Gay Liberation

Litigation around the Charter played a huge role in the advancement of the gay and lesbian rights movement in Canada. Some argue that the main goal of litigation like this is to build movements rather than achieve substantive legal change, and that ultimately it is not court decisions that bring about the biggest change but the political mobilization that builds around rights claims (Smith, Lesbian and Gay Rights in Canada 20). Miriam Smith argues that these rights claims served to bring attention to the issue of sexual orientation and develop networks, and that building the social movement through rights claims was as important if not more so than legislative victory (Smith, Lesbian and Gay Rights in Canada 21). Still others are critical of the role of the Charter, questioning whether it was a waste of resources that could have been used to better effect in grassroots organizing (Smith, “Social Movements and Equality Seeking” 286). Though both sides are arguable, Canada is now regarded as one of the most progressive countries in terms of LGBTQ rights, which may speak to the effectiveness of the strategies employed by gay rights liberationists.

Since the legalization of same-sex marriage, the gay and lesbian rights movement has focused more towards protection of LGBTQ youth and trans people (Rau), mainly through activism strategies. Though trans issues are not discussed in this analysis, they are historically intertwined with gay and lesbian issues. In 2005 and 2006, MP Bill Siksay attempted to introduce gender identity to the Charter as a prohibited grounds of discrimination, but was unsuccessful (“Canadian Queer History Timeline”). To address bullying of LGBTQ youth in schools, laws passed in Ontario in 2012 and Manitoba in 2013 require that all publicly-funded schools, including religious ones, allow student-organized gay-straight alliance clubs (Rau). “Gender identity” and “gender expression” were first added to the Ontario Human Rights Code in 2012, and the federal government added them to the Canadian Human Rights Act and the Criminal Code five years later (“Canadian Queer History Timeline”). Transgender activism has also resulted in the ability for trans people in Canada to change the gender on their official documents without undergoing gender reassignment surgery, which may or may not be important to a person’s gender identity (Rau). The Ontario's Human Rights Tribunal ruled got rid of the surgical provision in 2012, and by 2018 all other provinces and territories had done the same (Rau). The same year, the government under Justin Trudeau formally apologized for the purge of LGBTQ members of the Canadian Armed Forces, RCMP, and civil service, after two years of activism by the We Demand an Apology Network (“Canadian Queer History Timeline”).

LGBTQ activism is recent years is able to succeed because of the successful litigation strategies of the 80s and 90s, particularly surrounding the Charter, which set the stage for the full recognition of gay and lesbian political identities. Miriam Smith argues that past governments have preferred to leave these issues to the courts rather than addressing them directly, because they are such hot button issues (Smith, “Social Movements and Judicial Empowerment” 348). Thus, it is highly unlikely that future governments will roll back any of the rights granted to the gay and lesbian community. Though other strategies employed by gay liberationists since the 1960s have also manifested some level of success, the single most effective strategy employed by this movement was litigation in the courts.