Come As you Are, but Change Once you Enter

The Misalignment between the Admission and the Integration of Homosexual Individuals in 1970s Cold-War Era Canada Alfonso Ralph Mendoza Manalo, University of Toronto '23

Abstract: The Immigration Act of 1952 was the first immigration policy to explicitly mention homosexuals in its list of prohibited persons from immigrating to Canada. Homosexuality was later removed as grounds for denying admission into Canada in the 1977 Immigration Act. In doing so, the Canadian state recognized homosexuals as legal members of the Canadian state through the provision of legal status. I argue that the 1977 amendment was not indicative of the integration of homosexuals into Canadian Society, as the Immigration Act of 1952 was amended due to the increased visibility of the Gay and Lesbian Liberation Movement and the lack of policy influence amongst the Department of National Defense (DND) and the Royal Canadian Mounted Police (RCMP). Furthermore, homosexuals continued to be subject to increased surveillance and sexual regulation compared to their heterosexual counterparts; and were subject to pervasive forms of homophobia and sexual othering throughout the 1970s in Cold War Era Canada which stripped them of other aspects of Canadian citizenship (i.e., equal rights and social and economic belonging).

Introduction

The Immigration Act of 1952 was the first immigration policy to explicitly mention homosexuals¹ in its list of prohibited persons from immigrating to Canada (LaViolette, 2004, p.973). This policy was built on the premise that homosexuals were to be considered "subversives" and national security threats, due to dominant thinking at the time, which presumed homosexuals would be sympathetic towards Communists and the political left and more susceptible to being blackmailed based on their sexual orientation by Communists (LGBT Purge Class Action, 2019). Homosexuality was later removed as a ground for denying admission into Canada in the 1977 amendment to the Immigration Act, which was fully implemented in 1978 (Colwell, 2018,p.5) as a response to growing calls amongst Gay and Lesbian organizations that homosexual acts amongst two consenting adults were no longer prohibited by the Canadian Criminal Code as of 1969 (Girard, 2007, p.6) and that the Immigration Act should reflect this. The 1977 amendment was also caused by the public nature of the government's deliberations on the Immigration Act of 1977 broadly through the Government's decision to call for a Green Paper (p.6). which marked a turning point in Canadian immigration law as the act was the first to explicitly note the fundamental objectives of Canada's immigration laws such as prioritizing diversity and the principles of non-discrimination, and by introducing a transparent point system to determine the eligibility of admission for immigrants (Canadian Museum of Immigration at Pier 21, 2023b). This heavily juxtaposed the lack of public consultation and the confidential nature of the Immigration Act of 1952 (Girard, 2007, p.14).

In amending the 1977 Immigration Act to remove homosexuality as grounds to bar individuals from being admitted into Canada, the Canadian state recognized homosexuals as legal members of the Canadian state through the provision of legal status. However, this paper complies with Bloemraad, Korteweg, and Yurdakul's (2008) argument that citizenship encompasses the following additional dimensions: substantive equal rights, political participation, and belonging (social and economic), in addition to legal status (Bloemraad et al., 2008, p.153). Using this as a framework to assess the citizenship of homosexuals in Cold War Era Canada, I note that the full integration of any group or community within Canadian society would require said group to possess all four of these dimensions of citizenship. Thus, despite this marked transition regarding the admission of homosexuals into Canada, the 1977 amendment was not indicative of the integration of homosexuals into Canadian Society, as the Immigration Act of 1952 was amended due to the increased visibility of the Gay and Lesbian Liberation Movement and the lack of policy influence amongst the Department of National Defense (DND) and the Royal Canadian Mounted Police (RCMP).

As will be demonstrated further in this paper, homosexuals continued to be subject to increased surveillance and sexual regulation compared to their heterosexual counterparts; and were subject to pervasive forms of homophobia and sexual othering throughout the 1970s in

¹ This paper will use the term homosexuals to refer to sexual minorities, primarily gay men, lesbian women, and bisexual individuals in the Cold War Canadian Context. This paper employs this term as it was commonly used in official documents and the rhetoric of Canadian law-enforcement agencies throughout the Canadian Cold War when referring to sexual minorities.

