against manifestations of prejudice (i.e. criminal acts of hate propaganda), the law may educate the public, signal acceptable standards of behaviour, and may help improve the social climate (Cohen report 1966, 32).

Laws also outline state expectations. Legislative responses to given problems send a symbolic message that the state and its authorities perceive the issue as a serious problem. By codifying hate-motivation as an aggravating factor at sentencing, Parliament sent a clear message that such behaviour is unacceptable. Roberts suggests that the law represents “the most powerful response of the State to any social problem” (1999, 1). Taking this argument further, some have said that not legislating against hate crime can be viewed as a tacit permission to engage in such acts (Banks 1999, 39).

Another role attributed to the law is that it also may increase public awareness of the seriousness of a particular problem. Garafalo and Martin have argued that the inability to prosecute hate/bias crimes successfully may be less important than increasing awareness of hate/bias crimes which results from mandating these harsher sentences as a serious social problem (1993). Although not everyone agrees that the law can raise awareness on given social problems, Roberts argues that the extensive media coverage given to hate/bias crimes over the last few years means that the public is now aware of the existence of hate crimes in Canada. He also contends that the media coverage following the adoption of s. 718.2(a)(i) in the *Criminal Code* (1995) likely also increased public awareness of the seriousness of this problem (Roberts 1999, 25-6). Greater awareness can also be the result of the aftermath of highly mediatized cases such as those of Matthew Shepard and James Byrd in the United States or Singh Gill in Canada. We

can add to that the coverage of the series of hate crimes targeting Arabs, Muslims and Jews in cities across Canada in the months following the events of 11 September 2001.

In other arguments favouring recourse to a legal approach, the law is said to operate on three complementary levels: it legitimizes the work of law enforcement personnel; it sends a message to victims that they should come forth with complaints since the police are mandated (and willing) to deal with this problem; and it discourages would-be perpetrators by sending a strong message that such behavior is not acceptable and will be dealt with seriously. One obvious reason is crime control. The existence of criminal sanctions potentially act as a deterrent to would-be perpetrators of hate/bias activities; however, as Schulman notes, it is impossible to determine exactly how many individuals refrain from engaging in hate-motivated activities as a result of the law. Regardless, anecdotal evidence does support the argument that the law does act as a deterrent (Schulman 1997, 5.1).

The law can affect the responses of criminal justice professionals to hate/bias crimes. A resource guide on hate crimes produced by the Canadian Association of Chiefs of Police for police officers across Canada, for example, discusses the effect of specific legislation on the police response to this form of offending. It states: "concise legal direction in relation to a hate crime in the *Criminal Code* is mandatory for successful police investigations to be carried out" (CACP 1996, 17). Studies done in the United States assert that a positive byproduct of such legislation is that law enforcement personnel receive sensitivity training to recognize and respond to hate/bias (Lieberman 1992, 33; Fernandez 1991, 287-8). This has overall raised awareness as to what a hate crime is and how to respond to these incidents by those who are mandated to enforce the criminal law.

The law can also affect the willingness of victims to report hate crimes if it increases their trust in the criminal justice system (Roberts 1999, 1; Lieberman 1992, 33 and Hare 1997, 415). In a study on the presence of hate/bias activity in Toronto, Schulman argues that: “[p]articularly in a diverse city like Toronto, the mere existence of legal sanctions to deal with those who would seek to attack identifiable groups [...] provides great measure of comfort to minority groups” (1997, 5.1).

Finally, the two following arguments to support legal sanctions against hate/bias crimes and activities are not commonly advocated but are nonetheless important in the context of this study. The first is that hate crime legislation is needed to ensure the equal protection of citizens. Victims who are targeted because of their race, ethnicity, sexual orientation, sex or religion are more vulnerable than other members of society. If we consider criminal law as “the principal means by which society provides protection against crime to potential victims” (Harel and Parchomovsky 1999, 509), it is therefore the state’s responsibility to enact legislation to redress disparities in vulnerability related to certain immutable personal characteristics of its citizens (Harel and Parchomovsky 1999, 509-10)¹⁶. Hate crime legislation works to reduce the vulnerability of victims of hate crimes by increasing the penalties imposed on convicted offenders, and, in the process, helps to ensure the equal protection of everyone in society. This links back to the right to security as discussed in chapter 1.

A second argument is that the law is used to define citizenship. Citizenship offers members of Canadian society some rights and responsibilities. Citizens are expected to

¹⁶Advocates of hate crime legislation usually justify hate crime laws by suggesting that hate/bias crimes are more wrongful than regular crimes or that they implicate a greater degree of culpability. This understanding of why hate crime legislation is needed neglects examining the relative vulnerability of victims and society’s duty to provide equal protection from crime to different potential victims. (Harel and

contribute to and participate in public life and to the political culture. In return, citizens can expect to enjoy a climate of respect, equality and security. Hate/bias activities denigrate the groups they target and suggest that individuals from these groups should not participate in the public life and political culture of the community. Hate crime legislation, by extending protection and recognition specifically to targeted groups indicate that individuals from these groups are citizens and therefore entitled to security, respect and equality (Major 1996). In sum, by confirming the right to participate and contribute to political culture and public life as well as the right to equal protection and respect, hate crime legislation reaffirms the citizenship of targeted groups. In this respect, as I will discuss in much more detail in the following chapters, hate crime legislation can be part of a strategy to contest the boundaries of the citizenship regime. For example, in chapters 6 and 7, I speak of how in Ottawa, the hate crime legislation has been used by the community to hold the police accountable for the security of LGBT individuals. Such legislation is not, however, on its own sufficient to force a shift in the boundaries of the citizenship regime.

The reasons supporting legal sanctions are numerous and well founded. Moreover, actions to end hate crimes and legal sanctions against hate-motivated actions are a vital element of a governmental response to hate/bias activities. Nevertheless, it is my view that there are serious limitations to relying solely or principally on the law to enlarge the boundaries of the citizenship regime. Debates in the criminology literature to assess whether hate crime legislation is a good mechanism predominantly focus on practical matters that are important, but which are less useful for our focus on citizenship. Briefly,

Parchomovsky 1999, 509). Thus, hate/bias legislation increases the protection of individuals who are

some observers discuss the challenges to a successful prosecution, explaining that it is difficult to prove that a crime is hate or bias motivated (Hare 1997, 433). Others speak of a low conviction rate (Shaffer 1995), problems associated with non-reporting of hate crimes (Roberts 1995), how the legislation is used, by whom, to protect who and whether this reflects the intended goal of this type of legislation (Cowl 1995; Green, McFalls and Smith 2001), rates of recidivism and backlash (Gilmour 1994),¹⁷ and finally, the fact that the law requires police officers to respond to hate crimes but does not mandate sensitivity training for them on the issue of hate/bias crimes and activities (Bowling 1998, 290).

For the purpose of this study, it is more interesting to look not specifically at how the criminal justice system functions, but rather at the impact this has on the citizenship of individual victims. In this perspective, a limitation to the use of a legal response to hate/bias violence is the premise that legal remedies are reactive rather than proactive measures. A good proactive strategy to combat hate/bias violence and activities should not focus primarily on legislative measures, but on ways to deal with the factors that lead to this violence. Petersen argues in terms of antigay violence, “mainstream culture generates queer-bashers” (1991). In this regard, it is important to examine the role of the education system, religious organizations and the media in promoting or condoning hate or bias. Strategies to combat hate/bias need to prevent, rather than simply react to hate/bias for only then can the citizenship of targeted groups be upheld. Legal remedies can only apply to acts that have taken place, rather than preventing them from happening. For this reason, legal remedies on their own cannot prove to be an effective long-term solution for addressing hate/bias violence. Measures that address the root cause of

particularly vulnerable because they are likely to be targeted as a result of prejudice.

prejudice and which deal with hate/bias before it escalates to the level of crime are also needed along side legal sanctions.

Hate crimes legislation respond to specific incidents, when the problem of hate/bias is on-going. The British criminologist Bowling, in a study on violent racism, argues: “[w]hile violent racism is a social process, the police and criminal justice system respond to incidents, and in this contradiction lies an explanation of why the targets of violent racism feel unprotected and remain dissatisfied with the police response despite apparent improvements in police policy” (1998, 285). The dynamics of hate/bias violence elude any legal response, for the focus in the law is on reported incidents rather than the process that leads up to the commission of these crimes. Here we can draw parallels between substantive citizenship which I presented in chapter 1 as a process. It is a status that is negotiated time and time again, on different fronts. This contestation can be done by negotiating laws that are favorable to the protection of one’s group. In the hate crime legislation, the categories of individuals protected as members of designated groups vary from one piece of legislation to another. The federal legislative framework, for example, did not initially include sexual orientation in the hate propaganda provisions (which was passed at an earlier period, before rights for LGBT individuals came to be considered). Sexual orientation was included in the hate crime sentencing enhancement provision after a heated and divisive debate in the House of Commons (See chapter 4 for a discussion). Who is protected by hate/bias legislation is the result of political struggles. The framework defining the legislation is not objective. It is normative and is likely to reflect power relations in society. In this respect, the lack

¹⁷This issue was discussed at the Racially Motivated Youth Crime Roundtable organized by the Department of Justice Canada, Youth Justice Policy section, held in December 2000, to which I participated as an observer.

of inclusion in hate crime legislation can be interpreted as an indication of diminished citizenship for those excluded will not be protected by the state in cases of hate crimes. Others have argued instead that hate crime legislation may work to disempower minorities by suggesting that they are vulnerable and in need of special laws to protect them (Gilmour 1994, 15). Here, it is important to note that although hate crime legislation recognizes the vulnerability of groups subject to this type of violence, the vulnerability acknowledged is not that of individual victims. The legislation is intended to recognize the victim's disadvantage in relation to the perpetrator. If we consider racist violence, what is being highlighted through the law is the advantage or privilege of one racial group vis-à-vis another (Stanko 2001, 318-9). In that respect, the fear that hate crime legislation disempowers minorities is not well founded. Rather, such laws uphold the status of targeted groups as citizens worthy of state protection and this can help these groups to mobilize and hold the state accountable for their right to security, a right that is not only clearly outlined in the *Charter*, but also in the hate crime legislation.

Improvements in legislation may not suffice, however, to have this right upheld. Such legislation may provide us with a false sense of security. Successful implementation of legal reforms usually follows passage of the legislation by several years. Laws that are enacted after a long struggle often demobilize the forces which worked for such laws and were actively combating hate/bias violence. When legislation is enacted, the issue is viewed as having been addressed. We should not assume, however, that it is automatically effective in protecting us (Matas 1997, 7), or that hate crimes are no longer a problem. Mobilization must be sustained, but this is difficult in most cases once the legislative change has been achieved. According to David Pepper, who headed the task force on violence and was a founding member of the Liaison

Committee in Ottawa, individuals are less likely to feel the urgency or need to mobilize unless a horrific incident gives them an impetus (Interview, 26 April 2002). Of course, with respect to citizenship, demobilization prevents contestations of citizenship which means that if the state falters in its duty to protect equally all citizens, this may go unchallenged, diminishing the citizenship of all who are potentially subject to targeted violence.

The purpose of this critique is not to suggest that we should refrain from using legal measures to deal with the problem of hate/bias activities. We should be aware, however, that there are inherent drawbacks to legal measures. A main concern with relying solely or principally on legislative measures to address the problem of hate/bias is that laws are reactive, rather than proactive. There is a definite advantage to addressing forms of hate/bias before they escalate to the level of violence prohibited by criminal law. A more proactive approach is needed to eradicate hate/bias; one which tackles legal, political, social, cultural and economic factors that promote intolerance. This requires going beyond legal measures.

A more holistic approach is needed; in practical terms, hate crime legislation is of little use if it is the only measure implemented to combat hate crimes. The reality is such that if there is no clear understanding by the police of what constitutes a hate crime, the enforcement of the legislation will be a failure, for charges will not be laid or evidence towards proving hate-motivation will be overlooked. Sheehy argues that

[t]he criminal law is not simply a set of statutory prohibitions: it must be operationalized by police, prosecutors, defence lawyers, judges, juries, prison and parole officers, and other actors in the criminal justice system. In other words, when specific criminal laws are not enforced, are enforced disparately against certain groups, are prosecuted but rarely result in conviction, or are subject to penalties that allocate responsibility for the crime to the

victim, we recognize that the prohibition is in fact not “criminal” (2004, 82-3).

To be successful, the implementation of legislation requires training and awareness of the key players involved, including all members of the criminal justice system and groups affected by hate/bias violence. It also requires a shift in values and an openness towards a genuine understanding of the impact of targeted violence by the law enforcement arm of the state. Even when training is done, it is not always obvious to police officers why these measures are needed. Getting the police on board is not a short-term objective. As Pepper and Holland, community workers involved in the Ottawa Police Liaison Committee with the Lesbian and Gay Community, explain: “[a] broad-based strategy for hate crimes must include educational outreach to the public and needed changes in attitudes, including the perspective that judges and Crown attorneys bring to hate crime” (1994b). Apart from raising awareness, education and training, for the legislation to be effective, the issues of non-reporting and difficulties with proving hateful motivation must also be addressed.

The limitations of the legal approach make it important to consider proactive and preventive measures such as programs to deal with youth disenfranchisement and anti-racism and anti-homophobia curricula in schools. Approaches to combating hate/bias must consider the broader social framework. This can be done by looking at the root causes of hate rather than simply sanctioning these actions through criminal law and by, for example, implementing policies relating to immigration and broadcasting that indirectly relate to this problem.

The British Columbia Human Rights Commission theorizes hate in society as existing on a continuum of attitudes and actions, which help us understand the benefits of and need for a holistic approach. They state:

[t]he continuum starts with prejudicial attitudes and stereotypical beliefs about other’s race, colour, place of origin, sexual orientation, sex, disability, age or other grounds covered by the

B.C. Human Rights Code. The continuum moves through actions such as racism and harassment, a form of discrimination, as well as structural or institutional barriers to the equality of these groups. At the other end of the continuum is hate crime and activities, including acts of genocide and extermination (BCHRC 1998).

Because hate/bias is expressed in many ways, we need many responses to address the full range of hate/bias activities and capture less serious expressions of hate/bias not affected by the criminal law. This broader understanding of hate/bias goes a long way in explaining why most of the reports reviewed favour combining legal and non-legal measures. It is only through such an approach that hate/bias violence will eventually be effectively addressed.

Probably the greatest impediment to making substantive progress is the predominant view that sees hate crimes and bias activities only as a law enforcement issue. Consequently, harsher punishments and more effective ways of identifying hate/bias incidents are constantly proposed. By focusing exclusively on legal measures, the response to hate and bias activities is limited to serious crimes, rather than working towards preventing hate and bias incidents from taking place, addressing hate/bias violence only after it has escalated to criminal behavior.

It is important to remember that most of the groups affected by hate are marginalized in society and have also historically been oppressed by the police and criminal justice system (Henderson 2000; Neugebauer 2000a, 2000b; Burtch 2000; Peak, 2000; Wortley 1997; Pepper and Holland 1994a; Adelberg and Currie 1987; Petersen 1991). Yet, the proposals that emerge to combat hate crimes and bias activities (even from organizations that offer services to targeted groups or in some way speak on the behalf of these groups) turn to the law, to governments and more particularly to the criminal justice system and police services as the main way to address the problem of

hate/bias. In this respect, it is surprising that none of the reports speak of the uneasy relationship between the targeted groups and the state or its authorities.¹⁸ Past discrimination is at times acknowledged and issues of mistrust of police mentioned, however, no one asks how is it that the state, police services and the criminal justice system, three institutions that have upheld policies and norms that have proven oppressive and discriminatory to those who are often the victims of hate/bias crimes and incidents, are unquestionably viewed as having a central role to play in any strategy to combat hate/bias violence. How is it reasonable that the groups that have been victimized would turn for help to institutions that are or have been sources of oppression?

The groups targeted by hate/bias violence are often the same groups that have or have had difficult relations with the police. The Canadian Centre on Race Relations' report *Issue in Police Intercultural and Race Relations Training in Canada* explains:

The police are most likely to mistreat individuals who are stigmatized by the dominant society. This is what leads, in part, to “over-policing” and “under-protecting” minorities, if not blaming the victimized for their victimization (cited in Pepper and Holland 1994b).

It is not uncommon for victims of hate/bias crimes to perceive the police as unable or unwilling to help following a hate/bias incident. Aboriginal peoples, Blacks, LGBT people, and women have experienced various forms of discrimination within the criminal justice system. Aboriginal peoples and Blacks have been the target of over-policing, have historically had troublesome relations with the police, and are over-represented in the prison population (Neugebauer 2000a, 2000b; La Prairie 2000; Johnson and Rodgers

¹⁸An exception to this is the contribution of the Aboriginal representative at the last roundtable of June 2000. The issue of mistrust of the police by Aboriginal peoples was brought into public discourse. There was discussion about what could be done to reestablish better relations with the police and what kind of

1993, 109; Wortley 1997). LGBT communities' mistrust of the police, because of actual or perceived homophobia and heterosexism, is an impediment to reporting hate/bias incident (Pepper and Holland 1994b; Québec, *Commission des droits de la personne* 1994; Herek and Berrill 1992). The problem with underreporting cannot simply be attributed to the victims' relations with police. There are factors internal to the functioning of police services that inhibit the adequate reporting and processing of hate/bias incidents. The police themselves contribute to misidentifying incidents or not recognizing these incidents as hate/bias crimes through their insensitivity to some of the clues that indicate hate motivation¹⁹ (Levin 1992-3, 173; McCaffery 1997, 17).

A few observers have rightly raised questions about the possibility of achieving anything through hate crime legislation. Although grassroots advocates pressured states to adopt penalty enhancement measures to combat hate crime (Cogan 2002, 182; Jenness and Broad 1997), these laws are still implemented “by a criminal justice system —police, prosecutors, and judges—which itself is plagued by institutional racism, sexism and homophobia” (Cogan 2002, 182). Why then do we hope that hate crime legislation can help groups it intends to protect? The problems that plague the justice system need to be addressed if these measures are to prove successful.

Maroney (1998), who has drawn a portrait of how hate crime legislation came about in the United States, is also critical of the agenda of hate crime legislation being so quickly taken up by state actors. As he points out, within two decades, the anti-hate crime movement made significant gains, with several states adopting hate crime legislation. He warns that “the fact that anti-hate measures have been assimilated so

mechanisms could increase police accountability for their actions with respect to their treatment of Aboriginal peoples.

¹⁹For example, police officers may record an incident as a regular assault rather than a hate crime.

easily into the very criminal justice system they seek to challenge indicates that they fit squarely within its dominant ideology” (Maroney 1998, 597). Once incorporated into the criminal justice system, hate crime legislation, rather than upholding the interests of targeted groups, comes to reflect the internal culture of that system. In the United States, we know that hate crime legislation has been used frequently against the groups that it was intended to protect.²⁰ At this point, no study shows how s. 718.2(a)(i) has been applied. However, if we consider the *Charter*’s equality provision, we know that s. 15 has been used more successfully by men than women, particularly with respect to custody cases. This offers significant evidence that hate crime legislation may be used in ways that does not further the interests of oppressed groups targeted by hate/bias violence. Both examples show that the dominant group in society has been the principle beneficiary of measures that were likely intended to protect oppressed groups in society. Thus, unless measures to combat harmful prejudices in the criminal justice system are taken, it is unlikely that hate crime legislation will prove successful in enlarging the boundaries of the citizenship regime to include the groups targeted by hate/bias violence.

A similar argument about the co-optation by the state of a grassroots agenda was made in chapter 2 concerning violence against women. When the state became interested in the issue, the feminist agenda was left behind despite the fact that it was the women’s movement that had pushed for reforms. While the feminist movement insisted that any adequate response to violence against women had to include a range of interventions to help abused women be financially self-reliant and provide them with the needed services to help them leave violent relationships, the first initiatives undertaken by the state

²⁰According to Karen Franklin, recent data in Florida showed that Whites were the largest category of hate crime victims, accounting for 50% of reported crimes (cited in Cogan 2002, 182).

emphasized research and education. This coincided with massive budget cuts that weakened the social supports for women (Gotell 1997, 45). As Gotell concludes:

I have suggested that the apparent transition from government denial to government recognition of “violence against women” has been a process marked by the appropriation of feminist discourses and concurrent efforts to deny the legitimacy of feminist claims. The discursive triad underpinning contemporary violence policy [...] —women as victims, state as protector, feminism as unrepresentative—has become a central underpinning of the new law and order state. It is critical for feminists to interrogate this new discourse as it holds potential to disempower women, undermine the legitimacy of organized women’s movement and justify criminalization as the sole response to women’s complex inequalities (1997, 71).

This strategy is all the more important considering that we know that attempts to reduce violence against women without taking steps towards the equality of women are ineffective (Lakeman 2000, 25-8).

This also applies with respect to hate crime. The adoption of the legislation in 1995 has demobilized groups since then as is evident around Svend Robinson’s attempts to introduce a bill to include sexual orientation in hate propaganda provisions. Not much mobilization occurred, apart from the religious right and conservative groups that strongly opposed such a change; the gay and lesbian movement was not mobilized on this issue despite the fact that hate propaganda is a problem for LGBT communities. Furthermore, in the current neo-liberal frame, the state is able to focus on law enforcement rather than social and economic issues that are equally if not more important. Focusing on law enforcement does little to reduce violence targeted at specific groups if measures that address inequalities, prejudices and discrimination, as well as systemic heterosexism, sexism, and racism are not undertaken. The emphasis needs to be on the process that leads up to targeted violence, not simply on the acts

themselves. We can see from these arguments that a focus on legal sanctions is a hegemonic response to the problem of targeted violence for it is upheld by state actors and targeted groups alike, despite not meeting the needs of the later.

Conclusion

We have seen in this chapter that there is an underlying assumption in the literature that hate/bias crimes need to be addressed by legislation that specifically denounces such behavior. Although, to a certain extent, laws serve as a framework within which society operates, I have questioned whether legislation can really address the problem of hate crime and concluded that it is a necessary but not sufficient measure to address this problem. Legal measures do have a function. My purpose is not to negate the important value of codifying hate/bias crimes in the Canadian legal context, but that to focus all resources on that may not lead to guaranteeing the substantive citizenship of targeted groups. As will be discussed in the following chapter, police officers and community organizations do agree that it is important to have hate crimes included in the *Criminal Code*. Such an inclusion serves not only to identify a type of behavior that is deemed unacceptable by society in general, but also serves to legitimize the work of hate crime units and justify the allocation of resources towards addressing hate and bias. However, it is important to realize that hate crime legislation is not an end in itself. Yet, it is not clear from the literature that this notion is generally understood.

The fairly broad agreement on the assumption that hate-crime legislation is a solution to the problem of hate/bias activities has come about in part because the literature and discussion on this issue focuses almost uniquely on law enforcement solutions to hate crimes. Although the Department of Justice Canada is limited to

tackling the problem of criminal actions motivated by hate, as I will show in chapters 6 and 7, targeted groups, such as LGBT people, want public policies that address a much broader set of activities than simply prosecuting criminals. The literature on hate crimes does a disservice to itself by failing to ask the concerned stakeholders (i.e. the police officers who must implement the policy and the communities the policy aims to protect) if hate crime legislation is effective and appropriate remedy. Nowhere are the needs of the communities taken into account in the literature reviewed in this chapter. I explore this aspect in chapter 6.

As Stanko has pointed out, targeted communities are more likely to be affected by everyday harassment and hate graffiti. These incidents remain for the most part undetected by the criminal justice system, even though they contribute immensely to creating social environments that legitimize the exclusion of targeted groups and undermine the social cohesion of society by furthering their oppression. A random gay-bashing in a park on a Saturday night; an attack on individuals that have just come out of a gay bar; the beating by a gang of youths of a person of Arab-descent; a Black person being singled out by neo-Nazis; these are examples of incidents that capture public attention in a much more sustained way (and rightfully so) than would eggs thrown on the garage door of a lesbian couple or Swastika graffiti on a playground (which are more commonly what individuals are confronted with on a daily basis). The more severe crimes are likelier to be brought forward by the criminal justice system and perhaps convicted with provisions for a harsher sentence. For targeted groups, however, the response to hate/bias activities should not be limited to a focus on these more serious offences. Although such acts have the propensity to affect deeply the targeted communities and destabilize the social environment of that community, continuous harassment and unchecked anti-racist or homophobic comments and graffiti work to sustain an environment that is not welcoming for the targeted groups and in which more serious acts of violence are more likely to occur.

These seemingly less serious acts and more common occurrences affect the various communities in a subtler manner. In the long run, however, they are extremely detrimental. When hate and bias go unchecked, over time the social cost becomes high. It can materialize itself in lower self-esteem, forgoing certain activities, avoiding certain social settings, changing schools or jobs or moving away from the community where one resides. Communities become less vibrant, less safe and less welcoming to those who are different. The pressure to conform is felt by all members of the community. More serious consequences for individuals of the targeted groups can manifest itself as increased likeliness to alcohol or other addictions, suicide and homelessness. This has been documented in part for the case of lesbian, gay, bisexual and transgendered youths (Wellness Project 2001a; Dorais and Lajeunesse 2000).²¹ Recent cases of bullying that have resulted in suicides and killings also support these points (Honey 2002; Mickleburgh 2002).

Although violent homophobic or racist incidents are more likely to capture the imagination of the media and the public, the grueling reality of hate and bias activities is apparent in individual daily experiences of rejection and hatred that remain for the most part undetected by the criminal justice system. They are undetected in part because often victims will not report them, believing that they are not serious. They are also low on a scale of criminality so police officers who are not attuned to the issues relating to hate/bias tend to overlook their significance. Thus, a more comprehensive understanding of hate/bias activities, one that accounts for the smaller but daily manifestations of hate and bias, allows us to conclude that law enforcement solutions will not be effective on their own since they overlook a number of offences that are harmful to communities.

If instead of conceiving hate/bias as law enforcement problem, I argue that we should view targeted violence as part of a continuum. In this way we would understand

²¹ The Department of Justice, in a brief prepared to justify adding sexual orientation in the *Canadian Human Rights Act*, mentions that 75% of young people who attempt suicide give as prime reason conflicts resulting from their sexual orientation (Canada. Department of Justice 1996, 3).

these incidents to be manifestations of discrimination that have been left unabated. In a way, when homophobic or racist comments go unchecked, or graffiti are left to be seen rather than removed promptly, we all become involved in sustaining the social conditions that perpetuate bias and eventually contribute to more violent or reprehensible manifestations of hate/bias. It is these more subtle contributing factors that must also be addressed in public policy when looking for effective remedies to the problem at hand. Hate crimes are not law enforcement issues; they are social problems and should be addressed as such. This requires much more than a focus on changing the *Criminal Code* or Canadian laws and legislation. It requires the building of networks and institutions through community and social programs and initiatives that will be used to address hate/bias and the inclusion of all citizens in society. It will also oblige us to broaden our policy approach for dealing with hate/bias, to include some of the concerns raised by communities.

The criminalization of hate is a central element of many governments' response to hate/bias activities, including that of the Canadian Government. Thus, it is important to recognize that there are serious limitations to relying solely or principally on the law to successfully combat hate/bias. It is necessary to question how and when legal strategies are effective and in which ways such an approach fail to achieve intended goals of combating hate crimes and bias activities. The discussion in this chapter combined with the discussions found in chapters 6 and 7 propose contrasting viewpoints between what is being said in the literature on hate crimes and what is being experienced at the grassroots level. Accounting for the grassroots perspective, as I do in chapter 6, will allow me to uncover new policy directions that have been for the most part overlooked in the literature despite the fact that these new directions should more effectively meet the needs of the communities with respect to the problem of hate and bias activities.

What will become clear from this discussion is that while the literature proposes a law enforcement approach to the problem of hate crimes, this approach fails to truly

address the needs of the people most affected by hate. The law enforcement approach is a hegemonic response to hate crimes. It brings together the energy and resources of governments, NGOs and community groups, and some academics in proposing a law and order agenda, when in fact the needs of targeted groups would be better met through a more holistic approach that goes much further in securing the substantive aspect of their citizenship.

Chapter 4: Voices I - State Perspective on Violence Targeted at LGBT Individuals

In this study, I have sought to identify how different actors understand hate-motivated violence and their perceptions of the role and responsibility of the state and community with respect to addressing the oppression experienced by the groups targeted. Having established that hate-motivated violence denies targeted groups access to first-class citizenship, identifying how hate-motivated violence is experienced or defined by different actors involved and solutions envisioned by the actors who can intervene, I argue, is an important step in developing strategies to enlarge the boundaries of the citizenship regime. The following three chapters highlight “voices” from three different standpoints: the state (this chapter), the police (chapter 5), and LGBT communities (chapter 6). None of these are coherent actors with a unified definition and vision on this issue. It is useful, however, to outline perspectives on hate crimes and violence targeting LGBT communities from these various groups of actors to highlight how these matters are discussed by these actors. It helps us understand how they view hate-motivated violence and how they view the role of the state.

In this chapter, I turn to state discourse. The debates in the House of Commons are the main site of investigation for chapter 4. I start the chapter with an overview of the positions found in government documents, because these documents shape as well as reflect the government’s position on a given issue. In the second part of the chapter, I mainly provide a textual analysis of the debates around the hate crime and hate propaganda provisions, at times supplementing this discussion with statements made in parliamentary committees or outside the House of Commons by politicians.

Parliamentary debates are chosen for two reasons. First, they reflect back onto the public (although imperfectly and only partially) expressions that were initially expressed in society. When these are messages of tolerance and inclusion, they may

reinforce the citizenship of the groups mentioned while delegitimizing hate-motivated violence or discrimination towards certain groups. When these are expressions of homophobia and heterosexism and other forms of sentiments of intolerance, however, the state plays a role in reaffirming the legitimacy of such beliefs by giving them a public voice (Perry 2001, 185). According to Perry and others (see also Wiewiorka 1998), this is an important consideration since such rhetoric can contribute in upholding a framework within which hate-motivated violence emerges.¹ For the purpose of this thesis, since I am not looking into what causes hate crimes or hate-motivated violence, my interest in political rhetoric is limited to how these statements are indicative of the citizenship status of the groups mentioned. A second reason to focus on House of Commons debates is that political rhetoric is productive of both legal and material reality (Sharma 2002, 19; see also Perry 2001, 197). Here I will distinguish between rhetoric held by the governing party from that of the opposition or other elected officials. The assumption is that the political rhetoric of government representatives is more likely to be subsequently institutionalized in state policy and legislation.

It should be noted that although I speak of “state voices”, I am not implying that the debates in the House of Commons articulate the state’s position on given issues. State positions on various matters are articulated through laws and policies. I refer to “state voices” simply because the House of Commons is an institution of the state and it represents “the central link between the public and the government in Canadian democracy” (Dyck 2000, 545). In other words, parliamentary debates are not

¹Perry suggests that incidents of hate-motivated violence increase in enabling environments, and that negative political rhetoric is constitutive of such environments (2001, 179). There is empirical evidence of this in the United States. The National Gay and Lesbian Task Force which tracks hate-motivated incidents targeting lesbians and gays has documented substantial increases in violence targeting LGBT people following political campaigns leading up to votes on anti-gay initiatives (cited in Perry 2001, 191). No study has presented similar evidence for cases in Canada, although it is likely that similar patterns exist. For example, as I have mentioned in the previous chapter, the rate in hate crimes increased following the events of 11 September 2001 (Toronto Police Services 2002). At the time, Bill C-36 was being discussed in the House of Commons. The rhetoric often called for more stringent security measures in the area of immigration, which can easily be interpreted as considering immigrants as security threats (Adelman 2002). The two categories of people most targeted were Arabs and Muslims; individuals from both groups are likely to be immigrants.

representative of societal views, nor do they represent the sum of official state discourse particularly since I explore what opposition MPs have to say. Parliamentary debates echo some of the ways issues are considered in society, without being representative of the complexity of all of Canadian society. This has to do in part with the fact that those who are elected to the House of Commons do not represent equally, nor perfectly, all segments of Canadian society.² Regardless, Stychin argues that “political debates do encapsulate both state and civilian perspective and offer an important condensation of ideas” (2003, 27). Thus, using these debates as a site of investigation is likely to offer insight into how the hegemonic bloc supports a citizenship regime that is either favorable or unfavorable to LGBT citizens, possibly helping us to detect some of the ways that social change can be enabled.

I first look at government documents to discuss the elaboration of the state’s position on hate/bias crimes and activities. Then I turn to the House of Commons, focusing on the debates that took place around the implementation of hate propaganda provisions and hate crime sentencing provisions and briefly look at changes to hate propaganda legislation. These debates discuss what hate crime and hate propaganda are, as well as the role and responsibility of the state toward hate-motivated activities. These debates also offer numerous insights on how the citizenship of LGBT people is viewed by political actors. In these debates, equal treatment before the law and citizenship are sometimes defined and the specific location of LGBT people vis-à-vis both of these concepts is outlined. I argue that, overall, the debates on the inclusion of sexual orientation in hate crime or hate propaganda provisions underscore a hegemonic shift in which the dissenting voices are being increasingly marginalized (see Stychin 2003, 46).

²There is a whole body of literature on the issue of representation in parliament of various segments in society, including a royal commission report. See: Canada, Royal Commission on Electoral Reform and Party Financing 1991a and 1991b. A number of works focus on the representation of different segments. For a discussion on women’s interest, see Tremblay and Pelletier (1995) or Bashevkin (1998); on the interests of lesbians and gays, see M. Smith (1998a); on race and ethnicity, see Stasiulis and Abu-Laban (2000).

Whereas in 1994-1995, when the hate crime sentencing provisions were discussed, government backbenchers opposed the inclusion of sexual orientation along with members of opposition parties, in 2003, the changes to the hate propaganda provisions were brought forward through a private member's bill. A private member's bill rarely reaches the statutes books because the government arranges to have them "talked out" (i.e. prevent them from reaching a vote) (Dyck 2000, 556). This one obtained government support. This is indicative that the discourse held by those who opposed the inclusion of sexual orientation does not hold as much clout as it once did.

State Discourse: Departments, Bureaucrats, and Decision-Makers

Government documents, whether position papers, briefs prepared for ministers or parliamentary committees, and documents from working groups are important sources of information for understanding the state's position on a given issue. In the following section, I look at federal government documents that touch upon the issue of hate/bias-motivated violence and activities. These are the texts that organize the work of departments. Policy decisions are often based on these documents. Moreover, government documents are also important because they organize responses by various non-government organizations or communities that work on the given issue. Because these are public documents, they constitute a corpus that is used to define problems and solutions for a number of social issues. As public documents, they have a far reach. They often structure much more than the state's response to social issues; they also have the propensity to influence societal actors. In her study of how transsexual and transgendered people are erased in state discourse, Namaste looked at the inquiry held in Quebec in 1993 and 1994 by the *Commission des droits de la personne* on violence targeting lesbians and gays. She has shown how the briefs presented were used by the

Commission to define the problem of violence targeting LGBT people. In the aftermath of the inquiry, these briefs structured the response of Quebec government institutions and of NGOs which offer services to LGBT people. The work of the Commission also influenced societal actor's understanding of violence targeting LGBT people (Namaste 2000, 136-7).

Considering that government documents are likely to have an impact on how hate/bias violence is defined as a problem and the solutions sought, I felt it was important to review all documents produced by the various federal departments that touch on the issue of hate/bias crime and activities.³ This section presents my analysis of this material. I first look at how the Justice and Heritage departments see their role with respect to hate/bias-motivated violence and activities. I follow up with a discussion on the inclusion of sexual orientation in the list of identified groups covered under section 718.2. As with the debates in the House of Commons explored in the second part of this chapter, these documents offer insights in to the boundaries of the citizenship regime and possible widening of citizenship.

State Rationale With Respect to Hate/Bias

At the federal level, two departments are most visibly involved on the issue of hate/bias activities; they are the departments of Justice and Heritage (particularly through Multiculturalism). Each department approaches the issue with similar goals, but with different methods because their tools differ. Both consider hate/bias activities as undermining social cohesion in Canadian society. The Department of Justice focuses on federal legislation to prevent crimes. The Department of Canadian Heritage is not a legislative department; it develops programs and supports initiatives to bring communities and people together. Justice emphasizes the crime aspect both through

³A number of documents were acquired by putting in requests through Access to Information.

legislative measures and its crime prevention strategy to address the problem of hate/bias activities. Heritage comes to hate/bias activities from the perspective of inter-group conflict, which is part of the mandate of the Multiculturalism program (Confidential interviews with government persons, 19 June 2002, 8 July 2002, and 4 March 2003).

The Department of Justice included hate crimes on its agenda as a result of the work of the Federal/Provincial/Territorial Working Group on Multicultural and Race-Relations in the Justice System. In an interim report from the F/P/T Working Group, prior to Bill C-41 being introduced in Parliament, support was given to address hate-motivated activity either through sentencing provisions or through a specific *Criminal Code* provision. The Report argued that Canada was inconsistent in its approach to hate-motivated activities, with legislated hate propaganda provisions, but no provisions to deal specifically with hate motivated violence (1994b).

A document produced by the Department of Justice to justify the inclusion of hate in the sentencing reform proposed in Bill C-41 (1994-95) stated that it was necessary to include hate as an aggravating factor at sentencing as a way to “provide clear Parliamentary expression of our abhorrence of crimes motivated by hate and the pervasive impact they can have upon a whole class of people”.⁴ Further it noted that the inclusion of hate as an aggravating factor at sentencing would also further Canada’s commitment as signatory of the *International Convention of the Elimination of all forms of Racial Discrimination* and the *International Convention on Civil and Political Rights*.⁵

Moreover, studies funded by the research section of the Justice Department supported addressing the problem of hate-motivated crimes through sentencing or some form of *Criminal Code* provision. One document prepared for the F/P/T Working Group

⁴Department of Justice Canada. Document obtained through Access to Information request, file A02-0115 (p. 00013).

⁵In the concluding observations of the UN Committee on the Elimination of Racial Discrimination, it was stated that the committee welcomed the amendments made to the *Criminal Code* as part of Canada’s contribution to the elimination of racial discrimination. See [www.unhcr.ch/document A/57/18](http://www.unhcr.ch/document/A/57/18), para. 324 [retrieved 9 July 2003].

stated: “[...] it is difficult to overcome the concerns of members of racial and ethnic minorities that a failure to create a criminal offence against overt racism may represent a failure to recognize it as behaviour our society regards as serious wrongdoing” (Etherington 1994, xix). Similarly, in 1993, the F/P/T Working Group did a survey that aimed to determine the nature and level of hate crimes by assessing the perceptions of individuals working in human rights commission, justice departments, police services and relevant federal agencies which found that hate crimes appeared to be increasing in all provinces but two. The two provinces not reporting increases in hate crime had had a high profile hate crime on their territory. The working group concluded that successful arrests and prosecution as well as good police relations that encourage reporting of incidents, seemed to stop a trend toward more hate crimes (Canada, F/P/T Working Group 1994c, 4 and 15). It justifies the state’s commitment to intervene and even confirms its responsibility to do so.

This shows a belief that criminal law cannot solve all hate-motivated crimes and that crime prevention may be the best long-term solution. Crime prevention “is viewed as a process of community building, community involvement and innovation to deal with a range of issues and a variety of interests.”⁶ This also suggests that Justice officials rely on the principle of social cohesion when addressing hate/bias activities. In fact, seemingly, one of the motivating factors for developing accurate statistical data on the number of incidents was to be able to use hate crime statistics as an indicator of social cohesion. In the same way that homicide rates are used as indicators of violence in society, the rate of hate crimes could be used as an indicator of social cohesion, helping analysts track if there are more or less conflicts between groups in society (Confidential interview government person, 9 April 2002). Although my focus is on citizenship rather than social cohesion, statistical data on hate crimes is as much an indicator of social

⁶Taken from the National Crime Prevention Council Website www.crime-prevention.org/, retrieved 23 August 2002. The Council is made up of 25 members appointed by the Minister of Justice and Solicitor General.

cohesion as it is one of citizenship. Levels of violence can be used as an indicator of the “health” of the citizenship of the groups targeted.

From the standpoint of the Department of Canadian Heritage, the crime aspect is secondary; its concern is intergroup relations, social cohesion and citizenship. As the Honourable Hedy Fry stated in a document outlining the recommendations from the Roundtable to combat hate and bias activity:

[...] the vast majority of Canadians believe in equality. They believe that no person should have his or her freedoms or personal security compromised because of any characteristics such as religion or race that is part of his or her identity. And to the extent that this still happens in Canadian society, an overwhelming majority of Canadians want to see it stopped. In a poll conducted last year, 96% of Canadians said the governments should take an active role in working to eliminate hate crimes (Canada, Department of Canadian Heritage 2001, 3).

A number of statements are made in the department’s documents that support the involvement of the department in this issue. Documents produced by Heritage claim that hate crimes have always been a part of Canadian society and that Canadian values have evolved to reject all forms of discrimination and support legislation that aims to address this problem. It is also said that “Canadians recognize that our continued success depends on maintaining and improving our capacity to function as a cohesive, harmonious and stable society” (Canada, Department of Canadian Heritage 2001, 3). Furthermore, the marginalization of individuals as a result of hate/bias activities prevents these individuals from realizing their full potential and from contributing to society. Heritage advances goals of upholding the citizenship of diverse groups in society, protecting Canadians from the harm of hate/bias, and removing barriers to participation in society (Canada, Department of Canadian Heritage 2001, 3-5). A Heritage document states that:

Bias and hate-motivated activities weaken the commitment to shared values that supports social cohesion, threaten trust and openness between peoples, undermine fundamental values of

equality and security and damage Canada's reputation as a successful pluralistic and civil society (Canada, Department of Canadian Heritage 2001, 5).

The concerns addressed by both the Departments of Justice and Canadian Heritage focus mainly on social cohesion. Yet, the state's responsibility to protect citizens from hate/bias-motivated violence is confirmed in these documents.

*Sexual Orientation: Setting the Principles for
Enlarging the Boundaries of the Citizenship Regime*

In this section I want to briefly look at how the inclusion of sexual orientation was discussed in government documents. The position conveyed in these documents is constitutive of state policy and, therefore, of the view that should dominate in Parliament. According to these documents, state actors believed that the inclusion of sexual orientation was the logical position, more or less unavoidable, to further the goal of social cohesion. Upon consideration of the briefs prepared by the Department of Justice on the sentencing reform bill, the position papers prepared by bureaucrats within the Department of Justice as well as the brief sent out by the Minister of Justice to all MPs to explain Bill C-41, it is somewhat surprising that getting sexual orientation included in the *Criminal Code* section was such a controversial task. There was a consensus in the literature produced by the bureaucracy with respect to the need to include sexual orientation.

The inclusion of sexual orientation in the list of identifiable groups was supported by officials within the Department of Justice. In a memorandum from the coordinator of the sentencing team in the Criminal Law Section to the Minister's office, evidence was cited to support the inclusion of sexual orientation as part of the list of identifiable groups in section 718.2 of the *Criminal Code*. First, the memo outlined case law that had already made reference to sexual orientation when hate/bias was a

motivation. So the inclusion of sexual orientation was not new, rather a codification of what already was being done through jurisprudence. Second, the memorandum noted that despite the lack of “hard” statistical evidence, the evidence gathered by the Quebec Human Rights Commission through its inquiry on violence targeting lesbians and gays provided a sufficient basis to acknowledge such violence to be a problem (Canada, Department of Justice 1994b).

The brief the Minister of Justice sent to all MPs and Senators defended Bill C-41, just as it was being discussed before the House of Commons Committee. It presented statistical evidence from the Ottawa and Toronto police forces that showed that hate crimes based on sexual orientation were the third largest category of hate-related offences in those cities. It also indicated that a list of identifiable groups was absolutely needed to make the section of the Code effective. Interpretation by the Supreme Court of the hate propaganda provisions had signaled that this was the case. The brief reiterated that the law had not interpreted sexual orientation to include pedophilia and that mention of sexual orientation in the hate crime sentencing provision would not confer upon gays and lesbian any special status since protection from violence in no way advances or promotes a particular lifestyle or undermines the traditional notion of family (Rock 1994).

The F/P/T Working Group, in a report prepared in October 1994 for the federal and provincial deputy ministers responsible for Justice, presented recommendations for approval. It recommended that the list of identifiable groups in the hate propaganda provisions should be extended to include sexual orientation. As stated:

Le Groupe de travail... a la ferme conviction que l'orientation sexuelle devrait être ajoutée aux caractéristiques de groupe identifiable protégé par les dispositions visant la propagande haineuse dans le Code (Canada, Groupe de travail 1994, 12).⁷

⁷Translation: “The Working Group... holds the firm conviction that sexual orientation must be added in the list of identifiable groups in the hate propaganda provisions.”

Support for the inclusion of sexual orientation came from many of those who presented evidence to the Justice Committee that oversaw the sentencing reform bill (C-41). Although these documents were not covered by the media to the same extent as the debates of the House of Commons, the discussion that took place in Committee provided material to support the position of those in the House of Commons favourable to the inclusion of sexual orientation. These briefs also influenced the decision-making process and in this way contributed to defining what was at stake. Government documents are subsequently used by governments to support their position and by NGOs as an endorsement of their position when the briefs support their position. In other words, government documents are likely to form the basis of a hegemonic bloc.

Directly from the House of Commons: on Citizenship, Difference and Equality

Bills dealing either with hate propaganda or hate crimes have been addressed in the House of Commons on four different occasions: in the late 1960s when hate propaganda provisions were introduced (s.318-320 of the *Criminal Code*); in 1994 and 1995 when a bill was introduced to address the issue of hate crime at the sentencing stage (s. 718.2(a)(i)); in late 2001, when measures to prevent mischief aimed at religious property were included in the controversial *Anti-Terrorism Act* (s. 430.4(1)); and in 2003 with the (re)-introduction of sexual orientation as an identifiable group to be protected from hate propaganda.⁸

For the purpose of this analysis, I reviewed all House of Commons debates that took place regarding these bills, all of which eventually became law. Since the passing of the hate crime sentencing bill is the most important with respect to this study, I also reviewed the debates that took place in committee for that particular bill. The debates for

⁸ Bill C-250 became law on 29 April 2004.

these various bills covered several hundred pages in the *Hansard*. For example, the debates that took place on Bill C-41 (the hate crime sentencing reform introduced in the 35th Parliament in 1994-1995) covered approximately 196 pages, not including the debates in the Justice Committee. Bill C-3 (28th Parliament, second session) that led to the hate propaganda provisions, in its last incarnation (it was previously introduced in the 27th Parliament) covered over 166 pages of *Hansard*. My analysis of this material forms the basis of the discussion that follows.

Generally, each time a new piece of legislation is introduced, there is a discussion of the context that has led to the proposed amendments. As well, ministers and government representatives highlight the contribution of the proposed legislative change and proffer arguments as to why these changes should be adopted. Opposition members either discuss problems with the proposed bill, give reasons why such a bill should not be adopted or outline why the bill does not serve the best interests of Canadians. With respect to the particular debates reviewed here, these extended beyond a focus on hate crime and hate propaganda to issues relating to equality before the law, citizenship and the management of diversity in Canada. These extrapolations offer insights on the citizenship of LGBT individuals. I first look briefly at the context in which these bills were proposed. Then I discuss how citizenship was portrayed in these debates.

The Context That Led to the Introduction of Hate/Bias Legislation in Parliament

When the hate propaganda provisions were first introduced in the late 1960s, there was hardly any mention of sexual orientation. In fact, there was almost no discussion about the list of identifiable groups to be protected by these provisions. Most of the debates focused on how the hate provisions were expected to work, whether such provisions were needed, if these provisions had an educational value, if they encroached on freedom of

speech, and their role with respect to upholding Canada's obligation as a signatory country to the UN *Convention on the Elimination of All Forms of Racial Discrimination*.

