

When the Government Apologizes: Understanding the Origins and Implications of the
Apology to LGBTQ2+ Communities in Canada

by

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B.A., University of Victoria, 2015

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We acknowledge with respect the Lekwungen-speaking peoples on whose traditional
territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose
historical relationships with the land continue to this day.

Supervisory Committee

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Abstract

On November 28, 2017, Prime Minister Justin Trudeau apologized to LGBTQ2+ persons within Canada for the oppression and criminalization of queer sexuality and diverse gender identities. Between the 1950s to early 1990s, thousands of Canadian civil servants and military personnel were systematically surveilled, interrogated, and ultimately “purged” because of their sexual orientation or gender identity. The federal government’s heterosexism criminalized queer bodies and sex and it enforced heteronormativity and cisnormativity. These policies had disastrous effects on trans and queer persons and have contributed to ongoing systemic discrimination against LGBTQ2+ persons today. The 2017 apology and the associated process of redress have the potential to reconstitute the relationship between LGBTQ2+ communities and the government. Through an analysis of the apology’s affective and effective outcomes, this case study seeks to understand the origins, complexities, and implications of the apology for LGBTQ2+ equality and inclusion. It invokes Melissa Nobles’ membership theory to better understand the apology’s implications for LGBTQ2+ citizenship in Canada. Specifically, it is interested in better understanding the voices that were included in the pre-apology consultation process, and those that were not. Given the inherent diversity of LGBTQ2+ communities, such an effort had major implications for both the inclusivity of the apology and its ability to remedy past injustices. It finds that the consultations undertaken by the government were rushed, lacked transparency and openness, and consequently undermined the ameliorative potential of the apology.

It then turns to an assessment of the apology’s “authenticity” through an invocation of political scientist Matt James’ criteria, and posits that the 2017 apology is

best categorized as a robust quasi-apology. This thesis then considers the reactions of LGBTQ2+ persons to the apology *itself* and finds that the apology may serve as a rhetorical tool, which can be taken up by activists to demand additional reform. Further, to have lasting significance the apology must be substantiated by real action. To contextualize the apology's equality effects, this thesis also engages in an analysis of the government's substantive policy undertakings and failures in the post-apology period. This thesis asserts that while the government has moved forward with some significant reforms, its post-apology policy approach is characterized by profound shortcomings that have fallen short of the broad-based reforms demanded by LGBTQ2+ activists. These government failures evidence the continued predominance of what Miriam Smith terms "legal homophobia," and the restrictive model of renegotiated citizenship proffered by the government. The citizenship lens invoked throughout this project leads to the theorization that there are two primary LGBTQ2+ factions with regard to the apology: one that seeks integration within the state and demands Canadian citizenship *in spite* of queerness and another that rejects the state's homonationalist project and agitates for a *Queered citizenship* situated within an anti-oppressive, anti-racist framework. This thesis concludes by suggesting that the official apology can be used as a rhetorical tool to pursue the very *Queered citizenship* some activists desire.

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Dedication

This thesis is dedicated to the many LGBTQ2+ persons who endured criminalization and oppression at the hands of the Canadian state. It is dedicated to the two-spirit peoples whose identities were erased by colonizers. It is dedicated to those persons who were murdered or took their own lives because society and the state told them they could not live openly. It is dedicated to the many friends, family, and lovers lost in the HIV/AIDS crisis amid government inaction. It is dedicated to the activists who stood up and said enough to state and societal violence, many of whom have since passed away. It is dedicated to those who marched, rioted, and protested, who pushed back as police raided bathhouses and queer spaces, so that we can live openly today. It is dedicated to the LGBTQ2+ elders and youth who continue the fight today, working to eradicate transphobia, homophobia, biphobia, and indeed all forms of hatred and discrimination. This thesis is dedicated to the hope we find in the rainbow.