Cold War Era Canada. Homosexuals were stripped of all dimensions of citizenship following the ratification of the 1977 Immigration Act, as they were consistently labeled by the Canadian government as "deviants", "subversives", and "national security threats" thereby further othering them from the rest of heteronormative Canada. This was accompanied by the Canadian government purging itself of all homosexual public servants from its ranks by identifying, outing, demoting, and firing homosexual public servants, thereby hindering their ability to participate economically in a key sector of the economy, and thus preventing them from feeling any sense of economic belonging in Canada. Lastly, the increased surveillance of homosexuals and the enforcement of sexual regulations such as the bawdy-house law to raid bathhouses and other gay and lesbian establishments, and the Customs Act which was used to censor gay and lesbian publications, inhibited homosexuals from enjoying the same rights as their heteronormative counterparts in regard to expressing their sexual orientation. In demonstrating the above-mentioned phenomena through a series of cases, programs, and other government measures, I seek to establish a pattern wherein the Canadian government continued to hamper the possibility of homosexuals from fully integrating into Canadian society following the implementation of the 1977 Immigration Act. Therefore it becomes clear that the ratification of the Act, and the legal acceptance of homosexuals, did not indicate the full integration of homosexual citizens into broader Canadian society but rather a slight amelioration of one dimension of citizenship.

"Subversives": The Homosexual as a Subject of Suspicion in Cold War Era Canada

To further our understanding of the relationship between the status of homosexuals in Canada's immigration laws and its relation to their other aspects of citizenship, we must first understand the conditions that led to the barring of homosexual individuals from immigrating into Canada in the first place. At the onset of the Cold War, the Canadian government had embarked on a paradigm shift in regard to its immigration and national security policy, where it sought to proactively bar "subversive" individuals (those with an inclination to challenge the Canadian state) from immigrating into Canada rather than interning them, so as to curb the "contamination" of Canadians with so-called dangerous notions (Finkel, 1986, p.54) and prevent internal political dissent (Girard, 1987, p.1). This mainly pertained to Communists and leftleaning individuals, whose activities were labeled by Canadian and European intelligence partners to be "subversive or propagandistic in nature" (Finkel, 1986, p.57), with the Canadian state institutionalizing the use of security checks for all immigration applicants following a Cabinet decision in 1946 (p.54). This later expanded to include a host of other individuals, with Cabinet Guidelines to the RCMP in 1949 expanding the barring of all prospective immigrants to "anyone who might have once demonstrated an interest in left-wing thought" (p.58). This was justified by then Minister of Citizenship and Immigration Walter Harris, on the basis that "subversion had undertaken peaceful means and attempted to destroy the faith of the democratic peoples in the processes of democratic government in Canada," (p. 59) and thus requiring counteraction similar to subversion by force.

Homosexuals specifically, later became a prime target of national surveillance and other national security measures on the basis that the state considered their activity as "obscene", "defiantly" challenging traditional gender roles and heteronormativity, and that they themselves innately had "character weaknesses" due to their sexual object of choice (Kinsman, 2000, p.143). This coincides with Kinsman et al.'s (2000) argument that the use of national surveillance and other national security measures is to protect the interests of the ruling or privileged class, by marking the other as "threatening", "dangerous", or "other", justifying the suppression of their rights for the sake of protecting national interest (Kinsman et al., 2000, p.278). As shown, homosexual activity was deemed to operate in direct opposition to dominant heteronormativity by the Canadian government, similar to how left-wing and Communist individuals were deemed as threats to the interests of the dominant bourgeoisie and the capitalist system. This led to both groups being seen as "subversive" national security threats, external to the national interest of democratic Canadians and thus "unworthy" of equal rights, political participation, belonging, and virtually all forms of integration. This is notably seen in the words of Minister Walter Harris in response to criticisms to the 1952 Immigration Act:

"It might be said that by denying entry, we were tampering with the right of free speech..., however it was not felt that facilities for entry must necessarily be granted to one who had no right of admission into Canada and no special claim on Canadian hospitality" (Finkel, 1986, p.54).