The hate propaganda provisions followed waves of activities by racist groups beginning in the late 1950s and early 1960s. In the mid-1960s, hate propaganda targeting Jewish and Black communities was widespread, especially in Quebec and Ontario as Neo-Nazi and white supremacist groups, based largely in the United States, became active in Canada. These events led the federal government to appoint the Cohen Committee that was mandated to look into the problem of hate propaganda. The Committee made recommendations that formed the basis of the current hate propaganda provisions adopted in 1970.⁹

The impact of hate propaganda on Canadian society was discussed when the proposed clauses to be added to the *Criminal Code* were introduced. It was suggested that the harm caused by hate propaganda justified adopting a law. Mark MacGuigan — who, in his function as a law professor at the University of Toronto, had been invited to become a member of the hate propaganda committee (Cohen Committee) and who subsequently was elected to Parliament when the hate propaganda provisions were introduced in the legislature— explained in Parliament the findings of the committee on why hate propaganda provisions were necessary measures. He said:

But it is not the effect on the majority of the public which is the most serious. What makes hate literature so intrinsically awful is the effect which it can have on minority groups, the fact that as a result of a constant series of encounters which involve hate propaganda — and indeed which comes as well from other sources in society — a group can be made to feel completely unworthy, completely inhuman (my emphasis, Commons 1969, 910-11)

⁹This information is taken from a brief, dated 22 August 1994, prepared by Betty Ann Pottruff, Q. C., intended for inclusion in a report of the Federal/Provincial/Territorial Multicultural and Race Relations Working Group to be presented to the Coordinating Committee of Senior Officials (Criminal Justice). It was adapted partly from the *Current Issue Review* of the Library of Parliament (1993). The information was obtained 7 March 2003 through an Access to Information request. For more information on the passage of this bill, how and when it was introduced in the House and the context of the time, please refer to the House of Commons Debates, 17 November 1969 (881-85).

Some MPs were aware that passing laws that address hate propaganda was a small but important part of the solution. Again, MacGuigan pointed out: “[h]ate propaganda is not the whole problem of hating. Law is not the only solution to hate in our society. But hate propaganda is an important part of the problem and law is one of the most effective ways in which our society can deal with it” (Commons 1969, 911). Beyond serving as a deterrent by “proscribing a particular offence” (Commons 1969, 911), laws are attributed the role of protecting democracy and a just society. Hate propaganda is said to be a threat to all Canadians and to our democracy. In support of the hate propaganda provisions, one MP (the Parliamentary Secretary to Minister of National Health and Welfare) explained

that however confident we are of the strength of our democracy, any hate movement, if it is not stopped, bears within itself a potential threat to our society. While we may feel certain that the healthy fabric of our democratic society will be able to withstand the assault of hate propaganda, surely our citizens have the right to protection against this affront to basic human dignity. [...] A just society must be able, through law, to offer its citizens at least this minimal protection and safeguard (my emphasis, Commons 1969, 914).

The right of citizens to be protected was reaffirmed in this statement. Moreover, this government representative affirmed the role of the state in guaranteeing minimum levels of protection for individuals to be able to enjoy and access their citizenship. Over time, this right became inscribed in other laws (e.g. hate crime sentencing provisions) and in the *Charter*; but already, as the hate propaganda provisions were discussed in the late 1960s, the role of the state in guaranteeing minimum levels of security was acknowledged.

Similar discussions reaffirming the role of the state in protecting groups and punishing perpetrators took place around the introduction of the hate crime sentencing provisions. As one member of the Liberal government clearly stated:

This bill has two goals: first, to send a strong message to persecuted communities that violence against any person or group is unacceptable and that our laws will take action in that regard; second, it encourages victims to come forward, allowing the police to get a true handle on the extent of the problem, work on educating people and work against this hatred.

[...] To allow hate motivated violence and hate propaganda to go unpunished or uncontrolled through personal or collective indifference on the part of community leaders or public officials is simply to allow hate discrimination and violence to become acceptable norms of behaviour and standards of contact (my emphasis, Commons 1995, 13976)

The secretary of state for Multiculturalism and Status of Women explained to the House how hate crimes can be a threat to the social cohesion of communities and can impede upon the equal and full participation in society of the members of targeted groups. She highlighted how hate crimes can lead to “alienation, a sense of disenfranchisement and a feeling of powerlessness”. In this respect, she foresaw a role and responsibility for government in preventing hate crimes. As she said, “to avoid conflict and maintain social harmony, our institutions must redouble their efforts to develop policies, programs and practices that recognize the reality of Canadian diversity and move to ensure this social cohesion”. She predicted that the passing of Bill C-41 would further these goals. She also stated that passing the bill would reflect “the governments’ commitment to protecting the fundamentals right of all Canadians to live without being afraid to live in peace and security and to live as equals” (Commons 1994, 5902).

The symbolic value of the passing of such a bill was discussed on various occasions. As one Liberal backbencher stated:

I firmly believe that Bill C-41 is a crucial measure to send the strong message that hate crimes will not to be tolerated in Canadian society. I strongly urge all parliamentarians to support the bill so that we may work together to protect all Canadians (my emphasis, Commons 1995, 13961).

It was said several times that, through this bill, Parliament was sending a clear message that hate crimes are not to be tolerated in Canadian society. This point was made by Liberal MPs as well as by opposition Bloc Québécois MPs. One Liberal MP discussed the law as symbolic as well as a proactive measure to counter hate and bias activities. As he said:

I want to state clearly that I believe that hate crime is intolerable in any form and we must take proactive measures to remove hate from our society. I strongly support measures which will send a clear message that crimes based on hatred will not be tolerated but will be punished harshly (Commons 1995, 13953).

The debates above clearly outline three functions of the hate crime sentencing enhancement measure. This measure was proposed as a deterrent by proscribing harsher penalties for hate-motivated crimes, to send a message to targeted groups that hate-motivated violence is unacceptable and to confirm that the state has the responsibility to protect all Canadians.

The inclusion of sexual orientation as an identifiable group protected by the hate propaganda provision was a long process. More than a decade passed between the time Svend Robinson (NDP) first tabled the Bill and the moment Bill C-250 (*An Act to amend the Criminal Code (hate propaganda)*) received royal assent and finally became law in 2004. It was a very simple bill of only one clause. Being a private member's bill, however, and given its content, thirteen years elapsed between the first time it was tabled and when it actually became law.¹⁰

¹⁰Svend Robinson (Burnaby-Douglas, NDP) first tabled Bill C-236 to amend the *Criminal Code's* hate propaganda provisions on 27 June 1990. On 29 May 2002, Robinson moved that same bill which had been reintroduced in the 37th Parliament (first session) as Bill C-415 to be read the second time and referred to a committee (*Edited Hansard*, number 194: 1730). In the second session of the 37th Parliament, the Bill was discussed after the committee reported back to the House. *An Act to amend the Criminal Code (hate propaganda)* was then referred to as Bill C-250. It was debated in the House of Commons in June and September 2003 during the second session of the 37th Parliament. It was adopted by the House of Commons on 2 February 2004, during the third session of the 37th Parliament and was sent to the Senate where it went through the various stages between the period starting on 3 February 2004 until 28 April 2004. It received royal assent on 29 April 2004 (www.parl.gc.ca/LEGISINFO, consulted 17 September 2004).

The inclusion of sexual orientation in the hate propaganda provisions reflects a recognition that gays and lesbians are the target of hate propaganda and deserve the same protection as members of ethnic or racial minorities or religious groups identified in the original hate propaganda provisions. As one MP argued, if we will not tolerate hate propaganda aimed at people on grounds of ethnic or racial background, we should not tolerate hate propaganda based on sexual orientation (Commons, 29 May 2002, 1750).

If sexual orientation was not initially included in the hate propaganda provisions, this may have had to do with the time when they were introduced. As one MP from the Progressive-Conservative party¹¹ stated about the proposed changes in Bill C-250:

This bill [...] updates the *Criminal Code*. Thirty years ago, no one ever talked about gays, lesbians, transgendered people and so forth. Today, they do, as we are doing now. So, there is an evolution in acknowledging people who are part of this country. Gays and lesbians are an integral part of this country and our reality (Commons, 11 June 2003, 1900).

According to that MP, sexual orientation was not included back in 1970 because it was not an issue that was discussed at the time. We need to remember that homosexual activities were only decriminalized in 1969, the year prior to the passing of the hate propaganda provisions and that when the Cohen Committee made its recommendations, in 1965, homosexual acts between men were still criminal. Sexual orientation could not be included in the enumerated grounds under those circumstances.

In the present context in which we have evidence that LGBT people are victims of hate crimes and hate propaganda, and following the recognition of sexual orientation in human rights legislation, in the equality section of the *Charter of Rights*, and the hate crime sentencing provision, adding sexual orientation to the hate propaganda provision

¹¹ This is the Conservative party prior to the merger with the Canadian Alliance. When Bill C-250 was debated in the House of Commons, the Progressive Conservative Party and the Canadian Alliance had not yet merged to form the Conservative Party of Canada.

should be perceived as simply bringing the hate propaganda provisions in-line with other provisions of the *Criminal Code*, the *Charter* and human rights legislation.

Adding sexual orientation to the hate propaganda provisions fulfills Canada's obligation as a signatory country to the UN *Convention on the Elimination of all Forms of Racial Discrimination* and other UN human rights provisions. As explained by Dr. Hedy Fry, who oversaw three national roundtables on the issue of hate/bias activities when she was Secretary of State (Multiculturalism):

Canada is a signatory to the United Nations convention on human rights. Like all signatory states, Canada has an obligation under international law to exercise due diligence in preventing homophobic acts, investigating them and ensuring that the perpetrators are brought to justice.

Due diligence describes a threshold of efforts which a state must undertake to fulfill its responsibility to protect individuals from abuses of their rights. Canada has consistently shown due diligence in protecting most minority rights. The time has come for this extremely susceptible group to become part of that group and to be under the umbrella of Canada's protection (Commons, 11 June 2003, 1840).

Of course, the immediate concern is that there is no deterrent in place with respect to hate propaganda targeting LGBT people. Evidence before the committee and also presented to the House of Commons discussed cases in which police were powerless. They could not intervene, simply because sexual orientation was not included in the hate propaganda provisions. The most famous incident (discussed in chapter 6) was the attempted visit of Fred Phelps, a Texan who preached the death of homosexuals and the benefit of AIDS in eliminating gay people. Until the passing of Bill C-250, the police were not in a position to arrest individuals who promoted these types of ideas, despite the fact that they aim to promote hatred towards LGBT persons. If similar content had been used to target ethnic or racial groups, or religious groups, arrests could have been made and individuals charged. As an NDP member stated:

In the absence of prohibitions under the law, incitements to hatred against LGBT Canadians are able to flourish with few, if any, real consequences to the perpetrators. In fact, the absence of Canadian law that prohibits the promotion of LGBT hate propaganda lends license to the perpetrators of such abuse, both within and outside our borders (Commons, 11 June 2003, 1825).

Although debates in the Senate (because Senators are appointed rather than elected) do not carry the same meaning and weight as debates in House of Commons (where members are elected and are, in principle, representative of the Canadian public), it is interesting to note that the debates in the Senate that took place over the purpose of the Bill C-250 referred to some of the arguments made in the 1960s when the hate propaganda provisions were first introduced. One Senator quoted directly from the Cohen Committee when he reminded the Senate what the purpose of the bill was. As he said:

I want to quote from it (the Cohen Committee report on hate propaganda) because I think this is important to keep in mind when we address Bill C-250. The report states: "Canadians who are members of any identifiable group are entitled to carry on with their lives as Canadians without being victimized by the deliberate, vicious promotion of hatred against them. In a democratic society, freedom of speech does not mean the right to vilify". That was the major conclusion of the report that led to the enactment of section 318 of the *Criminal Code* in 1970 (Senate, Volume 140, Issue 77: 1710).

Senator Joyal (PC) went to explain how the changes proposed in Bill C-250 extended to the gay and lesbian communities the principles that were originally outlined when the hate propaganda provisions were introduced. Furthermore, echoing what was said before by MPs, Bill C-250 was argued to bring the hate propaganda provisions in line with the *Canadian Human Rights Act*, the *Canadian Charter of Rights and Freedoms* (which, since the Supreme Court interpreted in 1995 the equality section in the Egan decision, includes sexual orientation as an analogous ground on which claims for discrimination could be based) and the key section in the *Criminal Code* on sentencing which includes

sexual orientation (s. 718.2(a)(i)) (Senate, Volume 140, Issue 77: 1720). For those who supported the Bill, whether Senators or MPs, adding sexual orientation in the hate propaganda provision did not change the original meaning of the hate propaganda provision.

About the Content of These Debates

The debates that took place at the end of the 1960s when the hate propaganda provisions were passed were not entrenched in the discourse of identity politics as were the debates around the hate crime sentencing bill in 1995. Although the hate propaganda provisions did include a list of categories to be protected, little of the debate focused on the groups identified. In contrast, the debates on the hate crime sentencing provision focused overwhelmingly on the list of groups identified, even though hate crime sentencing was only one small aspect of this bill. Bill C-41 was in fact a sentencing reform bill that included numerous provisions.¹² It offered direction to the courts on the purpose and principles of sentencing; strengthened the process for awarding and enforcing restitution to victims; and allowed victims to make statements at early parole eligibility hearings and so on. Thus, beyond the hate crime provisions, Bill C-41 addressed a number of other issues that have to do with sentencing (Canada, Department of Justice 1995).

¹²Bill C-41 is an act to amend sentencing procedures. It was mislabeled by the media and public at large who referred to it as the "hate crime sentencing bill" simply because most of the debate around that bill focused on the hate crime sentencing provisions. Its scope is, however, much broader than simply looking at hate crime sentencing. Nevertheless, for the purpose of this discussion, when I refer to this bill, unless I specify otherwise, I am concerned with the parts of the bills that focus on hate crime provisions.

In the debates that took place around Bill C-41, several comments were made by various MPs on the focus of the debate. A Liberal member of parliament mentioned that the debate had been dominated by a focus on Section 718.2 of the Bill. As he said:

I want to comment as objectively as I can on section 718.2. This section has attracted more attention than any other aspect of the bill. There is a backlash of sorts that has conjured up a great deal of concern among a number of Canadians. This bill is referred to often as a hate crime bill. It is a sentencing bill with some 60 or 70 pages and has a wide range of important amendments to guide sentencing (my emphasis, Commons 1995, 13 776)

This comment was echoed by a number of Liberal members of Parliament. Even members from the Reform party (opposition party) regretted that not much attention had been given to other sections of the Bill (Commons 1995, 13829 and 13955). As an opposition Bloc Québécois MP explained:

The debate on the real issues of Bill C-41 was sidetracked from the very beginning. Indeed, since the legislation was tabled, the debate has focused on the sensitive issue of homosexual rights. [...] The debate has been sidetracked both by the defenders of homosexuals' right to protection and by the extreme right that wants the bill's provision regarding aggravating circumstances to be dropped. I have received thousands letters asking me to vote against Bill C-41 because it contains the phrase "sexual orientation". Our offices were flooded with these form letters. They merely reflected the opinion of a ill-informed minority. Those who signed these letters actually wanted us to scrap a 75 page bill, containing a hundred clauses and representing a complete reform of that part of the *Criminal Code* that deals with sentencing, because it contained two words too many. Let us keep in mind that Bill C-41 does not create new rights. It is a sentencing bill, and therefore sets out parameters by which judges must be guided in arriving at sentences (my emphasis, translation, Commons 1995, 13 773).

These impressions from MPs on the nature of the debate were well founded. A review of the debate's content reveals that in fact, approximately 40% of the allotted time in the House on Bill C-41 was spent on discussing the inclusion of sexual orientation. Moreover, as I will demonstrate below, the more intense moments of the debates of Bill

C-41 were over that exact same issue. The review of the debates confirms that order in the House and civility among members was not always easily maintained. In fact, the tone of what was said was at times nasty. Several comments vilified homosexuality and subordinated gays and lesbians. Some were even hateful of LGBT people. Apologies and retractions of comments were requested on several occasions, revealing broader issues, including views about the rightful place of LGBT people in society and their citizenship. Before I turn to these comments and look at their implications with respect to the citizenship of LGBT people, I first discuss more generally how the inclusion of sexual orientation was understood as the first step in granting special rights to LGBT people.

Including Sexual Orientation, Granting Special Rights

A major point of contention in the debates on the hate crime sentencing enhancement provisions was the inclusion of sexual orientation in the list of groups protected. The inclusion of sexual orientation was perceived by some as granting special rights to LGBT people. The Bill recognized the vulnerability of particular victims and attempted to provide special protection to the most vulnerable people. It did not, however, grant groups special rights. As the Minister of Justice stated before the House:

If we are speaking of special status perhaps we should remember that if gays and lesbians, for example, have a special status they have a special status to be targeted, to be beaten up. If there are members who care to share that special status I am sure it could be discussed. The only special status that is on the list is vulnerability. The only special rights we are talking about here are the rights to be targeted. The very purpose of this legislation is to redress that unfairness (Commons 1995, 13924).

Some MPs criticized and even rejected the bill. For the most part the criticisms toward this Bill centered on the refusal to recognize that LGBT people are the target of

hate/bias activities. Opposition to this Bill focused on the inclusion of sexual orientation as an identifiable group protected by the legislation. Members of the Reform Party¹³ were extremely vocal about their opposition. Opposition also came from some Conservative members and from within the government's own ranks as several Liberal backbenchers were not shy of speaking out against this Bill. I explore below exactly what was said to oppose this Bill.

Members of the Reform Party begged to differ on the intentions of the Liberal party in putting forward this bill. As one member explained it, “[a]n assault is an assault is an assault, whether it is against one person or another person, regardless of what people’s differences may be” (Commons 1995, 13963). Dismissing hate crimes as a meaningful category upon which sentencing should be based (by saying that hate crimes are like any other crime), he continued to argue that the underlying purpose of the bill was “not to try to address crime in a meaningful way, but rather to placate the special interest groups (i.e. gay and lesbian groups) that are giving the government lots of problems right now” (Commons 1995, 13965).

For several Reform MPs, and supporters of that particular party,¹⁴ the Bill was perceived as giving in to the gay lobby, as paving the way to granting same-sex couples benefits, legalizing marriage, allowing adoptions of children by same-sex couples and so on (Commons 1995). The bill was also a first step in granting special status and

¹³ The Reform party was formed in May 1987. It became the Canadian Alliance in January 2000. On 15 October 2003, the Canadian Alliance joined forces with the Progressive Conservative to form a new party called the Conservative Party of Canada. This merger was made official in December 2003. See Conservative Party of Canada, www.conservateur.ca/ (20 October 2004) and The Canadian Encyclopedia, www.thecanadianencyclopedia.com (20 October 2004).

¹⁴ On several occasions, Reform MPs shared the views of their constituents (and supporters) in the House of Commons. For example, Dick Harris, the Reform MP for Prince George-Bulkley Valley, after explaining that he was in Parliament to represent the constituents who voted for him (Commons 1995, 13963), said that he could not support Bill C-41 because he had received over 15 000 pieces of mail from his riding imploring him, as the member representing Prince George-Bulkley Valley to vote against Bill C-41. Most of the mail received suggested that the Bill was an attempt to respond to pressures by a certain lobby (i.e. gay and lesbian lobby) (Commons 1995, 13964). Similarly, the Reform MP for Port Moody-Coquitlam stated that a questionnaire sent out from her office asked whether her constituents agreed that sexual orientation should be included in the *Charter* as a protected category. Of those who responded, 65% rejected that idea (Commons 1995, 6819). That member used this information to justify her opposition to Bill C-41.

privileges to LGBT Canadians. As one Reform MP asserted: “I cannot figure any reason why they would include that (sexual orientation) if it is not to extend it much more. It bothers me when we get into legalizing adoption and spousal benefits. That is what bothers Canadians” (Commons 1995, 13970). Similarly, another Reform MP stated that “the reason Canadians are concerned about Bill C-41 (as evidenced by the number of letters received opposing this Bill) is because they see this very clearly as a very transparent, thin edge of a wedge that is an important stepping stone in order to get the undefined term of sexual orientation [and for rights and benefits to be extended to same-sex couples]” (Commons 1995, 13817 and 13816). That same Reform MP, in explaining why he opposed Bill C-41, said:

I stand clearly, unequivocally and in a very straightforward way in favour of and in full support of the traditional family unit as generally understood within society. [...] I give that as a background because it is true that all of us arrive at this House with predisposed attitudes and values from our very soul. I want to make it clear what my motivation is in taking a look, hopefully, at the deletion of section 718.2 from this bill (Commons 1995, 13816).¹⁵

Another objection to the bill, from the Reform party was the belief that it undermined social cohesion. The government claimed the bill would strengthen social cohesion in Canada by reaffirming the citizenship of marginalized groups and by sending a message to these groups that they are entitled to feel safe on the street and that when this safety is compromised the authorities of the state will act. Members of the Reform Party claimed that, by enumerating categories in section 718.2, the government would undermine social cohesion by reinforcing differences between groups. One Reform MP stated:

¹⁵The rhetoric on the family is also present in statements made by Liberal backbenchers. Roseanne Skoke stated: “To endorse or to include the words sexual orientation in any federal legislation would confer on homosexuals the ability to obtain special legal status, allow them to redefine the family, to enter into the realm of sanctity of marriage, to adopt children, to infiltrate the curriculum in schools and to impose an alternative lifestyle on youth. All these demands are encroaching on and undermining the inherent and inviolable rights to the family...” (Commons 1995, 13773).

One of the principle concerns I hold though lies in this bill's further entrenching the divisions between Canadians as outlined in section 718.2. This entrenching does nothing to pull Canadians together and reinforce the principles of fundamental justice. If anything, it stigmatizes Canadians, classifies Canadians, divides Canadians and raises suspicions between Canadians (my emphasis, Commons 1995, 13970)

Conservative MP Elsie Wayne echoed this when she endorsed comments (discussed below) of two of the dissenting backbench Liberal MPs (Roseanne Skoke and Tom Wappel). According to Tom Wappel, 631 petitions were presented in the House against the inclusion of sexual orientation either in Bill C-41 or in the *Canadian Human Rights Act*.¹⁶ Having heard that, Ms. Wayne stated that:

In the face of overwhelming opposition why is the government not listening to Canadians, for this is a slippery slope for Canada, a slippery slope the government is taking for the traditional family unit, and it is a dangerous route that will eventually become an avalanche if it is adopted in the House (my emphasis, Commons 1995, 13822)

Members of the Reform party also claimed that the passing of this Bill was counter to the principle of equality before the law. Several Reform MPs were adamant that passing the hate crime sentencing bill would result in “special treatment” for gays and lesbians, which it opposed on the basis that such special status detracted from the principle of equality, which they understood as same treatment. This was not a government imposed distinction however but a sociological reality: LGBT people are singled out on the street and made victims of violence and intimidation as a result of their presumed or perceived sexual orientation. This Bill was a response to this reality. Evidence of this violence taking place was presented to the Committee on Justice reviewing this bill by Police Services (Ottawa and Toronto) and by community

¹⁶The changes to the *Canadian Human Rights Act* (CHRA) were implemented in the year following the adoption of Bill C-41. It was already known that the government would follow up with a Bill to add sexual orientation in the CHRA at the time that C-41 was debated in the House.

organizations that work with communities that are the target of hate crimes (B'nai Brith, EGALE, CRARR). The Reform's position, as stated by one MP, was that:

The bill outlines to Canadians what discrimination is from the federal government's point of view. [...] Canadians for many years have been trying to move beyond government defined categories in the hope of becoming one people. This bill defies this vision and tries to further entrench these categories to appease special interests.

Canadians have clearly spoken out against these categories and want equal categories and want equal protection under the law (my emphasis, Commons 1995, 13971; also see 13761, 13766).

The debate on equality was also addressed when Bill C-250 made its way through the House of Commons. Canadian Alliance MP Vic Toews, the Justice Critic, reiterated in the context of this new bill several of the arguments that were used earlier by Reform MPs to oppose the inclusion of sexual orientation in Bill C-41, when he claimed that the bill would protect some individuals but not others. For example, he stated that the bill would not protect "a number of other Canadians who may be targeted for reasons of age, health, disability, social status or a number of other characteristics..." (Commons, 29 May 2002, 1755). He concluded that:

The Canadian Alliance has always promoted equal treatment of all Canadians under the law. However we are not in favour of preferential treatment of any group, something the legislation in its current form would do. We must be mindful that one man's or woman's freedom is not arbitrarily exchanged for another's based on what happens to be the current political flavour (Commons, 29 May 2002, 1800).

The Canadian Alliance, like its predecessor the Reform Party, perceived equality as the law treating everyone the same. This failed to recognize that neither the hate propaganda provisions, nor the hate crime sentencing enhancement measures, avoid the principle of equality before the law. What these provisions do is recognize that certain groups are the target of hate-motivated violence or hate propaganda. As a result, these groups are more vulnerable and therefore need state protection to become full citizens. Without

protection by the state, individuals from these targeted groups are less likely to be able or willing to participate in the political community.¹⁷ Furthermore, this line of argument is also inconsistent, objecting to sexual orientation but not to the other enumerated groups.

The idea that the hate crime sentencing bill was granting special status to gays and lesbians persisted despite evidence presented in committee and Liberal members' assurances that "the bill will not grant special rights to homosexuals, nor will it in any way affect the traditional family" (Commons 1995, 13961). One Liberal MP explained:

I have assured my constituents of these facts, but I will also take advantage of the chance to reiterate that this is a sentencing and crime bill which will protect all victims of hate crimes. It has absolutely nothing to do with the recognition of same sex marriages, nor will it destroy the traditional family.

I firmly believe that all Canadians should be protected from vicious, targeted acts of aggression. I certainly support the inclusion of sexual orientation as a ground for hate motivation in the legislation. The inclusion of sexual orientation as a ground for hate motivation recognizes the fact that criminal acts which are intended to terrorize the gay and lesbian community are on the rise and unfortunately have become a problem in Canadian society (my emphasis, Commons 1995, 13961).

A member of the Justice Committee reviewing Bill C-41 explained that by including sexual orientation, the bill did not sanction pedophilia, an argument made by several who opposed the bill. In response, a Liberal MP stated:

This is not a bill that sanctions pedophilia. Pedophilia is a crime in Canada [...]. Pedophilia is actually a mental disorder under DMS-IV. It was III when I was doing that type of work. Heterosexuals often commit the crime of pedophilia. It is more prevalent with heterosexuals. [...] it (the fact that pedophilia is more common among heterosexuals) is common psychiatric evidence.

Mr. Speaker, I will speak through you because it is difficult to educate some members on the other side. [...] This is what is really happening. We have a Criminal Code statute. We are not addressing morality in this bill (my emphasis, Commons 1995, 13972)

¹⁷This refers back to the discussion on the role of the state, security and citizenship in chapter 1.

Furthermore, to counter the arguments that this bill was granting LGBT people a special status, the Justice Minister stated before the House that:

It is not the government or the minister that is singling people out for special status. [...] it is the hoods, it is the thugs, it is the criminals that are out there on the streets singling out gays and lesbians for their special status by hunting them down and beating them up. This legislation is an attempt to get the Parliament of Canada to do something about it.

My hon. friends opposite tend to forget this is a bill which has to do with sentencing in the criminal law. The hon. member for Wild Rose (Reform party) would tell us that we are condoning immorality, we are breaking up the family unit. He does not approve of homosexuality. We are not inviting him to approve of homosexuality.

Religion is on the list too. We are not inviting him to approve all religions held by Canadians from coast to coast. This has nothing to do with social engineering, it is about the criminal law. This is about punishing criminals which is what I thought the Reform liked to do (my emphasis, Commons 1995, 13972)

The Reform MPs maintained that the Bill contravened the principle of equality before the law. They did so despite hearing evidence before the Justice Committee from the President of the Standing Committee on Criminal Law for the *Barreau du Québec* that the Bill in no way detracted from the principle of equality before the law. A Reform MP asked the Crown Attorney, “[d]o you believe in the premise that what this sentencing bill should do is establish the fact that all Canadians should be treated equally before the law, rather than work in these paragraphs (reference to section 718.2) that try to create a different standard for different persons?” The Crown Attorney for the *Barreau du Québec* replied that

All Canadians should be treated on equal footing. [...] That is the reason for our rules of evidence and rules of law. Most rules of evidence and procedure are aimed at protecting the accused who is charged with a crime. I do not see clause 718.2 as being an exception to that. Everyone is to be treated equally and prejudice, of whatever type, may be an aggravating factor just as premeditation in committing a crime (translated, Canada, Standing Committee on Justice and Legal Affairs 1994, 74:10).

The same Reform MP asked a similar question to the Senior Counsel for the League of Human Rights of B'nai Brith (who was also a criminal lawyer) when he presented evidence before the Justice Committee. The Senior Counsel replied that the inclusion of sexual orientation was necessary in order to have police and the courts recognize and treat these crimes appropriately. He also stated that "this section has nothing to do with same-sex benefits" (Canada, Standing Committee on Justice and Legal Affairs 1995, 78:32).

Svend Robinson, the MP responsible for the inclusion of sexual orientation in the hate propaganda provisions, said in response to the criticism brought forward against the bill:

What are the arguments for excluding sexual orientation from Bill C-41?

The arguments are very clear. They say that it is just and right and appropriate to increase sentences if a person is motivated by hatred on the basis of religion, race or sex, but it is not if you are motivated by hatred on the basis of sexual orientation. What kind of message would this House be sending to Canadian society if we accepted that message?

[...] Frankly, I am astonished that a party like the Reform Party which says it believes in law and order would not understand that importance (that at sentencing hatred should be considered an aggravating factor). I am very surprised and disappointed at that. I have to say I am even more disappointed in the position taken by the member for Central Nova (Roseanne Skoke, Liberal MP) and a number of other Liberal members of Parliament on this issue. That member has said that sexual orientation should be taken out of Bill C-41, not the other grounds in section [718.2], but sexual orientation.

The implication and the message which is sent out by that is that it is okay. There is one standard if you beat up people based on race or religion and there is another standard if you beat up people based on sexual orientation. That is the message that goes out (my emphasis, Commons 1994, 6826)

Vilifying Homosexuals and Subordinating Gays and Lesbians

On numerous occasions during the debates on Bill C-41, comments that can be characterized as derogatory or as vilifying gays and lesbians were made in the House of Commons, usually by Reform members, but also by a few Liberal backbenchers and Conservative MPs. Regardless of who advanced these comments, the intended effect is the same. They could undermine the citizenship of gays and lesbians and exclude LGBT people by characterizing them as undeserving citizens and as a threat to the family unit, moral fabric and social cohesion of society. One Reform MP argued:

I want the whole world to know that I do not condone homosexuals. I do not condone their activity. I do not condemn homosexuals. I do not like what they do. I think it is wrong. I think it is unnatural and I think it is totally immoral. I think that is the opinion of 85 per cent or 90 per cent of Canadians (my emphasis, Commons 1995, 13967-8)

Some went as far as to suggest that homosexuals are predominantly pedophiles and that consequently to mention sexual orientation in the hate crime sentencing bill is to protect pedophilia. One Reform MP said:

As I noted earlier a great deal of debate as surrounded the inclusion of the term sexual orientation. [...] the lack of definition of this term could open the door to the legal acceptance of such practices as pedophilia (Commons 1995, 13971)

The debate that took place played an important role in promoting stereotypes associated with homosexuality, giving a public voice to expressions of intolerance, potentially reaffirming the legitimacy of such beliefs (Perry 2001, 185). For example, one Reform MP stated:

I do not know how to communicate to the member (NDP member, Svend Robinson) and to all the members of that community (gay and lesbian communities) that we (Reform party members and supporters) do not hate them. A friend of mine was of that particular orientation. His funeral was this year. The hon. member

can say that I hate homosexuals and he is totally wrong. In the case of this friend of mine who died this year of AIDS I know and every thinking person in Canada knows that if he would have behaved sexually he would not have had that disease.

I would like to promote very simply that what we need to do in this country is promote sexual fidelity. We need to promote a lifestyle which is healthy, right and good. In no way should we be promoting a lifestyle which has such dangers. [...] I would like to urge all of the members of this community (the lesbian and gay communities) to recognize that we are trying to do what is right, we are trying to do what is good. To legitimize the homosexual lifestyle in this way (by including it in the hate crime sentencing enhancement clause) is a wrong direction (my emphasis, Commons 1995, 6828).

This statement infers that only heterosexuals are capable of sexual fidelity and that AIDS is a disease that homosexuals are likely to have as a punishment for acting immorally or for being sexual perverts. Not only does this ignore the fact that many same-sex couples live in long term monogamous relationships and that many heterosexual couples do not, it also ignores heterosexual victims of AIDS. More importantly, this bill was not remotely attempting to promote a gay lifestyle, or to discuss AIDS (or who is likely to have AIDS). It was a sentencing bill to address problems of violence targeted at individuals with identifiable characteristics. Comments like these made by MPs further subordinate a group in society, preventing that group from fully enjoying its citizenship rights, responsibilities and privileges.

When the debates on Bill C-41 were taking place in the House of Commons, Liberal backbenchers Roseanne Skoke and Tom Wappel received a lot of attention because they were extremely vocal about their opposition to this bill. The fact that both were members of the governing party meant the media gave them a lot of coverage. They are remembered for having clearly stated their opinions and for having made derogatory comments about LGBT people which conflicted with the values and policies of the Liberal party. For example, Roseanne Skoke, the Liberal MP for Central Nova, stated:

[...] I wish to go on record today as taking exception to the specific inclusion of the wording of “sexual orientation” in the *Criminal Code* amendment. The inclusion of this wording in effect gives special rights, special consideration, to homosexuals. The reference to sexual orientation in the code and its proposed inclusion in the human rights legislation gives recognition to a faction in our society which is undermining and destroying our Canadian values and Christian morality. Such a special recognition of sexual orientation in our federal legislation is an overt condonation of the practice of homosexuality which is being imposed on Canadians. It has the effect of legislating a morality that is not supported by our Canadian and Christian morals and values.

Canadians do not have to accept homosexuality as being natural and moral. Homosexuality is not natural, it is immoral and it is undermining the inherent rights and values of our Canadian families and it must not and should not be condoned (my emphasis, Commons 1994, 5910; see also 13773-4 for similar comments).

This statement implies that Canadian identity and associated values cannot include homosexuality which is labeled immoral and unnatural. This would exclude a whole segment of society from substantive citizenship. In other words, while LGBT people have the same legal rights as heterosexuals citizens, Skoke would deny LGBT people the protection of the law, thus preventing their full participation in society. Although her statement was only meant to target LGBT people by denying them access to substantive citizenship, it also repudiated values and goals advanced through the Multiculturalism policy, as well as the *Charter*. These policies foster a diverse society in Canada in which tolerates differences. For example, both the *Charter* and multiculturalism policies assume that immigrants can be citizens without having to endorse Christian values and family values as prescribed by Skoke. Immigrants are asked to respect the *Constitution* and *Charter*, as well as Canadian law and are free to practice their own faith and values as any citizen should be entitled to do. Moreover, Skoke was in agreement with the Reform party on the idea that the Liberal government was giving in to the gay-lobby. She stated “[t]he rights of families in my opinion are being undermined and are being eroded because of 10 per cent of the population

(homosexuals) that is promoting special rights and interests for homosexuals. I am strongly opposed to that” (Commons 1994, 5912)

Tom Wappel was the other Liberal MP who was extremely vocal about his opposition to Bill C-41. He produced a discussion paper on the issue of sexual orientation that was sent to all MPs and that is still currently available on the Internet more than 10 years after its initial release (Released on 16 November 1994).¹⁸ Approximately 16 pages long, it is a collage of comments made by various individuals. Although not based upon scientific research or evidence, the comments are nonetheless made by individuals of some repute, such as doctors, criminologists and lawyers. They are usually derogatory towards lesbians and gays and often equate pedophilia with homosexuality. Mr. Wappel repeated some of these arguments in the House of Commons. Wappel’s position was that sexual orientation needed to be defined in Bill C-41, if it was to be included at all, because sexual orientation referred not simply to heterosexuality, homosexuality, and bisexuality, but also to necrophilia, pedophilia and the like (Commons 1995, 13778).

Despite evidence presented to the Justice Committee and statements made in the House of Commons, including by the Justice Minister (Commons 1995, 13924), the Parliamentary Secretary to the Minister of Justice and Attorney General of Canada (Commons 1995, 13779), the Secretary of State Asia-Pacific (Commons 1995, 13821) and even opposition MPs from the Bloc Québécois (Commons 1995, 13772)¹⁹ when Bill C-41 was debated, that made explicit the fact that sexual orientation is a clearly defined legal concept, the issue of defining sexual orientation was revived in the more recent debates on Bill C-250. This time, the Parliamentary Secretary to the Minister of International Trade (Liberal) raised the following question: “Is sexual orientation limited

¹⁸Tom Wappel, “Sexual Orientation: Issues to Consider” (November 16 1994).

¹⁹Pierrette Venne (BQ) cited from the Supreme Court’s Egan ruling to explain that there was no ambiguity with the use of the term sexual orientation. The term sexual orientation is used in law to refer to heterosexuality, homosexuality or bisexuality (Commons 1995, 13772).

to homosexuals or does it include those who practice other forms of sexual deviance, such as pedophilia? Are those not also sexual orientation? Am I a criminal if I express hate for those adults who prey upon children?"(Commons, 6 June 2003, 1445). Such language makes reference to the stereotypes that hate propaganda, hate crime sentencing and accompanying educative programs aim to combat.

Throughout the debates around the passing of Bill C-41 (sentencing), dissenting voices, including from members of the government (particularly Wappel and Skoke) were clearly heard. Comments were made that vilified homosexuality and which were offensive to the gay members of the House of Commons who had to stand by to listen to these words without being entitled to an apology. Requests that hateful comments pronounced by some members of Parliament be retracted, including Ms. Skoke's intervention, were put forward by members of the NDP and Bloc Québécois, requests that were dismissed with no avail or dismissed by the MPs at which they were aimed. Following a particularly offensive intervention on the part of Skoke, Svend Robinson (NDP) said: "Madam Speaker, it is difficult to know where to begin in response to the comments of the last speaker (Skoke). As one who is among those she has accused of seeking to undermine and destroy Canadian society, as one she has described as immoral and unnatural..." (Commons 1995 13775). Tom Wappel (Liberal backbencher) intervened, calling upon the speaker to have Mr. Robinson retract his words for they conflicted with standing order 18 (a parliamentary rule) which states that no member may use offensive words against another member. Wappel claimed that Robinson had accused Skoke of slander. Although Robinson was the one who was attempting to get Skoke retract her words and apologize because he felt targeted by her comments, the acting Speaker asked Robinson, and not Skoke, to retract his words (Commons 1995, 13775).

In an earlier episode, responding to Svend Robinson's request that Ms. Skoke "retract those hateful comments she made suggesting that people, homosexuals as she

called them, were promoting and advancing the homosexual movement which is spreading AIDS”, while specifying that “[t]hat kind of fear mongering, that kind of hateful conduct (in reference to Skoke’s comments) has no place in this House” (Commons 1994, 5913), Ms. Skoke responded by saying that under no circumstances would she retract these comments. She claimed that she had the right as a Canadian and as a Christian to defend the values and traditions of this country. Moreover, Ms. Skoke denied that her comments were meant to undermine the citizenship of a given group or that they could be interpreted as hateful. In her words: “My Learned friend raised the issue that they were hateful comments. They are true comments shared by the majority of Canadians with respect to issues regarding morality” (Commons 1994, 5913).

Skoke put forward claims most would consider derogatory both inside and outside of the House of Commons, saying that homosexuals spread AIDS, destroy families and are annihilating mankind, and that homosexuality was in the same class as pedophilia and bestiality. In response, Mr. Robinson (NDP) asked the Parliamentary secretary and the Prime Minister to look into the appropriateness of having her continue to be part of the Liberal caucus. Ms. Skoke’s views were definitely in opposition to those of her government that was moving forward on the issue of hate crime sentencing and soon after adding sexual orientation to the human right legislation. The matter was not taken up either by the Prime Minister or the Parliamentary Secretary. As a result, the NDP member argued that a double standard was at play. As he said: “if they [Ms. Skoke’s comments] were spoken with respect to any other minority, perhaps a religious minority, a racial minority, any other minority, would be met with widespread outrage and anger by that member’s colleagues” (Commons 1994, 5916). The irony was that the very bill being discussed aimed to avoid this kind of double standard in sentencing. The point of hate crime sentencing including sexual orientation was expressly to avoid having hate crimes targeting people from racial or religious categories be always dealt with seriously while hate crimes targeting sexual minorities were left to the discretion of the judge.

Parliamentary privileges protect the MPs from prosecution for anything said in the House of Commons (Dyck 2000, 561), which means that even if comments made in the House of Commons were judged to be hate propaganda the MPs putting forward such comments could not be held accountable for them in a court of law. Regardless, there are justifiable concerns with giving a public voice to comments that could legitimize expressions of intolerance.

Commenting further on the impact that statements such as those made by Skoke and Wappel have, an NDP member added the following:

This legislation is very important. It is also important that we understand the kind of attitudes we have heard from member for Central Nova. The member of New Westminster-Burnaby said that gay bashing was not much of a problem because it was only one marginalized group, skinheads as he said, attacking another marginalized group, or it was gay people beating up other gay people. Those are the attitudes we have to confront (my emphasis, Commons 1995, 13776)

Réal Ménard, the Member of the opposition from Hochelaga-Maisonneuve (BQ) who is also openly gay, argued against the position advanced vehemently by both Tom Wappel and Roseanne Skoke (who are both lawyers) by saying the following:

With all due respect for the hon. member for Scarborough West and the hon. member for Central Nova— I must admit that when she talks about homosexuality, she does not mince her words, which is putting it mildly— I have not heard either member give examples that would hold water in the legal sense.

I would have had more respect, although I still have some, through you Mr. Speaker, for the hon. member for Central Nova or the hon. member for Scarborough West, if they had risen in their seats and argued on a legal basis to make a connection between agreeing that gays should not be attacked and pedophilia.

That is what disturbs them. [...] However, none of them were able to make a connection between what is proposed in clause 718.2 and what they themselves as parliamentarians anticipated would happen. [...]

What is disturbing, and I think the Minister of Justice is to be commended for his courage in this respect, is that, as parliamentarians, we have no obligation to support a certain set of moral values. You know, when the only argument is a moral

argument, when as a member, all they can do is get up and talk about prayers, religion and family, it is because they do not have much in the way of legal arguments.

I have great respect for people who are deeply religious. I have great respect for parliamentarians in this House who, in some way or another, want to perpetuate the family, be it in its traditional form.

But please, do not tell us that because we want to protect a specific group of people who are confronted with violence every day, because the legislator wants to make attacking gays because of their sexual orientation a factor in determining sentencing, please do not tell us we are challenging family values.

[...] My point is that it is certainly not as a challenge to the traditional or alternative family that we, as legislators, want to put a stop to violence. I cannot accept this kind of argument (my emphasis, translation, Commons 1995, 13780)

On the day that the Bill was last debated in the House before passing, Mr. Ménard added the following in response to comments made by the Reform party and other who opposed the bill. Again, I quote him at length:

If I may say so, Mr. Speaker, there are even colleagues who have made remarks that, in my opinion, are certainly pushing the limits of politeness, as well as the limits of democracy, in this House, in the name of religious freedom. None of the bill's detractors rose and asked that religious freedom, or national origin, be defined.

Why this unhealthy obsession with one of the explicit motives of discrimination, as it could open the door to recognition of what is obviously in the realm of perversion? Some not so great minds even went so far as to make a connection with pedophilia. You really have to be pretty ignorant and pretty far removed from any understanding of the term sexual orientation to make that kind of connection.

Anyone who has some concept of psychology or psychiatry knows perfectly well that homosexuality has no connection with pedophilia. Homosexuality has no connection at all with pedophilia, and it is comparisons like these that tarnish reputations and they are also most unfortunate from a legislative point of view (my emphasis, translated, Commons debates 13948).

The tone of what was being argued in these passages taken from the House of Commons debates was often less than friendly towards LGBT people. If the words pronounced by these members of Parliament are truly a reflection of the views of their constituents,

LGBT people have cause to be worried about their safety and their status as Canadian citizens. Moreover, these words support the need for the legislative changes that were brought forward in these debates, for the words lend support or may even legitimate hate/bias-motivated activities targeting LGBT people.

Thinking back to the Young's theory of oppression presented in chapter 1, Young would probably consider the dissenting voices in the debates on hate crime and hate propaganda as examples of cultural imperialism, one of the five faces of oppression she discusses (1990a, 59). Cultural imperialism involves the universalization of the dominant group's experience and culture and its establishment as the norm, while the Other is marked as different. The experience of the dominant group was presented as natural, universal or neutral by Liberal backbenchers and Reform MPs, while LGBT people were portrayed as Others or outsiders. Here, stereotypes were used to vilify LGBT people and make them a subordinate class of individuals. Homosexuality was denounced by being associated with disease (AIDS), pedophilia, and the inability to have a normal family. We can conclude that those who opposed the inclusion of sexual orientation in the hate crime sentencing measures view LGBT people as not even deserving of state protection. In this respect, the debates (the parts in which opposition was voiced) served to make LGBT people a subordinate group in Canadian society or second-class citizens.

Telling Words: on the Citizenship of LGBT People

Discussions about the implication of hate propaganda provisions and hate crime provisions as measures necessary to uphold equal rights of citizenship for all members of society was evident even in the early debates of the late 1960s. One member of Parliament, in a speech supporting the introduction of hate propaganda provisions said:

I suggest that hatred breeds contempt, and that the result in society is a form of social class distinction which is abhorrent to all Canadians. The scars created by expressions of hatred based on discrimination against colour, race or creed, in many cases last forever. The soul and spirit of Canadians require a standard of conduct which will eliminate the stigma of second class citizenship.

In addition, Mr. Speaker, the bill has profound educational value as a measure to enhance the strength and spirit of true Canadian respect for the dignity of man. To me, we are strengthening the bonds of citizenship in Canadian society by demonstrating the intention and determination of the Canadian people to prevent social class distinction, and place those in identifiable groups on exactly the same level of respect and regard as all other Canadians. This bill will be a victory for the dignity of the rights of Canadians (my emphasis, Commons 1970, 5577-78).

At the time of the introduction of the hate crime sentencing measures (Bill C-41 in 1995), the Secretary of State (Multiculturalism) discussed how the broad scope of that provision further enshrined the principles found in section 15 of the *Charter* which are “fundamental values for all Canadians”. She said:

I believe that equality for all Canadians includes freedom from hatred and from harassment. Expression of hatred have absolutely no place in Canadian society. Openness, understanding and sharing are features that shape our collective identity. Most Canadians believe that each one of us has the right to live free from hatred and actions that are motivated by hatred (my emphasis, Commons 1994, 5901).

She describes some of the necessary conditions for substantive citizenship. Another Liberal MP reaffirmed the right to substantive citizenship of LGBT people when she argued that they had the same right to safety as heterosexuals, a rights that the hate crime sentencing bill aims to strengthen. As Jane Stewart, a Liberal MP,²⁰ said:

Under this legislation the courts should take into consideration the principle that a sentence should be increased if there is evidence that the crime was motivated by bias, prejudice or hate based on

²⁰Jane Stewart became Minister of Indian Affairs and Northern Development following the 1997 election. She was a Liberal backbencher when the debates on Bill C-41 were held.

race, nationality, colour, religion, sex, age, mental or physical disability, or sexual orientation of the victim. Some say that this provides special status for these Canadian, particularly homosexual Canadians. If these people have any special status, it is the special status of often suffering abuse simply because of their minority characteristics.