Chapter 1: An Introduction

Introduction

On November 28, 2017, Prime Minister Justin Trudeau issued an official apology on behalf of the Canadian government for the criminalization of queer sexuality and persecution of lesbian, gay, bisexual, transgender, queer, and two-spirit (LGBTQ2+) persons.¹ The apology served as an important acknowledgement of the harms caused by government policy in the name of ‘national security’ and ‘morality.’ Between the 1950s and 1990s, the Canadian state systematically surveilled, interrogated, and purged thousands of LGBTQ2+ civil servants and military personnel.² Further, the government criminalized queer sex and bodies, perpetuating heteronormativity, through measures described by Miriam Smith as “legal homophobia.”³ Criminal Code offenses of “buggery,” “indecent assault on a male,” and “gross indecency,” among other provisions, were used to criminalize same-sex sexual activity.⁴

By 2017, an official government apology – along with substantive policy changes – had been a longstanding demand of LGBTQ2+ activists and organizations. In order to understand the origins, complexities, and implications of the apology for LGBTQ2+ equality and inclusion, it is necessary to examine the apology’s affective and effective outcomes. By affective outcomes, I mean the emotional effects of the apology on LGBTQ2+ communities; by effective outcomes, I mean the tangible policy changes that

¹ Canada *House of Commons* Debates, November 28, 2018 (Mr. Justin Trudeau, Prime Minister), <http://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-240/hansard#Int-9810667>.

² Gary Kinsman and Patrizia Gentile, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver: UBC Press, 2010); Egale Canada Human Rights Trust, “The Just Society Report: Grossly Indecent Confronting the Legacy of State Sponsored Discrimination Against Canada’s LGBTQ2SI Communities.” June 2016: Appendix H, <https://bit.ly/2D25JBB>.

³ Miriam Smith, “Homophobia and Homonationalism: LGBTQ Law Reform in Canada,” *Social and Legal Studies* (January 2019): 1-20, <https://doi-org.ezproxy.library.uvic.ca/10.1177/0964663918822150>.

⁴ Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities*, 2nd ed. (Montreal: Black Rose Books, 1996), 128-134.

have followed from the apology, both of which have the potential to alter LGBTQ2+ relational attachments to the state. This chapter lays the foundations for such a research project. It begins by exploring the associated research problem, purpose, and questions, and also locates the researcher in relation to the project. It then provides an historical overview to contextualize the apology, before reviewing literature on official apologies and citizenship. This chapter presents the various methods that will be employed, including a review of primary and secondary material related to the LGBTQ2+ apology and the use of semi-structured interviews, and acknowledges the limitations of this project.

This thesis will proceed as follows: Chapter One presents the research problem, purpose, and questions, along with a literature review; Chapter Two presents the origins of the apology and assesses the pre-apology period; Chapter Three examines the apology *itself*, LGBTQ2+ reactions, and government policy undertakings in the post-apology period; Chapter Four presents interview findings; and Chapter Five summarizes the conclusions of the project. A more detailed chapter breakdown is included at the end of this chapter.

Research Question and Motivations

It is useful to distinguish a research problem, purpose, and question, which will guide this project throughout. We begin with the research problem. LGBTQ2+ communities have experienced both historical and ongoing oppression. In Canada, this involved both the criminalization of same-sex sexual activity and the systematic effort by the national security apparatus to identify and purge LGBTQ2+ persons from the civil service and military. It is important to understand how the government's 2017 apology

functions to renegotiate the relationship between the Canadian government and LGBTQ2+ communities. The research problem can be stated as follows: given that the relationship between LGBTQ2+ communities and the Canadian state has been damaged by state-sanctioned discrimination, it is unclear how the LGBTQ2+ apology has altered the relationship between these communities and the state. We move now to the research purpose. Scholars, such as Melissa Nobles, have theorized that governments use political apologies to take responsibility for harm, and embark on processes of redress and relationship renegotiation with marginalized communities.⁵ The purpose of this case study is to discern the origins of the apology, examine associated policy changes – or the lack thereof – explore community reactions to the apology, and analyze the apology’s effects on LGBTQ2+ equality and citizenship. This purpose provides us with an opportunity to apply Nobles’ membership theory in assessing the government’s use of an apology to renegotiate its relationship with LGBTQ2+ communities.