Denying and Gaining Admission: The Origins of the 1952 Immigration Act section 5 (e)

The government-backed rhetoric that homosexuals were threats to Canada's national security, due to their susceptibility to left-wing thought and thus should have their rights suppressed was diffused onto Canada's 1952 Immigration Act. The 1952 Immigration Act Clause (Immigration Act section 5 (e)) (Canadian Museum of Immigration at Pier 21, 2023a) barred confirmed homosexuals from entering Canada in all capacities reflected the rife homophobia in Canadian society throughout the Cold War, acting as a complementary national security tool to the increased preventative measures taken by the Canadian government to prevent the infiltration of gays and lesbian individuals at large from infiltrating the public service by firing and demoting accused gay and lesbian public servants (LGBT Purge)² on the grounds that they were deemed by the government to be subversive, and increasing the sexual regulation of homosexuals in broader Canadian society (Girard, 2007, p.6). This also included the formal authorization of the Security Panel (composed of the RCMP, DND, External Affairs, and other rotating members) to investigate and weed out all homosexual working in the public service and

² The term LGBT Purge is used to describe the Canadian government's intentional outing and identification of gay and lesbian public servants, so as to fire or demote them on the basis of their accused sexual orientation. The LGBT Purge lasted roughly from the early 1940s till 1990, culminating with *Douglas v. Minister of National Defense* wherein Douglas filed a lawsuit against the Department of National Defense for infringing her Charter (Constitutional) Rights for being interrogated and discriminated upon on the basis of her sexual orientation as a lesbian woman (LGBT Purge Class Action, 2019).

at large, with an overriding principle of secrecy (p.4). Given that the clause itself was a product of Canada's national security regime, it did not solely focus on the admission of homosexuals but also prescribed their increased regulation, subsequently curbing their sexual rights. This is seen in the fact that the Immigration Act of 1952 also required all municipal clerks, immigration officers, constables, and peace officers to report all individuals who were suspected or deemed to have engaged in homosexual acts to the Director of Immigration (p.7).

The increased regulation of homosexual immigrants in Canada coincided with the ratification of homophobic policies in the United States of America, which was Canada's strategic intelligence partner throughout the Cold War and onwards. Most notable was the U.S. Senate's Subcommittee report on the "Employment of Homosexuals and Other Sex Perverts in the Government" released in December 1950, which called for the dismissal of all homosexuals from the American public service (p.8). It is important to note that the Immigration Act of 1952's clause barring homosexuals was a product of "international security arrangements with the United States who was increasingly concerned with the laxity of Canada's security system and pressured them to tighten them" (p.6). In an effort to mitigate publicity issues and moral panics surrounding the barring and targeting of homosexuals as experienced in the US's Lavender Scare, the Canadian government succumbed to the RCMP and DND's whims to secretly include the clause barring homosexuals, and subsequently, the notion that homosexuals were security risks to Canada's national interest (p.4). Therefore section 5 (e) of the 1952 Immigration Act in Canada arose in part out of international pressures and policy diffusion in the sphere of national security from the United States, while also coming out of domestic worries and angst towards the presumed threat that homosexuals had to Canadian society.