Bill C-41 ensures that the courts consider these circumstances when deciding upon sentences. This is not about granting special status. Rather it is about affirming equality for all Canadians. Homosexual Canadians should be able to walk on our streets without the fear of being attacked just because of their sexual orientation. Just as heterosexuals do not have to live with this fear neither should other Canadians who have different sexual preference.

This is about equality, not granting special status (my emphasis, Commons 1994, 6820).

There is a clear link made here between safety, citizenship and the role or responsibility of the state. Safety is understood here as part of the rights that accompany citizenship. Canadian citizens should be able to walk on the street without fearing that they will become the target of violence as a result of their identity. It is the responsibility of the state to offer protection and guarantee minimum levels of safety. The hate crime sentencing bill is meant to fulfill partly this responsibility by proscribing punishment for hate-motivated violence. This bill sets principles that are to be enforced by the criminal justice system. The Secretary of State (Asia-Pacific), Raymond Chan, stated his support for Bill C-41 as a measure that aimed to strengthen the citizenship of LGBT people and other targeted groups when he said: “Bill C-41 is an important part of the government’s efforts to improve public safety, enhance the rights of victims and protect the rights of all Canadians to participate fully in the social and economic life of their country” (my emphasis, Commons 1995, 13821)

The debates that surrounded the passing of Bill C-41 had a moralistic tone. They often turned to questions that were much broader than the scope of the bill. As a direct

result of the inclusion of sexual orientation on the list of victims of hate crimes,²¹ the debate focused on Canadian values, what it means to be a Canadian citizen, what equality is and how it should be interpreted in the law. As one Liberal MP claimed, this debate highlighted fundamental questions about “who we are as a nation, the values we hold dear, whether or not we are compassionate or just seek vengeance when we are wronged” (my emphasis, Commons 1994, 6822).

Ideas about citizenship were also present in the debates around Bill C-250. Réal Ménard (Bloc Québécois) spoke of the fact that there are more LGBT youth that attempt or commit suicide. As victims of prejudice, it is difficult for these youths to assume their role in society. As he said: “[t]he more clearly we condemn discrimination and hate propaganda, the more clearly, as a society, will we be helping young people who discover their homosexuality to accept themselves” (Commons, 29 May 2002, 1755).²²

The connection between the role of the state in protecting individuals and the ability of people to participate as citizens was also made by the Right Honourable Joe Clark, then PC leader (opposition). He argued that “the absence of legislation to protect minorities sends signals to members of those minorities that they would become second class citizens and not entitled to equal protection from the law” (my emphasis, Commons, 6 June 2003, 1425). This same point was made by Svend Robinson before the Justice Committee that heard evidence for this bill. As he stated:

What does it mean for gay and lesbian people to be excluded from the current provisions of the *Criminal Code*? Fundamentally, in

²¹There were no discussions in which any of the other grounds being protected were debated. Let us recall that the provision identified “race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor”. People either questioned having sexual orientation on the list or the usefulness of the entire list. Those who wanted the list removed entirely were often driven by the quest to prevent sexual orientation from being included. They chose to avoid a list altogether rather than debate the removal of sexual orientation, a strategy that made it more acceptable to deny the inclusion of sexual orientation without addressing directly that issue.

²²These ideas were echoed in the Senate. Senator Joyal noted how taunting in schoolyards destroys the ability of the victims of these taunts to take their place as equal members in society. Sexual orientation needs to be included in anti-discrimination law and in legislative measures such as the hate propaganda provisions on the premise that this will help avoid the exclusion of these individuals and avoid that these individuals choose not to participate in society (Senate, 24 September 2003, 1720).

many respects, it's to deny the reality of our lives. [...] One of the most serious impacts is the signal sent out. The absence of protection from hate propaganda basically signals to members of sexual minorities, to gay and lesbian people, that we are second-class citizens who aren't entitled to the equal protection of the law, to be equally protected from hatred directed at gay and lesbian people, as other groups currently included in the section are protected, namely on the grounds of colour, race, religion or ethnic origin (my emphasis, Standing Committee on Justice, 25 February 2003, 1105)

Hegemonic Shifts: Debates On Sexual Orientation in the House of Commons

Overall, this lengthy account of House of Commons debates has shown that state discourse on the issue of hate/bias activities also included numerous inferences as to the status of LGBT people as citizens in the Canadian context. If we consider the debates in the House of Commons as a reflection of values held in society, these can be viewed as an indication that LGBT people have reasons to be worried about their safety, in turn a justification for the laws enacted to protect them from hate crimes and hate propaganda. The rights to equality, dignity and protection by the state were confirmed in the laws that were passed and defended by a number of MPs from various political affiliations.

In the debates on Bill C-41, there was vehement opposition to the inclusion of sexual orientation from a few MPs. Several statements, depicted above, vilified LGBT people and conveyed stereotypes about homosexuals as sexual perverts and pedophiles, as sick (AIDS), as spreading an unnatural lifestyle, and as destroying families.²³ These comments were given a lot of attention in the media. The debates in 2002 and 2003 on Bill C-250 brought forward once more some of the same arguments to oppose the

²³Lynda Peers and Irène Demczuk note similar elements in speeches that took place over the changes to the *Canadian Human Rights Act* to include sexual orientation (1998, 94-96).

inclusion of sexual orientation.²⁴ Opposition was voiced mostly by the Canadian Alliance, some Conservative MPs and a few Liberals (e.g. Tom Wappel and Murray Calder (Parliamentary Secretary to the Minister of International Trade)).²⁵ Although the debates on Bill C-250 were punctuated by some opposition, possibly in part because the debating time is much shorter on a private member's bill combined with the fact that the media gave less coverage of these debates this time around, we heard less from individuals who had, in previous debates, vilified homosexuality. Dissenting voices were still present; they seemed, however, to have less clout than they did a decade earlier when the hate crime sentencing enhancement measure was debated.

The Bill, which was introduced as a private member's bill, gained support from a number of MPs, including the support of most Liberal MPs who formed the government at the time. The NDP,²⁶ the Bloc Québécois,²⁷ and the Conservative Party endorsed the Bill,²⁸ as did Jack Layton (NDP leader), Joe Clark (PC leader), Martin Cauchon (Justice Minister),²⁹ Hedy Fry (Liberal MP),³⁰ Réal Ménard (Bloc Québécois), Pat Martin (NDP)

²⁴For example, once more, Murray Calder, the Parliamentary Secretary to the Minister for International Trade, asked: "Is sexual orientation limited to homosexuals or does it include those who practice other forms of sexual deviance, such as pedophilia? Are those not sexual orientations? Am I a criminal if I express hate for those adults who prey upon children?" (Commons, 6 June 2003, 1445).

²⁵Roseanne Skoke who had been very vocal, alongside Tom Wappel, in her opposition to Bill C-41 in 1994 and 1995, was not re-elected after 1997. Therefore, she was not in the House when Bill C-250 was debated.

²⁶See Commons (6 June 2003, 1350).

²⁷Richard Marceau (Chalebourg-Jacques-Cartier, BQ) said: "I would like to begin by saying very clearly and plainly that the Bloc Québécois supports this bill and will support it wholeheartedly" (Commons, 13 June 2003, 1850).

²⁸MP John Herron said: "I want to state categorically for the record that both the Progressive Conservative Party of Canada and I as a private member of the riding of Fundy-Royal are in wholehearted support of Bill C-415 (which was renamed Bill C-250 in the following session of Parliament)" (Commons, 29 May 2002, 1800). The Right Honourable Joe Clark, then leader of the Progressive Conservative (opposition party) also endorsed Bill C-250. He stated: "Mr. Speaker, I wish to congratulate the member of Burnaby-Douglas and other members in the House who worked so steadfastly with him to bring the bill forward and ensure that a principle which is fundamental to our Canadian society is enshrined and reflected in our law. This private member's bill has my strong support" (my emphasis, Commons, 6 June 2003, 1425).

²⁹In the debate on the second reading of the Bill, Serge Marcil, the Parliamentary Secretary to the Minister of Industry, confirmed that the Minister of Justice supported this Bill (Commons, 29 May 2002, 1745). In Question Period, on the day that Bill C-250 was passed by the House of Commons, the Justice Minister Martin Cauchon endorsed the bill and said: "We support the bill as amended. It is consistent with the government's policy as well" (Commons 17 September 2003)

and others. Government support for a private member's bill is rare. Usually the government uses its advantage in the House to make sure that the Bill does not become law. If it views the Bill as favourable, the government will introduce at a later date a bill that has similar objectives (Dyck 2000, 551). The endorsement of this Bill by a number of Liberal MPs, including most importantly the Justice Minister, may be attributable to the fact that the Party lacked the political will to introduce a similar Bill. Regardless, government support for this private member's bill was instrumental to it becoming law.

Also indicative of the power dynamics in the House of Commons is the aspect of free votes. Several of the MPs who opposed the hate crime sentencing bill (Bill C-41 in 1994 and 1995), mostly Reform MPs, argued that including sexual orientation went against the principle of equal treatment before the law. Some MPs even went further and expressed disdain at the process that they called undemocratic. The Liberal party did not allow for a free vote on Bill C-41. Free votes are rare and usually limited to issues that have moral implications (Dyck 2000, 553)³¹. According to the governing Liberals, Bill C-41 was a sentencing bill and not a moral issue. In response to those who advocated for a free vote on this Bill, some Liberal MPs said the following: "[w]e will keep our campaign commitments and send a strong message against hate crimes. As an election promise and a matter of fundamental human rights, Bill C-41 will not be subject to a free vote" (Commons 1995, 13816).³² The Reform Party begged to differ. It claimed that "a government that denies the moral will of the majority of Canadians by forcing a vote on

³⁰Hedy Fry was Secretary of State (Multiculturalism) (Status of Women) between 25 June 1996 and 14 January 2002. In her role as Secretary of State, she kept the issue of hate/bias activities and crimes on the agenda, organizing a series of roundtables on this issue. She said: "...let there be no doubt whatsoever about my wholehearted support for Bill C-250, the private member's bill put forward by the MP for Burnaby-Douglas" (Commons, 13 June 2003, 1835).

³¹Examples include a free vote on capital punishment in 1987 and Abortion in 1988, when the Conservatives were the governing party. The Liberal government only allows free votes on private member's bill. Otherwise, it tends to discipline those who do not comply with party discipline, for example removing dissenters of the gun control bill from committee assignments, not signing the nomination papers of John Nunziata as a result of his attacks on the government for not removing the GST (Dyck 2000, 554).

³²Liberal party statement quoted in the House of Commons by Reform MP John Abbott.

party lines is denying the very basics of democracy” (Commons 1994, 6819). One Reform MP stated: “[t]he heavy hand of the whip is coming down on all of the Liberal members of the House, and we have seen the devastation that will do to their political careers as long as they toil within the Liberal Party” (Commons 1995, 13816). Since Bill C-250 was a private member’s bill, Liberal MPs were entitled to vote as they wished. The vote did divide the House. The Bill passed with a small majority (141-110). Approximately forty Liberal MPs voted with Canadian Alliance MPs and a number of Conservatives against this Bill, while the NDP and Bloc Québécois and a number of Liberals voted in favour of the Bill (*Globe and Mail* 18 September 2003, A7; see also: www.parl.gc.ca/LEGISINFO). Regardless, if we compare the vote on Bill C-41 and the one on C-250, which took place almost a decade later, we can see that there has been a shift in the opposition to the inclusion of sexual orientation in policies. The dissenting bloc has less clout than it once did. Where as party discipline was likely necessary to have Bill C-41 passed in 1995, a free vote on a private member’s bill sufficed in 2003 to have sexual orientation added to a *Criminal Code* provision. This is indicative of a shift in the hegemonic discourse, and likely indicative of a widening of the sphere of the citizenship regime. Again, if what is said in the House of Commons is in any way a reflection of societal attitudes, we can see that there is greater tolerance for LGBT people as expressed in these latest debates.

Sexual Citizens Through State Discourse

In this chapter, I reviewed discourse produced by state actors, be it in Parliament or in the bureaucracy. Both sources are constitutive of a hegemonic position that takes hold over time and dictates the boundaries of the citizenship regime. Through my analysis of the House of Commons debates, I showed how the dissenting voices that were heard quite

clearly in the debates on Bill C-41 in 1994 and 1995 could still be heard in 2003 when Bill C-250 was discussed. Several of the same arguments were being repeated; they did not, however, have as much clout as in the previous decade. Stychin who observed a similar phenomenon in the British Parliament attributes this change in part to a generational shift (2003, 46). As he has argued: “an analysis of the sexuality debates underscores, in my view, that a hegemonic shift is occurring, in which conservative discourse—which were historically dominant—are being increasingly marginalized” (Stychin 2003, 46). The view that sexual orientation should be included in hate crime and hate propaganda provisions was articulated by the state bureaucracy already in the early 1990s. This view was shared by a number of key Liberals in government, leading the way for the hate crime legislation to be passed. Party discipline was likely necessary for a successful vote on this legislation, because opposition at the time was voiced not only by the Reform party and some Conservative MPs, but also by some Liberal MPs who, in this case, dissented from their own party’s position. By 2003, a private member’s bill managed to get the support of enough MPs, including from the government, to be adopted by the House. The conservative discourse was increasingly marginalized.

Moreover, both the debates and government documents confirm the responsibility of the state in protecting individuals from hate/bias-motivated violence. Guaranteeing minimum levels of safety is seen as a prerequisite for LGBT people and others targeted by hate/bias violence to participate in the political community and enjoy their citizenship. In this respect, adding hate crime sentencing enhancement guidelines and adding sexual orientation in the hate propaganda measure is one of the ways that the state can contribute towards shifting the boundaries of the citizenship regime to be inclusive of LGBT people.

Chapter 5: Voices II - Police Perspective on Violence Targeted at LGBT Individuals

I have distinguished the voices of police from those of the legislative and executive branches of government, because the police are located at the intersection between state and society. On the one hand, they are a state institution that enforces state policies and laws. As one officer put it: “[a]s police, we are very much a criminal justice system. We are to react, to lay charges, to intervene, to separate parties before things get out of hands...” (Interview Sterling Hartley, 19 March 2002). Within a democratic state, the police have always had an important role with respect to maintaining civil order. Beyond the visible functions of crime control, the police, as a vital arm of the state, embrace an objective and legalistic culture. They have been an “ideal-typical representation of impersonal application of the law” (Forcese 2002, 5; see also Neugebauer 2000, 84). Police and other security services, in the conduct of their institutional role, have a legitimate recourse to force. The use they make of this tool can uphold or undermine the legitimacy of the state. “Good governance” depends on state legitimacy, which is in part determined through the just use of force by the law enforcement arm of the state or, in other words, its security services (Bourgault and Gow 2001, 2-3).

On the other hand, police officers are also front-line workers. They offer a service, that of protecting citizens and keeping the peace in society. Thus, while we expect police objectivity and political neutrality from police services (Forcese 2002, 9), police response may not be as uniform as anticipated from an institution of the state. Police officers are individuals who intervene (or not) in society. Their role, as front-line workers maintaining the peace, gives them a great amount of autonomy. They can help prevent situations, allow others to take place, take part in some and be unaware of yet others. Police officers can work to enable hate/bias activities targeting given groups by not attempting to apprehend perpetrators or restrain hate/bias activities. Moreover, since

police forces are not a monolith, but rather are made up of numerous individuals, despite similar training and common rules of operation, some segments of the police force are more likely than others to be sensitive to the problems associated with hate/bias crimes and activities and more likely to detect such actions and respond appropriately to them. In sum, although the role of police is contrived by a legislative framework and a set of rules of conduct, and policing is subordinated to the elected government, police officers have sufficient autonomy to respond variably to situations, applying some laws more diligently than others and, as a result, potentially reinforcing inequalities (Forcese 1999, 7 and 3-6).

Irrespective of social class, gender, race and other such determining factors, Canadians expect from the police protection of their person and property, as well as the maintenance of social order. Depending on the sub-group of society to which one belongs, “the perception and confidence that police meet these expectations” (Forcese 1999, 1) will vary. For example, evidence around the practice of racial profiling (Ontario Human Rights Commission 2004; C. Smith 2004) substantiates that police officers do not always apply rules and regulations in an impartial manner and that certain groups in society are the target of over-policing. Also, in some areas, police officers may refuse to go or rarely be present, leaving certain communities under-policed and under-protected. This is usually the case with poor areas or areas where immigrants and racial or ethnic minorities are overly represented (Forcese 1999, 5). Access to adequate policing is an issue of citizenship. If we consider the varying degrees of trust and openness that certain groups in society are likely to have towards the police and the fact that police services are not impartial in enforcing the law, it is unlikely that minimum levels of safety required for individuals to participate and contribute to the political community are being ensured by police services. Without police protection of one’s person and property, individuals are likely to withdraw from the political community. As a result, the democratic fabric of the state becomes threatened.

In this chapter, I argue that hate crime units can play an important role in opening police services to targeted communities, subsequently improving the safety of these groups and thereby shifting the boundaries of the citizenship regime. To substantiate this claim, I first examine police perspectives on a number of related issues. I look at how police understand hate crimes; how they address the problem of hate crimes; whether changes to the *Criminal Code* have an impact on their work; how the relations between the police and targeted communities are perceived by the police; and whether the police can contribute to making cities safer for LGBT people. Police perspectives on these issues raise a number of questions around the traditional role of police services, expectations from society, and whether police forces are well suited to address problems such as hate crimes or hate/bias violence. This information will contribute to understanding the role of the state with respect to protecting citizens and ensuring minimum levels of security.

This chapter is based on over a dozen interviews with police officers and personnel from various police services. The individuals interviewed either work on the issue of hate crime (i.e. being part or having been part of a hate crime unit or assigned to such cases) or are involved in some capacity with the LGBT communities. They therefore have developed an awareness of issues of hate/bias and how police responses affect incidents involving LGBT people. Since the Ottawa Liaison Committee and Hate Crime Unit are central to my study (see chapter 7), police officers and personnel from the Ottawa police force are well represented. I also interviewed individuals in Montreal, Gatineau, Toronto, Hamilton and Calgary. This has allowed me to appreciate what happens in various cities and better understand what goes on in Ottawa. I have also gathered a number of documents prepared by various police forces about hate crimes or policing and diversity, including briefs presented to House of Commons Committees or to commissions.¹ Before turning to what police officers have to say about hate crimes, I

¹These documents are listed in the bibliography in the section on primary sources.

review the different strategies used by police services across Canada to deal with hate crimes. This will contextualize the comments made by police officers, examined in the second section of this chapter.

Policing Strategies, Hate Crimes and Citizenship

The information that follows is taken from a report prepared by Canadian Centre for Justice Statistics (CCJS), a division of Statistics Canada. The CCJS contacted 36 police agencies across Canada, including the 25 metropolitan (as determined by the Census) area services, the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP) and other municipal services. Almost all of the police services replied giving information concerning policies on hate crimes, their working definitions of hate crimes, and information about data collection (Janhevich 2001, 19).

Of the 34 police services that answered the survey, twenty-seven (or 79% of those surveyed) said that they had policies and procedures in relation to hate crimes. Twenty-six police services (or 76% of those surveyed) had specific definitions of hate crimes and twenty-one services (or 62% of those surveyed) collected statistics on hate crimes (Janhevich 2001, 19). With respect to the strategies used by the various police services, four patterns can be observed for addressing hate crimes. The most prevalent is a department-wide approach, whereby hate crimes are addressed in a decentralized fashion. Rather than having all information centralized into a unit or officer, the onus is on each individual police officer to identify these crimes and address them according to procedures that they are mandated to be aware of. This approach is used in Montreal, Edmonton, Hull (now Gatineau), Regina, and several others. A second approach involves having a designated hate/bias liaison officer, which is cost-effective for police services that do not have the volume of cases to justify setting up a unit. The Liaison

officer is called when a hate crime is to be investigated. S/he is the primary contact for victims and community groups. This approach is used in Calgary and Niagara. A third approach is to have a hate/bias unit. The officers in these units are specially trained to recognize, identify, investigate and address these types of crimes. They work according to well-developed policies and procedures. Finally, they usually have a role as educators both of the communities and other officers. This approach is used by the OPP, and the Ottawa, Toronto and Winnipeg police services. The final and fourth approach involves joint force initiatives, when police forces work together across jurisdictional lines. Examples include the Hate Crime Team in British Columbia, the RCMP and the OPP (Janhevich 2001, 20-1; also CACP 1996, 18-21).²

Although the purpose here is not to compare and evaluate these strategies, having a hate crime unit or liaison officer appears to ensure a number of aspects are in place that are important to addressing effectively hate crimes. Having a hate crime unit or liaison officer usually ensures there are officers assigned to look out for and identify hate crimes, investigate them using the expertise that they have developed and also be aware of new trends or problems related to hate crimes. It favours education both within the police service and in the community on this issue. It also ensures a specific entry point to access police services for individuals that may be reluctant to report these crimes.³ By having a specific entry point, it is more likely that targeted groups will come forward

²Appendix B of that same report provides a detailed description of the situation for each of the police services that answered the survey. It includes the approach and definition of hate crimes used by each (Janhevich 2001, 37-44). Despite being presented as four approaches, the fourth one (joint-forces initiatives) is not a mutually exclusive category. For example, the OPP has a unit, but it also engages in joint initiatives with other police forces, such as the Ottawa Police Services.

³As we will see in chapters 6 and 7, the LGBT communities in Ottawa, having had bad experiences with the Ottawa police service, were reluctant to report crimes. The establishment of the Liaison Committee and Hate Crime Section opened a new door to these communities. It became known that the officers in the Hate Crime Section were LGBT-friendly and would handle calls with professionalism and dignity. Individuals from these communities were encouraged to contact the Hate Crime Section directly, regardless of whether the matter for which they needed police intervention was a hate crime or not. Over the years, with training and increased awareness of hate crimes and issues relating to LGBT communities, it has become easier to call the police service directly, rather than specifically calling the Hate Crime Section, and still expect to be treated with professionalism and dignity.

with information with regards to hate/bias activities, prior to these escalating to hate crimes. This strategy may offer the police an opportunity to engage in preventive work.

In contrast, the service-wide approach has the advantage that every officer is made aware of hate crimes and should be in a position to identify and investigate these crimes. Rather than having only one or two officers answering the calls for an entire metropolitan area, in principle all officers from that police service are capable of addressing these crimes. The downside of this approach is that there is no specific entry point to report these crimes. This may inhibit some victims from coming forward. I have already mentioned the reluctance to report hate crimes. Having a hate crime unit or liaison officer may work to open up police services to marginalized communities whose members are the usual victims of hate crimes. Moreover, when there is no unit or liaison officer, no one is taking ownership over this issue, there is no obvious entry point for the exchange of information between police services, there is likely no one monitoring new trends or identifying new problems, nor will there be preventive work or education done in the community. These are serious drawbacks when one is concerned about the safety of marginalized groups.

The service-wide approach has the advantage of increasing the number of police officers trained to deal with hate crimes, but possibly at the expense of developing the necessary expertise for addressing this issue in ways that will make a difference for the targeted groups. In the service-wide approach, hate crimes are addressed like any other crime, through traditional policing techniques, reacting to incoming calls and investigating crimes. Having a hate crime unit seems to favour a move away from traditional policing or at least going beyond the mandate of a responding officer. Officers in hate crime units engage in outreach with the communities and education. They also seem more alert to new trends and patterns with respect to hate crimes. Police officers working in a hate crime unit are more likely to be responsive and proactive

simply because of their expertise and information that they receive from the communities with whom they are in contact.

It is not possible in the context of this research to ascertain that one model is better than another, particularly when it is likely that a case by case assessment is necessary. What may work in some smaller communities, may not in larger ones or metropolitan areas. Moreover, although hate crime units are usually mandated to engage in education and outreach, it is possible to have hate crime units that are strictly investigative or others that, despite being mandated to do a number of things, may choose to focus their efforts either on investigation or intelligence, disregarding the outreach component. Although it would be necessary to have more research done on this matter, including a comparative analysis that looks at the various approaches used by police services across Canada, from the interviews I conducted there seems to be evidence that hate crime units, with a strong presence in the community, do play a role in shifting the boundaries of the citizenship regime. When marginalized groups are aware of an opening or entry point to access police services, they are more likely to report crimes or hate/bias crimes. Over time, the reporting of such incidents contributes to the enjoyment of a greater level of safety.

If we consider that substantive citizenship includes being protected from violence so as to benefit from a relative level of safety, it may well be that hate crime units are a contributing factor to the safety of given groups and, consequently, to the level of citizenship these communities are able to enjoy. If access to police services is increased through such a unit, although hate crimes will not be eliminated entirely, marginalized communities over time will experience greater levels of safety. If so, the citizenship of these communities will be enhanced. I have already discussed how hate crimes are a mechanism to reinforce the marginalization of given groups by ostracizing them and making themselves less inclined to participate in the political community. For targeted groups, establishing a contact with the police to give them access to police services may

be key to ensuring minimum levels of safety needed to enable targeted communities to enjoy rights and privileges associated with citizenship. For targeted groups, access to police services and enhanced citizenship are likely intertwined.

This link between safety, equality and citizenship is clear to members of the LGBT communities. In *GO Info*, a gay newspaper in Ottawa, in the early 1990s when the LGBT communities and police began to explore the problem of violence targeting the LGBT communities, it was said that “much progress needs to be made before gays and lesbians can enjoy the same privileges, and feel as safe as other citizens” (*GO Info*, #142, December 1991/January 1992, 9). The article discussed outreach efforts between the community and police and made it explicit that being able to access police services was a necessary step. To ensure minimum levels of security, safety was seen as a prerequisite for enjoying other privileges of citizenship.

The police are also aware of this connection. The Toronto Police, in the *2001 Annual Report of the Hate Crime Section*, stated that:

The Hate Crime Unit remains dedicated to the achievement of its complementary objectives: the prevention and vigorous investigation of hate motivated offences and the pro-active education of others to enable them to recognize and combat hate. The goal is to encourage tolerance amongst communities and to ensure the freedoms, safety and dignity of all guaranteed by the Canadian Charter of Rights and Freedoms (my emphasis, 2001, 2)

Similarly on the subject of safety and citizenship, the Ottawa Police, in the document that outlined the work of the Hate Crime Section mentioned that:

A city is more than a place to live and work. A city must be a place where all citizens can feel safe and secure, regardless of race, religion, ethnicity, sexual orientation, or disability. This is not a privilege but a right of every citizen (Ottawa Police Service 1994, 1).

The Montreal police outlined how it envisions its role as a police service in a brief presented to the *Commission des droits de la personnes*. It stated that the police

constitute a social agent working to gain respect for rights and liberties within the framework of a democratic society. The police work to prevent crimes and apprehend criminals; they also work to improve the quality of life of citizens on their territory, in part by reducing the levels of criminal activities and by improving the actual security and perception of security of its citizens (SPCUM 1993, 23).

Clearly, police services have a role to play with respect to ensuring that each and every individual in its territory, regardless of race, nationality, religion, sexual orientation or any other defining characteristic, is able to enjoy the privileges of citizenship, including the freedoms and liberties associated with a democratic state such as Canada. Police services are key to ensuring the needed levels of freedom and security that allows citizens to access other privileges associated with their citizenship. If police services are more accessible as a result of proactive initiatives such as the establishment of a hate crime section that engages with the targeted communities, then it is likely that having such a unit is a first step in shifting the boundaries of the citizenship of these targeted groups.

Police Officers Speak of Hate/Bias and Sexual Minorities

In the following pages, I examine the information gathered from interviews with police officers to come to an understanding of how these actors perceive their role and responsibility with respect to the safety of citizens on their territory.

Traditional Policing and Hate Crimes

The Canadian Association of Chiefs of Police approved the following definition of a hate crime to be used by police for collecting data: “a crime motivated by hate, not

vulnerability, which is to include all the groups outlined in section 718.2 of the *Criminal Code*, including an “other” category so as to not miss new, emerging types of hate crimes” (cited in Janhevich 2001, 20). Despite the fact that the *Criminal Code* defines hate crimes (see s.718.2(a)(i)) and that the Canadian Association of Chiefs of Police also has adopted a definition of hate crimes intended to be used by all police services, what a hate crime is remains a nebulous concept for most police officers. From what was said in the interviews for this research, one can easily infer that a large number of police officers within any given police service are not attuned as to what constitutes a hate crime.⁴ Yet, some officers have developed an awareness of hate crimes and view these crimes as different from, for example, a regular assault or robbery. Then again, some officers who know how to distinguish hate crimes from other crimes do not support the theory that a hate crime is a different type of crime. Needless to say these variations in the understanding of the problem by police officers result in uneven treatment within as well as across police services. As a police officer in the Toronto Police Hate Crime Section commented with respect to its’ annual report which offers a statistical overview of cases, “hate is a gray area. Therefore, what makes it into the report is influenced by who is working in the hate crime unit” (Interview Toronto Police Officer, 30 May 2002).

Part of the problem with defining and identifying hate crimes is that hate crimes are counter to traditional police logic and not easily identifiable through the application of traditional policing approaches. As we will discuss further in the following chapter, actions that are not even criminal are deemed serious by the victims and affect the targeted communities to a point that, in their view, justifies police intervention.⁵ In

⁴ The officers I spoke to made statements in the interviews about how hate crimes are perceived or understood by police officers other than those who work in these specialized units. Based on their comments and other readings, it seems that generally police officers are unaware of the particularities for addressing hate crimes.

⁵A resource guide produced by the Canadian Association of Chiefs of Police identifies a number of hate/bias acts that are not criminal. These include:
 discriminatory practices directed against individuals or groups with respect to employment, housing, etc.; distribution of material deemed offensive by a recipient, yet not within the preview of section 319 C.C. or the code sections dealing with defamatory libel; verbally abusive language;

traditional policing, police officers prioritize responses to calls and complaints according to their perception of the risk to safety of criminal activities. Within this framework, response to a call for teenagers shouting homophobic epithets as they drive down a street is not high priority. Such a call is likely to be given a low priority. If the response is not prompt, the victim may be left with the impression that their incident report is not important and should not have been called in the first place. This is not meant to suggest that police should respond to minor hate/bias incidents or crimes before responding to cases in which the risk to safety is higher. Rather, this is mentioned to acknowledge that a system which, although rightly, prioritizes risk to safety in terms of response, leaves the victims of less serious criminal acts or non criminal hate-motivated incidents vulnerable and likely dissatisfied with police responses.

In traditional policing, when responding to a call, police officers will usually limit their investigation to the crime committed, overlooking at times the context in which the crime took place. For example, a police officer taking a report of an assault on two men in a park or other public area may not realize that the victims had been kissing moments prior to the attack. In such a situation, the officer is likely to report a regular assault, when it would be worthy to investigate whether the identification by the perpetrator of the two victims as gay may have led to the assault. Identifying a hate crime requires police officers to account for the context and motive for the action committed. If the responding officers are not well acquainted with the various clues that suggests that a hate crime has been committed, it is likely that the crime will not be identified as a hate crime. Moreover, if the responding officer is not careful when communicating with the victim, it is unlikely that the person will want to identify as LGBT, and also unlikely that

dissemination of white supremacist literature, music; participation in white supremacist meetings, conferences, etc. (CACP 1996, 27).

s/he will inform the officer of the motivation for the crime (Interview Dan Dunlop, 11 April 2002).⁶

As stated by the Canadian Association of Chiefs of Police (CACP), in principle,

...procedurally, hate crimes should be handled in much the same manner as other crimes —evidence should be protected, the crime scene stabilized, victims and witnesses interviewed and, if necessary, attended for injury. However, there are several matters that the officer should be aware of when responding to actual or suspected hate crimes (1996, 15).

The level of anxiety associated with such crimes may be higher than with other crimes. The officer must be aware of the state the victim is in and therefore ensure that the victim is put in contact with external agencies that can assist the victim. Moreover, the crime report must account for additional factors that may not always be considered when a crime is not hate-motivated, including the motivation of the offender, remarks or comments made to the victim, symbols, words or gestures associated with hate groups, whether the day that the incident occurred on was significant to the victim's or offender's group (i.e. Hitler's birthday, a religious holiday, etc.) and the demographics of the area (i.e. is this the gay village or an area known to be frequented by Haitians or Somalians, etc.) (CACP 1996, 15-6).

Traditional police techniques may result in calls not being addressed with the necessary level of seriousness, and in officers overlooking potential hate crimes by not considering motives for crimes or not receiving the necessary information to identify these crimes. There is a need to recognize that hate crimes operate in a different paradigm than traditional crimes and, therefore, should be addressed accordingly. If someone steals a car, it is because that person wishes to acquire something. From a

⁶An obvious example would be of police officers responding to a domestic call. If the officer asks the victim, "where is your boyfriend?", the woman may not feel comfortable revealing that her partner is a woman. Initial communication of this sort is important. The issue of watching language and using appropriate language has everything to do with making sure that the victim is made to feel comfortable and therefore able to push ahead with her/his complaint.

police standpoint what needs to be done in such a case is to make it more difficult to steal. When it comes to hate crimes, however, the individuals committing these crimes do not intend to acquire anything. What they wish to do is make a point. They engage in hate/bias activities to uphold power relations in society and to subordinate those who are Other. Traditional policing techniques were not necessarily intended for responding to this type of crime which operates in a different paradigm or frame of mind from traditional crimes. The strategy to prevent hate crimes is not to make certain places harder to get into or safer. Rather, the strategy is to ask why there are still racist or homophobic behaviours. The question becomes how can the police, as an agent of social control within the framework of a democratic state, work to prevent these crimes (Interview Maurice Chalom, 19 July 2002). Seemingly, addressing hate crimes requires a different questioning, a different set of skills and a different approach. As stated in the Hate/Bias Crime Policy Guide of the BC Hate Crime Team, “[i]mplementing normal crime prevention measures is often not an effective tool, because victims of hate crime cannot prevent or change who they are” (BCAG 1998, 1).

Hate crimes are often the result of an escalation of hate or bias-motivated activities that began as offensive, but not necessarily criminal, or only minor if criminal. For example, name-calling and racial slurs or graffiti are all forms of hate/bias activities, however, the police are unlikely to be called in or if they are it is quite likely that unless the responding officer is with a hate crime section or aware of hate crimes, s/he will not treat such a case with the degree of seriousness that will satisfy the victim. Nonetheless, as one officer explained, hate crimes are now generally viewed more seriously by police officers than they were a decade ago because officers are realizing the impact that these incidents have on victims (Interview David Nurse, 7 March 2002). Recognizing how strong an impact hate crimes can have on victims is something that this officer came to realize from his work in the Hate Crime Section. Working on such cases, the emotional scar left on victims of seemingly minor hate crimes became all too obvious. Echoing this

view that the emotional scar left on victims may distinguish hate crimes from other crimes, an officer who had previously headed the Hate Crime Section stated:

When you are talking about a hate crime, you are talking about personal attacks. It is not the pushing or the shoving or the bruising that heals; it is the internal scars. That is what it is all about. And I think that we as a community and we as a police agency have got to recognize that. We need to understand that tolerance is key (Interview Dan Dunlop, 11 April 2002).

Hate Crime Units, Community Outreach and Proactive Policing

Since not everyone gets to work in the hate crime sections of their police service, training, policy and guidelines have to be relied upon to ensure that officers are aware of what are hate crimes, how to recognize them and how to respond to them in a sensitive manner. Over the last decade, police officers have become increasingly aware of hate crimes as a result of a number of factors, including: more training; changes to the *Criminal Code* (adoption of hate crime sentencing measures, addressing the problem of websites that have hate as content⁷ and including sexual orientation in the hate propaganda provisions); adoption of a definition of hate crimes by the Canadian Association of Chiefs of Police; some impetus for police services to collect data on hate crimes; setting up units specializing in hate crimes; mediatization of some sensational cases in Canada and the U.S. (i.e. Singh Gill, Matthew Shepard, James Bird); and a series of hate crimes targeting Arabs, Muslims and Jews following the events of 11 September 2001 which the police have had to address. A number of officers noted that when they first started working on hate crimes, people asked them what a hate crime was. Today, the existence of hate crimes is no longer questioned (Interview David Pepper, 24 March 2002; Interview Frank Corkery, 29 April 2003).

⁷This refers to changes in section 320.1 of the *Criminal Code* past as part of the anti-terrorist measures (Bill C-36) in 2001.

Increasing awareness of hate crimes has not produced a consensus on what hate crime is and how to identify it, nor has it eradicated the problem that the work done by officers, especially liaison work with targeted communities, is not always perceived as real police work. Several officers mentioned that their work is perceived in the police force generally as fluff work. The officer who first staffed the Hate Crime Section of the Ottawa Police noted: “it is not an easy section to work in because it is seen as fluff work. It is not taken seriously” (Interview Dan Dunlop, 11 April 2002). He explained “[t]here were undercurrents of resistance within the organization [to setting up that unit]. The big argument is that a crime is a crime is a crime” (Interview Dan Dunlop, 11 April 2002).⁸ Police officers were reluctant to accept the notion that the targeting of people because of their race, sexual orientation or religion has a chilling effect on their entire community and should therefore be treated accordingly (Interview Dan Dunlop, 11 April 2002).

Officer Dunlop was referring to events a decade ago, but similar comments were made by Constable Nosworthy who was in the position of Liaison officer with the LGBT communities in 2002. While she is not directly involved in the hate crime unit, her work does overlap with some of the things done by that unit. Referring to the Toronto Community Policing Support Unit of which she is part, she said: “[w]e are soft policing. Again, we are seen as puff stuff. But in fact, we do a lot of damage control and product identification.⁹ We aim to understand the problems and issues” (Interview, 31 May 2002). Maurice Chalom, a civilian advisor on relations with the community in the Montreal police, stressed that police officers need to understand that hate crimes are serious crimes, as serious as sexual assault or car theft (Interview, 19 July 2002). According to Chalom, however, they generally are not treated as such which likely is a

⁸The implication of this argument being that hate crimes are no different than regular crimes and that consequently there is no need for a unit that specializes on this particular type of crime.

⁹Nosworthy is referring to identifying problems and issues faced by the communities she liaises with. The liaison work is used to allow police services to develop an awareness of the problems experienced by certain groups, working out solutions to address these problems and opening up to communities so that they can trust police officers enough to access police services when need be.

major obstacle in having the work done by liaison officers and hate crime officers viewed as important work.

David Pepper, who was key in pressuring the Ottawa Police to set up the Hate Crime Section, and who is currently (and has been since 1995) the Director of Community Development for the Ottawa Police Service, sheds some light on the tensions within the police forces around the issue of hate crimes. He explained how what is valued in police culture is the intelligence aspect of the work done by the hate crime unit. This is why often officers will prefer to focus on hate on the Internet or organized hate groups. However, police preferences may clash with the needs of targeted groups whose direct victimization is viewed as having a higher priority. Dealing with ongoing victimization, such as homophobic slurs, harassment from a neighbour, being pursued on the street, are more critical issues for these individuals. These random acts require more front-line efforts, such as police officers engaging in outreach with the communities and making their presence known (Interview David Pepper, 22 March 2002).

Dan Dunlop who was the first police officer to head the Ottawa Hate Crime Section supported this view. As he explained, a hate crime section focusing mostly on intelligence gathering is looking for hate groups, but hate crimes are not limited to the activities of hate groups. Hate crimes are also about:

a young gay boy at a wedding reception and the buddy from up North going to teach him a lesson because he does not like him being gay. That is where it comes from and you need intervention when this happens. You do not need someone who is listening to wiretaps and so on. [The Hate Crime Section] needs to be up front and visible. [These officers] need to be approachable (Interview Dan Dunlop, 11 April 2002).

Although some officers are aware that community outreach can be beneficial, police officers are usually reluctant to take up this role. Obstacles include the fact that there is no career opportunity or upward-mobility that follows from assuming these functions. The officers I interviewed all discussed how working in a hate crime section

or being involved in liaison work is not perceived as real work. The literature on community policing also echoes this reluctance by officers, and even the organization, in moving away from traditional policing to more community-oriented policing (Morris and Forcese 2002, 19-21; Forcese 1999, 229-244; Griffiths, Parent, and Whitelaw 2001).

Despite a definite resistance to community-policing and liaison work, the need to emphasize proactive work and outreach with the communities came up in several interviews.¹⁰ Speaking of the situation in Montreal, Maurice Chalom, an advisor to the Montreal police on community relations, lamented the fact that the police are stuck in a reactive mindset. He explained how the police service does not try to predict, anticipate or prevent events. Although the Montreal Police Service had a hate crime unit in the early 1990s set up in reaction to specific problems, this unit was strictly investigative and because hate crimes are for the most part underreported, there came a point that resources for this unit could not be justified. The volume of calls was not there, leaving this unit to be under-worked due to its narrow mandate limited to investigation.¹¹ Chalom suggested that there is a need for the Montreal police to explore what is being done in Toronto and Ottawa and see if it would be beneficial to adopt one of these models in the case of Montreal (Interview Maurice Chalom, 19 July 2002).

When the officers interviewed were asked about how police approach the problem of hate crimes, as mentioned, there appeared to be some agreement with the fact that traditional approaches to policing are not adequate for responding to this type of problem. To effectively deal with hate crimes, the approach to policing must go beyond complaint-driven responses and responses based on the severity of a crime in a traditional sense. To be effective, police approach to hate crimes needs to be proactive and must involve a

¹⁰In accordance with the findings in the interviews, an audit of the Ottawa Hate Crime Section (then called the Bias Crime Unit) that was done in 1993 concluded that “the most important area of responsibility for the Bias Crime Unit is that of education and community liaison” (Ottawa Police Service, *Divisional Audit* 1993, 11)

¹¹In contrast, the Ottawa and Toronto Hate Crime Sections are both structured on a three pillar approach that includes outreach, investigation and intelligence.

strong community outreach component. Responding to a question about how and when police should intervene, one officer directly involved in the early work done in Ottawa on this issue, suggested that there is a double-standard as to when police officers feel they should intervene when it comes to hate crimes. Police officers are more comfortable intervening when the matter does not involve issues of racism or other prejudices. As Officer Dunlop explained,

...police go to noisy parties and to neighbour disputes even when these are not necessarily illegal. When it comes to hate or bias activities, the response is often, "there has not been a criminal offence committed". Police need to be proactive on this issue. They need to go in the schools and speak about the ostracization of one kid by a group in school. Although this is not a crime, police should speak out and say that it is wrong and is not to be tolerated on this before the matter escalates to a violent stage (Interview Dan Dunlop, 11 April 2002).

This hesitation in intervening can be attributed to the fact that activities that have a moral component (i.e. sexual activities taking place in parks or washrooms) or involve value judgments (i.e. was the offender's motive racist? homophobic?) are particularly difficult to police. They are difficult to police even when these are offences included in the *Criminal Code*. First, social attitudes change over time, a reality that may not be reflected in the criminal statutes. If we consider that the *Criminal Code* has remained mostly unchanged since its inception more than a century ago (Sheehy 2004, 78), police officers could be enforcing something that the public is now willing to tolerate (Murphy and Pepper 1998). This can contribute to the hesitancy of police officers in the application of the law. Second, although the *Criminal Code* and police procedure offer guidelines as to what police should respond to, there is no consensus on the interpretations of issues that are related to morals and value judgment. For example, for a crime to be treated as a hate crime requires that the victim and/or the police officer recognize it as such. The reporting officer will have to make a value judgment on whether hate or bias motivated that particular offence. This is a step removed from

police objectivity and neutral application of the law, which the police, as the law enforcement arm of the state, are believed to embody.

Engaging in community outreach is one of the ways that police are alerted to the types of incidents with which the targeted groups are confronted. As one officer who headed the Ottawa Police Hate Crime Section in the late 1990s explained, for the Hate Crime Section to be effective, outreach is a necessary measure: meeting with the various communities and making sure that these communities know that there are friendly faces in the police force to answer their call. This is extremely important because the Hate Crime Section deals with communities that are marginalized, for these are usually the groups targeted for hate crimes. If the officers are not out there and are not known by the communities, it is quite likely that hate crimes will not get reported. In an audit of the Ottawa Hate Crime Section that took place at the end of the first year of operation, it was revealed that 25% of the occurrences investigated by that unit were reported directly to the unit members (Ottawa Police Service, *Divisional Audit* 1993, 9). This goes to show the extent to which the Hate Crime Section does serve as an entry point for some groups to access police services. According to one officer who headed the Ottawa Hate Crime Section, when the community does not know about the hate crime unit and does not know the officers working in that unit, this may account for not getting reports of hate crimes (Interview David Nurse, 15 February 2002). Maurice Chalom, with the Montreal Police, made a similar point. He suggested that, when it comes to hate crimes, because victims are from marginalized groups this is likely to have an impact on the reporting of these crimes. Moreover, he added, that beyond the issue of hate crime, you are often dealing with people who are new citizens and perhaps not aware of their rights or with groups that have historically had difficult relations with the police also contributes to problems with reporting (Interview, 19 July 2002; also Interview Dan Dunlop, 11 April 2002). This makes outreach efforts all the more important.

Constable Nosworthy, the Toronto Police Liaison with the LGBT communities, explained that with respect to the LGBT community, “there is huge underreporting and significant criminal activity, like violence, crimes of violence, domestics, sexual assaults, robberies. A lot of [underreporting has to do with the fact] that people do not want to self identify as being part of the [LGBT] community.” In sum, she added, “the predominant problem that I see is a trust issue” (Interview, 31 May 2002). Because of a lack of trust in the police, there is a low reporting rate. Part of constable Nosworthy’s mandate as a liaison officer is to build bridges between the community and the police to attempt to overcome this lack of trust.

The Deputy Chief of the Ottawa Police, Larry Hill, also spoke of the importance of outreach. He mentioned, as a recent example, that in the days prior to the war in Iraq, as it became obvious that there was potential for an aggressive move from the United States, it was important for the Ottawa police to be visible at that particular time to the communities affected by this conflict. He arranged for meetings with leaders in the Arab and Muslim communities and suggested that officers from the Hate Crime Section attend a community meeting. They accepted which shows, as Hill said, that there is a need for outreach and for establishing lines of communication between vulnerable communities and the Hate Crime Section (Telephone interview, 18 November 2002).

Some officers perceive outreach initiatives and liaison committees with the various communities as part of the solution. Staff Sergeant Bruce Watts, who headed the Ottawa Police Hate Crime Section from 1995 to 1998, commented that Ottawa is becoming safer. He attributed this to a number of factors including the fact that hate crimes are perceived as socially repugnant by society in general and that the groups targeted by these crimes have been empowered, in part through the recognition of rights (i.e. equality rights in the *Charter*), and also through outreach initiatives with the police. As he explained,

The work being done in the Hate Crime Section is based on three pillars: community outreach, investigations, and intelligence gathering. The most important pillar [particularly in the beginning stages] is outreach [...] predominantly because of the nature of the crimes. Before, people were not reporting hate crimes. Doing outreach changed that. People became more comfortable with the police and aware that the police viewed these crimes seriously and were willing to do something about it. This is why the hate crime unit initially spent a vast amount of time doing outreach to the communities most likely to be affected by these crimes to let them know the police were going to address hate crimes properly (Interview Bruce Watts, 26 February 2002).