This project utilizes two primary research questions and a number of sub-questions to advance its purpose. The primary questions are: how does the 2017 apology function to alter the relationship between LGBTQ2+ communities and the government? And, what are the associated implications for LGBTQ2+ citizenship within Canada? In furthering these questions, a variety of sub-questions are asked. These include: which LGBTQ2+ activists and/or organizations are most responsible for precipitating the 2017 apology? Were some queer or trans voices excluded or relegated during the apology’s consultation process in favour of more mainstream voices? Is the apology authentic in light of ongoing transphobia, homophobia, and systemic inequity? And, does the 2017

⁵ Melissa Nobles, *The Politics of Official Apologies* (New York: Cambridge University Press, 2008).

apology make the government responsible for eradicating legal homophobia and heterosexism, which still persist in law and policy?

These questions aid in pursuing the purpose of this study because they allow us to assess both the inclusivity of the apology and the government's commitment to substantiate its apology. Indeed, the ameliorative potential of the apology could be undermined if it failed to account for diverse LGBTQ2+ communities. The apology could similarly be undermined if the government did not follow through with comprehensive reforms. By focusing the study on the pre-apology and post-apology periods, these questions allow us to evaluate the way in which the apology has altered, or is altering, the relationship between LGBTQ2+ communities and the government. Further, by understanding the voices that were included or excluded in the process, and by analyzing queer and trans reactions to the apology, we can discern different perspectives from inside LGBTQ2+ communities. This effort is essential to understanding how the apology has affected LGBTQ2+ citizenship within Canada.

Given that the state apologized to queer communities, it is essential to understand if, how, and to what ends this act of apology might have altered the relationship between these parties. As LGBTQ2+ persons have historically existed as second-class citizens, when juxtaposed with cisgender and heterosexual first-class citizens, it is important to understand how the apology contributes to the elevation of citizenship for LGBTQ2+ persons. The chosen sub-questions aid us in answering the primary research questions, and help to accomplish the stated purpose of this project. These sub-questions provide a window into the LGBTQ2+ movement by showcasing the voices that were included in the pre-apology process. Given the inherent diversity within LGBTQ2+ communities, it

is likely that the experiences of trans persons and queer people of colour differ greatly from the experiences of white, cisgender, queers. Failure to consult with these communities would undermine the inclusivity of the apology, thereby reconstituting citizenship for *some* queer persons, while leaving queer people of colour and trans persons on the margins. Further, by highlighting the LGBTQ2+ voices the government was most interested in hearing from, we can ascertain the groups that had the most influence in the process, and perhaps, the opinions that the government was most interested in hearing. Additionally, consideration of the government's post-apology efforts to eradicate transphobia and homophobia provides us with a better understanding of the apology's substantive effects. In particular, we can distinguish differences between what queer communities expect in light of the apology, and what the government is prepared to offer. These differences have implications for the likelihood of queer and trans persons to either accept or reject the model of citizenship renegotiation proffered by the government.

Before turning to the historical context of the research problem, it is beneficial to locate myself in the research. I see this research as a form of activism, which can bring attention to the harms of legal homophobia, demonstrate the necessity for holistic inclusion of all LGBTQ2+ persons in society, and privilege the voices of queer and trans individuals. As someone who identifies as gay, I have an interest in researching matters that concern LGBTQ2+ communities. Further, as someone with lived-experiences as a gay man – and as someone who has experienced homophobia – I believe that it is important to expose the harms and dangers of homophobia, transphobia, and associated trends of heterosexism, heteronormativity, and cisnormativity. I am also interested in

ensuring that LGBTQ2+ politics are inclusive of all trans and queer persons.