The Door was left Ajar: The Conditions Leading Admittance of Homosexuals

As aforementioned, the barring of homosexual individuals from immigrating to Canada under Canadian immigration law ceased with the amending of the Immigration Act in 1977 and its full implementation in 1978. However, the removal of the clause barring homosexuals from the 1977 Immigration Act is not to be mistaken as indicative of any increased integration of homosexuals in Canadian society as seen in the conditions that had led to its amendment. I assert that it was not necessarily a change in public attitude and increased tolerance that led to this amendment, but rather a myriad of other factors. One of these factors being the fact that the Immigration Act of 1977 was preceded by the 1975 Green Paper from the Special Joint Committee of the Senate and the House of Commons, which publicly reached out to multiple organizations throughout Canada to consult them on their views towards Canada's immigration scheme broadly (p.14) so as to instill National debate on the issue of immigration. This included a dozen Gay and Lesbian organizations that called to remove all explicit references of homosexuals and homosexualism in the Act, on the basis that barring potential immigrants on the grounds of their sexual orientation was misaligned with other legal developments (p.16). They primarily stressed that private sex between two consenting adults (21 years and older) had been decriminalized in 1969 and that the Immigration Act of 1975 should reflect this (p.16).

Furthermore, the Green Paper of 1975 held multiple primary objectives, including ensuring the principle of non-discrimination throughout the entire immigration process (Hawkins, 1975, p.239). Therefore, the barring of homosexuals from immigrating into Canada would operate in direct opposition to this principle, leading to a misalignment in Canada's Immigration law framework. The very public nature of these consultations and the weight given to community input rather than that to the RCMP and DND played a pivotal role in the removal of the clause in 1977.

Additionally, the Gay and Lesbian Liberation Movement had started to emerge in Canada leading up to the Green Paper. Through this, homosexuals increasingly becoming more visible and public with their sexual orientation (Girard, 2007, p.14-15). This was patterned with the increasing establishment of a collective queer identity, including through homosexual legal and community advocacy groups (i.e., Homophile Association of St. John's and Gay Alliance Towards Equality (GATE) (p.15), the proliferation of gay businesses and publications, and an overall willingness to voice out queer experiences and oppression at the hands of the government and heterosexist Canadian society. These combined pressures all contributed to the removal of the barring clause from the 1977 Immigration Act.

Sexual Dangers to the Canadian Public: The Sexual Regulation of Homosexuals

The ratification of the 1977 Immigration Act did not lead to the full integration of homosexuals in Canada, wherein they are granted equal rights, felt a sense of political and economic belonging, and participated politically aside from possessing legal status as a citizen. As shown in the previous section, the Immigration Act itself was not amended due to drastic changes to public perception or acceptance of homosexuals in Canadian society, but rather due to the public nature of the policy consultations surrounding the Immigration Act broadly and the misalignment of a clause barring the admission of homosexuals into Canada with other pieces of legislation. To supplant the notion that the 1977 Immigration Acts amendment did not coincide with the full integration of homosexuals, this section will illustrate the ways in which homosexuals continued to be subjected to increased measures of national surveillance, policing, and sexual regulation in other public spheres outside of immigration around the time of the 1977 Immigration Act's implementation. Throughout this time the sexual rights of homosexuals were severely limited, with said limitations being justified by a perpetuated notion that homosexuals were to be seen as national security threats. In being framed as national security threats, the limitation of their rights was justified as measures used to ensure the protection of the Canadian people; and subsequently proves that homosexuals were actively limited in obtaining dimensions of integration by the Canadian state. These dimensions included access to the same equal rights and social belonging, given that in being labeled as national security threats, homosexuals were stripped of rights from which their heterosexual counterparts benefited and enjoyed while they were constantly being othered.

A clear example of this can be seen in the disproportionate use of the Customs Act to censor, seize, and destroy homosexual publications and materials, essentially limiting the rights of expression and speech of homosexuals. As aforementioned, the emergence of the gay and liberation movement in the 1970s was accompanied by an increase in explicitly homosexual publication presses, magazines, books, poetry, and pornography (Cossman, 2013-2014, p.49). The proliferation of these homosexual publications and content was met with routine seizure during transit to homosexual-catered bookshops. This led to multiple notable legal cases against the government on the grounds that they were limiting the rights to expression and speech of homosexuals, including but not limited to The Body Politic, a gay newspaper which was raided multiple times by Toronto's Morality Squad, and Glad Day Bookshop and Little Sister Bookstore which routinely had their homosexual publications seized by the government (pp. 53-56).