The current head of the Ottawa Police Hate Crime Section differs somewhat from the others I interviewed on the issue of outreach. He does not see a need for the officers from the Hate Crime Section to be personally front and center, as his predecessors did. Instead, Sergeant Knowles stresses the importance of training all police officers to recognize and report hate crimes, so outreach is pursued by the community development sections of the police service, including the race relations section, or through a service-wide approach relying on a district investigator. The role of the Hate Crime Section then becomes to coordinate the outreach effort. The idea is that the specialization of the Hate Crime Section should be with respect to intelligence gathering and that all police officers should be trained to investigate hate crimes. His goal is to spend less time on outreach and spend more time on intelligence (Interview Murray Knowles, 9 December 2002; also Interview Frank Corkery, 29 April 2002). Officer Frank Corkery, also from the Hate Crime Section, believes, intelligence should be central to the work of the section because you cannot prevent random crimes. What can be prevented is the work of the organized hate groups (Interview Frank Corkery, 29 April 2002; LC, *Minutes*, 18 February 2002). Supporting this shift in emphasis towards intelligence gathering is the increased number of complaints that have to do with hate on the Internet. Despite this somewhat different orientation, like Constable Nosworthy, Sergeant Knowles sees the lack of trust from the community as a major obstacle in improving responses to hate crimes. As he said:

I think the police department is ready for the next step. But listening to the community [at the Liaison Committee meeting following the murder of a member of the community]¹², I do not think that the community is. The trust isn't there. So we still have to work from the police department to build that trust. But I really do think that officers on the streets and on the road and the district investigators are quality people and they are ready. They are ready to give professional service and compassionate service. And I am not saying to eliminate the hate crime section. I am just saying to start making it a service wide team, as opposed to a two men response (Interview Murray Knowles, 9 December 2002).

Not everyone agrees that police forces are ready to deal appropriately with hate crimes or more specifically violence that affects the LGBT communities. Lieutenant Martel who oversees police relations with the communities believes that policing must be done according to the principles set out in the *Charter*; however, principles and reality do not always coincide. Martel sits on the Ottawa Police Liaison Committee with the LGBT communities. He goes himself to represent the Gatineau police, well aware that he could not send just any of his officers.

The goal here is not to assess policing strategies, although outreach and proactive work clearly needed to be a priority when hate crimes sections were being set up. Whether there is less of a need for outreach—now that people are increasingly aware of what hate crimes are and that relations have been established between the police and a number of targeted communities—is something for criminologists and police services to assess. Nevertheless, we can note here that the nature of hate crimes has changed over time which affects police responses. In the early 1990s, White Supremacist groups were thriving; they are now less visible on the streets, and their recruiting no longer takes the form of leaflets distributed in schoolyards. Now, the Internet has become an important tool. As a result, hate on the Internet is more prominent and accounts for a large number

¹²The case that was discussed at that meeting was not believed to be a hate crime, although the Hate Crime Section did collaborate with the investigation to make sure that this possibility was not overlooked and was present at the Liaison meeting to make sure that any worries or question from the community could be addressed accordingly.

of the complaints received by the Ottawa Hate Crime Section. Random crimes seem to fluctuate with the weather more than any other identifiable variable, although major events like 11 September 2001 or the War in Iraq, etc., seem to have an impact. Yearly fluctuations repeat the same pattern: as the weather gets warmer, there is more graffiti and other incidents (Interview Frank Corkery, 29 April 2002; Interview Murray Knowles, 9 December 2002; Toronto Police, *Annual Reports 1999-2001*; Ottawa Police Services 1993-2001). Although the number of cases reported have increased over the years, it is probably safe to say that there are fewer random acts of violence than before. David Nurse who headed the hate crime section in the late 1990s mentioned that “there was a time [gay-bashing] was a Saturday night sport, but it isn’t anymore” (Interview, 15 February 2002). Regardless, he does warn that despite the fact that violence targeting LGBT communities is no longer common, this does not end the fear for these communities.¹³ Police need to be conscious of that and continue to provide services to address and prevent hate crimes. This is an extremely important point concerning the citizenship of LGBT individuals. Safety is not simply the result of a decreased number of crimes. It is also measured by whether access to police services is possible for given groups.

Criminal Code Provisions and Police Work

What is the impact of hate crime policy on police work? Although police officers enforce the laws in our *Criminal Code*, when asked whether changes to the legislative framework had an impact on their work as police officers, there was a quite widespread agreement that the changes brought about in section 718.2 of the *Criminal Code* in 1995

¹³Ottawa was privy to a series of gay-bashings in the late 1980s leading to community mobilization that resulted in sufficient pressure on the Ottawa police to have it recognized the problem of hate crimes targeting the LGBT communities and eventually setting up the hate crime unit. Chapter 7 goes over in more detail the situation in Ottawa.

did not have much direct impact on the work of police officers. One police officer explained that the new law may have forced some police services to change how they did their training or how they handled hate crimes. The changes made to the law, however, did not have an effect on the more visionary police services that had already started to address this issue, such as Ottawa and Toronto police services. These police services already had either a unit or a police officer to address the problem and were already taking steps to treat hate crimes appropriately (Interview Yves Martel, 28 February 2002). What the policy did was legitimate the work of these police services making it easier to justify resources being allocated to hate crime sections now that the *Criminal Code* recognized this particular type of offence (Interview David Nurse, 15 February 2002).

In the case of Ottawa, which already had a hate crime section, the hate crime sentencing provisions added to the *Criminal Code* did not really have an impact; changes preceded the legislation. It is likely that the policing guidelines on hate crimes set by the Ontario Solicitor General in 1993 had a more meaningful impact on how things were done, considering the early start it had on this issue (Interview David Nurse, 15 February 2002). In other jurisdictions, however, the change to the *Criminal Code* may have pushed some police services to consider motives of a crime (something not systematically done in traditional policing) (Interview Bruce Watts, 26 February 2002). Regardless, a clear advantage of including a definition of hate crime in the *Criminal Code* is that it ensures a more uniform application of this principle than if each provincial the solicitor general each issued their own policing directives (Quebec, *Commission* 1994, 89). Speaking to the impact of legislation on police practices, Frank Corkery, currently in the Ottawa Hate Crime Section, mentioned that while changes to sentencing provision did not alter policing practices for that service, Ottawa did respond to the new legislation. The changes made to the hate propaganda provisions to address the problem of hate on the Internet (Anti-Terrorist Bill C-36 passed in November 2001) for example,

affected how Ottawa did things: it shifted the focus of the work done by the Hate Crime Section, putting more of an emphasis on Internet hate (Interview Frank Corkery, 29 April 2002).

In Toronto, the impact of the changes to the *Criminal Code* (hate crime sentencing provisions) was limited to adjusting the definition used by the police service to correspond to the one found in the *Criminal Code*. The Toronto police had been using a definition that was narrower in terms of the categories identified than that which made its way into the *Criminal Code* (Interview Toronto Police Officer, 30 May 2002). Like Ottawa, the Toronto police was one of the earliest services to include a hate crime section. As for the situation in Montreal where there is no hate crime unit, the hate crime sentencing enhancement provisions have not had much of a role to play. As Maurice Chalom, the community relations advisor to the Montreal Police, explained, an amendment to the police act to define hate crimes would force the police service to address this issue in ways similar to what is being done in Ottawa, Toronto, or Calgary, all of which have specialized units (Interview, 19 July 2002).¹⁴

When assessing the impact of the changes to the *Criminal Code* made in 1995 with respect to the work of police services, we need to keep in mind that this provision is intended for use by judges at the sentencing stage of a criminal process (Interview David Pepper, 22 March 2002). By introducing hate crime sentencing enhancement measures rather than a new category of crime, this provision offers no new laws or tools that can be used by police. This is not to say that the provision had no effect at all, however. It made the public more aware of what hate crimes are. It has also raised the public's expectations of the police who are mandated to enforce the *Criminal Code* and must address hate crimes. In the long run, this can contribute to the reporting of these crimes

¹⁴Cynthia Cousens, the Chair of the Ottawa Police Liaison Committee with the LGBT communities made similar comments with regards to her 20 year experience with the Toronto Police Service (Interview, 2 March 2002). She mentioned how changes to the Police Services Act have more clout for police officers than changes to the *Criminal Code*.

and have an indirect impact on policing. What the hate crime sentencing legislation more generally contributed was a change in the ability to assess the situation with respect to hate crimes. Introducing changes to the *Criminal Code* gave police forces the ability to quantify hate crimes, which could not be done before. The concept of hate crime needed to be included in the *Criminal Code* in order for police to have the authority to charge individuals with such an offence.¹⁵ Once there was an operating definition of hate crimes in the *Criminal Code*, it became possible to quantify the number of cases in which charges are laid or the number of cases investigated (Interview Yves Martel, 28 February 2002 and SPCUM 1993, 12-13 and 21).¹⁶ In other words, it became possible to compile data on this type of crime. This of course is not to imply that there is by now reliable data on hate crimes. The statistics can only capture the crimes reported and we know underreporting is a problem. Moreover, hate crimes are reported which are not identified as such either because the victim does not come forward with this information or because the responding officer fails to recognize the motivation for the crime. For example, an assault may be reported without the officer realizing that it was a gay bashing. The victim may not provide the information that would indicate to the officer a possible hate crime (Interview Yves Martel, 28 February 2002; also Interview Sterling Hartley, 19 March 2002; Janhevich 2001; Canada, Department of Canadian Heritage, 2000; Toronto Police Services 2000, 1; Ottawa Police Services 1994, 2).

Tabulating hate crime data does help police services in terms of resource allocation. The Toronto Police Hate Crime Section prepares an annual report that highlights statistics for a given year. The report is prepared mainly because it provides an overview of what is going on in the city and also because communities ask for this

¹⁵It should be noted that the hate crime sentencing measures do not, in reality, create a new crime category. Instead, it mandates harsher sentences for criminal acts already recognized in the *Criminal Code* when these are motivated by hate or bias. By recognizing these harsher sentences, however, the *Criminal Code* does inscribe hate crimes in the list of crimes that are identified.

¹⁶The SPCUM included in its recommendation to the *Commission des droits de la personnes* that a legal definition of hate crimes be adopted.

information; however, the report is also used to back up claims for the allocation of resources (Interview Toronto Police Officer, 30 May 2002). Speaking about the initial stages of setting up the Ottawa Police Hate Crime Section, officers have also mentioned how it was a struggle to secure resources at a time when people were questioning whether this work should even be done. Now that the process is well entrenched in Ottawa, resources are secured for this section (Interview Bruce Watts, 26 February 2002). The codification of hate crime has likely contributed to this. The question is no longer whether resources will be allocated for work on hate/bias, but rather in what proportion.

Justifying the existence of a hate crime section is no longer an issue at the executive level of a number of large police services. It is accepted that the problem of hate crimes exists and that a specialized unit is needed to address these crimes. For example, the Ottawa Police Services Board, as part of the 10th Anniversary of the Ottawa Police Liaison Committee with the LGBT Communities, was asked to adopt a resolution that recognized a decade of progress as a result of the partnership between the Police Service and LGBT communities as well as encouraged those involved to continue the partnership and “to identify and respond to community identified needs” (Ottawa Police Services Board 2001, 4). It was the initial endorsement by the Police Services Board that helped pave the way for the Liaison Committee and eventually the Hate Crime Section. This matter was taken up by the Chief who made it a priority for the Ottawa Police. This substantiates how, in the case of Ottawa Police, there is an openness to community outreach and addressing hate/bias crimes. As I discuss in chapter 7, this openness contributes to enlarging the boundaries of the citizenship regime and giving communities access to the protection they need and are entitled to.

Establishing Trust, Ensuring Safety

Having looked at how hate crimes have come to be understood by the police, how police services approach this problem and whether the legislative framework has an impact on the work of police officers, it is also important to note the impact these changes have had on relations with the communities. For the purpose of this research, I have asked only about changes in the relations with the LGBT communities. Such an assessment has a lot to do with perception. Police officers are aware that the fear factor, whether founded or not, comes into play. Speaking about the lack of trust in the police by the LGBT communities in Toronto, the Liaison Officer, Constable Nosworthy, mentioned that:

[t]his comes from a myriad of fears, some of which are founded, some of which aren't. My belief is that if you are afraid then it is founded. You don't actually need facts to substantiate fear. And so, for people who aren't out, to their friends, to their family, there is fear that if they disclose to the police that suddenly it is going to appear in the daily news paper. There is also a fear, because of misinformation and negative history that has occurred in this city with the community that the individuals will be revictimized through the process of reporting (Interview, 31 May 2002).

Prejudice toward the police or LGBT communities affects both sides. Police officers meet people in crisis situations, so until there are more out gay police officers or more police officers who are LGBT friends, their views about LGBT people will remain based on stereotypes and prejudice. As Lieutenant Martel explained about his function as a Liaison officer:

[l]e monde policier est une culture "macho" Donc, une culture très hétérosexuelle habituellement... pour lesquelles il y a certaines valeurs totalement dépassées mais qui sont encore là, donc certains préjugés. Dans la profession policière, on ne devrait pas les montrer. On devrait être professionnel dans nos tâches, mais entre la réalité et la théorie il y a des différences. Donc, il y a des risques du côté de la communauté gaie et lesbienne d'avoir eue des mauvaises expériences il y a 4, 5 ou 6 ans; mais ce sont toujours

ces mauvaises expériences là qui transigent dans le temps et mon rôle c'est d'essayer de casser ça (Interview, 28 February 2002).¹⁷

Although it is possible that LGBT individuals may be confronted with officers that have prejudicial views, Lieutenant Martel does stress that police officers are mandated to show a professional attitude and offer services with respect and dignity. However, he notes that the prejudices are not only coming from the police side, but also from the community. “On travaille avec des vieux clichés du côté policier et du côté social” (Interview Yves Martel, 28 February 2002).¹⁸ Similarly, in a brief submitted to the *Commission des droits de la personnes*, the Montreal police services stated that:

[n]ous sommes d'avis que les difficultés passées, actuelles et éventuelles dans les rapports entre les policiers et les gais et lesbiennes viennent de l'incompréhension mutuelle basée sur une expérience négative ou sur les préjugés. D'un côté comme de l'autre, les décideurs doivent tout mettre en oeuvre pour que les attitudes et les discours soient, en tout temps, cohérents. Ceci est primordial car les leaders doivent donner l'exemple pour que la sensibilisation de la base soit efficace (SPCUM 1993, 20-1).¹⁹

As the Liaison Officer, Constable Nosworthy's mandate is to operate as a link between the police and community, and also to work internally to help officers shed negative stereotypes and prejudices towards LGBT people. Part of her mandate is to have the police force see her as an out officer. As she explained:

[w]hen we do diversity training on LGBT issues, time permitting, I have gone over there in uniform. And a lot of people in the class

¹⁷Translation: The policing world is a “macho” culture. It is a culture in which heterosexuality is the norm and some dated values still exist, including a number of prejudices and stereotypes. As professional, police officers should not show any biases. In theory, police officers must be professional and even neutral. In practice, things are different. This means that for the gay and lesbian community, which in the past has had bad experiences with the police 4 or 5 years ago, these are always the experiences that are remembered and which affects contacts between them and the police. My role is to bring the two groups beyond that.

¹⁸Translation: We are working with ingrained stereotypes on both sides.

¹⁹Translation: We are of the opinion that past difficulties between the police and gay and lesbian community come from a mutual incomprehension based on past negative experiences and old biases. On either side, the leaders must make sure that they present a strong discourse that moves people towards greater tolerance, a discourse that must move the people behind them towards more tolerance. They must lead by example.

did not like that. They did not like that because it made them realize that I was not one of “them” (LGBT people), I was one of “us” (police officer), but I am part of the LGBT community. So they have to come to realize that I have the same training, the same crappy supervisors, the same lousy shifts and so on, and I am talking to them about LGBT issues. They have to see it. It needs to be seen and not hidden (Interview, 31 May 2002).

Nosworthy assumes that a deeper understanding of LGBT people and getting to know LGBT individuals leads to tolerance on the part of officers (also see *GO Info*, December 1991/January 1992, 9). Although this may not always be the case, developing such an awareness may lead some officers to treat LGBT individuals with the same dignity and respect that they do other individuals they encounter.

Although random assaults targeting the LGBT communities, in the strict sense of the definition, are not common anymore, other issues around police response to calls from the LGBT communities and access to police services remain to be addressed (Interview, David Nurse, 15 February 2002). Even if attacks are less common and police are more responsive to calls from the LGBT communities,²⁰ this does automatically result in smoother relations between the police and community. As we will see in chapter 7, while relations between the police and LGBT communities have improved, they remain fragile. There is definitely more openness and understanding on the part of police services toward LGBT communities. In Ottawa, this is made clear through statements made by Chief of Police that make violence targeting LGBT people a priority, priorities set by the Police Services Board encouraging continued partnership, the fact that there is a Liaison committee to which a number of police officers contribute, and that some services have procedures in place for addressing same-sex partner abuse. Clearly, the police have developed a level of awareness of the needs of the community and are trying to serve this community accordingly. While Ottawa has taken steps to open up to the

²⁰Police harassment of the LGBT communities and repression towards these communities is documented and discussed in chapter 6.

LGBT communities, it is not obvious that the same level of openness has been reached by all police services, nor that the case of Ottawa serves as the perfect model. Seemingly, more work needs to be done despite progress over the last decade, something that will be discussed in the final chapter.

Police, Power Relations, and Counter-Hegemonic Projects

The previous section presented information gathered through interviews with police officers. I discussed police perceptions of hate crimes, LGBT communities and the role of police officers. Having heard from officers, I now want to return to a more in-depth look at the role of police as the law enforcement arm of the state and their responsibility in protecting all citizens. The officers we heard from are involved in outreach initiatives and liaison work. Although their accounts indicate that some police officers have understood the importance of such work and that police forces can contribute to opening access to police services to marginalized groups, I must also speak to the fact that police relations with minority groups are not usually easy-going. The Ottawa Police Service is atypical. From the information gathered through the interviews and judging from the literature that documents experiences elsewhere, I conclude that the openness towards the LGBT communities and other minority groups is not seen elsewhere to the same extent as in Ottawa. We need only be reminded how prejudices affect the service certain groups receive as well as whether such groups access these services. This section briefly discusses some of the stakes involved.

What minority groups, including the LGBT communities, want from the police is not preferential treatment, but rather a response that is adequate and respectful of the

community being served (Chalom 2002, 79).²¹ I have already argued that safety is a prerequisite for opening up spaces in which citizenship can be exercised and rights and freedoms enjoyed. I theorized that access to police services is key to securing an adequate level of safety and that hate crime units may contribute in improving LGBT access to police services. Finally, I have argued that police outreach is necessary to improve the trust of the LGBT communities and develop police awareness of the problems within that community. Safety is difficult to measure. As we will see in chapter 7, however, the case of Ottawa seems to indicate that the outreach work being done by the Ottawa Police Services with the LGBT communities is contributing to the safety of that community. Annual reports from the Ottawa Police Hate Crime Section substantiates that random gay bashing are less common (Ottawa Police Service 1993-2001), while a recent study on the well-being of the LGBT community in Ottawa presents findings that support the claim that LGBT individuals feel safe and report crimes to the police in higher proportion than elsewhere (Wellness Project 2001a), confirming also easier access to police services in Ottawa. More generally, considering the power inequalities between the police and marginalized groups such as the LGBT communities, can we speak of police-community relations and can we assume that the police will respect their role in protecting all citizens?

Relationships between the police and minority groups are embedded in power relations in which police officers represent the dominant group. I have already mentioned Lieutenant Martel's comments on police culture being in essence macho and heterosexual. Moreover, with respect to those who become police officers, the dominant group in society (white, heterosexual men) is overly represented. Minority groups are

²¹When I interviewed Mr. Chalom, I asked whether there was an equivalent to the Ottawa Liaison Committee in Montreal. Having said that there was not, he made the remark that relations between the community and the police (which is an institution) are not natural and are in fact difficult to maintain. In the case of Montreal, in the absence of crisis, there is usually not much communication between communities and the police. He pointed out, however, that what communities want is not a relation with the police, but being treated fairly and knowing so (Interview, 19 July 2002).

underrepresented in police services across Canada and when they become police officers, those from minority groups often speak of their rejection within the police service²² and from the communities to which they belong (Forcese 1999, 9; Buhrke 1996; Peak 2000).²³ They are rejected within the police force because of their difference. Yet they are rejected from their community or group of origin because they are seen as having joined the dominant group, betraying their “oppressed community” or group of origin.

Considering that lesbians and gays, Blacks, Sikhs or Chinese are not welcome in police services, it is not surprising that police officers do not generally welcome nor appreciate that hate crimes are to be distinguished from other crimes. For police officers to understand and distinguish hate crimes, they need to be well aware of the effects of racism, sexism, heterosexism and other biases in which an identity marker becomes the reason of exclusion of an individual in society. If there is a difficult acceptance of police officers from minority groups on the force, it goes without saying that the prevalent values that are shared and recognized by police officers are the values that favour the majority group in society. Moreover, as I have already said, possibly because in part police officers meet people mostly in times of crisis, the response of a number of front-line officers is not positive toward individuals from these groups. It is likely that these contacts with minority groups, since they are mostly in situations of crisis, serve to reinforce stereotypes and prejudices held by these police officers rather than undermine them. Lieutenant Martel spoke of old clichés being held on both sides —community and police.

²² The issue of representation and associated problems in the police force were discussed in a number of the interviews. Because these accounts made references to personal experiences or that of close colleagues, for reasons of confidentiality and respect for the people I interviewed, I did not reproduce these accounts in my discussion. I simply want to note the fact that what is being said in the literature on this issue was corroborated in my interviews.

²³ This could also be seen in the documentary *Zéro Tolérance* by Michka Saal (NFB production, Canada, 2004).

Since stereotypes are likely to guide police responses (Neugebauer 2000, 97),²⁴ police officers tend to consider crimes towards minority groups as less important than crimes against the majority group. This attitude impacts negatively on the treatment received by minority group members from police officers. Such negative treatments takes on various forms such as not taking the victim seriously or minimizing incidents. The result is always the same. Such a response helps maintain power relations between the majority or dominant group and minorities, resulting in diminished citizenship for LGBT people and other racial or religious minorities.

When we consider police relations with the LGBT communities or any other minority group, we must account for the fact that the police, as a state institution, has the monopoly over the legitimate use of force. “The police are empowered to infringe upon liberties of citizens and are legally entitled to use force and violence to uphold law and order. The police deal with conflict and are empowered by the state to do so” (McLaughlin 2000, 129-130). This automatically puts them in a situation of power inequality and even in a position in which abuses of power, especially against a marginalized group are not unlikely.²⁵ Vickers has argued that

...these coercive institutions (the military, prisons, and the police) exist to protect citizens from potential violence from “outsiders” and deviant insiders. [...] Even in democracies, in which state violence against citizens is less common, vulnerable minorities are exposed to violence without state institutions acting to protect them, and may even experience violence from the state agents themselves, such as the police (2002, 238).

²⁴Neugebauer’s study looks at “the policing of youth and the role of race in police-community encounters” (2000, 83). One aspect of her work explores how a normative frame of reference that depicts all Blacks as potential criminals informs police assessments and affects their interaction with Black youths” (Neugebauer 2000a, 97).

²⁵In chapter 6, I discuss findings from surveys that focus on LGBT communities’ experiences of violence in cities across Canada. These surveys reveal that police brutality does take place. Also, a recent Léger-Marketing poll on the attitudes of Canadians towards the police reveals that almost 6% of Canadians have been victim of police brutality (Léger-Marketing, 14 January 2002).

When such abuses do take place, they compromise more than citizenship rights; they also compromise the democratic framework (McLaughlin 2000, 130) and delegitimize the state (Bougault and Gow 2001)

The power inequalities between the police as an institution and minority groups not only affect the services received by these groups, they also serve to determine the meaning and importance of given events. Speaking of the police, Maurice Chalom stated: “on considère que la démarche policière doit déterminer” (Interview 19 July 2002).²⁶ Recounting an incident that involved stabbing to death a Hassidic Jew in the streets of Toronto, in his position as an advisor Chalom encouraged the prevention unit of the Montreal police to approach the leaders of the Jewish community in Montreal to reassure them that the police are aware of the case in Toronto and to assess their needs. The response from some police officers in Montreal was that the Toronto police had not said that the incident was a hate crime and that therefore there was no need to engage in this outreach initiative. As Chalom explains, although the Toronto police did not refer to the crime as a hate crime, the communities and media did fear that it was not a simple robbery, but really a hate crime. In such a situation, it becomes important to respond to the communities’ apprehensions despite the reasons for the police to not consider that crime a hate crime.²⁷ Police logic should not be the only determining factor in how the situation is handled; the perception and understanding of the community towards given situations must also be considered. Ignoring community perceptions of an event can have a negative effect in the long term. Communities may be left feeling that police do not take seriously crimes targeting their communities.

²⁶ Translates as : We consider that police work determines (or establishes) the meaning of a situation.

²⁷ I discuss in the following chapter the Raynsford case (the murder of a gay man). Although the Ottawa police did not believe this to be a hate crime, they liaised with the LGBT communities relying on the media as well as the Liaison Committee, in this way meeting expectations of the community with respect to their safety.

Overall, when we consider exchanges between the police and LGBT communities, we must account for the lingering lack of trust on the part of the communities, the enduring stereotypes and prejudices towards LGBT people that are dominant in society and also embraced by a substantial number of police officers (Bowling 1998), and the power inequalities between police and community in which police officers hold the preponderance of power. In such a context, police services are more likely to continue on with their role of agent of social control, working to uphold the dominant worldview and the power relations that set police in a dominant position vis-à-vis minority groups. As Neugebauer concludes from her study on police and Black youth exchanges: “[t]he police will protect when called on only according to their own frame of reference. The police serve and protect those elements in the community that have demonstrated an investment in the existing order. Other constituencies in the community are perceived as troublesome” (2000, 86). This seems to indicate that there is not much hope in opening up access to the police for marginalized groups and ensuring that the police engage in their role of protecting all citizens on their territory regardless of race, ethnicity, religion, sex, sexual orientation, etc. Although I cannot generalize to the entire police force conclusions from the accounts I gathered from police officers, I would suggest that they do indicate openings can be found and solutions sought that include change in police practices.

I consider the police officers I interviewed to represent a more enlightened segment of these police force. This means that they have developed a degree of openness towards the LGBT communities compared to others. A number of them are visionaries and do understand what is at stake when dealing with marginalized communities. They are remarkable in that they often engage in activities that are not associated with traditional policing or which go beyond traditional policing. This is what sets them apart. Over time, it is not so much policies or changes to the *Criminal Code* (although these do help to legitimate police work on issues such as hate crime), but the concerted effort of a

number of officers such as the ones to whom I spoke to that will contribute to opening further spaces for LGBT people to exercise their citizenship. In the case of Ottawa, it is the willingness of some officers to set up liaison committees and become involved with the LGBT communities that has resulted in better access to police services. These first steps are positive and a starting point for empowering communities to come forward and for police officers to better understand their role as interveners and protectors of the peace. It can be said that these are necessary steps for shifting the boundaries of the citizenship regime to include LGBT individuals.

I would not attribute to police services the task of reducing or eliminating heterosexism and hate/bias in society. These are within the realm of social change, something with which police forces are ill-equipped to deal. Evidence from my interviews, as well as various studies have shown that the front-line officers are cynical toward such requests (Bowling 1998, 290-1). Recalling what was said earlier, the outreach functions of the hate crime units or liaison officers are not considered real work by large segments of the police service (These functions were referred to as fluff work.). In such a context, it is difficult for police services to contribute to significant changes in society. Moreover, we need to keep in mind that police are usually called in to intervene once hate or bias-motivated activities have escalated to a certain level of criminality. The everyday acts of violence, such as homophobic epithets, intimidation and minor assaults, for the most part go unattended—in part because the community does not access police services, in part because resources are limited for police to intervene in minor cases. Yet, these diminish the citizenship status of LGBT people. Although it is not in the mandate of police services to engage directly in challenging heterosexism, I do see in the opportunities that are created through various outreach initiatives as important for opening up spaces in which LGBT people will be able to enjoy the rights and privileges associated with full citizenship.

Finally, I want to note that it remains puzzling as to why political science pays little attention to the role of the police and their monopoly within the state in the legitimate use of force. There are several aspects of policing, including what the police represent and their function in maintaining social order, that should fascinate political scientists. When we consider the police, a state institution, in relation to marginalized groups in society, the potential for abuses of power are all too obvious. We can clearly outline how police officers uphold dominant norms, protect powerful groups and reproduce social inequalities in so doing. The role of police has a great effect on the legitimacy of the state and can undermine democratic principles of governance if they the police abuse their powers. The role of police should be accounted for more frequently. The links between policing, the legitimacy of the state, democratic principles and citizenship have been under-theorized. In this respect, my study suggests that those officers who take part in liaison work and truly engage with the communities are involved in counter-hegemonic projects that overtime should lead to redrawing the boundaries of the citizenship regime. These are all questions of interest to the discipline of political science which would find itself enriched by paying closer attention to the role of police.

Chapter 6: Voices III - LGBT Communities Perspective on Violence Targeted at LGBT Individuals

One of the main contentions of this dissertation is that stakeholders are seldom truly considered in the development of policies, be it federal laws such as changes to the *Criminal Code*, provincial regulations that dictate police responses or curricula in schools. In the literature's discussions on hate crimes, what is most commonly proposed to address the problem of violence targeted at LGBT individuals, and hate crimes in general, is a law-and-order agenda in which "getting tough on crime" (or harsher punishment) is *the* solution (refer to chapter 3). Although punishment can serve to address the most severe gay-bashing or similar hate crimes, it is questionable that an agenda focused on harsher penalties does anything to help the individuals who face hatred, exclusion and harassment daily. It is my premise that a focus on a law-and-order agenda that proposes harsher penalties to address hate crimes does not account for the experiences of individuals who endure the daily expressions of hate and hate-motivated violence.

In the first section of this chapter, I focus on descriptions of experiences of violence as reported in surveys and through interviews. First, I provide an overview of the findings from surveys done in cities across Canada which inquired into the experience of violence targeted at LGBT individuals. Second, I follow up with an overview of qualitative data on the experience of violence targeted at LGBT individuals, gathered mostly through a series of interviews and complemented with information from the studies reviewed. Together, these accounts situate us with respect to the problems related to violence as they are experienced by LGBT individuals. They confirm that violence targeting LGBT individuals is a serious problem and suggest that despite severe gay-bashing being most feared, generally, what LGBT people are confronted with daily are less severe criminal acts and incidents that are not even criminal. Regardless, the

threat of violence—the looming possibility that one could be the victim of a “gay-bashing”—acts as a form of social control, as countless LGBT individuals change their behaviour or dress to avoid being identified as LGBT. I end this first section by looking more specifically at the implications with respect to their citizenship.

In the second section, I discuss LGBT communities' perspectives on the criminal justice system. I spend some time outlining past experiences of police brutality and harassment to show that LGBT communities' perceptions of the police are informed by a history of institutional oppression at the hands of police. This puts into question whether LGBT communities can, in today's context, access police services to ensure their protection or if the citizenship of LGBT individuals remains compromised by a lack of security and protection as a result of this history of police repression denying them access to (or preventing them from accessing) the law enforcement arm of the state. I then turn to the court system and assess whether LGBT individuals access this institution of the criminal justice system to ensure their protection and to uphold their rights as citizens. In the final section of the chapter, I turn to a discussion of public policy. I shed some light on how public policy could be rethought by incorporating insights from those it is to serve, and more specifically with respect to hate crime policy, from those the policy aims to protect. I theorize how public policy can better ensure the needed level of safety for individuals to access the rights and privileges that citizenship offers.

Although issues of safety are a concern for everyone, safety and living free from violence and discrimination is an even greater concern for LGBT communities which, like others marginalized by difference, are more likely to be the target of hate and bias-motivated activities and less likely to get the help they need to be safe. This chapter aims to give LGBT individuals a voice with respect to matters of violence and the effect of violence on their daily lives, and to think through solutions that emerge from their accounts. In the context of my project of critical social research, this is an important chapter because it offers insight into knowledge and perspectives that are often

overlooked. It gives a voice to marginalized individuals and proposes an articulation of these findings that outlines approaches to address the problem of targeted violence as it is experienced by LGBT communities. It also gives depth to the often-mentioned problem of police brutality and harassment, offering insights as to how police-community relations need to be understood.

Violence Targeted at LGBT Individuals as Viewed by LGBT People

In this section I describe the problem of violence targeted at LGBT individuals as it is quantified in surveys and substantiated through qualitative data. These accounts are followed by a discussion on the impact this violence has on citizenship.

An Overview of the Various Studies on Anti-LGBT Violence and Discrimination

In Canada, over the course of the last decade, a number of studies have been done to assess if LGBT individuals are the target of violence and discrimination as a result of their sexual identity. These studies document the type of violence experienced by LGBT individuals and its extent. They reveal how prevalent violence is. The LGBT communities studied are: New Brunswick (1990), Nova Scotia (1993), Vancouver (1995), Toronto (1997), Calgary (2001) and Ottawa (2001). There also are two studies that focused on only one segment of the LGBT communities: Montreal (1993) focused on lesbians and London (2000) focused on youths. There is also a report from the *Commission des droits de la personne du Québec* that focuses on the topic of discrimination and violence targeted at gays and lesbians in Quebec (1994). Although not based on a survey or statistical evidence, it does provide an in-depth look at the

situation in Quebec and documents various forms of discrimination and violence. It also substantiates the prevalence of the problem without quantifying it.

Because it is extremely difficult to administer surveys or to study hidden populations such as the LGBT communities, at best these studies present a sketchy picture of the problem of violence targeted at LGBT individuals in Canada. With respect to methodology, the implication is that it is difficult to gather precise information. The surveys may not accurately tap the level of violence experienced; however, they are reliable enough to confirm that violence and discrimination targeted at LGBT individuals are pervasive problems.¹ The results from these surveys offer sufficient insight for researchers like myself to go beyond replicating surveys and actually look at how these problems can be addressed. The work that has been done through these surveys makes a significant contribution to the understanding of violence and discrimination experienced by LGBT individuals across Canada. I review these studies in chronological order.

The New Brunswick study was released in 1990 by the New Brunswick Coalition for Human Rights Reform. With 176 respondents, the survey reported that 82% of them had experienced some type of violence or abuse they perceived to be a result of their sexual orientation. Reports of discrimination in the workplace (49%), as well as harassment in the educational system (40%), were prevalent. The survey asked if individuals had concealed their sexual orientation in order to avoid discrimination in housing and in employment. It was found that 30% reported doing so for housing and 60% for employment. Experiences of discrimination or violence by the police were reported by 23% of respondents (cited in C. Smith 1993, 7 and 25-6).²

¹As the discussion of these findings will highlight, the studies that have been done since the early 1990s in Canada offer similar results. Moreover, in several cases (Nova Scotia, Toronto, Vancouver), the findings have been compared to similar studies done in the United States. Again, the trends identified in all of these studies are similar.

²I cannot report on the definition used in the survey for the New Brunswick study, for I was unable to obtain a copy. However, the information C. Smith provides on this study indicates that the survey used in the New Brunswick study was similar to the one used in the Nova Scotia study. Please refer to the definition outlined in the following paragraph.

The study done in Nova Scotia in 1993 was produced by the Nova Scotia Public Interest Research Group. The report *Proud but Cautious* (C. Smith 1993) provides an overview of the various types of homophobic abuse and discrimination experienced in Nova Scotia by lesbians, gays and bisexuals. It defined homophobic abuse as including

any type of harassment, discrimination or violence against a person because she or he is thought to be, lesbian, gay or bisexual. It includes anything that aims to silence, punish, shut out, hurt, or kill a lesbian, gay, or bisexual person. Homophobic abuse can be committed by individuals or by groups (C. Smith 1993, 55).³

Of 294 respondents, over 90% reported experiencing some form of abuse or discrimination as a result of their sexual orientation. Verbal insults or threats were experienced by 72% of respondents. 18% reported experiencing some form of physical violence including being punched, kicked, hit or beaten. Police harassment was reported by 16.5%, while 2% reported assault by police. The study also documented discrimination in housing, employment, education, and health care services. In terms of housing, 8% reported being denied rental and over 4% had been evicted. 9% reported being denied employment, almost 8% had been fired and 4% reported being denied promotion. Experiences of homophobic abuse were reported especially in the education system: 33% of respondents experienced some form of abuse or discrimination in public schools and almost 37% in university. Over 26% reported discrimination and abuse at the hands of school authorities, including teachers, principals and counselors. The study also looked how respondents perceived the impact of homophobia on them— how it forced them to change their behaviors or conceal who they are. The study concluded that:

The fear of abuse is perhaps the most insidious aspect of homophobia, and affects the lives of lesbians, gay men, bisexuals, and heterosexuals. The fear of being labeled as “gay”, of being subjected to the variety of abuses as chronicled in this and many other studies and brought to our attention through the media, acts

³This is the definition provided on the questionnaire.

as a social control. It is not actually being gay, lesbian or bisexual that puts one at risk for homophobic abuse, but rather, being perceived as being lesbian, gay or bisexual. [...] No matter the percentages of people who are subjected to homophobic abuse, the mere possibility of it keeps us in line, and it is this element that we carry with us every day (my emphasis, C. Smith 1993, 42).

The 1993 Montreal-based survey of violence and discrimination targeted at lesbians obtained 427 respondents. The study was done by the *Caucus Lesbien*, an organization founded in 1993 specifically with the intention to present evidence on the experiences of lesbians at the public hearings held by the *Commission des droits de la personne du Québec*. Fearing that their interests and experiences would not be well represented by mixed gay and lesbian organizations (where it is often the case that the views held by gay men overpowers the specificity of the lived experiences of lesbians), a number of lesbians decided to conduct their own study and present the results at the hearings. The survey did substantiate the prevalence of experiences of negative attitudes geared towards lesbians and can be used to highlight how lesbians perceived the violence targeting them and how it differs from that reported by gay men (*Caucus Lesbien* 1993, 17).⁴

The definition chosen in this survey to assess violence targeting lesbians was modeled on the definition found in the United Nations' *Declaration on the Elimination of Violence Against Women* (1993) and subsequently taken up by the Canadian Panel on Violence Against Women. It defined violence against women as

any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life (UN Declaration cited in Canada, Canadian Panel on Violence Against Women 1993, 5).

⁴As with all of the other surveys, bias in sampling is acknowledged, whereas the lesbians represented are more likely out or willing to go to gay-identified events and establishments, probably younger than the average and living in a urban setting (that is usually more likely tolerant than in smaller settings) (*Caucus Lesbien* 1993, 17).

The definition used was purposely broad, as to encompass a large array of actions and behaviours that interferes with one's well-being and which would not be acknowledged when using a narrow definition focusing on specific types of violence. (Demczuk 1998, 202). The survey revealed that almost 62% of lesbians reported they were targets of negative comments and attitudes, intimidation or contempt on the part of parents, siblings, friends, co-workers or neighbours—in other words, people that they know and with whom they have close relationships. The study also revealed that approximately 36% of the lesbians surveyed reported some form of violence in public places either verbal assault, harassment, psychological violence or physical assault. Discrimination in either employment, social services, housing, benefits and so on was also reported by 38.9% of respondents. This survey presents no data on police brutality. Respondents were not asked about this specific type of violence (*Caucus Lesbien* 1993). It appears from these findings that lesbians are more likely to be targeted by people they know and that incidents often take place in their homes or places familiar to them. This is unlike the experience of gay men who are more often attacked by strangers and in public locations. This claim was also confirmed in an interview with Howard Shulman who heads the anti-violence project at the 519 Community Centre in Toronto (Interview 29 May 2002) and in the study by Samis to which I now turn.⁵

The research done in Vancouver by Samis obtained 420 respondents.⁶ Of these, 85% reported experiencing at least once some form of verbal harassment and 30.6% of respondents had been victims of a gay-bashing, half of those more than once. The survey examined who the perpetrators were and where these bashings took place. Family

⁵On the subject of gender differences in the experience of “anti-gay” violence, studies in the United States confirm similar patterns to those in Canada. For example, a study by Berrill concludes in terms of gender differences that “males generally experienced greater levels of anti-gay verbal harassment (by non-family members), threats, victimization in school and by police, and most types of physical violence and intimidation. Lesbians [...] generally experienced higher rates of verbal harassment by family members and reported greater fear of anti-gay violence” (Berrill 1992, 25 and 28). Comstock (1991) also confirmed that gay men are more likely to be victimized in schools or gay-identified areas, whereas lesbians tend to experience victimization in the home or in public settings that are not gay-identified.

⁶The survey method he used and sampling technique were comparable to that of the other studies.

members were reported as perpetrators by 9.8% of respondents; co-workers or supervisors were identified by 4.8% of respondents, attacks at school were mentioned by 22.4% of the respondents. When asked where incidents had taken place, near LGBT-identified businesses (40.1%) and in LGBT-identified neighborhoods (59.5%) were the two most commonly mentioned places. In terms of police harassment and brutality, 13.8% of respondents said that they had been harassed by police once, while 6.6% reported being harassed more than once. Almost 6% of respondents said that they had been beaten by police due to their sexual orientation (Samis 1995, 80 and 83).

Samis assessed the level of reporting of serious incidents and the reasons why individuals chose not to report. From his survey, he established that only half of those who had reported experiencing a serious incident in the survey actually reported them to police. This means that official statistics on hate crimes targeted at LGBT individuals definitely under-represent the number of incidents that take place. The fear of secondary victimization (either by the police or by individuals who may come to know about the incident if it is reported, i.e. employer, family-member) was stated by the majority (79%) as the main reason why individuals were reluctant to report incidents (Samis 1995, 108-113).

Samis' study did concern itself with certain aspects not included in other surveys. Beyond a description of the demographic attributes of the respondents and the type of victimization experienced, Samis looked at how an individual's lifestyle and personal attributes can make her or him more prone to being targeted. Samis did not define in his survey "anti-lesbian or gay harassment, violence or victimization" (1995, 127). The survey included, however, questions about whether respondents were out and whether they were perceived by others (strangers, friends, family members, etc.) as being gay or lesbian, specifying that lesbians and gays are often victimized on the basis of stereotypes related to appearance or mannerism (Samis 1995, 53-4 and 127). Samis confirmed that the more out or visible an individual is the more likely s/he will be victimized.

Moreover, the more individuals correspond to stereotypes of lesbians and gays, the more likely they are to be victims of the most severe forms of bashings, which require medical attention. Finally, although Samis was unable to confirm where and by whom lesbians were more likely to experience violence, he did confirm that gay men are more likely to be victimized in gay-identified areas (Samis 1995).

The Toronto study, released in 1997, had 368 respondents. The term anti-gay/lesbian violence⁷ was used in the survey instead of hate crimes against lesbians and gays. The justification for this choice was to make sure that individuals reported all offences, even ones not covered by the *Criminal Code* definition. The term anti-gay/lesbian violence covers “a wider range of harassing and violent incidents experienced by lesbians and gay men” (Faulkner 1997, 4). Reports of victimization identified through the survey were 77.5% for verbal assault, 27.9% for physical assaults (includes 7.3% of cases with a weapon), 20.6% harassment by police and 5.4% assault by police (Faulkner 1997, 18). The Toronto study looked at the impacts of anti-LGBT violence. When asked if the possibility of being targeted by anti-LGBT violence had changed somewhat or greatly their behaviour and/or how they act, 78% of respondents confirmed that it did. The survey also gathered information on how individuals changed their behaviour to cope with the threat of violence. There were 214 respondents that specified ways in which they altered their behaviour. The coping mechanisms described include: not appearing openly gay or lesbian; avoiding public displays of affection; modifying their dress, appearance and behaviour to present themselves in ways that do not make them identifiable as gays and lesbians; developing street wariness (avoiding certain streets or areas, traveling with friends, etc.); getting involved in groups to fight back against homophobia and violence targeted at LGBT individuals; and avoiding to

⁷The term anti-gay/lesbian violence is not defined in the report. It is only said that it is violence targeting lesbians and gays (see discussion in Faulkner 1997, 3-4).

speak out on gay and lesbian issues or rights in order to not be identified with that group (Faulkner 1997, 27-34).

The Calgary survey (2000) was an initiative of the Calgary Gay and Lesbian Communities/Police Liaison Committee. It is unique for having the Calgary Police Service assist in the creation, distribution and collection of the survey. The survey did not define violence, but rather asked about specific types of incidents because of one's presumed sexual orientation.⁸ Of the 554 respondents, 62% reported experiencing verbal assaults, 31% being chased or followed, almost 15% being punched, kicked or beaten because someone assumed them to be lesbian or gay. Almost 70% reported that the possibility of anti-LGBT violence or harassment affected how they act or behave. Gay men reported higher rates of victimization and violence than lesbians, bisexuals and heterosexuals. Men also reported higher levels of violence occurring on the street and perpetrated by strangers. The survey differed from others by asking about the quality of police response and quality of treatment at the hospital following an assault that required medical attention. Answers to these questions quantify and describe the context of anti-LGBT violence and harassment (Calgary Gay and Lesbian Communities/Police Liaison Committee 2000 and 2001).

The most recent survey was conducted in Ottawa in 2000 by the Wellness Project. It is by far the most extensive survey of an LGBT population in Canada, with 826 respondents. The main focus of the Wellness Project is to report on the health needs of the LGBT population in Ottawa, but the survey offers insight on a number of other related-issues, including a profile of the LGBT communities in Ottawa, health situation and needs of the communities by age group and, of particular interests for the purpose of this research, information relating to safety and crime. One very interesting aspect of this

⁸The incidents included: verbal assault, threats of physical assault, damaged to property, objects thrown at a person, being chased or followed, being spat on, being punched, kicked or beaten, being assaulted or wounded with a weapon, sexually harassed (verbally), sexually assaulted, subject to misconduct by police (Calgary Gay and Lesbian Communities/Police Liaison Committee June 2000)

study is that the respondents were asked about how safe they felt in Ottawa. None of the other studies reviewed here had inquired about the perception community members had of safety. This aspect is important because the fear of violence is often what forces individuals to modify their behaviour or change what they do.⁹ This happens regardless of the number of incidents that have been reported or have taken place in a community.

In the Wellness Project, which focused on Ottawa as a place to live, most respondent reported feeling accepted by the larger community.¹⁰ Most (68%) also indicated that they felt generally safe in Ottawa suggesting Ottawa may be a safer place for LGBT individuals than other cities. Even in Ottawa, however, some segments of the LGBT communities that are less likely to report feeling safe; transgendered people (47%) and bisexual individuals (54%) were less likely than gay men (72%) and lesbians (68%) to report feeling safe. Racial identity was also an added factor in that people who identified as being part of a visible minority were less likely to report feeling safe than white respondents (Wellness Project 2001b, 40).

Respondents were asked how often they had been victims of verbal abuse, threats of violence and criminal acts as a result of their sexual identity; 35% reported never having been victim of verbal abuse, but an almost equal proportion (38%) reported being victim of such abuse three or more times. Most respondents reported never having been threatened with violence (66%) and never having been a victim of crime or attempted crime (72%). In terms of victims of verbal abuse, gay (45%) and transgendered (50%) individuals reported being more often targeted than lesbians and bisexuals. Similar differences are found for victims of threats of violence and acts of crimes or attempted crimes. Age makes a difference (i.e. older people are less likely to be victims and youths more so). As in the Vancouver study, the more out or open about their sexual identity

⁹Other studies (i.e. New Brunswick, Nova Scotia, Toronto, Calgary) asked about changes in behaviour without asking about safety. I will elaborate on this point in the final part of this section.

¹⁰When asked how accepted they felt as an LGBT person living in Ottawa, 66% reported that they felt very (18%) accepted or somewhat (42%) accepted, while 28% were neutral on this issue (Wellness Project 2001a, 34).

respondents were, the more they reported having been victims of a crime. Questions were also asked about discrimination as a result of one's sexual identity; 21% reported experiencing incidents of discrimination (Wellness Project 2001b).

Only a small portion of those who have been the victim of a crime or discrimination report these incidents to the police. According to the Ottawa survey, only 37% reported to police (Wellness Project 2001a, 42); actually a much higher reporting rate than estimated in reports from other jurisdictions where reports are said to approximate 10% of hate crimes (see Roberts 1995, 17-18).¹¹ The Ottawa police also confirmed that this was high compared to other cities (Wellness Project 2001a, 49). According to this study, youths were the least likely to report hate crimes, discrimination or bullying problems at school because they have a difficulties in approaching authorities, including police (Wellness Project 2001a, 42). Some people refrained from reporting cases of discrimination because they were uncertain as to the proper authorities to whom to report these incidents, and others do not report because they feel there is no point in doing so. The data do not specify why so many people do not report crimes to the police, or why a larger percentage do in Ottawa than in most jurisdictions. Although no questions were asked about the work done by the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* and the Ottawa Police Hate Crime Section, these two entities may have helped in creating an environment in which individuals feel that they are safe to report crimes. This will be discussed further in the next chapter, where I explore in depth the work of these bodies.

Although a certain level of safety appears to exist in Ottawa,¹² the Wellness Project, through a survey administered to service providers, did identify that issues of

¹¹Roberts study focuses on hate crimes in general. He mentions that reporting rates for anti-LGBT crimes tends to be lower than for other categories of victims. In the Toronto study, there where 30 respondents that said they had reported to the police (Faulkner 1997, 34-35). This appears to be a low rate of reporting similar to Roberts findings.

¹²Unfortunately, there are no other surveys that have asked questions on perceived safety so I cannot make a comparison. Qualitative data from this study and others seems to indicate that this is a relatively positive number. I am aware, however, that this is an interpretation. Even if quantitative data were available in other surveys, the concept of safety is a rather elusive one and difficult to measure. Despite all this, it

safety, discrimination and homophobia remain a major concern for the communities and those who offer services to them.¹³ Another interesting aspect of this study is that it documents the impact of violence and harassment on the health and general well-being of individuals. Because its original focus was on health and social services, the study did establish a connection between the experience of homophobia and violence with levels of well-being. It reported that respondents who had been verbally abused, threatened or a victim of crime were more likely also to report being only in fair-to-poor health, feeling very stressed or feeling depressed (Wellness Project 2001a, 8). It also found that youths, particularly teens, reported the highest percentage of depression and suicide (Wellness Project 2001a, 42).

Apart from these various surveys, there are two more studies which used qualitative data to assess the extent of the problems of discrimination and violence experienced by LGBT individuals. The first study done in London (2000) focused on gay, lesbian and bisexual (GLB) youths and gathered information through individual interviews or focus groups conducted with 62 GLB individuals between 14 and 25 years of age. Most were interviewed, but some who did not feel safe enough to participate in focus groups or to be interviewed sent in hand-written, personal accounts of their stories. The problems of studying LGBT communities using traditional research methods are accentuated when one focuses on youths, who do not easily trust people and have often been hurt by those supposed to take care of them, protect them or with whom they have close relationships (parents, teachers, counselors, siblings, friends etc.); as a result, they are less likely to want to open up to strangers (Lee 2000, 10). The London study revealed that violence targeted at lesbian, gay and bisexual youths is a prevalent and extensive problem. Experience of verbal violence was reported by 98% of respondents

should be said that although 68% of respondents indicated feeling generally safe, there are still 32% who do not feel safe. This is not an insignificant number. It indicates that more can be done in this area to improve the safety of LGBT individuals in the Ottawa community.

¹³Service providers indicated a need for better training (81%), anti-harassment workplace policies (68%) and diversity training for service providers (66%) to promote further the wellness of LGBT people (Wellness Project 2001a, 46-7).

and physical violence by 71%. Sixty-eight percent of respondents reported experiencing violence at home and an almost equal proportion (66%) at school. Street-based violence was identified by 26% of respondents. 26% confirmed having had suicidal thoughts (most likely related to the violence experienced).

The study reveals that LGBT youths are a particularly vulnerable group and confirms a direct correlation between violence directed towards them and actions and behaviours that put them at risk or reduce their potential for success and a bright future such as drug abuse, alcoholism, homelessness, suicide, and quitting school. Violence experienced at home led to actions such as running away from home, alcoholism and drug abuse, while school-based violence led some to drop classes or quit school. Not feeling safe in school lowered academic performance. Teachers or school staff often did not intervene when violence or harassment took place in their school and, at times, were even the perpetrators (Lee 2000).¹⁴

The study identified gendered differences in the type of violence experienced; boys experienced higher rates of physical violence (94% vs. 45% for females), while girls experienced higher rates of sexual assault (21% as opposed to 6% for males). The study also confirmed that incidents of violence targeting LGBT youths exert a form of social control over all young people, whether or not they were victimized themselves. Comparing the results from the study to the number of crimes reported to the London police substantiates that few are reported. Respondents reported fear of disclosing their sexual identity, and the lack of support services as reasons. The fact that many do not have a personal support system (friends and family) to help them through the process of reporting incidents, that they have a low self-esteem and that they do not trust the police also contribute to their not reporting incidents (Lee 2000, 13, 21, 23, 52-60).

¹⁴Similar findings were heard and documented in the public hearings held by the *Commission des droits de la personne du Québec* held in 1993 (Quebec, *Commission* 1994, 40-1).

The second study that relies on qualitative data as opposed to surveys is the report of the 1993 public consultations on the topic of violence and discrimination towards lesbians and gays held by the Quebec human rights commission. After the ninth murder of a gay man in a period of two years, the *Comité sur la violence de la Table de concertation des lesbiennes et gais du Grand Montréal* pressed authorities to hold a public inquiry into violence targeted at gays and lesbians, the attitudes of police officers, issues of discrimination in the work place and discrimination with respect to health and social services (Québec, *Commission* 1994, 3). The *Commission des droits de la personne* proceeded first with an internal report which concluded that, despite the inclusion of sexual orientation in the Quebec human rights code fifteen years earlier, intolerance and discrimination targeted at lesbians and gays continued. These attitudes, they argued, were the root cause of violence targeting lesbians and gays (Québec, *Commission* 1994, 6-7). The findings in the initial report pushed the *Commission* to hold a public inquiry into the matter and produce a report from these consultations entitled *De l'illégalité à l'égalité* (1994) (translates to: from being illegal to being equal).

The public inquiry, with its focus on discrimination and violence targeted at LGBT individuals, was the first of its kind in North America. It opened up a debate and raised awareness of the conditions of LGBT individuals, highlighting a number of issues beyond violence, such as problems LGBT people had accessing health and social services, police-community relations, and challenges in accessing the criminal justice system. This was a first step toward improving the situation of LGBT individuals in Quebec society. The report included recommendations that focused on health and social services, relations with the police, equality in law, and a number of objectives to be pursued by the *Commission* itself.

From the information gathered through the public inquiry, the *Commission* concluded that discrimination and violence targeted at LGBT individuals were part of an extensive problem. It did not adopt a definition of violence, but reported on what

community organizations presented in briefs and memoirs. For example, it acknowledged physical assaults, harassment, psychological violence and verbal harassment as forms of violence affecting LGBT individuals. In other words, the concept of violence included a wide array of incidents and forms of harassment (Québec, *Commission* 1994, 64-71). It identified a number of actors who could improve the situation of LGBT individuals, including community organizations and public institutions. It also stressed that the challenge having LGBT individuals accepted by society in general requires a change in attitudes and values, which does not come quickly or easily. The task that was started with the adoption of the Quebec Charter (in 1977) and proceeds through a renewed commitment by the *Commission*, other institutions and community groups. The *Commission* expressed commitment to the values that are advocated in the Quebec Charter and emphasized the need for society to embrace these principles. It stressed that equal rights must be enjoyed by all; they are not seen as special rights of the groups enumerated in equality clauses, but rather reflect an underlying principle of equality to be shared by all members of Quebec society. The *Commission* acknowledged that part of its mandate was to raise the awareness of society as to what these values are and how they can be respected. In sum, the report by the *Commission* reaffirmed the citizenship of LGBT people.

Overall, the results from the studies reviewed here confirm that violence and discrimination targeted at individuals because of their real or perceived sexual identity is a problem in many communities in Canada. Because the samples are not representative, the results from the various surveys can only be compared with caution. However, all of these surveys used a similar methodology for seeking out respondents and conducting the survey, replicating a model developed by Berrill and Herek (1992; see also Herek, 1989) who have done pioneering work in this area in the United States. The definitions of

violence, when the surveys and reports identified such a definition,¹⁵ usually referred to violence targeted at LGBT people in loose terms, encompassing a number of forms of harassment or incidents not covered by the *Criminal Code* or in police definitions of hate crimes. This was the case of, for example, the *Caucus lesbien* which used the UN Declaration's definition, the Toronto study which asked about anti-gay/lesbian violence or the Nova Scotia study which used as a definition "any form of harassment, discrimination or violence that silences, punishes, shuts out hurts or kill". In each of the surveys conducted from 1990 to the present, the reported rate of all forms of violence has varied between two-thirds to over three-quarters of respondents, and commonly was about 75%. The Ottawa study (which is the most recent) and the Montreal study (which focused only on lesbians) found lower levels (65% and 62% respectively). The Montreal study supports the finding that women are less likely to be victims; while the Ottawa situation brings into question whether there is something different happening in Ottawa that contributes to the safety of the LGBT population. These lower percentages contrast with the findings in the London study (which focused on youths only) that found that almost all of its respondents were victims of some kind of violence (98%). The reports of physical violence (or what could be called bashings) were around the 30% mark in most studies. The exception again is the London study, in which 71% of GLB youths reported being victim of physical violence. Police harassment was measured in most of the studies reviewed. The reported rates of police harassment were on average 20%.

Some of the studies did ask about perpetrators and where incidents took place. This is important information because it may have an impact on strategies and solutions to address this problem, including policing strategies. Reports revealed that gay men were more likely to be attacked by strangers in gay-identified areas, while lesbians were more likely to be attacked by people they know often in their homes (*Caucus lesbien*

¹⁵The Vancouver and Calgary study did not define violence but rather asked about specific types of incidents, i.e. physical assault with a weapon, being punched or kicked, being chased, etc.

1993; Samis 1995; Calgary Gay and Lesbian Communities/Police Liaison Committee 2000). Youths are likely to be victims of people mandated to take care of them or protect them either at home or at school (C. Smith 1993; Lee 2000). The studies also revealed that hiding one's sexual identity to feel safe when walking on the streets, at work, in school or in most public places is one precautionary measure employed by several LGBT individuals in order to avoid violence, harassment and victimization. The New Brunswick, Nova Scotia, Toronto, Vancouver and Calgary studies reported rates that varied between 60% (New Brunswick) and 78% (Toronto). Concealing one's sexual identity when seeking housing or employment was also common,¹⁶ as was staying away from gay establishments to avoid being followed, harassed or attacked when leaving. Under-reporting of these incidents was common and fear of revealing their sexual identity and fear of secondary victimization (including by police) were commonly-mentioned reasons for not reporting a crime (see the Vancouver and London studies). Together the studies substantiate that many LGBT people experience danger and perceived threats to their safety as part of their daily routine. These conditions prevent LGBT individuals from enjoying the full rights and privileges of Canadian citizenship.

Rethinking "Hate Crimes": Hearing LGBT People on Violence Targeted Them

In this section, I examine the different voices heard from LGBT community members on the problem of violence targeting them. "Hate crime" is commonly used in the literature and by the media to refer to violence targeting LGBT individuals. I will show, however, that even when LGBT people use the term hate crime, the problem to which they are referring and which matters to them is much broader than criminal acts. This section is based on the 26 interviews I did between February and April 2002 with individuals in

¹⁶A study in New Brunswick revealed that 30% of the respondents did not make their sexual identity known when looking for housing and 60% did not reveal their sexual identity when looking for employment (cited in C. Smith 1993, 25-6).

Ottawa that identify as LGBT or work in some capacity with LGBT individuals either in schools or universities, or in community organizations. Fourteen of them are involved or had previously been involved with the *Ottawa Police Liaison Committee with the LGBT Community*. The findings from these interviews are complemented by qualitative accounts reported in the studies reviewed in the previous sections.¹⁷

As we have seen in the previous section, community surveys identified violence targeted at LGBT individuals in terms that went beyond the *Criminal Code* definition or definitions used by police services. For individuals in LGBT communities, hate crimes include the lived experiences, on an almost daily basis, of discrimination, ostracism, rejection and harassment, even when these actions are not considered criminal according to Canadian law. They are any form of violence, harassment, discrimination or victimization targeted at individuals because of their real or perceived sexual identity.

Verbal harassment is probably the most common form of violence experienced by LGBT individuals. Verbal harassment takes the form of name-calling and insults shouted from passing vehicles or by people walking down the street. It sometimes happens in familiar settings such as school or workplace. It can be initiated by family members or friends. For example, one man recalled: "My mother called me 'abnormal', 'ill', 'irregular'" (a 22 year old male quoted in Samis 1995, 87). Another man spoke of a workplace experience that shows that even when statements may not be aimed directly at one specific person, they can still be very painful for LGBT individuals. As he recalled: "[a] client, unaware that I am gay, stated that "all homosexuals should be shot. I'd love to sit here with my gun and pick them off. Open season on homosexuals!" (a 30 year old male quoted in Samis 1995, 87). A personal workplace experience was recounted by a

¹⁷I did not interview victims or ask about personal experiences of anti-LGBT violence, because my goal was not to establish causes of hate and hate-motivated violence. Rather, in my interviews, I focused on the role of communities, police and public policies in terms of making communities safer for LGBT individuals.

woman in the Toronto study. She said: “I told my co-worker that I was a lesbian and he said he always wanted his dick sucked by a lesbian” (quoted in Faulkner 1997, 22).

Although most LGBT individuals experience verbal harassment, most accounts of violence by those I interviewed focused on threats of violence, physical violence and the more insidious effects of heterosexism and homophobia. In the Nova Scotia study, one person defined her experience of anti-LGBT violence in the following manner:

Graffiti on bathroom walls propagating hate against anyone outside the heterosexist norm, insults yelled from passing cars, textbook descriptions of my sexual orientation as maladaptive, fear of being found out by profs and employers, wondering if the stranger following me home at night is considering attacking me because I am a woman or because I just left a gay bar—these images all form part of my daily reality, and they are abuse. I'm lucky; I've never been bashed, denied a job, home, child because of my bisexuality—yet—but I have faced many of the subtler forms of homophobic abuse (Gowans, quoted in C. Smith 1993, 5).

This account suggests that violence targeted at LGBT people includes homophobic abuse and the more subtle forms of control and constraints that force individuals to comply with the heterosexual norm and to fear of being found out when they fail to do so, possibly resulting in less subtle forms of violence. Evelyn Huer, a community member in Ottawa, shared similar concerns. She said the fear shared by most LGBT individuals is most likely:

... the problem of people being attacked on the streets [simply] for being themselves. That kind of violence is a silencing violence, in terms that people don't feel safe to act or express themselves in the way that they would like to. [This] violence or threat of violence restricts [our] freedom. [...] We check our behaviours in so many different ways [to comply to the heterosexual norm] that we are probably unaware of it. It is this enforcement of normalcy that I think is in my mind a kind of violence (Interview, 27 February 2002).

This problem of being safe in public places is echoed by John Fisher, the executive director of EGALE, a national organization that defends lesbian and gay rights. He

confirmed that safety is a concern for LGBT people across the country. As Fisher explained, simple gestures such as holding hands in public —something that is done unconsciously by heterosexual couples requires LGBT individuals to have the confidence to do so. And when they do hold hands, it is usually with an awareness of the surroundings and the situation (Interview, 23 April 2002).¹⁸ It should be noted however that one particularity with respect to the safety of LGBT individuals is that the threats to their safety are everywhere an issue including in their homes. LGBT individuals may not be out to their family or to their roommates in part because of safety issues (Interview Bruce Bursey, 14 March 2002).

The need to define broadly violence targeted at LGBT individuals was mentioned by several respondents. Nathan Hauch, a representative of Pink Triangle Youth in Ottawa, said that hate crimes should be defined to include emotional as well as physical elements. He explained that slurs have a major impact to which youths in schools are especially attuned. Social ostracism based on one's sexual identity is a significant problem that is faced by all LGBT people, and to which youths are particularly vulnerable (Interview, 26 February 2002). David Hoe, another Ottawa community member, wants to do away with the definition of hate crimes, which he finds too narrow, and focus on hate and its effect on LGBT individuals. He explained that: "... to me, [hate] is anything that would change a person's right and entitlement to live as fully as possible". He added:

[...] the broad analysis of hate which includes health and wellness is probably better to have because hate crimes considered as a criminal offence is only the sharp end of the wedge and so the broader analysis, not to think of the hate crime within the context of what could be designated as a crime within a legalistic framework, but what is hate in the broadest context is what we actually live. Being abused, physically attacked or being discriminated against with any human rights framework is the very

¹⁸In the Toronto study, 36 respondents stated that they were careful about public displays of affection such as holding hands, kissing and hugging because they fear for their safety. As one woman said: "I am afraid to be affectionate with my lover in public, and I censor my conversations" (quoted in Faulkner 1997, 29).

tip of that. We live the daily, the daily grime of hate or homophobia (my emphasis, Interview, 11 April 2002).

Violence targeted at LGBT people, when understood from those who experience the brunt of homophobia and heterosexism on a daily basis, is not necessarily a criminal act, or, if so, it is often on the low-end of the criminal spectrum (e.g. literature deemed offensive by a recipient, but not hate literature as defined in the hate propaganda provisions; receiving shouted insults and homophobic slurs; etc). As a respondent to the Nova Scotia study explained: "Every day I experience some anti-gay sentiment and homophobic behavior in very subtle ways, which, as a cumulative effect, adds up. It has the same impact as verbal and physical abuse" (a 25-29 year old gay man quoted in C. Smith 1993, 14). If we accept this interpretation, it confirms that the citizenship of LGBT individuals and their sense of security is threatened not uniquely by physical violence, but also by more subtle forms of violence. Violent gay-bashing and anti-LGBT assaults do happen and are a problem, however; what most LGBT individuals deal with on a regular basis is the threat of physical violence (particularly gay-bashing), the fear of being outed to people who are in a position to cause them harm, or the cumulative effect of various manifestations of homophobia often expressed in subtle ways. As C. Smith, the author of the Nova Scotia study, explains: "The fear of abuse is perhaps the most insidious aspect of homophobia, and affects the lives of lesbians, gay men, bisexuals, and heterosexuals" (1993, 42). It is the fear of being perceived as gay and then being subjected to any number of abuses as a result, that acts as a form of social control. She concludes: "No matter the percentage of people who are subjected to homophobic abuse, the mere possibility of it keeps us in line, and it is this element that we carry with us every day" (1993, 42).

Whether we agree with these understanding of the problem often referred to as hate crime is inconsequential. What must be concluded and can be concluded from these accounts is that threats of violence are a major form of social control. They are one of

the faces of oppression, as discussed by Young. They exert a certain level of social control upon LGBT individuals and those who may be perceived as being LGBT. In reality, they exert control on all of us, since to be exempt from anti-LGBT violence and discrimination, we must all conform to the heterosexual norm regardless of our sexual identity. Individuals, particularly youths in school settings, do not have to be gay, lesbian, bisexual or transgendered to feel obliged to conform to a heterosexual image or stereotype to avoid anti-LGBT harassment and violence.¹⁹ Furthermore, individuals do not have to be bashed to fear the effects of a gay-bashing that may have taken place in a known gay neighbourhood, in a park or near a bar. As one respondent in a survey on anti-LGBT violence described it:

I am aware of the possibility of anti-gay violence or discrimination virtually all the time that I am outdoors, or in a crowd that is not familiar to me. It affects virtually all of my choices about how I interact with other people. I try not to allow this awareness to prevent me from living my life according to my own choices, but this often means living with the danger of attack or ostracism (a 35-39 year old gay man respondent in the Nova Scotia study quoted in C. Smith 1993, 41)

Although it may be necessary to include subtler forms of violence when discussing the problem of targeted violence as experienced by individuals on a daily basis in order to fully understand how the problem is experienced and to develop appropriate strategies to address it, it must be noted that violent hate crimes have a greater propensity to affect large numbers of people at once. They have a chilling effect on the LGBT communities as a whole. As John Fisher (EGALE) said: “[a]nother thing about hate crimes is that, regardless of their frequency, it only takes a few hate crimes or the possibility of hate crimes to have a dampening effect upon the whole community”

¹⁹A provincial hate crimes unit officer in British Columbia was quoted as saying back in 1998 that approximately 15% of the people who are gay-bashed are heterosexual men who happen to be in gay-identified areas (see Eleanor Brown, *Queer Fear* in *Globe and Mail*, 24 October 1998: D1 and D3). Also, the catalyst for the mobilization of the LGBT community in Ottawa against violence targeting LGBT people was the 1989 murder of Alain Brousseau, a young man who was mistakenly identified as gay.

(Interview 23 April, 2002). Evidence of that was clear at a recent Ottawa Police Liaison Committee meeting. The December 2002 meeting was held a few days after the body of Chris Raynsford, a gay man in the Ottawa community, was found. The victim had been badly beaten and left for dead. Since Raynsford's death followed a series of unsolved robberies and assaults on gay men who met other men through telephone dating lines, the LGBT communities felt particularly vulnerable and threatened by this incident. Although there was no evidence that hate was a motive for this crime,²⁰ the LGBT communities were shocked by the death of a friend or community member and mobilized around this tragedy treating the incident as if it were a hate crime targeting their community.²¹

Chilling accounts of gay-bashing are likely to represent what is most feared by a large numbers of LGBT individuals. Danny and Steven, two youth respondents in the London project, offered a written account of their experience with gay-bashing. Danny said:

Me and my friend were leaving a gay bar in London last month and we were jumped by 3 or 4 guys. We were walking home and all of a sudden these guys were right in front of us calling us "queer" and "fag". Two of the guys grabbed my friend and they punched him in the face, he was really bleeding. I ran to call the cops and when I got back, my friend wasn't moving. I thought he was dead. All I thought was what if he's dead. My friend lost his front tooth and his face looked pretty bad. We both had scrapes

²⁰See various articles in *Ottawa Citizen* and *The Ottawa Sun* that covered the events around the Raynsford murder, including Rev. Singer, "Friends to Celebrate Slain Man's Life", *The Ottawa Citizen* (9 December 2002; and 16 December 2002). This was also confirmed by Murray Knowles, head of the Hate Crime Section, in a personal interview (Ottawa, 9 December 2002). In the January edition of the *Capital Xtra!*, in an article by Rory MacDonald, Staff Sgt. Randy Wisker is quoted as saying that the Raynsford murder was not a hate crime (17 January 2003: 7).

²¹For example, the questions that were raised by the LGBT community members in attendance at the Ottawa Police Liaison Committee meeting that followed Raynsford's death had to do with what the Hate Crime Section was doing with respect to this murder investigation and ensuring the safety of LGBT communities, why there was under-reporting of crimes targeting LGBT individuals and practical measures to prevent hate crimes targeting LGBT individuals (see LC, *Minutes*, 9 December 2002). Also, People Against Discrimination (PAD) Consultants (a non-profit organization), following the death of Raynsford, organized a candlelight vigil in memory of all those have been the victims of hate crimes as a result of their sexual identity. The vigil was meant to express condolences to the family and friends of Mr. Raynsford while lending support to measures (policy and policing strategies) that could be implemented to ensure the safety of LGBT individuals (P.A.D., *Press Release*, 5 December 2002).

and bumps all over our heads. I had a huge black eye, I couldn't open it for a while. Now my head hurts all the time. I have really bad headaches. I feel lucky that I fought back and got away. My friend doesn't fight so he really got hurt bad. He's so scared to even go out of his house now. We don't go out much anymore (quoted in Lee 2000, 45).

The impact of acts of violence is not limited to the physical pain of victims and making entire communities fearful. Victims of gay-bashing or bias-motivated incidents are also made to feel ashamed of being gay. As Ernie Gibbs, a counselor for LGBT youth, explained, “the fear of being gay-bashed makes me not want to be gay or want to be discreet about where I go” (Interview, 24 April 2002). Moreover, victims of anti-LGBT violence, like victims of rape, are often blamed for the violence they suffered.²² Michael Smith, a LGBT community member, mentioned that a lot of self-blaming goes on. When an individual is assaulted when leaving a LGBT-identified bar, the victim will say: “Oh well, I was coming out of a [gay] bar, it is to be expected”. He also explained that this type of attitude by the communities needs to be overcome. He said: “[t]here should be a validation that this is outrageous and that a response by police that takes the victims concerns seriously is warranted. Individuals do not deserve getting beaten or harassed simply because they are exiting a gay-identified establishment” (Interview Michael Smith, 23 April 2002).

The experience of violence differs when additional factors such as race, class, and ability compound the effects of exclusion on the basis of sexual identity. Transgendered individuals tend to have much more acute concerns and problems with respect to safety than lesbians, gays, bisexuals. Transgendered individuals are often more visible than lesbians, gay men and bisexuals. As Joanne Law, a transgendered activist and long time

²²Community members I interviewed made references to the similarities. This was also alluded to in various accounts of anti-LGBT violence. In its report to the *Commission des droits de la personne du Québec*, the *Comité contre le racisme d'Hochelaga-Maisonneuve* elaborates on this issue (see p.1 of its *Mémoire*).

member of Gender Mosaic (a transgender support group), puts it: “For the *trans* community, there are a lot of safety concerns, because the minute we do come out of the closet [and step out on the street], we become very visible” (Interview 27 February 2002). This makes transgendered people easier targets than LGB individuals for any kind of harassment whether they are driving their car, in a shopping mall, waiting for a bus or simply walking on the street.

Transgendered individuals may be confronted with certain problems with official identity documents. It is likely that their identification papers do not correspond to the gender in which they present themselves. This can create confusion or result in a hostile confrontation between transgendered individuals and police officers or service providers. Moreover, most services and institutions are not geared towards the inclusion of transgendered people. For example, what happens when a transgendered person is arrested? Which cell will s/he be sent to? The one corresponding to her/his legal identity or that of the gender s/he presents in? And what about shelters for homeless people or abused partners? Can and should a male-to-female transgendered individual be welcomed in a shelter for battered women? Can a female-to-male transgendered individual feel safe in a homeless shelter for men? Where can transgendered individuals turn to in these vulnerable situations (Interview Jan Hobbs, 9 April 2002 and Interview Joanne Law, 27 February 2002; Namaste 1993)?

Transgendered individuals do not have the same rights as lesbians, gays and bisexuals. Under the law, in terms of discrimination, sexual orientation is recognized. This does not include the gender identity of transgendered individuals. If a transgendered person loses her job because of her status as a transgendered person, there is no legal recourse. No claim of discrimination can be brought forward before human rights tribunals. This makes transgendered individuals much more vulnerable than LGB individuals when it comes to issues of discrimination in employment, housing, etc. (Interview Matt Lundie, 26 February 2002; Namaste 1993). Apart from legal

considerations, it is also important to recognize that living as a transgendered person is expensive which, in this particular case, can be a safety issue. For example, male-to-female transsexuals have expenses for hormones, psychiatry, surgery and electrolysis. Although in some provinces a number of these expenses are covered in part by Medicare, transsexuals are usually burdened by numerous medical expenses for which they do not have insurance. As Ki Namaste, an academic and transgendered activist, explains, "for these and other reasons, many transgenders earn their living in the sex work industry" (1993, 5). Of course, the sex trade industry is a volatile environment, exposing transgendered individuals to problems with the law or threats to their safety. This is especially so if a customer is under the impression that he hired a genetic woman and discovers otherwise (Namaste 1993, 5).

The problems faced by transgendered individuals with respect to their safety are compounded by the fact that medical professionals often know little about transgenderism. This makes obtaining even basic medical treatment difficult. It also means that many choose to obtain their hormone medication on the streets rather than in a controlled medical setting. This further compromises the health of these individuals, their safety, and exposes them to risks such as AIDS and other diseases transmitted through unclean needles (Namaste 1993, 8 and 2000, 157-164). Finally, transgendered individuals tend not to be accepted by either the heterosexual or LGB communities. As one transgendered individual responding to the Wellness survey explained:

There are too many people in all aspects who do not understand transgenderism and are afraid of us. The typical response to us is that we are pedophiles and perverts because we have this desire to dress in the opposite gender's clothing. The general feeling is that most people do not want to learn about what we are and prefer to ignore our existence if they can (quoted in Wellness Project 2001a, 35).

In sum, the marginalization of transgendered individuals, for several of the reasons mentioned here and some others, tends to be greater than for other segments of

the LGBT communities. Considering that for a number of reasons that include discrimination a large proportion of transgendered individuals are poor, are more likely to be in abusive-relationships, and are more likely to be cut off their network of friends and family after their change of identity, it is easy to see that safety concerns are somewhat more acute for transgendered individuals. In fact, as one person I interviewed mentioned, the problems faced by transgendered individuals are similar to those that were experienced by lesbians, gays and bisexuals a couple of decades ago. The fact that alternative sexual orientations are a lot more acceptable in society than one's gender not corresponding to one's biological sex has a huge impact on the safety of transgendered individuals. (Interview Matt Lundie, 26 February 2002; also see Interview Joanne Law, 27 February 2002; Interview with Jan Hobbs, 9 April 2002; Namaste 2000 and 1993).

Transgendered individuals are not the only segment of the LGBT communities that are more likely to be vulnerable; the challenges faced by LGBT youths are also numerous. Fitting in at school is probably the most difficult experience for these youths (Wellness Project 2001a, 50). One youth I interviewed spoke of witch-hunts in schools conducted by students to determine who is gay (Interview Nathan Hauch, 26 February 2002). Although the use of homophobic language may not be perceived by most as a serious matter, for LGBT youth the atmosphere fostered by such language can make them feel insecure. As Paul, one of the youths who participated in the London study, explained: "At my high school I hear anti-gay messages every day. At school it is uncomfortable to be gay: it is dangerous. There are so many people who are so closed minded and hold very violent opinions, an openly gay student is risking his or her life" (quoted in Lee 2000, 40). Similarly, Kevin, also a youth from the London study, said that: "Every day I hear 'Oh, that's so gay'" and it really scares me. I have no idea what would happen to me if anyone ever found out. I want to stay in school but, to be honest, I don't know how much longer I can take this. I'm actually thinking about quitting school" (quoted in Lee 2000, 40).

Even though schools address various issues such as sexism and racism, rarely do they address homophobia. Schools have anti-harassment policies, but these do not necessarily protect students from harassment based on their perceived sexual orientation (Interview David Gamble, 30 May 2002; Interview Deb Tully, 10 April 2002; Interview Ernie Gibbs, 24 April 2002). As David Gamble, the (now retired) Vice-Principal at Woodroffe High school in Ottawa, explained: "Most teachers don't know what to do [when confronted with homophobic incidents]. There's no current infrastructure or plan to deal with the issue" (quoted in *Capital Xtra!*, 16 March 2001, 11). School responses to homophobia have been so uneven that at times it is the youths who are harassed and intimidated that end up changing schools rather than those who are the perpetrators (LC, *Minutes* February 1999; and *Capital Xtra!*, 16 March 2001, 11). In other words, the student who is being harassed is the one being punished for the harassment, while the perpetrator is not being held accountable for her/his actions. In some cases, homophobic actions are simply not dealt with. A participant of the Toronto study recounted one of her experiences. She said: "In grade school, I was physically attacked by another girl in front of the whole class and the teacher. She thought I was a dyke. I didn't know I was (yet). Nothing was done about it" (a white lesbian respondent, quoted in Faulkner 1997, 21). Contributing to this particular problem is the fact that teachers are rarely out. Although a LGBT student may suspect a certain teacher is also LGBT, the teacher's silence reinforces the shame felt by the student. It conveys that it must be bad to be LGBT, since the teacher is silent on the issue (Interview David Gamble, 30 May 2002). Generally, low self-esteem, shame, and fear are experienced by LGBT youths. As a result, LGBT youths are at greater risk of depression, underachievement, dropping out of school, and suicide (Lee 2000; Wellness Project 2001a, 42).

Homophobia at home can also have serious consequences. As Jordan Kent, one of the youths I interviewed, explained: "The biggest fear for safety is around parents; the second is the schools" (Interview, 24 April 2002). There are a number of LGBT youths

that have no place to call home, either because they were kicked out after telling their parents about their sexual identity or simply to avoid the consequences if the parents found out about their sexual orientation while they were still staying at home. In their words: “My step dad beat me up a lot and called me faggot and pussy when he was beating me” and “I’ll tell my dad when I go away to University. He’d kill me, really, he’d kill me” (Two LGBT youth respondents for the London study quoted in Lee 2000, 16).

LGBT youths are definitely more vulnerable when it comes to security and safety issues. They are dependent on parents financially and for shelter, so coming out in the family is not always possible. Darlene, a youth who participated in the London study, explains:

I’ve known for a while that I was a lesbian. I was also a sex trade worker for 2 1/2 years. I did this to support myself. I just couldn’t live at home anymore. My family didn’t approve of me being a lesbian so I left before they threw me out. [...] My dad once told me that he would kill any child of his who was queer. I believe him (quoted in Lee 2000, 41).

Youths often have to live closeted for fear of being kicked out of their home or to avoid violent situations in certain cases. An additional challenge for LGBT youths is that services are not always geared towards the needs of that particular group. In terms of homelessness, shelters are not always welcoming or even safe for that given group. Young gay men feel unsafe in male shelters, for these shelters are for men of all ages. In such an environment, their sexual identity is likely to make them more vulnerable to harassment and possibly violence. Transgendered youth, male or female, feel unsafe in either male or female shelters, and may be outright refused access to either (Judy Perley quoted in *Capital Xtra!*, 22 June 2001).²³ An additional burden for transgendered youth is that there is a lot of disbelief about their situation. Guidance counselors will not take

²³Judy Perley is the Director of Housing Services at the Youth Service Bureau in Ottawa. The article by Tina Danecke from which this is taken offered insights on what is being done in Ottawa to address the needs of homeless LGBT youths. This information was also confirmed in an interview with Jan Hobbs (Interview 8 April 2002).

them seriously. Teachers will use the name that corresponds to their record not that which represents the gender in which they present themselves. Students will harass them and so on (Interview Jordan Kent, 24 April 2002).

Like youths and transgendered people, people of colour also face additional challenges. They are confronted with the racism of the LGBT communities and often find themselves rejected by their own communities of colour or ethnic groups because of their sexual identity. Peter Flegel, the co-president of Black Youth in Action relating to his own experience as a youth activist in the Montreal Black community, said: “[m]algré les progrès accomplis, il semble que la communauté canadienne noire soit plus homophobe que la population en général. L'idée que la communauté noire est, en fait, plus homophobe n'est pas fausse” (quoted in *Fugues*, April 2002, 60).²⁴ The concerns and interests of LGBT individuals of colour are often ignored by LGBT organizations and service providers (Interview Elizabeth Hall, 2 March 2002).

Matters are also complicated for individuals raised in a faith that rejects them because of their sexual identity. Both David Gamble, the (retired) Vice-Principal of Woodroffe High School, and Pat Irving, the Principal of Rideau High School, spoke of the difficulties of dealing with issues related to sexual orientation or homophobia in the presence of students from the Muslim faith (Interview David Gamble, 30 May 2002 and Interview Pat Irving, 11 April 2002). As Pat Irving pointed out, “Muslims will make it really clear that it is against their religion to even consider the issue of sexual orientation” (Interview, 11 April 2002). Similarly, a group of youth I met one evening at a Pink Triangle Youth Night Out discussed how it was difficult to be out at school in the Catholic School Board, since the teachers and principals in those schools overtly denounce homosexuality as sinful (Informal conversation with four youths, 24 April 2002).

²⁴Translates as: Despite the progress that has been accomplished, the Canadian Black community seems to be more homophobic than the general Canadian community. This assumption is not a false.

In this section I have outlined how LGBT individuals perceive the problem of violence targeted at them. Hearing the voices of LGBT individuals confirmed that what concerns them is much broader than what is defined as a hate crime in the *Criminal Code* or by police services. What concerns most LGBT people is the daily experience of having to hide one's sexual identity in order to avoid harassment, discrimination and violence. It is the fear of violence, in addition to the name-calling, taunts, graffiti, ostracism and marginalization that is of greatest concern to LGBT community members. Whether we agree or not that the problem should be defined as broadly as it is described here, defined in ways to encompass all forms of violence criminal or not, is not the issue. The reason for hearing from community members is to assess how they identify the problem at hand. This is part of a project that wants to uncover knowledge that can be useful to those affected (oppressed) by a certain problem. Hearing the voices of those who are usually excluded from decision-making or policy-decisions is one of the objectives to which the material discussed in this chapter contributes.

It is my premise that what concerns LGBT individuals is oppression. According to Young, systematic violence is a form of oppression. Individuals have to live with the knowledge that they can be a victim of an unprovoked attack at any time because of their identity (a part of themselves which they cannot change) (1990a, 61). Such violence reinforces power relations by clearly outlining who are worthy citizens and who are not. Targeted violence keeps those at whom it is aimed outside citizenship. Violence prevents individuals from contributing to society and, in that way, furthers the marginalization of LGBT people. The consequences of violence were clearly outlined in the various surveys. For example, youths who are the victim of targeted violence are likelier to run away from home, have poor performance in school, abuse drugs or alcohol, etc. In other words, targeted violence has a profound effect on LGBT youth who are denied security (and often protection) and who imperil their future by the choices that they make to cope

with the violence. Both forms of oppression (violence and marginalization) work to deny LGBT individuals substantive citizenship.

If LGBT communities' concerns are not reflected accurately in public policies, this likely means that state authorities are not responding to violence targeted at LGBT people in ways that meet the needs of LGBT people or in ways that allow them to be safe enough to enjoy the rights and privileges of Canadian citizenship. Listening to these accounts, however, suggests that responses to violence targeting LGBT people need to include various levels of state intervention not limited to law enforcement. The form of social control to which LGBT people are subject, even if it can lead to situations of violence, is first and foremost a cultural problem rather than a problem to be addressed by police. Finding ways to challenge this heterosexual hegemony with which individuals, especially LGBT people, are compelled to comply to avoid targeted violence needs to be a priority in public policy. Appropriate and successful state intervention in this area is more likely to be achieved through the education system or through awareness campaigns and other similar measures that can have an impact on people's beliefs and values, in other words, measures that can result in cultural change.

The problems identified by the communities suggest that solutions to targeted violence as it is experienced by these communities require that the state not limit its focus to law enforcement. In fact, the crux of the problem as identified by the communities has little to do with policing, law enforcement, criminal justice and so on. This view does not dismiss the police from their responsibilities to respond to violence targeted at LGBT individuals. Appropriate police response remains an essential element for allowing LGBT individuals to access their citizenship rights. Safety is a prerequisite to accessing substantive citizenship which explains in part the emphasis on policing and law enforcement, two of the ways serious breaches to one's safety can be addressed. Yet, since the type of violence with which we are dealing is systemic, an adequate response requires a much broader approach to this problem.

Safety is a nebulous concept, difficult to measure and assess; despite that, a number of indicators of safety have already been mentioned. Reported crimes in both surveys and police data is one such indicator. Diminishing numbers of reported crimes can be an indicator of safety, although statistics should not be taken at face-value. The possibility that LGBT people may be less inclined to come forward and report crimes must be ruled out before we can conclude that diminished rates of reported incidents are indicative of a safer environment. In this respect, identifying whether LGBT individuals are reporting incidents and therefore accessing police services in so doing can be an indicator. The Wellness Project (2001b) reported that individuals in Ottawa were more likely to report crimes to the police which suggests that access to police in Ottawa is better than elsewhere. Safety can also be measured through indicators found in surveys. Although the Wellness Project directly asked people whether or not they felt safe, I would argue that a better indicator are the studies that did not ask about safety, but offered data on reported rates of changes in behaviour or dress to avoid being identified as LGBT. If individuals feel safe, they will not be compelled to go out of their way to change their behaviour or dress.

When discussing issues of safety and violence, it is important to account how differently situated individuals experience and define safety and violence. Solutions and strategies to ensure the safety of all LGBT people must not be formulated to cater only to the white, male majority, but rather give consideration to characteristics and location in society of the diverse segments of the LGBT communities. I have given insights into the particular experiences of LGBT youth and transgendered individuals shapes their exposure to violence, as well as how gender affects the experience of violence. Strategies to cope with violence need to account for these differences and should also account for how race, religion, ability and other similar factors come into play. The media and literature usually limit their account of anti-LGBT violence to an analysis of gay-bashing. This is in part because severe gay-bashings tend to draw attention; but it is

also because what is taken as the experience of the community is usually what is experienced by (white) gay men, who are a more powerful sub-group within the LGBT communities. For example, a brief presented to the Quebec human rights commission detailed how policing practices had been revised to address violence targeted at gay men. Although the Montreal police understood this as addressing the concerns of the lesbian and gay community, the violence that they focused on was gay-bashing in a specific area of town (the gay village). Lesbians and transgendered people were in no way beneficiaries of these added protections, nor were gay men when not in the specific area covered by police (Namaste 2000, 149-154). Lesbians and transgendered people were excluded in part because they are not found in that area, but even more importantly because the type of violence being addressed is not necessarily the kind to which they are subjected.

The citizenship of LGBT people will continue to be compromised until we examine the problem of violence as experienced by all LGBT people and not only gay men, and until LGBT people find ways to hold the state accountable for their protection. I have argued that accessing police services is a necessary step for enabling the other rights of citizenship, but it may be particularly daunting for LGBT individuals whose past experiences with police are marked by instances of police harassment and brutality. Although eliminating heterosexism and homophobia are long-term objectives of those who fight for social justice, the immediate concern, for the purpose of this study, is much more modest. It has to do with guaranteeing minimum levels of security for LGBT people to enable the citizenship of LGBT individuals. This explains a focus on police services and the criminal justice system in their role of protecting all citizens. This does not deny the fact that the accounts of violence experienced by LGBT individuals pushes us towards an awareness that public policies that aim to address the problem of violence targeted at LGBT people as it is experienced by them require that the state diversifies its interventions (and not limit them to a focus on law enforcement) and that the

communities demand much more than police intervention to address more generally issues of heterosexism and homophobia.

A LGBT Community View of the Criminal Justice System

The criminal justice system comprises the police services and law enforcement agencies that apply Canadian laws as well as the Crown Attorneys, lawyers and judges that oversee to court proceedings. Relations with the police and the entire criminal justice system have been difficult for the lesbian, gay, bisexual and transgendered communities. Although these systems are intimidating for most individuals, according to accounts from my interviews, the LGBT communities seem to experience extra obstacles that are likely to prevent them from accessing these services or being treated appropriately when they do. The history of difficult police-LGBT relations in most communities in Canada, the United States and elsewhere is well documented. Moreover, issues of outing render access to the courts somewhat difficult if not impossible for some LGBT individuals. This section will first examine the policing arm of the system and then look at the court process, highlighting the LGBT communities' relations with both.

Relations with the Police

Relations with the police have always been a concern for LGBT communities in Canada. Despite the fact that the ban on homosexual activities was removed from the *Criminal Code* in 1969 (consensual sexual activities between men in private were no longer illegal), LGBT communities have often continued to be subject to police harassment and repression. Although the *Criminal Code* provision was aimed at gay men, it is the view of LGBT people that it was used by police and society in general to condemn, exclude

and ostracize LGBT communities. The ban on homosexual activities has been used as a justification to treat gay men and those whose sexual identity is not heterosexual as abnormal or different, and therefore not citizens with the same rights as the (white, heterosexual) majority in society.

Reports of police abuse or harassment show it was more prevalent prior to 1969 when homosexual activities between men were illegal. For example, Luther Allen documents how Montreal municipal authorities and the Montreal police orchestrated morality campaigns to get rid of gay men in public places (Mount Royal and bars), particularly in the 1950s although he also discusses earlier attempts in the 1930s and 1940s (1998, 91-93). These practices continued in the post-1969 era; more recent harassment and repression by police are well documented in various cities in Canada. Each of the surveys on anti-LGBT violence in Canada examined in the previous section revealed that some LGBT individuals experience police harassment and brutality. Respondents in the Nova Scotia study, for example, indicated that 16.5% had been harassed and 2% assaulted by police. In New Brunswick, 2% of respondents said that they had been assaulted and 23% harassed (C. Smith 1993, 20-21). In the Toronto study, 20.6% of respondents reported having been harassed by police (Faulkner 1997, 40), while in Vancouver, 18% of respondents reported having experienced harassment by police, a third of these respondents more than once (Samis 1995, 80).²⁵ Considering these numbers, I want to stress that the examples that are described in the following paragraphs attest to a recurring problem. These should not be viewed as merely anecdotal evidence. I have included these descriptions to inform readers of what police brutality and harassment consists.

The LGBT communities' perceptions of police are informed by a history of institutional oppression at the hands of the police. As McGill University's Post Graduate

²⁵A recent survey by Léger Marketing reported that 6% of Canadians have experienced police brutality. This number is lower than what is reported in studies that focus on LGBT respondents (Léger Marketing 14 January 2002).

Students Society's Ad hoc Committee on Violence and Discrimination Against Lesbians and Gays explained before the *Commission des droits de la personne du Québec*:

A common problem among oppressed social groups in general is particularly sharp for gays, lesbians, bisexuals and transgendered individuals: how can they turn to local police forces for security when these have historically been among their most ardent harassers (cited in Québec, *Commission* 1994, 58)?

Events that have taken place in various cities across Canada and elsewhere shape LGBT people's negative perceptions of the police. In Ottawa, from the late 1970s to the early 1990s, when LGBT people mobilized and started working with the police, LGBT communities knew that the mugging and harassment of gay men in Ottawa's Major's Hill Park continued unabated by police while gay men were arrested in that same park for victimless crimes (e.g. sexual activities in public places) (*GO Info*, June 1975; Pepper and Holland 1994a). A number of individuals remember the tragic outcome after clients from a male prostitution service in Ottawa were arrested in 1975. Media coverage of the event, based on police information, in which the names of the individuals charged were reported, led eight individuals to require psychiatric care following a deluge of hate mail and phone calls received when their names were published, nine to lose their job or be transferred and one man to commit suicide (*GO Info*, June 1975; Warner 2002, 104). In another case, more than a decade later, an individual was charged for knowingly giving HIV-tainted blood to the Red Cross. The Ottawa Police distributed a photograph of the man following his release from police custody. His picture appeared on local and national television. He subsequently received death threats, was harassed and his landlord attempted to evict him from his apartment (*GO Info*, June 1988). These examples illustrate the ability of inappropriate police action to have a serious and profound impact on the lives of LGBT individuals (or men engaging in sexual activities with other men).

The *Commission des droits de la personne* substantiated the problem of police harassment and brutality qualitatively through evidence gathered during the public hearings. The *Commission* identified two recurring problems in the relations between police and LGBT communities: excessive use of force and derogatory language; and harassment. For example, in the police intervention at the Sex Garage in Montreal (a private party) in 1990, some of the party-goers were beaten and verbal insults were made by police officers. This continued the afternoon following the Sex Garage raid when 200 participants showed up for a peaceful demonstration at Station 25 to oppose police brutality targeted at LGBT individuals. These individuals were met with as much violence as the previous night. According to a testimony in the report from the *Comité sur la violence de la Table de concertation des lesbiennes et gais du Grand Montréal*, it took twenty minutes for the police to beat 200 gays and lesbians and arrest 48 people. The brutality was such that one man had a ruptured testicle from being beaten by a police officer with a nightstick in the groin (cited in Québec, *Commission* 1994, 60). The *Commission* received testimony of harassment in the form of repeated police intervention in Montreal's gay village (saunas and bars) and in parks that are frequented by gay men, including the practice of handing out tickets (\$100 fine) to men found in the parks after midnight (referred to by the Montreal police as "Opération Saute-Mouton"²⁶) (Québec, *Commission* 1994, 61-64).