The censoring and seizure of homosexual publications was explained by the government on the basis that the confiscated contents were considered to be "immoral", "indecent", and "obscene" in accordance with the 1959-1992 Criminal Code definition of obscenity. This definition was later replaced in the Supreme Court Case of R. v. Butler (1992), in which the community test to determine if a material was legally considered as obscene was rewritten to include the following three categories: (i) sex with violence, (ii) sex without violence, but is degrading and/or dehumanizing, and (iii) sex without violence but is not degrading and/or dehumanizing (p.51). It is important to note that gay and lesbian publications were consistently considered as failing this community test as they were often considered to fall under the second category. This is explicitly shown in Glad Day Bookshop v. Deputy Minister of National Revenue (Customs & Excise) (1992), where the judge ruled that all seizures made at Glad Day Bookshop were justified as each publication was considered to be obscene, "as the mere representation of gay sex was degrading and dehumanizing (p.54)." The disproportionate censoring of homosexual publications on the basis of obscenity was explicitly recognized in Little Sisters Book & Art Emporium v. Canada (Minister of Justice), in which the Supreme Court ruled that the Canadian Customs' practice of censoring materials did not breach the homosexuals' right to the freedom of expression under the Charter, but that Canadian Customs did unfairly target gay and lesbian materials (p.56).

Another notable example of the increased sexual regulation of homosexuals was the drastic increase in "public sexuality" following the amendment of the 1969 Omnibus Bill that decriminalized sex amongst two private consenting adults in private (a bedroom), which, according to the George Smith, a sociologist and gay activist "ironically...led to the largest mass arrests of gay men in the country's history (Hooper, 2019, p.260)." This was due to the fact that as argued by Tom Hooper, the Omnibus Bill recriminalized homosexuality by explicitly expanding the criminal justice system's authority over the lives of discreet homosexual men whose sexual lives prior to the Omnibus Bill were mainly unnoticed (p.259).

In decriminalizing the sexual relations of homosexuals in private, Canada's law enforcement agencies disproportionately³ used other regulations such as the Bawdy-House Law, to raid gay establishments (i.e., bathhouses, bars, etc.) and arrest homosexuals. Under the Bawdy-House Law, all spaces that facilitated acts of so-called indecency were considered to be illegal (p.265). This was used to raid all spaces wherein homosexual sexual acts were considered to occur regardless of whether that establishment considered itself to be private or not (p.263). The most notable of these countless raids included Operation Soap in 1981, in which Toronto Police raided four bathhouses and arrested 306 men (p.266); the 1977 raiding of the Montreal Truxx Bar where 146 patrons were charged with being "found-in" a bawdy-house (p.266); and the 1976 Montreal Olympic Cleanup in which countless gay establishments in Montreal and Ottawa were raided leading up to the Olympics (p.265). It is important to note that the sexual regulation of homosexuals was underpinned by the homophobic mentality that homosexuals were considered to be sexual threats and sexual dangers to Canadian society, with Toronto Chief James Mackey noting in 1968 that: "Families have been brought heartbreak and sadness because of children affected by coming into contact with homosexuals" (pp.263-264). This paralleled the words L. R. Hobbs, the director of Montreal Port Police, where he problematically claims that homosexuality needed to be regulated as it led to criminality: "The search by homosexuals for partners often leads to assault, theft, male prostitution and murder" (p.264). Furthermore, this stood in direct contrast to how heterosexual group sex was legally regulated, as shown in R. v. Mason 1981 wherein despite the fact that Mason hosted monthly heterosexual group sex parties, the judge acquitted of keeping a bawdy-house, with his rationale being:

"It is my considered opinion that no one would seriously contend that a sexual act, between consenting adults of the opposite sex, in a private home, could be considered grossly indecent..., an act of gross indecency, as contemplated by the Code, includes an act between homosexuals..." (Hooper, 2014, p.71)

Unfit for Employment: The Expansion of Sexual Regulation into Economic Integration

The stripping of homosexuals' freedom to enjoy equal rights as their heterosexual counterparts encroached other areas outside of the previously mentioned literary expression, the ability to gather and congregate, and perform sexual activity in private. The sexual regulation of homosexuals also prevented the economic integration of homosexuals in Canada, hindering

³ There is a lack of concrete statistical figures surrounding the disparity on the enforcement of sexual regulations such as the Bawdy-House Law on sexual minorities in Canada. However, there is broad consensus surrounding the fact that these regulations were disproportionately enforced on gay men and lesbian women specifically throughout the Cold War, as seen in Prime Minister Trudeau's 2018 apology wherein he states: "discrimination against LGBTQ2 communities was quickly codified in criminal offences like "buggery", "gross indecency", and bawdy house provisions. Bathhouses were raided, people were entrapped by police. Our laws bolstered and emboldened those who wanted to attack non-conforming sexual desire. Our laws made private and consensual sex between same-sex partners a criminal offence, leading to the unjust arrest, conviction, and imprisonment of Canadians. This criminalization would have lasting impacts for things like employment, volunteering, and travel" (Prime Minister's Office, 2017).

homosexuals from yet another dimension of citizenship needed for full integration. As subjects of national surveillance, they were barred from working in the federal civil service, the RCMP, and the military until 1992 (Federal Court, 2020 p.70). In actively investigating suspected homosexuals in the Canadian public service and purging itself of queers in their ranks, the Canadian government hindered their ability to economically belong in Canada, preventing their integration. Known as the LGBT Purge, the Canadian government tasked the RCMP's A-3 Unit with hunting down homosexual public servants and confirming the sexual orientation of all suspected homosexuals within the civil service (Kinsman, 1995, p.149). The RCMP would conduct their investigations in a myriad of ways, including but not limited to the surveillance of suspected homosexual meeting spots, befriending non-civil servant homosexuals, and asking them who they knew was gay, and directly interrogating suspected homosexuals to out themselves and others (Kinsman, 2000, pp.145-147). DND's Special Investigative Unit also employed the same research methods to purge itself of homosexuals, in accordance with Canadian Forces Administrative Order 19-20 which barred homosexuals from working in the military until 1992 (Gouliquer et al., 2018, p.324). This resulted in the discriminatory discharge of hundreds of individuals such as Martine Roy (1984), Alida Satalic (1989), and Todd Ross (1990) who successfully launched the LGBT Purge Settlement, in which the Canadian government recognized that the LGBT Purge subjected class members to persistent discriminatory, humiliating and injurious treatment, demeaning their dignity and infringing their basic human rights (Federal Court, 2020, p.69). Similar to other sexual regulations, the LGBT Purge was also justified by national security campaigns, that deemed homosexuals unfit for employment in all capacities due to their moral and character failings and supposed susceptibility to being blackmailed by Communists as a result of their sexual orientation (Kinsman, 1995, p.141).

Conclusion

As demonstrated throughout this paper, the Canadian government increased the sexual regulation of homosexuals leading up to and following the 1977 Immigration Act, on the basis that they were "other" as sexual and moral dangers, and national security threats who did not socially nor economically belong to Canadian society nor shared the nation's interest. This sexual regulation hindered their ability to possess substantive equality rights as enjoyed by their heterosexual counterparts and subsequently stripped them of the multiple dimensions of citizenship required to be considered fully integrated such as their economic and social belonging, according to Bloemraad et al.'s. (2008) framework. Therefore, the Immigration Act of 1977 granted the admission of homosexuals, but its ratification did not lead to nor coincide with their full integration into Canadian society.

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