A number of incidents were also mentioned in the surveys reviewed earlier. Police are at times the perpetrators of anti-LGBT violence, insults and so on. As one gay man in the Toronto study recalled: "The arresting officer knew I was gay and said "You're a flamer, aren't you? Should I be wearing rubber gloves or something?" (quoted in Faulkner 1997, 25). Similarly, the Vancouver study reported an incident of verbal harassment. One man said: "After reporting an attempted bashing, one of the police officers said: 'well, what do you expect wearing that scarf'" (a 31 year old male quoted

²⁶Refers to leapfrog, the kids game in which one player bends down and another leaps over him.

in Samis 1995, 90). A more serious incident in which the police victimized two lesbians was recounted by a 34 year-old female also in the Vancouver study. She explained: "The police attacked me and my lover at a bus stop on Commercial Drive. We had guns pointed at our heads, had to lay on the pavement, and be handcuffed. We were not under arrest, but all our rights were violated. We never got an apology and we were traumatized" (quoted in Samis 1995, 90).

Most gay men and other community members remember that the late 1970s and early 1980s were plagued with numerous raids on bath houses across the country, including the infamous bath raids that took place in Toronto in 1981 during which 286 men were arrested (McCaskell 1988; G. Smith 1990; Krawczyk 1991; Bérubé 1996; Warner 2002) and the clean-up operation in Montreal that preceded the 1976 Olympic games. The examples mentioned illustrate a history of police brutality and harassment. As much as we would like to consider these as history, bath raids and police harassment are not necessarily a thing of the past, as recent events sadly remind us.

In December 2002, the Calgary police (wearing rubber gloves) raided the Goliath sauna.²⁷ The police went in looking for explicit sexual activity following a complaint. They charged two employees with keeping a bawdy house and 13 patrons with being found in a common bawdy house without a lawful excuse (*Globe and Mail*, 18 December 2002, A9 and *Capital Xtra!*, 17 January 2003, 9). Also in recent times, the fourth Pussy Palace event was held at Club Toronto (which usually operates as a men's bathhouse). The event was intended to provide a space for women to enjoy the same sexual privileges as gay men. Ironically, these women endured the same harassment by police that is usually aimed at gay men. The police arrived at 12:45am while the party was in full swing (*Sirens*, Oct/Nov. 2000). Five male Toronto police officers spent more than an

²⁷The Goliath Sauna has been in business for more than three decades and had never been raided before. The Calgary gay community was reported as saying that "the episode raises painful memories of times when police habitually raided during homosexual haunts" (*Globe and Mail*, 18 December 2002: A9; also see *Capital Xtra!*, 17 January 2003:9).

hour going through the five-story building where women were in various states of undress. They claimed to be responding to a complaint that illegal activities were going on. The judge ruling on the minor liquor offences that were laid criticized the Toronto police's action which violated the rights of the women attending the event (365Gay.com, 1 February 2002).²⁸ This was yet another example of police officers using liquor-permit inspections as an excuse to harass patrons at a gay event. Prior to the raid of the Pussy Palace event, in 1999, two separate raids were conducted by the Toronto Police at the Bijou (a gay bar). The officers that did the raids were on regular liquor inspections when they charged the 12 men for committing indecent acts (*Capital Xtra!*, 25 June 1999).

There are several other cases in which LGBT individuals were charged and, following these raids and arrests, were caught up in costly and time-consuming criminal proceedings. In a number of cases, the police would later drop the initial charges often as a result of a lack of evidence. The LGBT individuals that did end up in court were usually being penalized for police harassment rather than for breaking the law. It has been common for police officers to use liquor licensing laws to enter these establishments and then lay charges of indecency, bawdy house, disorderly conduct, etc. (Warner 2002, 294). That areas known to be frequented by LGBT people are more often the target of these types of control has much to do with the fact that the police are as much agents of social control as legal control. Indeed, many police officers see gay sex as repugnant or undesirable, and so they uphold the norm by targeting those who deviate from it (see Kinsman 1996; A.M. Smith 1994).²⁹

These events are engraved in the collective memory of the LGBT communities. They support the negative perceptions of the police held by LGBT individuals and prevent a large number of individuals from turning to the police when victim of a crime.

²⁸A year later, when the fifth Pussy Palace was to be held, the organizers decided to forgo serving alcohol. This was a concession made to ensure the safety of the women who attended, and avoid the visit from police officers who target gay events that have special events permits (*Xtra!* 3 May 2001).

²⁹As we will see in chapter 5, Lieutenant Martel spoke of how police culture is a macho culture (Interview, 28 February 2002). This supposes a tendency to reinforce or uphold the heterosexual norm.

Even when police forces change the way that they do things, and that repression at the hand of police is no longer a regular occurrence in a given city, the narratives from these earlier periods and from other places where police forces may not be as progressive still dominate and inform the LGBT communities perception of the police (Interview Mickey Cirak, 29 May 2002; Interview David Pepper, 26 April 2002; Quebec, *Commission* 1994, 64).

Police services are the arm of the state that can and should protect citizens from violence targeted at them or their property, either by responding to incidents, intervening when incidents are underway, or engaging in preventive work. Police services can play an important role in ensuring the security of LGBT people, as they do towards any other vulnerable group in society. As I discussed above, however, because police services for a long time repressed, harassed, intimidated and arbitrarily enforced liquor licenses and indecency laws in ways perceived to be discriminatory (and occasionally still do), LGBT communities who have had to bear the brunt of these measure, do not easily trust the police. For LGBT communities, the police represent both a service that should oversee the safety of their communities, and also an agency involved in acts of discrimination, harassment and violence targeting LGBT individuals. This paradoxical relationship is a source of tension within LGBT communities. As the report by the *Commission des droits de la personnes* noted: “Il est incontestable que la police, en tant qu’institution, est perçue comme une source de conflit et suscite beaucoup de méfiance au sein des communautés gaies et lesbiennes” (Québec, *Commission* 1994, 59).³⁰ It is a serious problem because it prevents or makes it difficult for the LGBT communities to access police services, thereby compromising the safety of LGBT individuals.

³⁰Translates as: It is absolutely clear that the police as an institution is perceived as a source of conflict which gives rise to distrust by the LGBT communities.

The isolation of the LGBT communities from police services gets in the way of LGBT communities' being safe. The safety of LGBT individuals is compromised by the lack of communication between LGBT communities and police services. For example, Stephen Lock, a gay activist in Calgary and co-founder of the Liaison Committee in that city, explained with respect to the raid on the Goliath sauna (December 2002) the Vice Squad who oversaw this operation had no knowledge of the context of the steam baths and gay culture. The Calgary police assumed that the LGBT community would not react. When the Vice Squad raids a Black crack house, the Black community does not complain. They assumed the same would be true of the raid on the Sauna (Telephone interview, 16 January 2003). This showed a misunderstanding on the part of police of the history of LGBT-police relations. For the people involved in the Calgary Liaison Committee, this recent incident undermined the work they have accomplished and strained the relations between the LGBT communities and the police. The barriers leading to the isolation of LGBT communities are two-sided. On the one hand, the LGBT communities are unwilling to come forward to the police to report crimes. As already discussed, LGBT communities do not trust the police and fear victimization and unfair treatment in the hands of police. On the other hand, the police also create barriers that prevent LGBT individuals from accessing their services. There is systemic hatred of lesbians, gays, bisexuals and transgendered individuals in society to which the police are not immune. Over the years, the police have been involved in a number of situations in which LGBT individuals were subject to homophobic actions or what were or seemed to be discriminatory practices.

Bearing credence to this perception that the police are not open to LGBT people, there appears to be few if any out police officers. According to a number of individuals I interviewed, it would be easier for the LGBT communities to trust the police if some police officers were openly gay. They claimed that knowing that there are openly-gay officers is a signal that the police respects LGBT individuals and that LGBT individuals

can turn to the police when they are a victim of a crime (GO Info, December 1991/January 1992: 9; Interview Nicky Casseres, 31 May 2002; Interview Cynthia Cousens, 2 March 2002; Interview Judy Nosworthy, 31 May 2002). When there are no out officers, LGBT communities perceive this as suggesting that LGBT individuals are not welcome on the force and that likely they should be fearful of the treatment they will receive at the hands of police officers. As one community activist explained with respect to all service providers including the police: “We [the LGBT communities] anticipate hostility, rejection and poor treatment unless institutions visibly demonstrate inclusiveness” (Holland 1995).

Over time, LGBT communities have gone from being over-policed to being under-policed. From a community stand point, there is a sense that the police are over-doing their jobs when it comes to enforcing liquor licenses and having the morality squad rake the parks —more common in earlier times (i.e. pre-1969 and pre-*Charter*) than currently although these practices still happen from time to time. Over-policing are situations in which the police appear to target LGBT institutions and meeting areas to enforce laws more rigorously than they would in institutions or areas not-known to be LGBT-identified. At the same time, the police are perceived as not doing their job when it comes to taking seriously individuals that have been assaulted and when they fail to recognize assaults targeting the LGBT communities as hate crimes —more common since the 1980s and still ongoing (Interview Howard Shulman, 29 May 2002 and LC, *Minutes*, 17 February 1997).³¹ The examples of the series of murders in Montreal in the early 1990s, in Ottawa in the summer of 1989 and Vancouver in 1995 and 1996 come to mind. The police initially denied in each of these that there were a series of homophobic crimes or heightened violence targeting LGBT individuals.

³¹Although Shulman speaks mostly of the Toronto situation, the same phenomena of being over-policed/under-policed is recognized in Ottawa by David Pepper in the interview of 22 March 2002.

The police are an essential component of any communities safety. Although large segments of the LGBT communities distrust the police, building a relationship that will promote a better understanding between these two groups appears to be an unavoidable component for creating safer social environments for these communities. As we will see in the next chapter, the LGBT communities in Ottawa have come a long way in terms of working with the police, overcoming years of distrust between the two groups. Cooperative work such as that achieved through the *Ottawa Police Liaison Committee with the Gay, Lesbian, Bisexual and Transgender Communities* is unique. In most cities, even those with liaison committees between the police and LGBT communities, relations are at best fragile and tensions still exist. The need for positive community-police interaction to overcome the historical negative interaction was identified at the initial stage of the Ottawa Liaison Committee³² and this was key to its success.

Safety for LGBT individuals is not possible if these communities will and cannot access police services. If these communities do not turn to the police when they are victims of a crime, this sends a message to perpetrators that LGBT individuals are easy targets and that they will not be punished for their actions. If community members who turn to the police are unfairly treated, victimized and made to feel they are to blame for their actions, however, their safety is also compromised. The suggestion has often been made that the LGBT communities need to be made aware of their rights and the procedures in place to complain about police officers when they are unfairly treated.³³ It should be stressed here that this is not a solution to the problem of officers overstepping the boundaries. We should not expect individuals, especially from marginalized groups in society, to have to file individual complaints against police officers that are part of the law enforcement arm of the state. The power differences are such that this requires an

³²This was mentioned by Gail Johnson in the Ottawa Police Strategic plan focus group for lesbians and gays, 16 November 1994. See the *Minutes* (LC).

³³Such a recommendation was made in the report from the Québec, *Commission des droits de la personne* (1994, 81). The process was also discussed at an Ottawa Liaison Committee meeting (LC, *Minutes* 17 February 1997).

individual to have a tremendous amount of courage and determination to go through such a process.

When communities and the police develop a working relationship (e.g. liaison committees), the police are much more amenable to work on problems that matter to the communities. Despite the fact that large segments of the LGBT communities distrust the police and do not want to get involved in liaison committees or anything that has to do with the police, at the same time, we do hear from various individuals that they want the police to take their complaints seriously and to intervene when they are threatened, targeted or victimized. If the police do not develop a better understanding of marginalized communities, including the LGBT communities, they will not be able to ensure their safety. This is not about preferential treatment of a segment of the population. It is about better understanding. It is about treating marginalized groups in a fair and equitable manner rather than harassing and persecuting them. It is about making sure that LGBT individuals will feel safe to turn to the police when they are victims of a crime. It is about police responding to crimes targeted at LGBT individuals when they are reported and working with the communities to prevent future crimes. It is about working together against homophobia, heterosexism and any form of prejudice toward LGBT individuals within the police force and in society that prevents LGBT individuals from being safe.

In the next chapter, I discuss whether it is possible for police to work within a framework that is defined by the community and how a partnership between the community and the police can change things. For now, it can only be said that the history of oppression and abuse of the LGBT communities at the hands of the police informs police-LGBT community relations. It is difficult to change the perception of the police by LGBT communities because of past actions which have deeply scarred them. The relations between these two groups can only be understood within a framework that accounts for this history of oppression and harassment. Regardless, police are necessary

allies in ensuring the safety of all segments of society, including LGBT communities. It is therefore important to look at the possibilities of working with the police to create safer social environments for these communities. Without improvements in police-LGBT relations, LGBT individuals will continue to refrain from accessing policing services that are necessary to ensure their safety. In other words, their access to substantive citizenship will remain compromised.

The Court System and LGBT Individuals

When a crime has been committed, the step after reporting to police is going through the court system. The judicial system is inhospitable for everyone, but even more so for marginalized groups (Burtch 2000). When I asked Riad Tallim, a Crown Attorney in Ottawa, if there were barriers for various groups in accessing the criminal justice system, he replied that the whole process is intimidating to most people. According to Tallim, from the beginning of the process the accused or the person under investigation is not required to give a statement. In contrast, the victim or complainant is required to give information to the police. From that point on, the credibility of the complainant is being assessed and usually a powerless or marginalized individual is less likely to be taken seriously or to be perceived as saying the truth. This is the first barrier (Interview Riad Tallim, 24 April 2002). “The second barrier is simply that it is a process that people simply do not understand”. When people make a complaint, it does not go to trial immediately. It may take six months or so before there is an actual trial. “And six months down the road, most people want to get on with their lives [...]. That is an inherent barrier. It is frustrating.” Finally, when the trial takes place, “the veracity and the credibility of the complaint is always an issue”, again making it difficult on the complainant. In sum, the process is not accommodating of the complainant and can be very intimidating (Interview Riad Tallim, 24 April 2002).

Although according to this Crown Attorney the system is intimidating to everyone, Jan Hobbs from Gender Mosaic (a transgender community organization in Ottawa) claims this is even more the case for groups who are marginalized in society such as LGBT individuals. She raised issues similar to the ones mentioned by Mr. Tallim. She discussed how difficult the process is for victims, but added how particularly difficult, if not inaccessible, it is for LGBT individuals. The fear of homophobia within the criminal justice system and the fear of being outed lead countless LGBT individuals to choose not to report crimes committed against them. With respect to homophobia in the judicial system, Jan Hobbs mentioned that the credibility of the victims is often undermined because of the victim's sexual identity. As they go through the system, "there is a continuous: 'you did this, you allowed this, you are responsible'... as it is similarly experienced by rape victims" (Interview Jan Hobbs, 9 April 2002). Moreover, outing is a concern. She explained that "[t]he court system is open. When you show up [at the Court], you have the names of the people involved and the charge [posted]" (Interview Jan Hobbs, 9 April 2002). According to these accounts, fearing that their sexual identity will become public knowledge, LGBT people choose not to report crimes. If these accounts are correct, the fear of being outed then contributes to the cycle of violence by letting perpetrators off the hook and keeping the police and entire judicial system uninformed of these incidents. The cost of being outed often outweighs the benefits of going to court and is a risk that several individuals are unable to take.

David Hoe, a community member in Ottawa, highlighted a number of other issues with which the LGBT communities are confronted when accessing the judicial system: "[the first issue that LGBT people face] is the institutionalized lack of protection. The second is the interpretation of the law through individuals who are homophobic. And a third is our own, lesbians and gays, our own historical interpretation of self-protection that I don't think we automatically assume we will get a good reception" (Interview, 11 April 2002). The institutionalized lack of protection of the rights of LGBT individuals in

the law makes reference to the fact that homosexual activities between men were illegal until 1969, that hate propaganda laws did not include sexual orientation until 2004, that sexual orientation was not protected in federal human rights legislation until 1996 and has only recently been read into the equality section of the *Charter* (Egan case in 1995). Although the focus of this section is more specifically on the courts, it is important to note that the institutionalized lack of protection also refers more generally to police oppression and brutality towards LGBT individuals that prevents LGBT people from accessing the criminal justice system when they are victims of a crime. Together, the lack of protection both in the law and by police works to undermine the citizenship of individuals by denying them the protection needed to have their rights upheld and to be safe enough to enable LGBT people to participate in society as members of the political community. Progress on this front requires that laws be changed, and that the courts uphold these laws. It also requires that police as an institution change how they do things, becoming more accessible to LGBT people and that LGBT people be willing to access police services. As we will see in the next chapter, liaison committees are useful for bridging the gap between the police and community. Changes in the law, although necessary, are not sufficient to open the police to the LGBT communities and vice versa. They do however give LGBT people a tool with which to hold the criminal justice system (courts and police) accountable for upholding their rights and protecting them from abuse, violence and damage to their person and property.

With respect to the interpretation of the law, once an individual victim has made a complaint, the law will likely be interpreted by individuals who know little if anything about the realities of LGBT lives and will interpret the laws in ways that reinforce the heterosexual norm. For example, custody battles have been lost by women when their sexual identity was revealed to the courts. Mothers who are lesbian are often perceived

as unfit and therefore lose the custody of their kids.³⁴ Some of the problems encountered in these custody battles include the difficulty that LGBT couples have to prove the longevity of their relationship. There are typically no official documents to prove a relationship and often LGBT couples are not open about their relationship in order to protect themselves and their kids from harassment and homophobia. Moreover, custody cases can always be reopened. This means that even if the issue of sexual identity was avoided the first time or was not used against the parent, it may be used in the future as a weapon to remove custody. All this goes to show that the law, in appearance neutral, may in fact be interpreted in ways that favor and uphold the heterosexual norm.

Having discussed issues of outing as well as the consequences, in some cases, for actually going through the process, it is not surprising that a lot of cases in which LGBT individuals are victims of crimes go unreported. It is also not surprising that LGBT people can often be heard suggesting that publication bans should be imposed to protect victims and names and cases not be made public. As Crown Attorney Mark Moors explained, it is difficult to avoid outing concerns because judges, and those who work in the criminal justice system, do not want the courts to operate behind closed doors. The public, and by extension the press, act as watchdogs to make sure that what goes on in the courts is fair and complies to the principles outlined in Canadian law (Interview, 8 April 2002). This is a position that was shared by Crown Attorney Hillary McCormick who sits on the *Criminal Justice Round Table Against Violence Against Women* (in Ottawa) and is well aware of concerns around outing through that involvement. As she explained: "Within the statutory framework, there is the presumption that courts are open to the public and the press to ensure a just system" (LC, *Minutes*, 23 January 2002).

³⁴See Catherine Arnup's presentation a guest speaker at the Liaison Committee's Annual General Meeting that focused on issues of outing and accessing the court system. She documents several of the obstacles faced by lesbian mother in custody battles (LC, *Minutes*, 29 April 2002). Also refer to the January meeting of that year when Crown Attorney Hillary McCormick made a presentation on the topic of outing (LC, *Minutes*, 23 January 2002).

Ultimately, when community members speak of closing off the courts to protect the identity of LGBT individuals during court proceedings, the desired outcome from such measures is to have access to a system that will provide justice without the atrocious consequences that outing may inflict upon some individuals. Unfortunately, it is unlikely that this will be achieved by closing off the system in ways that would allow for the protection of the identity of LGBT individuals. To do so would be to jeopardize the entire justice system. Despite the fact that the system has not always been fair to LGBT individuals, to close off the justice system would be to prevent the transparency needed to ensure that the system is fair and equitable. This probably explains why the *Criminal Justice Roundtable* (Ottawa initiative) has worked on measures such as educating judges, Crown Attorneys, and those who work in the criminal justice system about the concerns of outing. To close off the system can only be understood as a temporary measure to achieve the desired end: having a criminal justice system that treats LGBT individuals fairly and equitably. Again keeping in mind long-term objectives of social justice, it is much more desirable to work on measures that make those involved aware of LGBT realities and to further extend the mainstreaming of LGBT individuals in all aspects of society, including and starting with the courts, rather than to try to hide sexual identity by closing off the court system. To close off the court system can only further stigmatize these communities by sending the message that sexual identity is something of which they should feel ashamed and by holding up the idea that sexual identity is a weapon people can use to black mail or destroy the lives of LGBT individuals.

It is important to remember that most of the gains that have been achieved by LGBT individuals with respect to being recognized and having their rights upheld have been achieved through the courts. Changes in laws are not often initiated by politicians. Rather, changes in the law tend to follow rulings by the courts. This was the case, for example, of the recognition of equal marriages, family law reforms to recognize same-sex couples, the interpretation of s. 15 of the *Charter* to include sexual orientation and the

inclusion of sexual orientation in human rights legislation at both the provincial and federal levels. As one community member put it: “The days of legal oppression are over. [...] We now live in the post-legal oppression years” (Interview Bruce Bursey, 14 March 2002). He added that it was judges who made the rights of lesbians and gays the same as non-gay individuals.³⁵ This is why it is important to keep the court system open and to have judgments that send a message that LGBT individuals are entitled to the same protection under the law as any other citizen. Because this requires a cultural shift—one in which individuals in the criminal justice system have become sensitive to the realities of LGBT individuals and aware of heterosexist biases in the interpretation of the law or operation of the system—it will take some time before the criminal justice can be considered to work fairly for these communities. Nevertheless, the changes achieved in the last two decades in terms of rights are encouraging. They indicate openness to treating fairly LGBT individuals or as citizens in the substantive sense of the term, rather than second-class citizens.

Public Policy and Safety Understood From Below

Public policy tends to be a foreign or distant concept for most individuals. Generally, people will not stop to think about how certain public policies affect them. Public policy—defined here as “a course of action or inaction chosen by public authorities to address a given problem” (Dyck 2000, 636) and which I take to include changes to the *Criminal Code* such as the one central to this study (i.e. hate crime sentencing provision)—is perceived as a far removed concept that does not have a direct impact on

³⁵I have already discussed that the situation is lagging behind when it comes to the rights of transgendered individuals. For example, they have no protection when they lose their job or apartment as a result of discrimination. Sexual orientation is recognized, but not gender identity, leaving transgendered individuals in a vulnerable position.

our daily lives. Even for policy-makers, it is sometimes difficult to identify what are the direct outcomes from certain policies. When policy-makers want to assess the effectiveness of certain measures, they must rely on success indicators that may not be obvious to the untrained eye. It is therefore not surprising that community members may not always consider the effect of public policy or its potential in achieving certain ends.

Nevertheless, throughout my research, I did look for indications of how the LGBT communities perceived the role of public policy. I asked the community members I interviewed if they saw public policies as providing ways to ensure their safety. For example, with respect to hate crimes, have the changes in the *Criminal Code* (s. 718.2) helped in anyway? The answers I obtained were varied and in no way constitute a unified position. They do, however, provide several insights into how public policy is perceived by LGBT individuals and how public policy can be rethought to better meet the needs of these communities (assuming this is the intended end) and open access to the rights and privileges associated with citizenship.

Public policies are attributed various functions or roles by those I interviewed. For some, public policies (including rights as they are defined in law) send a strong message to all of society as to what the rights, rules and values are in Canadian society. Sandy Beeman, a past Chair of the Ottawa Liaison Committee, said that policies are extremely important because they indicate to those who are not LGBT that lesbians, gays, bisexuals and transgendered people have rights and should be included in the citizenry. LGBT individuals are entitled to the same respect non-LGBT individuals expect for themselves (Telephone interview, 11 March 2002). In the words of John Fisher (EGALE): “[i]n the age of the *Charter*, there has been an evolving consciousness of the rights of minorities and how those relate to the values that are important to us as Canadians” (Interview 23 April 2002).

David Hoe also discussed how policy outlines the collective values of society or, in other words, suggests how certain events or phenomena should be understood. As he explained:

The role of policy is to provide the pathway for the interpretation of people on legislation. [...] Public policy, as an adjunct to the legal system, provides the environment in which change can take place. The absence of policy [...] means that individuals have to do their own interpretations. And the first place that all people go is their own value system. Public policy provides an alternative collective value once the policy process is complete (my emphasis, Interview, 11 April 2002).

Public policies indicate to us how to think about our society and how to live with each other. According to Hoe, it is interesting to note that in the realm of public policy, LGBT individuals have been associated with illegality (sodomy laws), mental illness, and are now included in discussions on human rights and equality. He claimed that this shift is accompanied by a similar shift in the social structures of our society (Interview David Hoe, 11 April 2002). Although gay men, and more generally LGBT individuals, were for several decades considered outlaws, in the current context there is a willingness to recognize the rights of LGBT individuals. Hoe is likely referring to a greater openness to same-sex couples who are being recognized in the law and by social service providers (including the police responding to calls of domestic violence); to immigration officers processing requests to accept LGBT immigrants who are in danger in their country of origin because of their sexual identity; or sexual orientation being recognized in human rights legislation and read into the *Charter*. These changes in policy and the law contribute to changing our definition of family, rights and benefits and who is entitled to these privileges and rights. It also changes the meaning of citizenship in ways that are more inclusive of LGBT individuals.

With respect to safety, one member of the Ottawa Liaison Committee said that “laws help in decreasing the likeliness of violence because they normalize LGBT”. As

he explained, a lot of homophobic attitudes and actions can be attributed to misinformation or ignorance. When people are confronted with difference, one of the ways they react is to be rude or violent. When LGBT are included in policies or when more becomes known about LGBT communities or same-sex couples, this will have a positive effect on how people perceive LGBT individuals (Interview Matt Lundie, 26 February 2002). Laws and public policies of themselves cannot prevent harassment and hatred. Jan Hobbs, a community activist, argued that the decriminalization of sexual activities between men has in many respects delegitimized and diminished the oppression and harassment by police of gay-identified bars and areas (Interview 8 April 2002), a positive outcome for LGBT people.

Public policies, such as the hate crime legislation (sentencing enhancement provision), according to a number of community activists I interviewed, have an impact in terms of the willingness of LGBT people to access police services. As Joanne Law, a transgendered activist, explained: "If we have a policy, at least it can be policed. Whether it will help or not is not evident, but at least you have something to work with" (Interview 27 February 2002). In other words, when hate crimes are defined in the *Criminal Code*, a message is sent to society confirming that hate crimes are serious problems that must be addressed. It works either to encourage victims to turn to the police following a hate crime or by legitimating community demands to have police address hate crimes as seriously as other crimes.

Beyond accessing policing services, public policies also have an effect on policing practices. Diane Holmes, a past city councillor and member of the Police Services Board in Ottawa, mentioned that one of the outcomes of the hate crime legislation (sentencing enhancement provision) was that it legitimized the work of the Hate Crime Section (Ottawa Police). Rather than having to justify such a section, the reference in the *Criminal Code* to hate crimes meant that the Hate Crime Section was

responding to a problem identified in the Canadian law (Interview 10 April 2002)³⁶. As a result, rather than having to continue to justify the existence of such a unit within the police service, the focus came to be on the amount of resources that would be allotted to it. Having a *Criminal Code* provision that specifically identifies hate crimes as a distinct problem justifies having a specialized unit. Similarly, John Fisher explained that one of the reasons EGALE endorsed the changes outlined in Bill C-41 (sentencing enhancement measures for hate crimes) was because his organization felt that such legislation would enhance the ability of police services include this issue in their training and also would encourage them to do education work around hate crimes and prevention of hate crimes. This would prove beneficial to the communities targeted by such activities (Interview John Fisher, 23 April 2002).

In sum, if we consider the hate crime legislation, for some police services the policy helped justify the existence of their hate crime unit or endorsed the work that was already being done in that area, while for other police services the policy prompted them to either assign an officer or set up a unit and make sure that training on the issue was done. It may have forced some policing services to adjust their ways of doing things to be in a position to enforce the *Criminal Code*. The policy has also confirmed the existence of this particular type of violence. From a community perspective, LGBT people can demand that police intervene or step up patrols in areas known for these types of crimes. It also means that police services should be more amenable to understanding the seriousness of such crimes and the need to intervene and protect groups that are vulnerable to such crimes.

While some community members perceived public policies as tools to encourage changes in social structures, others view public policies simply as a reflection of changes

³⁶This was also echoed in discussions I had with David Nurse who headed the Hate Crime Section (1998-2000) (Interview 15 February 2002), with Howard Shulman who heads the Anti-Violence Project at the 519 Church Street Community Centre in Toronto (Interview 29 May 2002), and with John Fisher of EGALE (Interview 23 April 2002).

in Canadian values. For these individuals, public policy is not perceived as useful in terms of forcing changes in society or pushing for desired outcome (such as the better treatment of LGBT individuals). As one community member explained, “the *Criminal Code* happens after changes have been done in society anyway. [...] The fact that [we] are seeing changes in legislation now is a reflection that we (LGBT communities) are [more] mainstream” (Interview Tom Barnes, 20 March 2002).

For others, public policies can play a role. Without education, however, the view is that policies are unlikely to have much effect. Although policies can send a clear message about our collective or shared values, one community member warned, “policies do not change a thing until what is in the policy enters our consciousness. Good policy is not enough to bring about changes” (Interview Evelyn Huer, 27 February 2002). Adrienne Sefton of People Against Discrimination (a community organization in Ottawa) expressed a similar concern. She said that policies are necessary, but that more education is needed for them to be effective. As she explained, “it is all fine and dandy to make policy, but if nobody knows how it is going to work and what it really is, it will be just another law in a very thick *Criminal Code*. In order for [policies] to be effectual, implementation mechanisms need to be in place to make people aware of how to use them, where to use them and what to use them for.” Moreover, she added that as long as you have discrimination within the criminal justice system, “all the anti-hate legislation in the world will not change the reality [of violence targeted at LGBT individuals]” (Interview Adrienne Sefton, 2 March 2002).

Most of us do not regularly consider how certain policies affect our daily activities. Regardless, public policies do affect how we experience our rights as citizens. Public policies can enhance or diminish our ability to participate in society and to have our rights respected. Public policies can help ensure the safety of LGBT individuals. When we consider how equality rights have been extended to include LGBT individuals, this goes a long way in terms of sending the message that LGBT individuals are not to be

harassed and discriminated against. The *Charter*, human rights legislation and some policies do send a clear message that LGBT are equal citizens, entitled to the same dignity and respect as non-LGBT individuals.

Thus, although it would be safe enough to say that LGBT people interviewed were not opposed to a public policy that included hate crimes in the *Criminal Code*, at the same time there was an awareness that public policy is not a sufficient condition to change certain phenomena. Having the law define hate crimes and including sexual orientation in its definition does provide LGBT communities a tool to access police services; however, the policy cannot guarantee that the police will be receptive or treat LGBT individuals appropriately. From a LGBT community standpoint, herein lies one of the limits of public policy. There is a need to educate the public and service providers alike as to what the policies are and how to implement them in ways that best meet the needs of these communities. Beyond that, there are the limits imposed by the interpretation of given policies. In the case of the hate crime legislation, one of the reasons LGBT communities may not feel as though their safety is improved through a law that directly addresses hate crimes is probably because the problem of hate crime or targeted violence as it is experienced by LGBT individuals encompasses a much larger set of issues than what is outlined in the *Criminal Code*. This may explain why LGBT people are likely to feel somewhat distant from the hate crime policy that imperfectly addresses a problem in ways that do not account for everyday experiences of violence.

LGBT communities see hate crimes as including any form of violence or threat that compromises the safety of LGBT individuals regardless of whether or not these are criminal according to Canadian law. If police services, the criminal justice system and service providers are working with the narrower understanding of the definition found in the *Criminal Code*, it is likely that the communities will feel as though those who are supposed to offer them protection are not doing so. This is especially true in situations where there are limited resources, and resources get committed toward more serious

incidents. For example, hate-graffiti or harassment cases may be a low priority for police service, because these incidents are low on the scale of criminality. Yet these are the experiences most likely to affect LGBT individuals and many LGBT individuals see them as the real hate crimes, acts about which they wish the police would take action. Unless public policy incorporates LGBT communities' accounts of hate crimes, the police, criminal justice system and service providers will continue to work with a definition of hate crimes that only imperfectly corresponds to the lived experience of targeted violence by most LGBT individuals. Of course, to have police take action on these less serious types of hate or bias-motivated crimes raises questions about the availability of resources for police services to engage in such work. If police ignore community concerns, however, public policy will continue to be perceived as a necessary but limited tool to ensure the safety of LGBT individuals. It will persist in being a distant concept, somewhat inconsequential in the daily lives of community members.

Conclusion: The Role of LGBT Communities

What is the role of a community in terms of ensuring its own safety? From a community perspective, the community should have the power to decide what is a problem. It should also be in a position to decide how the problem should be solved and it should have the power to get others to pitch in and help with the solution (Community Access Project, *Monthly Report* April 21-May 11, 1998). If oppressed groups are our main concern, the information discussed in this chapter which presented accounts of targeted violence as experienced by LGBT individuals should dictate how to go about addressing the problem of violence targeted at LGBT individuals.

From the surveys and interviews, I have outlined the problems that affect the LGBT communities with respect to their safety. The problems that are a concern to

LGBT individuals are somewhat different from those identified by state authorities (policy-makers and police services) and service providers (victims' services, etc.). They are more broadly defined and often considered to be minor on a criminality scale if at all criminal. The role of communities consists of identifying the problems with which they are confronted and that have an impact on their group, and, when appropriate, to working with policing authorities or community organizations toward the prevention of these problems. LGBT communities must get the police involved. They must access policing services if the cycle of violence targeted at their communities is to be undermined. Without the police, the safety of LGBT people is greatly undermined, for perpetrators will not be apprehended and violence will continue unchecked.

With respect to the court system, we have seen that the system is opening up and recognizing the rights of LGBT individuals. It therefore is important that individuals continue to turn to the courts to have their rights upheld. Although outing concerns and homophobic and heterosexist interpretations of the law will prevent some from going forward and will be a great sacrifice for those who will push ahead in the system, the communities must continue to fight these battles in the courts. Positive outcomes will strengthen their citizenship by having their dignity and respect upheld by the courts.

If anything, this chapter should have made clear that part of the problem with hate crimes or violence targeted at LGBT individuals is that the policy-making process to date has not managed to truly involve those who are affected by this type of violence and has therefore not been able to offer solutions that are adequate for moving toward safer social environments for LGBT individuals. My contribution is to demonstrate how it is important to include a community understanding of the lived experience, of the understanding of the problem at issue and of what the potential solutions to this problem are. Although there were legislative committees that heard the briefs of various individuals when the government went forward in 1995 with Bill C-41 (the harsher sentences for hate crimes) and although there have been a number of round tables hosted

by the Ministry of Multiculturalism since then on the issue of hate crimes, these efforts have not managed to account for the lived experiences of those who are at the receiving end of targeted violence. Public policy made in this way has not addressed the problem of targeted violence as experienced by LGBT communities.

Communities must therefore work toward solutions that will incorporate their definition of the problem. The changes may not come initially through policy circles, but the end goal is to have public policy reinterpreted in ways that account for the lived experiences of community members. I would argue, however, that this should not be interpreted as including in the *Criminal Code* LGBT communities' definition of hate crime, which more or less is hate. The various accounts of hate crimes presented in this chapter seem to indicate that whereas the criminal justice system, and all its components, focus on hate crimes, LGBT communities focus not only on hate crimes, but also on hate and stigma. Hate, stigma and prejudice are three things with which the criminal justice system, including police, is ill-equipped to deal with. We do not want the coercive arm of the state to be monitoring our thoughts, feelings and values. Criminal law should be used only, as it is currently, to intervene when hate and bias are the motivation for criminal actions. However, state actions are not limited to criminalizing undesired behaviour and actions. Public policies can take on different forms including mandating police to work more closely with targeted communities, likely through assigning resources to developing police-community relations and getting involved when needed by communities, regardless of whether a situation is criminal or not. Public policies that take into account the interests of LGBT people, including their experiences of violence, would likely take aim at the educational system and devote resources toward anti-homophobia awareness for both teachers, who can play a role of protector, and students who are likely to be victims or perpetrators.

The following chapter looks at how the partnership between a community and a police service has come further along than the realm of public policy in applying a

community understanding of the problem of targeted violence in order to make LGBT individuals safer in their communities. This chapter stresses the importance of turning to the communities themselves and to listening to what they have identified as their needs and problems. By doing so, the state (policy-makers and police services alike) may develop alternative approaches to addressing the problems of violence targeted at marginalized groups in society, approaches that may be more inclined, I would hope, to enable the citizenship of these oppressed group by changing the parameters of the citizenship regime to include these groups.

Chapter 7: Moving Toward Safety - LGBT Communities in Ottawa

In this chapter, I present the case of the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities*. The committee brings together LGBT community representatives from various organizations, individual community members, and police officers (including the Hate Crime Section). I will argue that the Liaison Committee, a community-based committee with police involvement, is a successful model of police accountability to the communities. Thus, it will be argued that this model should be replicated within other police forces across Canada. I shall also argue that the Liaison Committee's collaboration with the Ottawa Police Hate Crime Section has been key in developing an approach to police work which conceptualizes crime and safety in ways compatible with the communities' experience of targeted violence or hate crimes as outlined in the previous chapter.

This chapter is based on information gathered from all of the interviews I conducted with a particular emphasis on the 14 interviews with individuals who have participated as a representative of a community organization or as an individual member on the Ottawa Liaison Committee, the nine individuals involved in liaison committees in other cities across Canada (e.g. Toronto, Hamilton, Vancouver, Edmonton, and Calgary), and the 13 individuals from police services, mostly in Ottawa, but also in Gatineau, Montreal, Toronto and Calgary. It is also based on an extensive review of archival material, including all of the Liaison Committee's Minutes and reports.

The Liaison Committee came into being as a result of pressures from the LGBT communities and their willingness to liaise with the police to solve problems that compromised the safety of LGBT people. The police did not initiate this committee and originally had to be shamed into meeting with the LGBT communities. When the police agreed to the first meeting, they probably did not foresee that the communities would

insist on having regular meetings. More than a decade later, this committee still exists and is vibrant. Police participation in the Liaison Committee has been necessary and is central to its existence (Interview David Pepper, 22 March 2002 and Interview Bruce Watts, 26 February 2002). According to Bruce Watts who was head of the Hate Crime Section from 1995-1998, a key distinction between this committee and other committees of the Ottawa Police is that unlike the others, this committee is community driven with some police involvement, rather than being police driven with community involvement (Interview, 26 February 2002). Although police voices are heard at meetings, the LGBT communities use the committee to voice their concerns and problems to the police. The committee meetings are a forum used to find solutions that will promote the safety of LGBT people in Ottawa, thereby opening up spaces where LGBT individuals are able to enjoy the rights associated with Canadian citizenship.

As in most cities, the LGBT communities are quite diverse and not always visible. The Liaison Committee does attempt to represent the LGBT communities, but cannot do so fully. The Committee involves a number of organizations that represent diverse segments of the LGBT communities.¹ LGBT people of colour and youths, however, have had little if any representation over the years. Since this committee engages with the police, some community activists are uncomfortable with or unwilling to associate with such a committee. The history of the LGBT communities' relations with the police in Ottawa and elsewhere has been marked by a number of homophobic and repressive moments that still today leave some individuals unwilling to engage with the police. Overall, the Liaison Committee does voice the concerns of a number of individuals from various backgrounds and works in the best interest of the LGBT communities.

¹The committee has a permanent membership that includes the representatives of the Ottawa Police Services, the Gatineau police, Carleton University Safety, University of Ottawa Security Services and the Crown Attorney's Office. The list of community organizations that are represented are: Pink Triangle Services, Parents and Friends of Lesbians and Gays (PLAG), Gender Mosaic, Sage, AIDS Committee of Ottawa, Ottawa Knights, GLBT Centre (Carleton University), Pride Centre (University of Ottawa), Pride Committee of Ottawa, and VASOC.

History of the Liaison Committee

The summer of 1989 was a defining moment in the history of the Ottawa Lesbian, Gay, Bisexual and Transgendered communities because a significant number of gay bashings and hate-motivated incidents targeting the LGBT communities took place. Although such violence was not new and police inaction also was not new, what was new was that the events of that summer led to the mobilization of LGBT communities.² As in previous summers, Ottawa's Major's Hill Park (situated next to Parliament Hill) was busy with men cruising other men. That summer, however, the level of violence was unprecedented. Initially, the incidents appeared to be random and were for the most part unreported (Pepper and Holland 1994a, 2). An evening in the summer of 1989 became a pivotal point in the history of the Ottawa LGBT communities,³ when a group of men and youths went on a gay-bashing rampage. Four individuals chased, robbed and stabbed a man in Major's Hill Park. The attackers followed up by robbing Alain Brosseau as he left the Château Laurier where he had been working, throwing him to his death over the Inter-Provincial bridge. The four attackers met up with two other men and took a taxi to Orleans to an address they had obtained from a wallet in one of the previous robberies. When they arrived at the house, part of the group went directly to the bedroom of the gay couple to attack the two men, while the others stayed behind to vandalize the house. All of the victims were severely injured (*Go Info* July/August 1990, 1 and 9). All three of

²Although the incidents that prompted the mobilization appear to be targeted mostly at gay men or individuals perceived to be gay men (i.e. assault and robberies in parks), the mobilization around this issue was not limited to gay men.

³The case of Alain Brosseau, outlined in the following paragraphs, is identified as the catalyst for the mobilization of the community. In all of the interviews I did with both community members and police officers, when the historical origins of the Liaison Committee were discussed, everyone made reference to the death of Alain Brosseau. Only two individuals also mentioned the other events from that evening (i.e. the home invasion attack in Orleans). It is telling that after more than 13 years that particular incident remains part of the collective memory of that community.

these incidents were hate-motivated; the victims were targeted because they were perceived to be gay.

Alarmed by these events and the continued inaction on the part of the police, members of the LGBT communities came together to form the *Ottawa-Hull Lesbian and Gay Task Force on Violence* to focus on issues of gay bashings and police response to these incidents. The Task Force was to monitor violence targeting the LGBT communities and to develop solutions to make Ottawa safer for lesbians and gays. Short term objectives of the Task Force included setting up phone lines for anonymous reporting of incidents and crimes targeting LGBT people and working with the police to have them assign an officer that would focus on incidents involving violence targeted at the LGBT communities (*GO Info* October 1989, 1). There was a real urge for LGBT people in Ottawa to act to prevent violence targeted at them. The Task Force was trying to oversee some of the necessary changes to achieve this end.

By 1991, members of the Task Force were angry with the police. While the Task Force had been successful in going forward on a number of important preventive measures with the collaboration of other community groups and organizations, the police were still silent and inactive with respect to violence targeting these communities (Pepper and Holland 1994a, 2). The Task Force had distributed safety pamphlets with tips for safe cruising, a diagram that illustrated how to respond when physically attacked, numbers of police and community services to be called following an incident and information on the legal rights of the victim (*GO Info* June 1990, 1). The Task Force had organized a "Blow the Whistle Campaign" (distributing whistles and encouraging men who used the parks to carry them and use them when in danger to alert others in the vicinity), an initiative that had been used in several communities across the United States.⁴ The Task Force also collaborated with the Gayline and Pink Triangle Services to

⁴LGBT individuals were encouraged by several community organizations that worked on anti-violence issues to carry whistles. These included San Francisco's CUAV, Florida's GUARD, Chicago's Horizons Community Services' Anti-Violence Project, Minneapolis' Gay and Lesbian Community Action Council,

establish safety information-lines and to assist in documenting cases of anti-LGBT violence and ensure that incidents could be reported anonymously (David Pepper, quoted in *GO Info* July/August 1991, 8). Yet, despite these initiatives and pressures from LGBT communities (mostly voiced through the Task Force), the Ottawa Police did not take any special measures to address the violence targeted at the LGBT communities.

After being challenged once more publicly by the Task Force and on the advice of a city councillor, the Ottawa Police finally agreed to a joint meeting with the LGBT community groups and local politicians, at which the Task Force presented the Ottawa Police with twelve demands (Pepper and Holland 1994a, 2). The Task Force's demands included that the police document violence targeted at LGBT people; that a bashing hotline be established; that the Ottawa Police issue warnings of the possible dangers associated with the recent violence; that the Chief of Police issue public statements condemning violence targeted at LGBT communities; that police presence be increased in the areas where violence occurred; and that the Ottawa Police recognize the special safety needs of the communities (reproduced in Pepper and Holland 1994b, 347-348).

At the initial meeting, the police were made aware of problems faced by the LGBT communities. Although gay-bashing incidents were a definite concern for the LGBT communities, the police had little if any information on this particular problem since most of these incidents went unreported (Interview David Nurse, 15 February 2002; Interview Tom Barnes, 20 March 2002). In fact, the police denied that the motive of Brosseau's death was gay-bashing (*GO Info*, May 1990, 1) and denied there had been a wave of gay-bashings, despite the many violent incidents that had taken place that summer (*Ottawa Citizen*, 29 August 1989, A1). The hate motivation was not recognized

San Francisco's IRATE, Cleveland's Lesbian and Gay Community Center, and New York City's Gay and Lesbian Anti-Violence Project (Jenness and Broad 1997, 88-101; see also Herek 1992c, 241)

by police until after the testimony at the trials of Alain Brousseau's murderers which took place a few years later (Interview David Pepper, 22 March 2002).⁵

Following the initial meeting in July of 1991, regular meetings between the Ottawa Police and Task Force began and eventually were institutionalized as the *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* (hereafter the Liaison Committee).⁶ To this day, the Liaison Committee hosts monthly meetings giving the police and LGBT communities an opportunity to share information about hate crimes, to discuss issues that affect these communities, to network and to identify potential initiatives to solve problems and improve the safety of LGBT communities or their relations with the police. At these meetings, both the police and LGBT communities are represented (LC, *Fact Sheet*, August 2000). As Mandy Rocks, one of the individuals initially involved in setting up the committee, explained: "the Committee grew out of organized community concern about the lack of response by police to a rash of gay bashings and then a murder in the summer of 1989. The goal at the time was to establish and maintain a dialogue with the Ottawa Police" (quoted in Pepper and Holland 1994b, Appendix E).

The Basics: How the Liaison Committee Functions

A typical Liaison Committee meeting starts with a brief explanation of the process. The Liaison Committee meetings are open meetings. Anyone interested in issues of safety of

⁵According to David Pepper, the testimony of the trials revealed chilling information on why these events took place, including the homophobia. The details were published in the *Ottawa Citizen*, a mainstream newspaper, making this information widely available (Interview David Pepper, 22 March 2002).

⁶At its inception, the committee was originally called the Ottawa Police Lesbian and Gay Liaison Committee. The name was changed in 1994 to add bisexuals and transgendered people. It is referred to in this thesis by its current name or simply as the Liaison Committee.

the LGBT communities and policing is welcome to participate.⁷ In the earlier days, meetings were usually attended by 6 to 8 individuals, about half were police officers. More recently, meetings have attracted on average 20-30 individuals, although only one or two officers at most meetings. The *Minutes* of the Liaison Committee are distributed widely to share the information with as many LGBT people, community groups and police officers as possible. The *Minutes* offer detailed accounts of the issues raised at the meeting, helping to keep people informed. The *Minutes* contribute to the on-going dialogue between the police and community by allowing those who missed a meeting or those who are unable to attend to be aware of what took place. They are a historical record that offers insight into various issues related to the safety of LGBT individuals and policing issues that can be of use to those involved as well as anyone interested in this topic.⁸

At each meeting, incident reports are made by the various police services and sections of the Ottawa Police that are represented, and by the LGBT community members; anywhere between 3 and 10 incidents are usually reported. The Hate Crime Section has always participated in the incident reporting. Over the years, the Ottawa Police Victims Services and Partner Assault Section have also come to the table to report on issues that affect the LGBT communities. The Hull police (now Gatineau Police Services), Ottawa University Security and Carleton University Security send representatives on regular basis. This exchange of information is often followed by a

⁷This is an important distinction from other committees. Often meetings are not open to anyone who wishes to attend or has an interest in the issue. For example, the Liaison Committee in Toronto has a number of open meetings, but has most of its meetings closed off or limited to the individuals who sit on the committee. As Nicky Casseres, the current co-chair, explained to me, there is so much hostility on the part of some segments of the community who do not want LGBT people to cooperate with the Toronto police that it is necessary to meet only with the members of the LGBT communities in order to get some work accomplished. Open meetings can be intimidating and hostile, making it difficult to establish goals and objectives and work toward those (Interview 31 May 2002).

⁸Having attended a number of meetings in the period between November 2000 and December 2002, I was able to get a good understanding of what had taken place at Liaison Committee meetings in previous years simply by reading the *Minutes*. My knowledge about the Liaison Committee was further enhanced by a series of interviews. The *Minutes* constitute a historical record that is invaluable for researchers, community groups, police services and policy-makers who want to assess the Liaison Committee as a tool to improve police-community relations.

discussion on best ways to proceed if a solution has not already been found for a given problem. The officer or community member who reported an incident or who was mandated or volunteered to follow-up on a given case may at later meetings report on the outcome of the case.

Sharing information on incidents is a central component of the mandate of the Liaison Committee. Incident reports provide useful information that can contribute to preventing incidents from taking place by making both the police and community aware of potential problems or safety concerns. It is an opportunity for both the police and community to engage in proactive and preventive work. The information exchanged gives the community an opportunity to become aware of recent problems in the city of Ottawa that could threaten their safety. At the same time, police officers may receive information needed to respond to incidents. The partnership that exists between the police and LGBT communities as a result of these meetings is beneficial for both parties involved. For police services, the main advantage to such a committee is an increased awareness of the problems faced by the LGBT communities. For example, since there were no reports of incidents involving LGBT students, the University of Ottawa Security Services had perceived their campus to be safe for LGBT students. Through their attendance at Liaison meetings, however, they learned of incidents on campus that were not reported directly to them. This led University Security to develop a rapport with the University Pride Centre and work more closely with the Hate Crime Section to ensure safety on campus (LC, *Minutes*, 22 March 1999). The partnership between the police and LGBT communities was instrumental in making the campus security aware of problems and developing appropriate solutions to ensure that the campus was a safe environment for LGBT individuals.

For the communities, the Liaison Committee helps in building trust in the police. Moreover, through the Liaison meetings, the communities have direct access to police officers and can raise issues with them. It is an effective mechanism. LGBT

communities are able to voice their concerns directly and usually get an immediate response to their queries. For example, if there are known problems in a given area, the community can ask directly for stepped up patrolling in that area. Moreover, if police officers do not act in certain cases, the community can ask them why. Police officers who come to the Liaison meeting have to be ready to justify police action or inaction, so meetings are used to hold police accountable (Interview Yves Martel, 28 February 2002; Interview David Nurse, 15 February 2002). The accountability process helps the LGBT communities to develop a better understanding of police operations, including their limits in terms of both law and resources. It is also a first step in contesting the boundaries of the citizenship regime.

Individuals from the LGBT communities have at times raised concerns about the handling of specific cases, the behavior of certain officers and have praised the Ottawa Police for their response in other cases. For their part, the police officers keep the LGBT community members informed of new initiatives, outreach efforts, training and the work being done in various sections, especially in the Hate Crime and Partner Assault Sections. They are also able to respond to concerns that are raised by the LGBT communities. The partnership helps in building trust between the police and the communities. It has brought about awareness of the LGBT communities to the police and a comprehension of policing issues to the communities. It has also given the LGBT communities opportunities for advocacy and to demand accountability of its police service, while giving police needed information to help them identify problems and solutions with respect to LGBT-related issues.

In sum, the Liaison Committee is a small scale application of community-policing, one in which the principals of prevention, problem-solving and partnership with the community, the three Ps of community policing that require patrol officers to be proactive, interventionist and willing to rely on a problem-solving approach, are being applied (Griffiths, Parent and Whitelaw 2001, 59). It is not within the mandate of this

research to provide a review of the literature on community-policing. It is important to note, however, that although the mantra of community-policing is prevalent in Canada, the application of community-policing is limited. In most cases, when community-policing has been adopted as a model for policing, this has meant a superimposition of some aspects of community-policing upon traditional police structures. Most police services have implemented a few community-oriented programs, such as storefront offices, bike patrols, neighbourhood footpatrols, or liaison committees. While Edmonton and Victoria police forces are recognized as exemplars in Canada, department-wide community-policing has not been implemented anywhere in Canada (Forcese 1999, 244). Despite the fact that the Ottawa Police Service has not implemented a department-wide approach to community policing, we should not overlook the gains achieved through small-scale community-policing initiatives of which the Liaison Committee is an example.

The Evolving Mandate of the Liaison Committee

The Hate Crime Section is a key player in the *Ottawa Police Liaison Committee with the Lesbian, Gay, Bisexual and Transgender Communities*. The initial mandate of the Liaison Committee was to have violence targeted at LGBT people recognized as a problem and to have police respond to it in an appropriate manner. Unlike committees in other cities that were established to deal with oppression by the police, or police mistreatment or even brutality towards the LGBT communities,⁹ the Ottawa Liaison Committee was established to address the problem of hate crimes targeted at the LGBT

⁹For example, the main function of the Toronto Liaison Committee (established in 2000) is to address police oppression. The Hate Crime Section is not involved in that particular committee. Rather, the LGBT Community Liaison Officer is the one who attends the meetings with some senior officers. The focus is on relations between the community and police rather than on crimes targeted at these communities.

communities and police inaction with respect to safety concerns. In the beginning, the LGBT communities wanted to secure an entry point to have access to the services of the Ottawa Police to which they were entitled as residents of Ottawa. The individuals on the Task Force were willing to work with the police to overcome police indifference to the problems of violence in the parks, community reluctance to report, and, more generally, safety issues affecting the LGBT communities. The Hate Crime Section, because of its attendance at the Liaison Committee and presence in the LGBT communities (i.e. at events, etc.), was key to opening up access to police services and working with the committee and community on a number of issues.

The Liaison Committee and the Hate Crime Section were created in part to overcome these difficulties. Among the challenges identified with respect to the relationship between the police and LGBT communities at the outset were issues around trust, access, accountability, and overcoming negative attitudes and ignorance. One of the goals outlined in the *Hate and Bias Crimes Fact Sheet* (1994) was that “minority groups must be able to count on receiving appropriate, sensitive responses from any member of the police service”. Trust had to be built and LGBT communities needed to be aware that policing in Ottawa was changing and becoming more inclusive. The Liaison Committee and the Hate Crime Section, when first initiated, started with these tasks.

Between July 1991 (when the Liaison Committee was established) and August 1993¹⁰ (seven months after the Hate Crime Section¹¹ was established), a number of the initial demands made by the LGBT communities through the Task Force on Violence had already been addressed. Hate motivated crimes and incidents could be directly reported to the Hate Crime Section which had started to compile statistics. The Ottawa Police

¹⁰The reason this time frame is discussed is because the committee itself at that time engaged in an assessment of the work they had done and the tasks that were ahead to be accomplished. The dates are not significant in any other way.

¹¹It was initially called the Bias Crime Unit. The name changed in 1997. It is referred to in this thesis by its current name: the Hate Crime Section.

Services as well as the Chief of Police had issued statements condemning violence targeting the LGBT communities (Pepper and Holland, 1994b, Appendix O). The progress achieved in that period had much to do with the collaboration between the Hate Crime Section and the Liaison Committee, however, it was just a first step. There still remained numerous challenges to overcome before the LGBT communities would trust the police. At the time, the Hate Crime Section was presented as a safe entry point to access police services, if one was fearful or uncertain about the police in general. Members of the Liaison Committee encouraged victims to call directly the Hate Crime Section to report crimes.

In 1994, the Liaison Committee, Hate Crime Section and Police Services Board collaborated to develop a fact sheet on hate and bias crime that identified changes needed to improve the situation, including building community-based partnerships, finding ways to foster community confidence in police services, exploring innovative ways to reduce barriers to reporting of violence targeted at LGBT individuals, designing comprehensive police training that would be inclusive of LGBT issues, and securing provincial and federal legislation on hate crimes (LC, *Fact Sheet*, reproduced in Pepper and Holland 1994b, Appendix I). Progress has been made on a number of issues since then. At a recent Liaison meeting, Carroll Holland, who has been a leading figure since 1993 with respect to the work done at the Liaison Committee, outlined success indicators highlighting the accomplishments of the Liaison Committee. As she explained, when the committee started out, at most 8 or 10 people attended meetings, which now draw 20 to 30 people, and even more on some occasions. When the Liaison Committee was first established, the meetings were tense; now they are more relaxed and friendly, open and productive, and allow opportunities for information sharing and networking.¹² At the outset, the Liaison Committee had identified areas that needed to be worked on such as a

¹²This can even be perceived from the Minutes of the meetings. Moreover, from having attended a number of meetings, I can confirm regularly seeing community members and police officers chatting informally, laughing, and, of course, exchanging information.

phone-line dedicated to reporting crimes, meeting with police, having the Police Services Board recognize the needs of the LGBT communities, and training for police on LGBT-related issues. All of these objectives have been achieved (LC, *Minutes*, 18 February 2002).

Many changes in the approach of the Ottawa Police are the result of work, outreach, and pressure from the Liaison Committee and community groups. The Liaison Committee was a major catalyst in getting the Hate Crime Section set up in January 1993. Bruce Watts, the Head of the Hate Crime Section from 1995-1998, pointed out: “[t]he police did not form the Hate Crime Section because of their good nature; they were shamed into it. It was exposed by community groups that they should be doing this” (Interview Bruce Watts, 26 February 2002). In other words, the Ottawa Police finally recognized that establishing a hate crime unit had been a long time priority for affected communities, including the LGBT communities. Pressures on the part of the LGBT communities, especially following the mobilization of the Task Force and eventually the Liaison community, forced the Ottawa Police to respond. The Ottawa Police Hate Crime Section “was set up in response to community-defined concerns about racism, homophobia and anti-Semitism” (LC, *Fact Sheet on Hate and Bias Crimes*, 1994).

The Partner Assault Section also underwent a number of changes. Although these cannot necessarily be attributed directly to the Liaison Committee, these changes coincide with concerns that have been expressed at the Liaison Committee meetings. Working in partnership with the community, the Partner Assault Section refashioned its services to what is more appropriate for the needs of the communities. Its old name, Spousal Assault Unit, was replaced by Partner Assault Unit (LC, *Minutes*, 11 December 2000), to be more inclusive of the clientele it aims to reach, as partner is inclusive of all conflicts in intimate relationships, including same-sex couples. Moreover, the “Domestic Violence Supplementary Report” sheet to be filled out by an officer when there is an arrest in a partner dispute or assault now includes same-sex couples in the identification

section, which reminds officers that same-sex partner assault is a *real* problem to be dealt with seriously. The Unit also was able to add a number of investigators to its staff to cover shifts when most of these incidents occur.¹³ This new system ensures that investigators are on hand when incidents happen and that victims get officers who specialize in “domestics”. The new Partner Assault investigators were selected through a selection process that included a number of questions developed with community input (not only LGBT people, but others in Ottawa likely to use this service) to incorporate indicators of sensitivity to these issues. The officers received specialized domestic violence training. As part of an outreach effort, the Partner Assault Section in collaboration with community partners developed an information pamphlet. The Partner Assault Section has also used Liaison Committee meetings as a forum to convey their concerns with the lack of reporting of same-sex partner assault (LC, *Minutes*, 11 December 2001; Interview Sterling Hartley, 19 March 2002). The changes in the Partner Assault Section are an example of how partnerships between communities and the police can help in bringing about changes to policing practices that ensure that the community can access services that are suited to their needs.

The Liaison Committee hoped to extend its work to the whole justice system since LGBT individuals have been reluctant to bring cases to court. To improve access to the justice system, the Liaison Committee is represented on the *Criminal Justice Round Table Against Violence Against Women*, a working group that brings together service providers in the criminal justice system, shelters, victims support workers, regional councilors and community members to discuss services offered for dealing with partner assault. The Round Table has made real efforts to identify the gaps in service delivery within the Partner Abuse/Criminal Justice System and to remedy these gaps (LC, *Minutes*, 15 November 1999). The Liaison Committee’s participation on that committee

¹³The shifts cover a 24-hour base Thursday to Sunday and 20 hour base on Monday to Wednesday (LC, *Minutes*, 11 December 2001; Interview Sterling Hartley, 19 March 2002).

has resulted in progress on the issue of recognition of the problem of same-sex partner abuse by the communities themselves, the police and Crown Attorneys (Holland 1998).

The LGBT communities in their initial demands had requested police participation in community activities, which would send a strong message that the police are accessible and to allow for police officers to discuss with community members what they do. This has materialized to some degree (LC, *Minutes*, 18 February 2002); police officers sometimes participate in Pride events, the LGBT Film Festival or the Lambda award presentations. There was a joint concert featuring the Gay Men's Chorus and the Ottawa Police Service Chorus in June 1997.¹⁴ The head of the Hate Crime Section was present at the community vigil held following Matthew Shepard's death.¹⁵ As one community member explained, "there is nothing more impressive than arriving at the Wild About Sappho Gala to see the Chief of Police in full uniform, socializing with the other guests. When members of the police service come to such events and explain to people what they do, this changes attitudes towards the police, especially when such events are covered by the mainstream media" (Interview Tom Barnes, 20 March 2002).

The Hate Crime Section remains an important player on the Liaison Committee, although it is no longer the only one at the table. The Liaison Committee still focuses on incident reports as one of its main activities; however, it has expanded its scope and no

¹⁴David Pepper discusses in the Minutes of 9 March 1998 how police participation in such events send a message of confidence to the community that they can trust the Ottawa Police. The Concert which was well publicized in the Gay Press, Police Newsletters and other media, was "a visual sign of unity and harmony."

¹⁵The death of Matthew Shepard was widely covered by the mainstream media, raising awareness on the problem of hate-motivated incidents targeting the LGBT communities. Matthew Sheppard was a gay student attending university in Wyoming. On an evening in October 1998, he was savagely beaten and left hanging from a fence he had been lashed on in near-freezing temperatures. He died in hospital five days after his body was found. The perpetrators were two men in their 20s said to have been wanting to get back at Sheppard who had made a pass at one of the men at a campus bar on a previous evening (*Globe and Mail* 13 October 1998: A14). Following this tragedy, there was a huge mobilization of LGBT communities across the United States to demand hate crime legislation in states that had none or the inclusion of sexual orientation in the state that had such legislation, but did not mention sexual orientation as a targeted group. Moreover, there were numerous vigils held in cities across North America, including in Ottawa. The presence of Bruce Watts, the Head of the Hate Crime Section at the time of that event, was appreciated by the LGBT community in Ottawa. His presence sent the message that the community could rely on the support of the Hate Crime Section when confronted with such incidents (LC, *Minutes*, 19 October 1998).

longer limits its focus to hate crimes targeted at the LGBT communities. Over the years, the presence of other sections of the Ottawa Police Services has been regular with the Partner Abuse Support Team or Partner Assault Section represented since 1998 and the Victims Crisis Unit since 1999. Apart from hate crimes, the incidents reports now include partner assault cases, sexual assault, victimization and outing concerns (LC, *Heard*, 2002). The work of the past decade has shifted from having the problem of violence targeted at LGBT individuals recognized to demanding accountability from the police to the LGBT communities. Because the Liaison Committee has been successful in getting the police to recognize the problem of hate incidents for their community and also has had some success with increasing the reporting of incidents, it has been able to focus on other aspects of the police-LGBT relations. It has been able to diversify the training of police officers to include LGBT issues. It is also working on eliminating the barriers for LGBT individuals working as police officers or those wanting to become part of the police force (adapted from LC, *Minutes*, 17 June 2002).

Over the years, there has been a noticeable increase in reporting of hate and bias-motivated incidents on the basis of sexual identity, which can be attributed to LGBT communities having come to recognize safe entry points to access police services, either through the Liaison Committee or the Hate Crime Section. This was made explicit in the report of the Wellness Project, in which respondents reported turning to the police in much higher proportions than other cities across Canada (i.e. 37% instead of 10% elsewhere) (Wellness Projects 2001a, 42; Roberts 1995, 17-18). It is also confirmed by the Ottawa Hate Crime Section case summaries. Reporting of hate crimes targeting LGBT individuals increased from 24 in 1993 to 46 in 1999, peaking at 65 in 1996 (OPS, Hate Crime Section, *Case Summary*, 1993-2002).¹⁶ An overview of the *Minutes* of the Liaison Committee suggests that it is likely that even when a victim does not want to

¹⁶The number of crimes reported in recent years has been substantially lower. Reporting rates are: in 2000, 20; in 2001, 21; and in 2002, 10. This may indicative of a problem, an issue that I address later in this section.

come forward, her/his case may be reported anonymously at the Liaison Committee, thereby alerting both the LGBT communities and the police to incidents (refer generally to the LC *Minutes*). Initially, there was only one safe entry-point to access police services in the Hate Crime Section; today, following increased training and awareness, and partnerships developed within the organization, there is greater confidence that LGBT individuals will be treated appropriately by front-line officers and other sections. LGBT people can come forward with their reports knowing that the police will take their case seriously and respond appropriately (LC, *Minutes*, 9 March 1998).

The growing mandate of the Liaison Committee is also reflected in its activities. For example, there is a Parks sub-Committee that works on the issue of men cruising in parks and problems of health, safety and policing associated with that issue. The Parks sub-Committee oversees outreach being done in the parks (safer-sex information, distribution of condoms, AIDS awareness, and safety) and shares information with the various law enforcement organizations that have jurisdiction in these parks (Ottawa Police, National Capital Commission and RCMP). These meetings are held throughout the summer when parks are frequented. Its main achievements have been to open up talks between various stakeholders involved and to propose a strategy to respond to public sex in parks, one that takes into account health and safety concerns of gay men without disregarding the use that other groups make of parks (LC, *Minutes*, 15 June 1998; 13 December 1999; 19 June 2000; Interview Michael Smith, 23 April 2002).¹⁷

¹⁷The issue of men cruising in parks is one over which the LGBT communities are generally divided, not only in Ottawa but elsewhere as well. It is also an issue that easily gets sensationalised media coverage and has often been the focus of police repression. Police handling of such cases has been perceived as unduly harsh by some segments of the communities. Moreover, the amount of complaints received by the general population seems limited, although the attention given to the issue by the media and by some local politicians would have one believe that men using the parks for sexual encounters is a problem that is out of control.

For a number of years, the AIDS Committee of Ottawa (ACO) has been active in the parks doing outreach to promote safer sex practices. That organization is involved in offering services around AIDS and AIDS prevention. Doing outreach in the park is one way for it to reach out to individuals that could not be reached otherwise, for it is a known fact that the men using parks are not necessarily gay men or men that associate with the gay community or identify as gay. This is why ACO privileges this health promotion approach for dealing with men using parks. It is aware that promoting safe sex is one of the ways that it can prevent an health epidemic that would affect the men using the parks and in some cases

Another offshoot of the general committee is the Education sub-Committee, working on problems experienced in schools by LGBT youths and children of LGBT parents. Founded in January 2001, it offers students, teachers and school authorities information about harassment targeting LGBT youths, raises awareness around LGBT issues and works with teachers and staff on responses to hate incidents and harassment in schools. Although a lot of education work has been done on racism in recent years, sexual orientation has only recently been addressed (LC, *Minutes*, 19 April 1999). As a result, students who are experiencing problems have not received needed support and perpetrators are rarely reprimanded for their actions. The sub-committee is working to overcome this problem.

Finally, the growing mandate of the Liaison Committee is also evident in the work being done within the context of the *Criminal Justice Round Table Against Violence Against Women*. The representation of the Liaison Committee on that committee has contributed to reforms that take the interests of the LGBT communities into account, identifying gaps in services for the LGBT communities with respect to partner assault (Criminal Justice Round Table Against Violence Against Women 2002). The Liaison Committee has invited Crown Attorneys to discuss outing issues, hate crimes and other concerns that affect the LGBT communities. The 2002 Annual General Meeting of the Liaison Committee focused on the court system. Guest speakers offered insights on how the system works and particular challenges that have been encountered by LGBT people (LC, *Minutes*, 29 April 2002).

Despite great efforts to change police-LGBT community relations and to have police address the problem of hate crimes targeted at LGBT people and other issues of concern, the work of the Liaison Committee remains limited. Although attendance at meetings has increased, several accounts in the interviews I conducted indicated that the

their wives who are most likely unaware of these activities. Validating this health safety approach has been the main contribution of ACO in the Parks sub-committee and in the Ottawa community with respect to this particular issue. See AIDS Committee of Ottawa (n/d) and LC Park sub-committee (1998).

work of the Liaison Committee is known by only a small portion of the LGBT communities. Jan Hobbs, from Gender Mosaic, explained that unless you are involved in the Liaison Committee or you are part of a member organization, you are unlikely to know of the existence of the Committee (Interview, 9 April 2002). John Fisher, to explain this gap or lack of awareness, said that unless you are put in a situation where there has been a hate crime or harassment, people are unlikely to seek out this type of service or to inquire about what is available to them. This of course does not undermine the importance of having these services there and ready to be accessed (Interview John Fisher, 23 April 2002).

This discussion has served to illustrate the positive changes that have come out of Liaison Committee meetings.¹⁸ Of course, there are remaining challenges. The positive changes are however encouraging and support the continued and sustained work of those involved in the Liaison Committee's work. The Liaison Committee is unique in that representatives of the marginalized lesbian, gay, bisexual and transgendered communities meet regularly with representatives of the police services to discuss common concerns and shared objectives and to develop strategies to achieve these objectives and promote the goal of a safer environment for LGBT citizens. It puts the police in a better position to meet the needs of LGBT people, while simultaneously empowering LGBT communities which gain a sense of respect and inclusion through this exchange and networking (Pepper and Holland 1994a, 12).

While the work of the Liaison Committee opened up channels for dialogue between the communities and the police, the Hate Crime Section played a key role in facilitating the rapprochement between the two groups. The Hate Crime Section was instrumental to the implementation of the action plan developed by the Liaison

¹⁸Both the Hate Crime Section and the reformed Partner Assault section have been looked at as a model to be replicated by other police services. They are considered as templates (or a progressive and forward-looking model) by various stakeholders in Canada (LC, *Minutes*, 11 December 2001).

Committee to improve police services to the LGBT communities and to promote access to police services by LGBT individuals. The tasks performed by the Hate Crime Section included outreach to the LGBT communities to inform them that the Hate Crime Section investigates hate and bias-motivated crimes, including crimes and incidents targeting the LGBT community; to network with all communities affected by hate and bias crimes; and to develop material to be included in anti-homophobia training for police officers. These steps were viewed as necessary measures to combat the high level of hate-motivated violence against the lesbian, gay, bisexual and transgendered communities (*Fact Sheet on Policing* reproduced in Pepper and Holland 1994b, Appendix I). In sum, one of the most important functions of the Hate Crime Section is to overcome or reduce the traditional barriers between minority communities and the police. The next section focuses on exploring why the Hate Crime Section has an important role in the Liaison Committee.

***The Ottawa Police Hate Crime Section and the Safety
of the LGBT Communities***

From the moment it was created in 1993, the Ottawa Police Hate Crime Section played a central role in allowing for the recognition of the communities' understanding of safety and hate crimes to be at the forefront of how things got done. As discussed, LGBT communities, police services and the government have different understanding of the problem of hate crimes. From a government perspective, as well as for most police officers, the issue is mostly about crime; the police and criminal justice system will intervene only when a criminal act has occurred and is reported. As discussed in the previous chapter, from the LGBT communities' perspective, what is considered a hate crime encompasses much more than what is defined in the *Criminal Code*, including activities that are not criminal but are a threat to their safety. This means that LGBT

people want to see police take action when there is verbal harassment or anti-LGBT demonstrations. From a LGBT perspective, police should respond to incidents even when they are considered minor from a criminal stand point in order to keep LGBT people safe. For example, LGBT communities believe police should take seriously hate graffiti, harassment and vandalism. Without such interventions, LGBT community members believe they cannot enjoy sufficient safety. If not safe, the rights of Canadian citizenship are denied.

By working closely with the Liaison Committee, the Hate Crime Section has been able to approach matters in a way that coincides more with a community understanding of hate crimes and safety issues, in that it has come to the realization that “criminal charges are not always the best way to resolve hate-motivated incidents” (Sgt. Watts quoted in LC, *Minutes*, 9 March 1998). The Hate Crime Section has responded to offences that are not criminal but are considered serious matters by a victim. The Hate Crime Section also has taken a leadership role in responses to anti-gay protests that are deemed a threat to the LGBT communities. It has also responded to incidents of harassment that are unlikely to be investigated within a traditional policing framework. The following examples illustrate how the Hate Crime Section has responded in ways that correspond to the expectations of the communities; they substantiate how LGBT communities’ understanding of hate crimes and safety issues can be integrated.

In the first case, a gay man driving his car was overtaken by young men in another car who made hand gestures and called him a fag. The victim noted the license plate and reported the incident to the Ottawa police. The Hate Crime Section traced and contacted the owner of the vehicle, the grandfather of one of the perpetrators. The officer followed up by speaking to the mother of the identified perpetrator, who raised the issue with her son and saw that he was denied access to the car. The resolution satisfied the victim (LC, *Minutes*, 22 March 1999). The incident was not criminal; but the offence, nevertheless, was deemed serious by the victim. The Hate Crime Section sent a clear

message to the perpetrator, to the victim and to the community, as well as to would-be perpetrators, that such behaviour will not be tolerated.

The Hate Crime Section has also dealt with cases for which traditionally a report was taken as the only police response. Since vandalism and harassment, for example, are low priority from a criminal standpoint, further action was rarely taken; however, the Hate Crime Section is aware of the impact that harassment or vandalism can have on a victim, especially when cases are on-going. Therefore, it has taken action on harassment and vandalism cases that have been brought to their attention. For example, there was a case reported at the Liaison Committee in which the victim had made a number of reports of various harassment and vandalism incidents that were not followed up by police. The Hate Crime Section got to the victim who was in such bad shape emotionally that the investigation had to wait until he received some support to overcome personal difficulties. The victim had repaired damage to his property and had a video camera installed on his property for safety reasons, which eventually was used by the Hate Crime Section to identify the perpetrators (LC, *Minutes*, 22 March 1999) and take action. Without the involvement of the Hate Crime Section with superior training on such matters, the safety of the victim would have been further jeopardized had the incident only been reported, rather addressed.

A final example touches on the issue of hate propaganda. Until recently, hate propaganda laws did not protect the LGBT communities because, unlike the hate crime sentencing provisions in the *Criminal Code*, the hate propaganda sections did not include sexual orientation as one of the groups protected. Consequently, police could not charge those who promoted hatred against LGBT individuals. When Fred Phelps, a known anti-gay preacher from Texas (US), announced in June 1999 that he would make a trip to Ottawa to burn a Canadian flag in front of the Supreme Court to protest a recent judgment that ordered the Ontario government to include same-sex couples in their definition of spouse, the Hate Crime Section played a leadership role, working with the

communities to ensure the safety of LGBT individuals in Ottawa. It contacted the Kansas City Police to inquire about Mr. Phelps background; had a criminal record been found, Mr. Phelps could have been denied access to Canada by Immigration Officers. The Hate Crime Section, however, made it clear that they would be where the protest was to take place, ready to arrest Mr. Phelps if any breach of law should occur and generally to maintain peace. The event was to be videotaped by the police as possible evidence in the case of an arrest. The Ottawa Police also denied Mr. Phelps' request for personal protection and made public statements that they disapproved of his message, which raised awareness around the issue. For example, this subsequently led the local hotel where Phelps' group planned to stay to cancel their reservations on the grounds that the group might be a security threat for the establishment. In the end, Mr. Phelps did not show up for the protest, but twelve police officers were at the site to keep peace and approximately 500 people who opposed Phelps' message came together for a peaceful counter-protest. The work of the Hate Crime Section was key in coordinating the effort that defused Phelps' protest. It also brought the issue into the mainstream media across Canada, raising awareness around hate motivated activities targeting the LGBT communities (Interview Carroll Holland, 15 February 2002; LC, *Minutes*, 21 June 1999; 12 July 1999; 16 August 1999).¹⁹

The above examples demonstrate how the Hate Crime Section is key in bridging the gap between the police's understanding of the problem of hate crimes and the lived reality and perception of what hate crimes are and safety issues from a community standpoint. The Hate Crime Section undertakes non-traditional police work because it is proactive and finds alternative solutions to criminal charges. It works with the

¹⁹Mainstream media coverage of this event include: *Ottawa Citizen* (June 29, 1999): A4; *Globe and Mail* (June 29, 1999): A2, (June 25, 1999): A1 and A5, (November 15, 1999): A3. Relatives of Phelps returned in August to picket in front of four churches in Ottawa and at the Supreme Court. Some of the material they had brought with them was withheld at the border. It was deemed very offensive under the Hate Material Laws of the Custom Act. The proceedings of the picketing that took place in Ottawa were videotaped by a police officer in plain clothes. No arrests were made, but the event was reported at the Liaison Committee as hate incident #266 (LC, *Minutes*, 16 August 1999).

communities, the victims and the perpetrators to resolve some conflicts and tensions that are experienced in Ottawa. It also takes action even when not mandated by the *Criminal Code* because those working in the Hate Crime Section are sensitive to the impact minor criminal offences have on victims and their communities. As one officer who worked in the Hate Crime Section mentioned, while working there he had come to understand that hate crimes do not have the same effect as other types of crimes do either on the victim or LGBT communities (Interview David Nurse, 15 February 2002).

Studies have shown that police are more likely to mistreat individuals who are stigmatized by the dominant society (Underleider 1992). The officers in the Hate Crime Section are aware that working with marginalized communities (for the target groups are marginalized groups in society) requires a different approach (Interview David Nurse, 15 February 2002; Interview Dan Dunlop, 11 April 2002). They make the communities aware that there is a friendly face in the police service willing to help them who will take their reports of crimes and harassment seriously.²⁰ This is why the Hate Crime Section, more than most other sections, must engage in a lot of community outreach initiatives to ensure that members from the targeted communities are aware of their presence and know where to turn to when a hate crime has taken place. As Bruce Watts, head between 1995 and 1998, explained: “the Ottawa Police Hate Crime Section has a high emphasis on community outreach that has contributed to its success” (Interview, 26 February 2002). Similarly, Dan Dunlop who was the initial head of this unit said that: “community

²⁰The officers that worked in the Hate Crime Section in the early years were committed to community outreach and education (Interview David Pepper, 22 March 2002; Interview Bruce Watts, 26 February 2002). A testimony to their success came through in the interviews I conducted. On numerous occasions the names of Bruce Watts (Head of the Hate Crime Section from 1995-1998) and Dan Dunlop (Head of the Hate Crime Section from 1993-1995) were repeatedly mentioned. Both officers were engaged with the community, and a number of individuals, whether working with the Liaison Committee or not, still remember these two officers' contribution through the Hate Crime Section. Both Officers made certain that they were known by community leaders and that they were accessible. As Dunlop said: “When I was doing it, my pager was going off all hours of the night. You have to be accessible to the community [when there is an incident]” (Interview, 11 April 2002). If the section is not available when incidents happen, it is likely that these incidents will not be reported. That these two individuals who first headed the Hate Crime Section are still remembered and mentioned by the community in general discussions about the police and LGBT relations or the Liaison Committee is indicative of their success in reaching out to the community.

partnership is the crucial ingredient. It is vital to establish dialogue with people historically disaffected with the police, to work from the ground up (LC Minutes 18 April 1994). Through these outreach effort, the Hate Crime Section offers the communities what they really want: a sense of dignity and safety.

Marginalized communities are more vulnerable in part because they do not report incidents. As a result, one of the tasks before police is for them to recognize problems even when there is a lack of reporting. To do so, they must work in partnership with these communities to identify problems and solutions. As David Nurse explained, an Officer who had worked in the Hate Crime Section, if the police do not develop a rapport with the LGBT communities, it is very likely that the Hate Crime Section will not get reports of gay-bashings or hate-motivated incidents targeted at the LGBT communities (Interview, 15 February 2002). Hate crimes units that focus primarily on intelligence gathering, with little community outreach, are less likely to be aware of problems that are affecting the LGBT communities in their jurisdiction. Deputy Chief Larry Hill considers the presence of officers at the Liaison Committee as a form of intelligence gathering. He believes police can learn much more about LGBT people and issues and problems they face by being out there doing outreach than by engaging in the traditional forms of intelligence gathering information away from the community.²¹ Similarly, David Pepper, Director of Community Development for the Ottawa Police,²² stated that the success of the Hate Crime Section depends on work that takes a lot of time and often happens after a person's shift, such as community-building, taking part in community activities and attending meetings (Interview, 22 March 2002).

²¹ Adapted from my notes of the Liaison Meeting, 8 July 2002.

²² Pepper was appointed by Chief Ford in March 1995 to the position of Director of Community Development for the Ottawa Police. Pepper was a prominent gay activist involved in the Task Force on Violence, the establishment of the Liaison Committee and Community Access Project, as well as one of the authors of the report *Moving Towards a Distant Horizon* that outlined a number of recommendations to be undertaken by the police and community to improve LGBT-Police relations and the safety of LGBT individuals in Ottawa. In his position, Pepper reports directly to the Chief of Police. His responsibilities include community outreach and improving the access to police of groups that have been traditionally marginalized (*GO Info*, April 1995: 13).

According to David Pepper, the Hate Crime Section has always had the lead in the Liaison Committee (Interview David Pepper, 22 March 2002). This is in part because the Committee was initially intended to address the problem of hate crimes targeting the LGBT community. Judging from the Minutes of recent meetings, community members still expect that the Hate Crime Section will retain ownership of the committee, ensuring continued police presence and dialogue between the community and concerned police officers or services on cases or issues brought forward. Regardless of whether the incidents reported at the Liaison Committee meeting are hate crimes or not, there is also an expectation from community members on the Liaison Committee that the Hate Crime Section will handle these rather than letting other divisions in the police service do their job (Interview Jan Hobbs, 8 April 2002). While certain police services come and go or are represented on a on-again/off-again basis, there is an expectation that the Hate Crime Section should always be present at Liaison meetings.

Although the literature on hate crimes which was reviewed in chapter 3 suggested that communities, governments, and policy-makers come together to demand tougher laws and harsher sentences for hate crimes, the members of LGBT communities who live “the daily grime of hate or homophobia” (David Hoe, interview, 11 April, 2002) want their security to be understood in a context that is broader than the legalistic framework. They want to be safe and, as this chapter illustrates, this is more likely to happen when the police do not act strictly within the mandate structured by the *Criminal Code* and policing standard requirements. Issues that matter to individual members in the community will only be addressed by pro-active and forward looking officers in a unit like the Hate Crime Section. It is in this way that the Hate Crime Section and the Liaison Committee contribute to making Ottawa safer. By empowering the communities to come forward, the Hate Crime Section is in a better position to do the work that matters to the LGBT communities. The Hate Crime Section has been over the years an essential player

in moving toward a policing response that contributes to the safety of LGBT communities.

***Liaison Committees and Police-Community Relations:
The Report Card***

The *Ottawa Police Liaison Committee for the Lesbian, Gay, Bisexual and Transgender Communities* is considered a definite success by those involved and most likely by a large number of LGBT people. Although it is quite possible that most LGBT individuals in Ottawa will not make a direct connection between their feelings of relative safety and the work done by the Liaison Committee, the partnership established between the police and the communities that is maintained through the Liaison Committee has been key in ensuring that increasing numbers of incidents are being reported, that actions are being taken to prevent incidents from occurring and that incidents are resolved (or investigated) when they do happen. As one community member explained, “the police is a great resource to deal with safety issues. If the community is not accessing police services, their safety is likely to be compromised” (Interview Matt Lundie, 26 February 2002). The Liaison Committee and the work being done by the Hate Crime Section therefore affect the lives of countless individuals directly and positively, especially those who are the victims of hate and bias-motivated crimes and incidents.

What in Ottawa facilitated the committee’s success? Definitely, leadership in both the community and the police were necessary components to Ottawa’s success. The LGBT communities in Ottawa had a number of leaders who recognized the importance of working with the police to move toward ensuring the safety of the LGBT communities. When the Task Force on Violence was set up to address the problem of gay-bashings in parks and on the streets, it was determined to work with the police despite great opposition from various segments of the communities. There were several individuals

unwilling to participate in any initiative that involved the police and who regarded those who did as coopted by the police. Nonetheless, the Task Force persevered in asking the help of the police with respect to the problem of gay-bashings because it understood that the police were needed to ensure the safety of their communities. The Task Force slowly developed a working relationship that led to the establishment of the Liaison Committee and eventually the Hate Crime Section. Having community leaders determined to establish a working relationship with the police—an institution historically regarded by LGBT people as oppressive—was necessary to ensure the success of Ottawa.²³ Ever since, the LGBT communities have used the Liaison Committee as an access point to hold the police accountable for their security. This is where Ottawa's LGBT communities have negotiated with the police, making sure that police fulfill their role with respect to protecting all citizens, including LGBT people.

In Ottawa, the LGBT communities had visionary leaders, but so did the police. When the Liaison Committee and the Hate Crime Section were established, the police Chief Tom Flanagan and Deputy Chief Brian Ford (who later became Chief) endorsed the report produced by David Pepper and Carroll Holland about safety for the LGBT communities and made a number of recommendations to address these problems and support the initiative. The Ottawa Police acted on several recommendations in that report and a number of interested officers set up a Hate Crime Section and began to cooperate with the LGBT communities. Moreover, the police Chief publicly denounced violence targeted at LGBT. Commitment to both the Hate Crime Section and the Liaison Committee have been renewed over the years in statements made by high-ranking officers, attendance of the Deputy Chief and Chief of police at some Liaison meetings,

²³This in part distinguishes Ottawa from other places. The hostility towards the police is common in most LGBT communities and in fact, seldom have LGBT communities developed ties with the police in the way that has been done in Ottawa. For example, when Toronto set up its committee in the year 2000, the whole process was almost completely undermined by the raid of the Pussy Palace (discussed in chapter 6) (Interview Nicky Casseres, 31 May 2002; Interview Mickey Cirak, 29 May 2002). Similar problems were experienced in Calgary following the raid at the Goliath Sauna (Telephone Interview Stephen Lock, 16 January 2003).

etc. This all took place prior to the hate crime sentencing measures being added to the *Criminal Code*.

Beyond such leadership, there is a need to accommodate institutionally these changes. To have both the police and community change how they do things, institutions must also be changed to accommodate new ways of doing things. Before the community warms up to the idea of reporting incidents, the police have to show that they are willing to respond to these crimes and to treat LGBT individuals fairly and appropriately. They have done so by setting up the Hate Crime Section; supporting the Liaison Committee process by giving it some funding and space for meetings and encouraging police officers to attend; having police officers attend community events; and warning the LGBT communities when problems occur. With respect to the communities, the participation of an increasing number of community organizations in the Liaison Committee and the transparency and openness of such meetings through which both the community and police are held accountable was instrumental in encouraging individuals to report.

Ottawa is not the only city with a Liaison Committee between the LGBT communities and the police although it was probably the first. Committees are not common, but do exist in Toronto, Hamilton, Calgary, and Edmonton. What seems to distinguish Ottawa's Liaison Committee is in part the strong ties with the Hate Crime Section and endorsement by high level officers (Chiefs and Deputy Chiefs of Police) over the years that have enabled it to change some fundamental aspects of policing. In the case of Toronto and Calgary, the police officers who co-chair the liaison committees are constables rather than high-ranking officers. Although from a community perspective this does not really matter as long as the police officer is open and cooperative, in terms of the committee's impact on policing practices beyond what goes on in the committee, having constables rather than high-ranking officers diminishes its efficiency and potential for getting things addressed, changed or done. Having a high-ranking officer sit or attend on a regular basis these committees indicates a strong commitment from the executive

office, sending a message to the entire police service that what is being done by the Liaison Committee, the issues being discussed and actions taken as a result, are important and should be recognized as such.

The Ottawa Liaison Committee has had an impact on recruiting as well as training to make sure that the openness to the LGBT communities is not limited to one section of the Ottawa police (i.e. the Hate Crime Section), but rather gradually extends to the entire Ottawa Police Service. Diversity training and sensitivity issues must extend beyond the Hate Crime Section and other specialized units. Focusing on training and recruiting is important, because the police are not a monolith. Sections or a few patrollers may engage in harassment or unfair practices towards the LGBT communities and this undermines any achievements of the Liaison Committee. We have seen this recently in Calgary with the Vice Squad that raided the Goliath Sauna. The Calgary Liaison Committee and Hate Crime Section were unaware of the police operation targeting the bath house until after the raid had taken place. This event has undermined and even jeopardized the work accomplished by the Liaison Committee and has reinforced the negative perception and inherent mistrust of the Calgary Police by the LGBT communities (Telephone interview Stephen Lock, 16 January 2003). The chilling effect that this has had on the Liaison Committee and LGBT communities was not limited to Calgary, but was felt in Edmonton and elsewhere (Telephone interview Fred Dicker, 4 February 2003). Training can help avoid these situations by making police officers aware of the impact of their actions on the LGBT communities, giving them necessary information to evaluate a course of action before proceeding with it.

A Liaison Committee like the one in Ottawa is extremely useful and beneficial for the LGBT communities because it plays an important role in opening up the dialogue between the police and LGBT communities to make sure that the two groups understand each other. In Ottawa it has also contributed to higher rates of reporting and in efforts that are preventive. By contrast, after seven years of operation, reporting rates in Calgary

with its liaison committee have not increased (Telephone interview Stephen Lock, 16 January 2003). Similarly, the Edmonton Liaison Committee which was initiated approximately ten years ago has not had much success in increasing reports of incidents (Telephone interview Fred Dicker, 4 February 2003). In both cases, the LGBT communities still have a great deal of mistrust of the police, something that has been dampened in the case of Ottawa as a result of the work in the committee. In Toronto and Hamilton, the focus of the Liaison Committee (or Task Force in the case of Hamilton) is on police-LGBT relations rather than violence targeted at LGBT individuals by non-police. Both committees were initiated to stop police harassment. Reporting of incidents is therefore not something they concern themselves with at the moment. So with respect to opening up venues for reporting crimes, the Ottawa model has been rather effective.

The Ottawa Liaison Committee has also played a role in diminishing the harassment by police of the LGBT communities. For example, even on the sex in the parks issue, the two groups have come together to discuss what could be done to deal with this issue effectively while avoiding the adverse effect a rigid law enforcement approach can have. The Edmonton liaison committee has been successful on this front. Fred Dicker, co-chair of the Liaison Committee, indicated that although the Liaison Committee can take some of the credit for not having problems on that front, the Edmonton Police Service also can take some of the credit. As mentioned, Edmonton was one of the first police services in Canada to adopt a model of community policing and is considered exemplary in this area. It has been concerned with working with minority groups for quite some time (Telephone interview Fred Dicker, 4 February 2003). In Toronto, it is difficult to determine if the Liaison Committee has been able to improve police-LGBT relations because it has only recently been established. In the case of Calgary, the recent raid has in many respects undermined the work done by the Liaison Committee, putting into question its existence by some LGBT community members and

forcing the committee to reassess the work it has been doing (Telephone interview Stephen Lock, 16 January 2003).

Although the success of the Liaison Committee in Ottawa is significant and has contributed to opening access to police for LGBT people, having a liaison committee is only one of the mechanisms useful in addressing the problem of violence targeted at LGBT individuals (Interview Michael Smith, 23 April 2002). Hate crimes and violence targeted at LGBT individuals do not happen in a vacuum. They take place in part because there is a social context that allows for it. There is a need for “education and strong community standards concerning prejudice” (LC, *Heard*, 2002) when it comes to addressing this type of violence. This cannot happen only within the context of policing or community relations with the police. It requires efforts that reach beyond the institutions of the criminal justice system, although that system is a necessary partner.

Despite all the education and sensitization efforts aimed at the schools, service providers and the like, it is obvious that the police and criminal justice system have a role to play in terms of making sure that when such incidents occur there is an adequate response. In this respect, I conclude that cities with a liaison committee that plays a significant role in making police accessible to LGBT communities, as does the Ottawa Liaison Committee, are likely better off than those who do not because access to police is a prerequisite to ensuring minimum levels of safety to enable the citizenship of LGBT individuals. Having a liaison committee means, in the case of Ottawa, that individuals have a place to which to turn when there is a problem, even if they do not wish to go directly to the police (for it is possible to report crimes anonymously through the liaison committee). It also means that there is an established dialogue with the police when there is a problem with that very institution. When the communities have a problem with the police, they can address them at Liaison meetings —a forum where the police are held accountable for their actions or inaction. Without such a venue, individuals are forced to use official complaints against, for example, an individual officer that are made to the

police itself, which puts the onus on the individual making the complaint in a process which tends to be adversarial or confrontational, not to mention formal and much slower than raising issues in the informal setting of the Liaison Committee. Moreover, the scope of the issues addressed in the context of the Liaison Committee is much broader than in the system of complaints. For example, the community may ask the police to step up patrol in a given area where they have identified a problem or it may question why it had not received a warning that there had been a series of incidents and so on.

A Liaison Committee is a tool that can contribute in making certain cities safer for LGBT individuals when used by the communities to hold the police accountable for their safety. It is not a sufficient condition however to ensure that a city is safe for LGBT communities. As Holland explained, because the focus of the Liaison Committee is on crime prevention, the work of the Committee will never be finished. The Committee must always question whether it is covering all the bases. In her words:

Two necessary components [of the work done by the Liaison Committee]: Vision and Vigilance. Speaking about vigilance, we cannot assume that the police will be at a shared place of understanding and goal setting every moment on all issues; we cannot assume that the issues will come to us. We have to be aware of the issues and we have to identify the issues. This speaks to being proactive (Interview Carroll Holland, 15 February 2002).

She warns that now that the Liaison Committee is ten years old, and should not allow itself to slip into a place of self-satisfaction. It needs to sharpen up and be vigilant and assess where it is at and what it should be doing next to continue on with crime prevention and safety of LGBT individuals. One can easily draw parallels between what Holland is saying about the role of the Liaison Committee and a project of radical democracy. A project of radical democracy implies that those engaged in counter-hegemonic projects, such as negotiating the conditions to ensure one's safety, are always having to renegotiate their position to secure their access to substantive citizenship (Mouffe 1993, 83-6), something I will discuss at length in the concluding chapter.

For such a committee to be part of the solution a number of conditions must be met. There is a need for community members sitting on the Liaison Committee to be vigilant with respect to holding the police accountable. They must ensure that police are present and that they are responsive to the communities' needs. The police officers need to be able to keep the communities informed of developments on cases that concern the communities, alert them to problems that have been reported (or recorded) and advise them on changes and initiatives within the police service that are pertinent to the safety of the communities and the services they should receive. When the police are not doing these things, the communities must persist in asking for information, support and participation. The community members of the committee also have obligations towards the larger LGBT communities. It must encourage members of LGBT communities members to participate, particularly those from community organizations. It is those members who can in turn play an important role in keeping the larger community informed of changes in policing and alert them to problems, while encouraging victims to come forward. Encouraging the reporting of incidents is also an extremely important function of the community members on the committee. Because lack of trust has prevented individuals from reporting incidents, the onus is on the community members to inform the larger LGBT communities that it is safe to report incidents.

With respect to the police officers on the committee, I have already mentioned how their attendance and cooperation is needed. Their outreach efforts must start with the Liaison Committee but must extend beyond that. In the case of Ottawa, the participation of police officers at community vigils following a hate crime incident or attendance at Pride and other community events has been important. Moreover, police must be proactive in their approach. They should develop initiatives that will work toward improving the safety of LGBT communities rather than always reacting to incidents. Police officers must also be open to intervention in cases that may not be a high priority in terms of criminality and be willing to rely on alternative measures to

charges under the *Criminal Code* to solve some of the problems at hand. These are all factors that have contributed to Ottawa's success.

Unfortunately, in the case of Ottawa, there has been a recent breakdown of these conditions. Although this may well be a temporary relapse, unless both the communities and the Ottawa Police Service address the slippage, Ottawa risks being no different from other cities with respect to the safety of their LGBT communities. The events of 11 September 2001, combined with other events that have put pressure on the resources of the Hate Crime Section (G8 and G20 summit), have meant that the Hate Crime Section has operated under strained conditions. The resources were so scarce that for the year following the events of September 11, no one from the Hate Crime Section attended Liaison Committee meetings. The participation of police officers in general was limited in 2000 and 2001, however, the absence of officers from the Hate Crime Section is especially worrisome because historically that section assumed an ownership role for the committee.

The reporting rates for crimes targeting LGBT individuals have been much lower since the year 2000, although reporting rates had increased between 1994 and 1999.²⁴ It is uncertain if there has been a tremendous decrease in hate crimes (which is what we would hope, but which is unlikely) or if people are simply not coming forward and reporting these crimes. The decrease in reports does coincide with the replacement of officers working in the Hate Crime Section and diminished attendance at Liaison meetings by the Ottawa police in general. It also seems to reflect a return toward emphasizing intelligence gathering over community outreach in the Hate Crime Section. For their part, however, the LGBT community members were not prompt in insisting that police officers show up at the Liaison meetings. It took a number of months before requests were put through to channels that led to police participation being resumed in

²⁴According to the statistics recorded by the Hate Crime Section, the reported rates of incidents targeted at LGBT individuals were: in 1993, 24; in 1994, 22; in 1995, 30; in 1996, 65; in 1997, 55; in 1998, 54; in 1999, 46; in 2000, 20; in 2001, 21; and in 2002, 10.

September 2002. The community members did not play their role of holding the police accountable, essential to their contesting of their citizenship. Once again, this is indicative of a number of principles of a project of radical democracy. Although the Liaison Committee serves as an access point to the police by the LGBT communities, when the communities do not use it to hold the police accountable, it is likely that the police will revert back to their traditional course of action, reacting to incidents rather than engaging in problem-solving with the communities. By not holding them accountable, the LGBT communities are letting the police return to its traditional functions of law enforcement, a model of policing informed by the interests of dominant groups in society (property owners and middle-class white Canadians) (Forcese 1999, 4), rather than marginalized communities such as the LGBT communities.

Despite these recent problems, generally the Liaison Committee has been successful. It has gone from having the problem of violence targeted at LGBT individuals recognized to holding police accountable for the safety of LGBT communities in Ottawa. The Liaison Committee in Ottawa is an essential component of moving toward making the city a safer place for LGBT individuals. An immediate and concrete outcome is that LGBT individuals are more likely to receive appropriate and fair treatment at the hands of the police when they are victims of a crime. A less obvious and longer term outcome is that the Liaison Committee, by allowing LGBT people to access police services, is empowering their communities by enabling their citizenship. This is a necessary first step toward a regime shift, toward redefining citizenship in substantive terms that are inclusive of the LGBT communities.

Conclusion - Counter-Hegemonic Citizenship

In advanced liberal democracies, like Canada, managing diversity is one of the greatest challenges faced by state and society. For those concerned with social justice, the debates raised by trying “to live together with difference” (Fraser 1997a) can best be answered by understanding substantive citizenship. It is my premise that we must measure the citizenship of groups considered different or Other to determine how sexual identity, gender, race, ethnicity, religion, or disability work as barriers to substantive citizenship. This requires in-depth analysis if Canada is to become a peaceful democratic state. A lot has changed over the last decade and even more since the events of 11 September 2001, reminding us that we cannot take for granted that Canada will act as a model state as its human rights record, its multiculturalism policies and its success in addressing matters that have to do with difference suggest is possible. Over the last decade, we have experienced a rolling back of the rights of citizenship. The re-organization of the state directed by neo-liberal tendencies in governance has compromised social rights (Rice and Prince 2000), while increased security measures invoked to combat terrorism have imperiled civil rights (Adelman 2002). In other words, the citizenship of many individuals has been diminished as a result of the changing political landscape. My concern is the particularly severe result for those who, on the basis of their identity, already encountered barriers to enjoying the rights and privileges of citizenship; whose citizenship remained proforma rather than substantive.

About Citizenship

I became interested in the concept of citizenship because it is a useful lens for assessing power relations, understanding situations of oppression and developing strategies to challenge this oppression. Citizenship also helps us make sense of everyday situations.

Considering that one objective of my project was to produce theory that is significant for oppressed groups, the concept of substantive citizenship is a valuable tool to achieve this end. Within the concept of this thesis, it keeps the inquiry focused on issues that matter to those who experience oppression or marginalization, possibly uncovering strategies to challenge this oppression.

In chapter 1, I reviewed the literature on citizenship. I started by presenting Marshall's model of citizenship that offers a functional definition that can be used to assess the citizenship of various groups in society. I argued that his model serves as a reference point to evaluate the rights of substantive citizenship. We must distinguish substantive citizenship, however, from formal-legal citizenship. While formal or legal citizenship has to do with rights, substantive citizenship refers to the "full integration" of individuals in the political community (Walby 1997; Lister 1997a); or, as I prefer, widening the boundaries of citizenship. Since I am interested in issues of social justice, my focus is on substantive citizenship.

In recent years, globalization, diminished sovereignty of states, the emergence of supra-national entities (e.g. European Union) and immigration, etc., have put the role of the state as gatekeeper of citizenship into question. My study repeatedly pointed out the role of the state in acknowledging the rights of citizens and in overseeing their application. Citizenship rights are mediated through the state apparatus. Although the role of states may have changed in recent times, theories of post-national or global citizenship (Smith and Guarnizo 1999; Kriesberg 1997; Soysal 1994) underestimate the continued importance of the nation-state. I argued that the hate crime sentencing provision (a policy of the Canadian state), by identifying sexual orientation as one of the protected categories, reaffirmed the citizenship of LGBT individuals, sending a clear message that violence targeted at LGBT people will not be tolerated. The hate crime sentencing provision is an instrument for judges rather than policing services. For the most part, it has not had a direct impact on policing practices. Nevertheless, the

provision has been used, for example in the case of the LGBT communities in Ottawa, to hold the police accountable for their security (a right of citizenship) and in this way change policing practices. Again, this is a situation in which the state (through its police services) mediates a right associated with citizenship: the right to security and protection.

The literature on citizenship does not focus sufficiently on how those with legal but not substantive citizenship can challenge situations of oppression or push for change. The concept of citizenship regime (Jenson and Phillips 1996; Jenson 1997) was used to establish the boundaries of the current model of citizenship and so exemplify who is included and excluded in a substantive definition of citizenship. Using targeted violence as one indicator of diminished citizenship, I determined that LGBT individuals were denied some of the rights and entitlements of citizenship, in other words, they did not enjoy substantive citizenship. When citizens cannot recognize themselves in how citizenship is defined, those excluded must rethink the citizenship regime, developing strategies to force a shift in the boundaries of the regime to better reflect their interests. Identifying the boundaries of the citizenship regime and the barriers that prevent LGBT access to substantive citizenship then becomes a first step toward changing the boundaries of this regime. Such strategies are rarely discussed in the literature on citizenship. This is why I proposed a new way of thinking about citizenship: counter-hegemonic citizenship.

The radical democracy project informs my idea of counter-hegemonic citizenship.

About citizenship in radical democracy, Mouffe asserts:

[c]itizenship is not just one identity among others, as it is in liberalism, nor is it a dominant identity that overrides all other, as it is in civic republicanism. Instead, it is an articulating principle that affects the different subject positions of social agent, while allowing for a plurality of specific allegiances and for the respect of individual liberty (Mouffe 1993, 84).

The interest in the radical democracy project is that citizenship finds itself repoliticized (Delanty 2000, 36). When citizenship is no longer understood simply as a set of rights,

but rather as an entry-point from which we can contest, challenge and reshape the citizenship regime, social groups are more likely to mobilize around their citizenship identity, articulating a counter-hegemonic project that, if successful, will force changes in the boundaries of the citizenship regime. Mouffe has claimed that “[a] radical democratic interpretation [of citizenship] will emphasize the numerous social relations in which situations of domination exist that must be challenged if the principles of liberty and equality are to apply” (1993, 84). When citizenship is contested from below—when the regime is challenged by a counter-hegemonic project by social groups who have experienced exclusion from substantive citizenship—then, citizenship is repoliticized. It becomes radical (Turner 1994, 18; Mouffe 1993) or, as I prefer to call it, counter-hegemonic.

Citizens are social agents capable of forcing institutional changes when pressed to do so as a result of a situation of oppression. I am not suggesting, however, that citizens easily engage in counter-hegemonic projects. Laclau and Mouffe have argued that a central problem in identifying when such projects are possible has been to “identify the discursive conditions for the emergence of collective action, directed towards struggling against inequalities and challenging relations of subordination” (1985, 153). They conclude that when a relation of subordination have become a source of antagonism, citizens are likely to engage in challenges. It is my premise that Young’s “faces of oppression”(1990a) are useful for identifying conditions which allow counter-hegemonic projects to be articulated. If experiencing a situation of oppression as defined by Young, it is likely that the conditions needed to stimulate engagement in a counter-hegemonic project are met.

With respect to the goals of such a project, Mouffe has argued that “the aim of a radical democratic citizenship should be the construction of common political identity that would create the conditions for the establishment of a new hegemony articulated through new egalitarian social relations, practices and institutions” (Mouffe 1993, 86). The essence of counter-hegemonic citizenship is the redefinition of the boundaries of citizenship regime to achieve the promise of social justice implicit in the idea of universal citizenship. In other words, the goal is a new hegemony in which the group that mobilized to shift the boundaries of the citizenship regime can finally recognize itself in the status proffered to citizens in this new regime.

The model of counter-hegemonic citizenship that I propose also takes into account feminist critiques of radical democracy regarding the autonomy of individuals. Social positioning has differential outcomes for different groups. At present, not everyone has an equal opportunity to participate in radical democracy. Counter-hegemonic citizenship is based on three pillars: “voice, difference and justice”. First, there is a need for citizens to be active participants, although this participation may take different forms (e.g. traditional party politics, local liaison committee with the police, etc.). Second, there is the assumption of difference. This model is proposed in part because we want to come to terms with the challenge that difference poses to the governance of liberal-democratic states. Finally, there is the assumption that social justice is the desired end (Delanty 2000, 46) because formal equality leaves LGBT people in a situation of having fewer rights and freedoms or second-class citizens, as with women, racialized minorities, Aboriginal people, etc. These are the conditions for the success of a project of transformative politics. The progressive potential for counter-hegemonic citizenship is met when the process leads to real changes, when the experience of the oppressed group is taken into consideration and when diversity is represented in the accounts of knowledge produced by oppressed groups to force changes in the boundaries of the citizenship regime (see Andrew 2003, 324).

Counter-hegemonic citizenship engages with the theory elaborated by Mouffe to allow concrete expressions of her framework. Mouffe's work is invaluable for understanding the social struggles taking place in advanced liberal-democratic states. Her work is theoretical, however, and does not provide examples of the application of her framework. By proposing my model of counter-hegemonic citizenship, I have contributed to filling what I consider a void in the literature. There is a need to understand how Mouffe's model can become concrete for social actors, relating to and challenging situations of oppression. To arrive at this conclusion, I have relied on tools at my disposal. I have made use of the concept of citizenship regime (Jenson and Phillips 1996; Jenson 1997). I have insisted on thinking about citizenship as a process - something that could be contested, enlarged, redefined- rather than a status or set of rights. I have also focused on understanding citizenship from below; I have given a voice to those who do not experience substantive citizenship. Based on the refinement of existing theories, I proposed counter-hegemonic citizenship as a meaningful concept for oppressed groups, one that can shed some light on the struggles ahead to achieve a meaningful end: the redrawing of the citizenship regime for social justice.

Heterosexual Hegemony and Shifting Boundaries

To work towards a regime shift through contesting the boundaries of citizenship, what is needed is an "agenda for change [that] will require the collective engagement in a positive politics of difference that combines short-term responses as well as long-term transformative practices which disrupt institutionalized structures of inequality" (Perry 2001, 23). This means that the approach to counter-hegemonic citizenship takes place on several fronts. First, as I started to do in chapter 2, we must analyze systems of oppression, in this case heterosexism. We need an understanding of how

heteronormative principles are upheld so that they can be challenged. Such an analysis can guide groups in their choices of issues on which to focus and in their choice of mobilization. For example, such an analysis could result in the gay and lesbian movements reconsidering their fight to be included in marriage that will only further entrench heterosexual norms and inhibit the development of alternative relationships and family forms. As Filax and Shogan have argued: “[t]he *Charter of Rights and Freedoms* has improved the legal rights of lesbians and gay men in certain respects but they continue to be denied things that heterosexuals take for granted, among them, benefits and freedom from harassment. [...] Canadian law valorizes heterosexuality as the norm, to the exclusion of other sexual orientation” (2003, 169). The issue of marriage is divisive in the LGBT communities, deepening the divide between good lesbians and gays (respectable individuals) and bad queers (individuals who go to bathhouses or parks or flaunt their sexuality). In other words, it divides the more acceptable gays and lesbians (i.e. often professional, living in decent neighbourhoods, who can emulate a heterosexual lifestyle) from the more marginalized segments of the communities (i.e. bisexuals, transgendered, and lesbian and gay who cannot or choose not to adopt a heterosexual lifestyle).

Without an analysis of heterosexism, it is quite likely that LGBT individuals contribute in upholding the heterosexual hegemony, despite it not being in the best interest of LGBT people. In this light, the extensive mobilization on the part of the lesbian and gay movements involved in equality-seeking strategies like pushing for the right to marry appears to be such an example. Although an analysis of recent changes may suggest otherwise, if it finds the citizenship regime altered by these newly gained rights, for now, I would argue that this mobilization is not informed by an analysis of heterosexual hegemony. It is informed by short-term expectations for equality, rather than the long-term objective of undermining the heterosexual hegemony. Working to be part of the institution of marriage is one of the ways that the lesbian and gay movemenst

work to uphold the heterosexual hegemony. An analysis of how heterosexual hegemony is maintained would reveal that the strategy of doing away with state involvement on the issue of marriage is one way of avoiding discrimination toward LGBT people while undermining heterosexual superiority. It is therefore a better choice for the LGBT communities in particular, but also for all of us who would also gain from greater freedom with respect to our choices of families and relationships.

Apart from uncovering how heterosexism works in order to choose wisely for the long term the battles that can successfully challenge this system of heterosexual hegemony, there is a need to go beyond seeking equality rights and actually pushing for an institutional response to challenge heterosexism. This is an approach that can concretize itself in more immediate actions. This can mean working with police services, as I explored in chapter 7 when I presented the case of the Liaison Committee. The work that has been done over the last decade in Ottawa has had positive outcomes in terms of giving LGBT communities access to police services and likely improving their safety by so doing. This is positive with respect to the citizenship of LGBT individuals. Being empowered as a result of being safe opens a number of doors for the participation of LGBT people in the political community. I am not suggesting that there is no violence targeted at LGBT individuals in Ottawa, nor any problems with police services. Rather, I am suggesting that the development of a working relationship between the LGBT communities and police services is a positive step towards ensuring the safety, and at the same time, deepening the citizenship of LGBT people.

An institutional response to heterosexism also means, for example, that if there is evidence that hate crime units and liaison committees can contribute to the safety of LGBT individuals, then police services have a responsibility in setting up such units. I have discussed how police services work in a reactive mode, answering complaints. They react to a crime, but are not equipped to deal with the social context that allows these crimes to take place (Bowling 1998; Interview Maurice Chalom, 8 July 2002).

Police services are not in a position, and should not be expected to address, the causes of hate crimes (e.g. heterosexism, homophobia, racism, antisemitism). Police intervene at a given time, after an incident has taken place. It is not reasonably within their mandate to be aware of the social process that led to that particular situation. Hence, we should not expect them to work toward undermining heterosexism in society at large. My case study has highlighted another reality, nonetheless, showing that by working more closely with the communities through liaison committees or hate crime sections, officers could be proactive, not just reactive. These outreach initiatives can contribute to increases in reporting and building trust between the police and LGBT communities. The outcome is beneficial, enabling the citizenship of LGBT individuals. In turn, the communities then share a responsibility by taking on the role of holding police accountable.

The difficulty with issues of difference and citizenship, or more precisely of exclusions from substantive citizenship, is that the problem is so broad that identifying where to start can be daunting. Considering the extent to which heterosexism and homophobia affect the citizenship of LGBT individuals, solutions must be equally broad. However groups decide to challenge this system of oppression, we must keep in mind that every little gain with respect to substantive citizenship is one step closer to being able to *be ourselves safely* regardless of our sexual identity.¹ Keeping a sharp eye on the functioning of heterosexism is mandatory if the boundaries of citizenship are to be successfully challenged. As someone I interviewed said:

Wherever homophobia exists, there will be a perversion of people's freedom and rights of which hate crimes is a component. I think there have been some shifts in homophobia within the culture, but I still think it is preeminent. Therefore, all issues around our interests have to be, in my opinion, premised on that as the environment and probably even in terms of our ability to self define is hampered by that. We [...] continue to seek a self-definition of who we are and what that means in a completely

¹Discussions on social control have already suggested that regardless of our sexual identity, we are all controlled by the same gender norms that are not to be transgressed if violence, harassment, discrimination is to be avoided.

unbiased way by chipping away at this homophobic environment in which we live (Interview David Hoe, 11 April 2003).

The challenge of understanding heterosexism is great because LGBT people by participating in this heterosexual hegemony, easily lose their sense of self. A thorough analysis of heterosexism, which explains how it works to exclude LGBT people from substantive citizenship, an analysis similar to what has been done on racism and sexism, must absolutely be considered a priority. As we saw in Chapter 2, such an analysis explains why community groups supported law and order solutions to hate crimes when in fact these solutions do not meet the needs of the communities according to descriptions I have compiled from various accounts. Apart from the fact that harsher sentences are unlikely to contribute to the safety of people reluctant to turn to the police and the criminal justice system (which is often still the case with LGBT individuals), harsher sentences do not deal with the problems that affect most LGBT people (as depicted in their accounts), incidents that are not necessarily criminal or are on the low-end of the scale of criminal activities if they are criminal. This study has looked only at one aspect of heterosexism. Much more work needs to be done in this area.

From Struggles of Specificity to Struggles of Connection

One of the questions I wanted to answer through this study is whether the work being done in Ottawa by the Liaison Committee, which is used by the LGBT communities to hold the Ottawa police accountable for their security, expands citizenship for LGBT individuals, and if so, can it be replicated elsewhere. Can the lessons learned in Ottawa—a struggle of specificity—be applied elsewhere? Considering that the Liaison Committee in Ottawa is a political project informed by local knowledge, can it be replicated elsewhere, and if so is it an example of a struggle of specificity that can be

turned into a struggle of connection (Klodawsky and Andrew 1999, 164)? Is it a struggle in which the boundaries of the citizenship regime shift to be more inclusive of LGBT people in various cities across Canada, and eventually more generally in the Canadian state? In other words, can my case study, which involved a small-scale example of community policing, eventually be considered an exercise in counter-hegemonic citizenship?

The Liaison Committee in Ottawa is integral to contesting a situation of oppression. The work of the Liaison Committee allows opportunities for both the police and LGBT citizens to increase their awareness of targeted violence and policing practices, thereby diminishing the barriers between the two groups and contributing to LGBT people having access police services—a prerequisite to their safety and deepening their citizenship. If the Ottawa Liaison Committee was successful, why have other committees not have the same success and why are there only a few liaison committees (e.g. Toronto, Hamilton, Calgary, Edmonton)?² Part of the answer is that little is known about the work being done in Ottawa.³ This is probably indicative of the need for more studies like this one. Not much is written on liaison committees, nor on hate crime units and other similar initiatives that are meant to improve relations between police and LGBT communities and make police services more accessible for LGBT individuals. Another reason is that although police harassment and brutality may occur less often than before, LGBT people's perception of police remains informed by the repression experienced previously at the hands of police. Raids on saunas and licensed events are still taking place at times jeopardizing the work of the local liaison committees.⁴

²As I mentioned in the previous chapter, despite all being called liaison committees (except for Hamilton which has a task force that is based on similar principles as liaison committees), they are not all intended for the same ends. While the Ottawa Liaison Committee was started to have police address problems of targeted violence, the Liaison Committees in Toronto and Hamilton focus on police harassment.

³This was confirmed in a number of interviews of people involved in the Liaison Committee.

⁴I have mentioned how the work of the Liaison Committee in Calgary was almost brought to an abrupt end following the raid on the Goliath Sauna (Interview Stephen Lock, 16 January 2003). It should also be said that, in Toronto, the launch of the Liaison Committee was almost derailed as a result of the raid at the fourth Pussy Palace (Interview Nicki Casseres, 31 May 2002; Interview Mickey Cirak, 29 May 2002).

Many LGBT individuals are reluctant to have anything to do with police. Some perceive such initiatives as assimilationist (Warner 2002, 289), rather than a base from which the boundaries of the citizenship regime can be challenged. Considering that power relations between the police (the coercive arm of the state) and LGBT communities (an oppressed social group) will always be unbalanced, the warning of cooptation is warranted (as my discussion in chapter 2 demonstrated with regard to how discourses about violence against women have been appropriated and altered by the state). LGBT individuals sitting on the Liaison Committee cannot afford to be complacent; they must be vigilant in their task of holding the police accountable for their security. I would argue that there is a risk in engaging in initiatives with the police, but in the case of Ottawa, the initial gamble taken up by the members of the community Task Force on Violence paid off.

The material I have reviewed and the accounts I have gathered that focused on the Ottawa Liaison Committee were convincing about the success of this initiative and the need to export this model elsewhere. A question that remains unanswered is how to make this struggle of specificity a struggle of connection. Seemingly, the mobilization that led to the creation of the Liaison Committee meets the criteria set by Young's faces of oppression. LGBT people were the target of hate-motivated violence—a situation of oppression—which led to their efforts to develop mechanisms for redress. The oppression experienced by LGBT individuals as a result of targeted violence occurs across Canada. Despite some variations, the surveys I reviewed in chapter 6 indicated a shared experience of targeted violence regardless of location. Considering that the conditions for the establishment of a new hegemony require the construction of a shared political identity (Mouffe 1993, 86), this shared experience of oppression should translate into a project of counter-hegemonic citizenship. The conditions for replicating this model beyond Ottawa appear to be met. What may be lacking to turn this into a project of counter-hegemonic citizenship is knowledge among LGBT people of the success in

Ottawa, signaling to other communities the possibility of working with police as a method for addressing problems of targeted violence.

From Transformative Politics to an Emancipatory Project

One aim of this project was to generate knowledge out of concrete experiences to serve emancipatory ends for a group that is oppressed. Much of this thesis outlines the problem of violence targeted at LGBT people, based on information obtained from LGBT individuals. I defined the problem of targeted violence using information from my interviews and from the reports on various surveys done with LGBT respondents that I reviewed in chapter 6. I reproduced lengthy descriptions of how the problem is viewed. Considering that little is written on the experiences of LGBT individuals, this was a necessary step to give a voice to an oppressed group. I concluded from these accounts that how the communities define the problem they experience with respect to targeted violence differs from the definition used by police forces and in the *Criminal Code*. This is what led me to conclude in chapter 3 that the law-and-order agenda that focuses on punishment will not meet the needs of those who experience this violence.

My case study qualifies as a counter-hegemonic project. It would be desirable to turn this Ottawa initiative into such a broad-based project—one that is not simply local, but which can be replicated elsewhere in Canada. Studies like this one contribute to the tradition of critical social research by coming to an understanding of issues by including the perspective of traditionally excluded actors. This information, when analyzed through a framework of social theory, can help social groups assess their strategies of mobilization. The aim is to provide an analysis of everyday situations that matter to these individuals. Successful analysis will produce knowledge that can be used by grassroots organizations or social groups for projects of transformative politics.

A Final Word

This thesis accomplished a number of objectives that I have reviewed in the preceding pages, including proposing a new understanding of citizenship. My model of counter-hegemonic citizenship was applied here to a specific case (violence targeted at LGBT individuals). I want to stress, however, that the potential application of this model of citizenship is much broader. Counter-hegemonic citizenship can be a useful lens for understanding the citizenship of all oppressed groups. It is an important model to address timely and pressing concerns embodying the barriers that prevent marginalized or oppressed groups from accessing substantive citizenship. Simply to give one example, it could be applied to racialized and ethnic minorities to understand the impact of anti-terrorism measures (such as Bill C-36 that received royal assent in the months following the events of 11 September 2001).

Wanting to come to terms with why hate crimes take place and who commits them is usually what prompts people's interest on this issue. This thesis was not about the causes and cures of stigma, hate and bias. Although I wrote about heterosexism, I could not explain why hate crimes or targeted violence happen, how they could be eliminated, and so on. Considering the paucity of literature on hate crimes in Canada, research on the victims and perpetrators, rates of recidivism and other similar issues should all be looked into, but this was not the purpose of this study. My interest was on citizenship—how violence is an indicator of diminished citizenship and how public policies and policing practices could be used to contest the boundaries of the citizenship regime to include previously excluded groups. My focus was on issues of social justice and one aspect of managing diversity as exemplified through the hate crime policy.

This thesis also opens the door to future research. Within the context of this thesis, I saw violence as a blunt indicator of diminished citizenship. While violence unquestionably denies some of the most fundamental rights of citizenship, we need more sophisticated indicators to measure other aspects of citizenship and better identify the barriers to citizenship. More sophisticated indicators of citizenship could end up being important tools for oppressed groups, guiding them in their strategies of contestation.

More research is also needed on how policing has changed and whether policing can change sufficiently to be part of the solution. My research did not allow me assess policing strategies. I could only report the perspectives of officers I interviewed, who were convincing about the progress achieved and the potential for change through the hate crime section and liaison committees. It would be worthwhile to investigate further the potential for change, focusing specifically on law enforcement. Finally, as I have already mentioned, this thesis contributes to the scholarship that studies heterosexism as a system of oppression. A lot more work needs to be done in this area if we are to come to understand heterosexism in ways comparable to sexism and racism.

One limit of this study is that I could not account for the diversity of the LGBT communities. I did explore transgendered people's different needs and interests, and how they are not recognized in law or by the state (through programmes and services) to the same extent as those of gays and lesbians. I also explored the extra hardships for youths and the consequences of the cleavage in the LGBT communities between good and bad queers. Little if anything was said about bisexuals, who, like transgendered people, tend to be marginalized in LGBT communities. Bisexuals are often silenced and this was reflected in my study. Moreover, little was said about other key factors that affect one's experience as a LGBT person, such as the intersections with class, gender, race, religion, ability, etc. There is also a need to account for rural/urban cleavage, language, regional differences and so on. In sum, more research needs to be done on diversity within LGBT

communities and the intersectional experiences of identity that shape how power relations are played out and how a counter-hegemonic project can be concretized.

The case study outlined in chapter 7 cannot initiate a shift in the citizenship regime, but in Ottawa, LGBT individuals and communities are better off after a little more than decade of cooperation or partnership with the police. What is unusual about the Ottawa Liaison Committee is that members from a marginalized community meet on a regular basis with the police to exchange information and discuss problems with which they are confronted. As I have shown, part of what has made the Ottawa situation successful is that members from the Hate Crime Section have come to understand the problem of targeted violence as informed by the realities experienced by the communities. This goes a long way to bridging the gap between the state-defined and community-defined problem of hate crime or targeted violence. And at the same time, it contributes to the safety of LGBT individuals and works toward greater social justice and substantive equality for all marginalized groups. Ultimately, substantive equality is the essence of counter-hegemonic citizenship.

Appendix A:

Legislative Framework to Address Hate/Bias Crimes and Activities: List of Laws and Policies

Canada's public policies condemn hatred and hate-motivated violence. They also promote tolerance and value diversity. Moreover, Canada is signatory to a number of international conventions and declarations, confirming its commitment to norms as they are embodied in these UN sponsored instruments. The following is a list of conventions, laws and regulations that constitute the legislative framework to address hate/bias crimes and activities.

International conventions:

- ***Universal Declaration of Human Rights*** (1948): This declaration is the foundation of international obligations to promote and protect basic human rights.
- ***Convention on the Prevention and Punishment of the Crime of Genocide*** (1948): The Convention requires signatory states to enact laws to give effect to the provisions in the Convention. Canada partly fulfilled this obligation by adding a section in the *Criminal Code* that makes advocating genocide a crime.
- ***International Convention on the Elimination of All forms of Racial Discrimination*** (1970): Article 4 of that *Convention* states that “all propaganda and all organizations which are based on ideas or theories of superiority of one race or groups [...] or which attempt to justify or promote racial hatred and discrimination in any form” must be condemned. Moreover, it requires signatory states to “adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination”.
- ***International Covenant on Civil and Political Rights*** (1976): Article 20 states that “any advocacy of national, racial, religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

Federal laws and policies or regulations:

- ***Charter of Rights and Freedoms*** (1982): The *Charter* sets out fundamental values of Canadian society. Both the section on equality (s. 15) and the endorsement of multiculturalism and respect for diversity (s. 27) are important when concerned

with issues of hate crimes, targeted violence, social justice, equality and difference.

• *Criminal Code* ([1985] 2004):

- s. 718.2 (hate crime sentencing enhancement guidelines): A court that imposes a sentence shall also take into consideration the following principles:
- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence of the offender, and, without limiting the generality of the foregoing,
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor, or...
- s. 318 (advocating genocide): (2) “Genocide” means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,
- (a) killing members of the group; or
 - (b) deliberately inflicting on the group conditions of life calculated to bring about physical destruction.
- s. 319 (1) (public incitement of hatred): Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace....
- (2) (wilful promotion of hatred): Every one who, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group
- s. 320 (1) (warrant of seizure): A judge who is satisfied by information on oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is hate propaganda shall issue a warrant under his hand authorizing seizure of the copies.
- s. 430.4 (1) (Mischief relating to religious property): Every one who commits mischief in relation to property that is primarily used for religious worship, including a church, mosque, synagogue or temple, or an object associated with religious worship located in or on the grounds of such a building or structure, or a cemetery, if the commission of the mischief is motivated by bias, prejudice or hate based on religion, race, colour or national or ethnic origin...
- s. 181 (spread of false news that causes or is likely to cause injury): Every one who willfully publishes a statement, tale or news that he knows is false

and that causes or is likely to cause injury or mischief to a public interest....

s. 722 (1) (victim impact statements): For the purpose of determining the sentence to be imposed on an offender or whether the offender [...], the court shall consider any statement that may have been prepared in accordance with subsection (2) of a victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.¹

- **Canadian Human Rights Act (1985):** The *Act* prohibits discrimination and dissemination of hate messages, including the publication and display of material that promotes discrimination (s. 12) and telephonic communication of hate messages (s. 13).
- **Immigration Act (1985):** This *Act* can be used to prevent hate mongers from entering Canada or to deport perpetrators of hate crimes who live in Canada not as citizens
- **Broadcasting Act (1991):** It enables the Canadian Radio and Television Commission (CRTC) to regulate content on radio and television. Regulations are intended to prohibit programming that includes discriminatory comments or promotion of hatred against individuals or groups. The general public can lodge complaints with the CRTC, which has the power to suspend or revoke a license if the complaint is deemed justified.
- **The Customs Tariff Act(1997):** (s. 114) gives Canada Customs officials the power to intercept material that constitutes in their view hate propaganda.
- **Canada Post Corporation Act (1985):** (section 43(1)) allows the Minister responsible for Canada Post to prohibit the delivery of mail to or from someone who has used the mail to commit an offence, including the distribution of hate propaganda.

Provincial and municipal laws and policies or regulations:

Provisions exist also at the provincial and municipal levels. They include human rights legislation and other measures and regulation that serve to prevent discrimination, promote equality and social justice.

¹ Because hate crimes are considered at the sentencing stage, victim impact statements can offer useful information to the judge for her3his decision on sentencing (BCAG 1998, 9)

Appendix B:
List of Recommendations for Addressing
Hate/Bias Activities

The following is a list of recommendations that I have compiled from a comprehensive review of the literature produced by governments, NGOs or community organizations, and other interested actors, for addressing hate/bias-motivated crimes and activities. It focuses mostly on the period between 1990 and 2002 which is when most documents, reports and research notes on the subject of hate crimes were produced, although important documents produced before or after these dates have also been included.

The appendix is divided into two sections. There is a list of legal recommendations, followed by a list of non-legal recommendations. These lists are intended to give a general overview of what has been proposed over the years to address hate/bias crimes and activities. A number of the recommendations listed below have been addressed, in some cases on a small scale by certain police services, community organizations, groups, school boards and so on.

Legal Recommendations to Address Hate/Bias Crimes

I have divided the list of legal recommendations into three categories: recommendations that focus on criminal law; recommendations that focus on human rights law; and other recommendations. For more clarity, I have subdivided some of these categories, grouping recommendations that have certain commonalities.

1) Recommendations and Amendments with Respect to the *Criminal Code*

Hate/Bias Crime

Definition of hate/bias crime

- A list of identifiable groups should be included in section the hate-crime sentencing provision of the *Criminal Code*. (done)
- Sexual orientation should be included as a protected category when hate/bias is considered an aggravating factor at sentencing. (done)
- To protect the privacy of individual victims, the definition of a hate/bias crime should refer to the 'actual or perceived' group status of the hate-crime target.

New crime category and/or sentencing guidelines

- The *Criminal Code* should be amended to make hate-motivation an aggravating factor in sentencing. (done)
- The federal government should revise the *Criminal Code* to allow for stiffer sentences for all perpetrators of hate/bias crimes in order to reassure victims and targeted groups that hate crimes are considered serious matters and to deter would-be perpetrators from committing these crimes. (done)
- Justice Canada should prepare amendments to the *Criminal Code* to allow judges to impose an additional consecutive sentence when the principal criminal act is racially motivated.
- A separate crime or crimes of hate-motivated violence should be created.
- New sections to the *Criminal Code* that specifically criminalize the desecration of religious institutions and cemeteries (done) and that makes membership in hate groups a criminal offence should be added.

Data collection

- A hate crime statistics act should be enacted.
- The mandatory tracking of hate crimes and timely publication of reports analyzing the data should be legislated.

Hate Propaganda

Elimination of certain requirements or specifications in the current hate propaganda provisions

- The requirement for the Attorney General's consent to a hate propaganda prosecution should be removed.
- An amendment to s. 319.2 (incitement of hatred) to drop the word 'willfully' as a requirement for the public incitement of hatred should be prepared.
- Certain defenses used to prevent, under certain circumstances, prosecutions for promoting hatred mentioned in s. 319.3 should be abolished.
- The territorial limitation for the commission of the offence should be removed, making the offence one of universal jurisdiction.

Specifications to current provisions

- The list of identifiable groups should be expanded to include...¹
- The word 'publicly' should be added in the provision that specifies the circumstances under which advocating genocide is considered.
- The definition of genocide (s. 318.2) should be amended to reflect a broader set of circumstances leading to genocide.
- The defence of religious belief for cases of incitement of hatred (s. 319) should be modified to ensure that hatred cannot be perpetrated under the guise of religion.
- An amendment to s. 319.3 that would clarify that the burden of raising special defences to counter charges of spreading hatred is on the accused should be enacted.
- The definitions of 'public place' and 'possession' in relation to computer technology should be codified to ensure that the hate propaganda provisions include materials stored on, and distributed by, computer disks and drives and the Internet.

Creation of new crime categories or new applications of current provisions

- The possession of hate propaganda for the purpose of distributing it with the intention of publicly promoting hatred should be made a criminal offence.
- Section 13 of the *Canadian Human Rights Act* should be made the object of a new section in the *Criminal Code*.
- The *Criminal Code* should be updated to include Internet hate crimes.
- The hate propaganda provisions should apply not simply to perpetrators, but also to those who have authority or control over the perpetrators.
- A new provision should be added to the *Criminal Code* making the downloading and possession, on hard drives or floppy disk, of hate propaganda with the intent to promote hatred should be penalized.

2) Recommendations and Amendments with Respect to Human Rights Codes

General Recommendations

- Access to human rights commissions should be standardized across the country.
- Federal and provincial governments should include sexual orientation in their Human Rights Codes.²

¹Propositions have been made to include a number of groups other than the one listed in the *Criminal Code*. Prior to being amended in 2004 to add "sexual orientation", section 318 (4) defined "identifiable group" to mean "any section of the public distinguished by colour, race, religion or ethnic origin". Despite demands to include sex, language, age, physical or mental disability, etc., to date, only sexual orientation has been added to the definition of identifiable groups protected by the hate propaganda provisions.

² Including "sexual orientation" in human rights legislation has been done in most jurisdictions. The following is a list of jurisdictions with the date of the change: Federal (1996); Alberta (1998); British Columbia (1992); Manitoba (1987); New Brunswick (1992); Newfoundland (1995); Nova Scotia (1991); Ontario (1986); Prince Edward Island (1998); Quebec (1977); Saskatchewan (1993); and Yukon Territory (1987). Both the North West Territories and Nunavut have yet to include sexual orientation in their human rights legislation, although a law is currently under review in the North West Territories (EGALE 2002).

Hate Propaganda

- The reach of the *Canadian Human Rights Act* should be broadened by giving jurisdiction to deal with hate propaganda, regardless of the way it is disseminated.
- The remedies available to tribunals should be expanded.

3) Other amendments focusing on the legislative framework

- New tort law to have a civil cause of action to respond to hate propaganda and more generally hate activity or simply discrimination should be added.
- Changes to libel law that ensure that these laws are not used by hate groups as an intimidating and harassing tactic against equality-seeking groups need be enacted.
- Governments and public institutions should develop policies to ensure that public space provided by those institutions is not used by groups or individuals to communicate ideas of hate, racial superiority, or inequality with others. Moreover, governments should refuse to give grants or do business with those in the private sector who offer facilities to hate groups.
- The private sector should consider developing policies to ensure that their facilities are not used by groups or individuals to communicate ideas of hate, racial superiority or inequality with others.
- The Department of National Defence should develop a policy to ban the presence in Canada of individuals who are members of organizations promoting hate and genocide.
- Federal and provincial governments should include homophobic harassment in Employment Standard legislation, labour relations and collective bargaining agreements.

Non-Legal Recommendations to Address Hate/Bias Crimes and Activities

Although there is a definite emphasis on recommendations that focus on the legislative framework, over the years, a number of recommendations have been made which do not focus on the law. These non-legal recommendations can be classified into four categories. They either have to do with research and data collection, public education and community action, implementation and enforcement, and new media. These are the categories that have been used by the government of Canada, particularly in the documents that were produced following the hate/bias roundtables held in 1997 and

2000. I have employed the same categories here since they represent accurately the type of recommendations that are made in the literature. As done above, I have grouped similar recommendations in each category.

1) Research and Data Collection

Data collection: general

- A uniform definition of hate/bias crime should be endorsed and universally applied at all levels of the criminal justice system in all of the provinces and by all law enforcement personnel.
- Statistics on hate propaganda, hate crimes and hate groups, as well as public attitudes towards hate/bias should be collected.³
- International comparison between the data on hate crimes in Canada and other jurisdictions should be conducted.
- Governments should offer financial support to community groups that are gathering data to monitor hate crimes and hate group activities.

Data collection: specific

- The Canadian Centre for Justice Statistics (CCJS) should adopt the collection of hate crime statistics as a priority for future information requirements in the area of criminal justice.
- In order to estimate the true extent to which hate crimes are underreported, questions about hate-motivation should be added to the General Social Survey (GSS) victimization project. (done in 1999 for the first time)
- Questions relating to hate-motivations should be added to the data elements currently collected on the revised Uniform Crime Reporting (UCR) survey.
- One institution or organization should be mandated to investigate the dissemination of hate propaganda.
- A task forces to gather information on the prevalence of hate literature, the promotion of hate and the recruitment to hate groups via the Internet should be established.

Research projects

- Research that explores the nature of the problem of hate/bias as a social problem should be undertaken to broaden our understanding of this issue.
- Community surveys should be conducted on the populations most at risk in order to gauge the extent to which they have confidence in the criminal justice response to reports of hate crimes.
- Reports that document various aspects of responding to hate/bias should be compiled. Topics covered should include a list of all laws and policies; an inventory of services and programs available, a survey of literature, handbooks

³This is done by a number of police services and community organizations or NGO (B'nai Brith, 519 Community Centre). Moreover, the Canadian Centre for Justice Statistics (Statistics Canada) has a pilot project looking into data collection issues. Despite these initiatives, at this point in time, there is no uniform and centralized data collection.

and manuals or reports that focus on hate/bias activities, and all existing recommendations to combat hate/bias with the status of their implementation.

- Consideration should be given to increasing the amount of resources devoted to research into the nature and origins of hate crimes in Canada.
- Funding should be provided to produce community and victim impact studies.
- Research into the social conditions that give rise to racism against Aboriginal peoples should be developed.

2) Public Education and Community Action

Public awareness

- A massive and co-ordinated public education campaign should be launched to educate people on how to recognize hate/bias crimes, and for targeted groups to be aware of where to get help and how to report hate/bias incidents.
- Canadians need to be educated about the benefits of diversity.
- The media have a key role in informing the public on issues relating to hate/bias and also in downplaying the use of hate/bias speech.
- Educational material on hate/bias incidents (how to recognize such incidents and how to get help following hate/bias incidents) should be made available in various forms and languages.
- A national information-sharing network including police departments, community groups and government officials to improve awareness of hate group activities and, more generally, hate/bias, should be developed.
- Human Rights Commissions must improve their outreach programs and educational capacity.
- Professional Colleges should educate health care professionals to recognize and respond to hate-motivated violence with an understanding of the psychological effects of hate-motivated assault.

Community actions

- There is a need for community coalitions and networks to combat hate/bias at the local level.
- Communities must support victims of hate and bias activities.
- Community-based victim assistance programs should be established to support a spectrum of services to victims, such as legal advice, counseling, the provision of child care and companion for court appearance.
- A well advertised 1-800 number and other centralized services should be provided with referral mechanisms, to ensure that hate and bias activities are reported and that victims receive the assistance they need
- Non-profit regional centres should be established to help smaller communities deal with hate/bias crimes, disseminate information and create awareness.
- Strategies that counter the recruitment activities of organized hate groups should be developed.
- Young people's creativity and leadership in developing strategies to combat hate and bias should be encouraged.

- Individuals should be encouraged to take action against hate/bias and reject racist politics.
- Local politicians should participate in public information sessions in their neighborhoods to become aware of the extent and nature of hate activity and to encourage the development of neighborhood strategies.
- City Councils should make sure that no hate/bias material (including white supremacist and Holocaust denial material) is available for general distribution in public and school libraries.

Education system

- There is a need to recognize the role of the school system in promoting positive attitudes towards diversity, preventing youths from getting involved in hate/bias activities, providing information to potential victims, and encouraging youths to take a pro-active stand against hate/bias.
- Anti-racism/anti-bias policies in all school boards should be developed and updated, and it should be ensured that they address homophobia.
- Partnerships between school boards, police and community groups should be developed to effectively combat hate/bias in the school environment.
- Government involvement in computer space in high schools should be increased.

3) Implementation and Enforcement

Police services

- National guidelines, policies and procedures for governing police response to hate/bias crimes need to be developed.
- All provincial law enforcement agencies should provide ongoing training for police officers (front-line officers and detectives) in identifying, responding to, and reporting all hate crimes.
- Hate crime units in larger urban areas and community-oriented patrols need to be established, especially in known danger areas and at known dangerous times.
- Information on hate crimes units and police services' policies on hate crimes should be made available on the Internet.
- Provincial phone lines should be established to report hate/bias crimes.
- Partnerships between police and community groups should be established to develop and implement programs that meet the needs of victims and targeted communities as well as help in establishing effective responses to hate.
- A national police training workshop, that would involve police officers from all hate crime units across the country, should be considered as a forum to promote a uniform police response to the investigation of hate crimes.
- A multi-level task force that brings together the coordinated efforts of municipal, provincial, and federal police forces, Criminal Intelligence Service of Canada (CISC), Immigration, Customs, Canada Post, GST and PST Inspectors as well as provincial and Crown attorneys to combat hate groups activities should be established.

- Criminal Intelligence Service of Canada (CISC) should make monitoring of hate groups a national priority.
- Offenders' criminal record on the Canadian Police Information System (CPIS) should reflect when an offender has been convicted of a hate-motivated crime.
- Threat assessment programs are important to ensure the protection of anti-hate advocates. Resources should be attributed to those.
- Guidelines by the Correctional Services of Canada (CSC) should be developed to address the presence and activities of hate groups in the prison system.
- A consistent, reliable system for handling complaints about police actions must be established to restore trust in the police on the part of certain groups
- Mechanisms should be established for the police and Immigration authorities to share information concerning hate groups and individuals who disseminate hatred.

Legal system

- Cross-cultural training for all members of the criminal justice system on all aspects of hate motivated crime should be made mandatory.
- Prosecutors should have an information handbook that provides them with up-to-date information on how to identify hate messages and hate crimes.
- Provincial attorney generals need to give clear directions as to how Crown prosecutors should address the issue of hate/bias activities.
- Crown Attorneys who specialize in the prosecution of hate crimes should be designated.
- Mechanisms should be developed to improve communication between police forces and Crown prosecutors.
- Representatives of the victim community should be allowed and encouraged to speak at sentencing.
- Human Rights Commissions should be provided the necessary resources to be able to process complaints expeditiously; the human rights process should be simplified and made more accessible.
- The use of civil rights cases as a potential redress mechanism where such laws are in place should be encouraged.

4) New Media

- A multifaceted approach to combat hate on the Internet which combines the use of legislation, industry self-awareness and user participation should be established.
- The Internet should be used by governments, organizations and businesses to promote messages of respect, equality and diversity.
- Governments must allocate funding to research ways to monitor certain aspects of the Internet.
- Research in the area of non-legislative regulation that encourages user-awareness and responsible Internet Service Providers (ISP) conduct is needed.
- Codes of conduct stating up front that services will be denied to hate promoters should be adopted by Internet access providers and telephone and cable companies.

- Internet Service Providers should require proper identification be provided prior to an account being issued.
- Parental Supervision of Internet use should be encouraged.
- Institutional supervision of computer use should be encouraged.

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