Additionally, my past involvement with political parties and election campaigns enhances my interest in how governments represent and respond to LGBTQ2+ constituencies. It is my hope that this research project will provide insight into LGBTQ2+ political activism, and shed light on the various tools and techniques that trans and queer communities use to elicit government response and action. I believe this project will provide valuable insight into the robustness of the 2017 apology, and its associated policy changes. This project will illuminate affective responses and thereby highlight the *meaning* of the apology for LGBTQ2+ communities. By engaging with an intricate case of citizenship renegotiation through apology, this thesis will contribute both to our understanding of citizenship in Canada – through the lens of LGBTQ2+ inclusion – and broader apology literature. It is necessary to undertake this work because of the status of LGBTQ2+ persons as second-class citizens. To achieve its objectives, this thesis will utilize primary and secondary research materials, as well as interviews, to better understand both the pre-apology and post-apology periods.

Historical Context

This section provides a brief overview of the history of criminalization and oppression endured by LGBTQ2+ communities in Canada. Such a sketch will better illuminate the research problem by contextualizing the reasons why an apology and redress were long overdue. Further, understanding the relevant injustices will allow us to discern how effectively the apology addressed the harms perpetrated by the state. This historical survey will also demonstrate the way in which queer and trans communities not only persevered in light of state-sanctioned discrimination, but also mobilized to resist

and fight for their rights. It is hoped that such an effort will shed additional light on the importance of this research project. Supplementary to this account, Chapter Two begins by presenting further detail of these historical injustices.

From its inception, the Canadian state criminalized homosexuality and same-sex relations. Homophobic statutes in Canada's Criminal Code were drawn largely from English law.⁶ Particularly, "buggery" was used to criminalize anal intercourse between men; in 1869 it was termed an "unnatural offence," and in 1892 it was classified as an "offence against morality."⁷ In 1886, "indecent assault" was reclassified as "indecent assault on a male,"⁸ thus representing the state's fixation with criminalizing homosexuality. Also in 1892, the offense of "gross indecency" was added to criminalize all other forms of sexual activity between men.⁹ The state was clearly preoccupied with ensuring that all homosexual activity between men was captured under criminal law, so that it could police queer sexuality. Sociologist Gary Kinsman notes that "sexual policing" developed to respond to "the visibility of networks of men having sex with other men," while also addressing the concerns of municipalities and the anxieties of "social-purity" advocates.¹⁰ Police forces developed new surveillance techniques to arrest and prosecute men for engaging in sexual activity with other men.¹¹ For example, police officers monitored parks, lower-income neighbourhoods, and public lavatories in

⁶ Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities*, 2nd ed. (Montreal: Black Rose Books, 1996), 128-129.

⁷ *Ibid.*, 129.

⁸ Tom Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002), 19.

⁹ Kinsman, *The Regulation of Desire*, 129.

¹⁰ *Ibid.*, 133.

¹¹ *Ibid.*, 131.

Toronto's Queen's Park and Allan Gardens between 1918-1922.¹² One form of egregious surveillance involved police building a platform at the back of a lavatory in order to access a hole in the wall; they then were able to peer through this hole to look down on all washroom stalls and detect any queer sexual activity.¹³ This example highlights the societal and state obsession with surveilling and repressing queer sexuality.

The Canadian government strengthened the criminalization of homosexuality in the post-WWII period. In 1948, the government created a category of "criminal sexual psychopath" (CSP), and in 1953, added "buggery" and "gross indecency" to a list of offenses that could be captured under the CSP category.¹⁴ Gary Kinsman and Patrizia Gentile demonstrate that CSP designation was more often used against men having sex with men, than it was against perpetrators of "violent heterosexual acts."¹⁵ Notably, in 1953 the Criminal Code definition of "gross indecency" was amended to capture the activities of lesbian women, which marked the first criminal acknowledgement of same-sex activity between women.¹⁶ In 1961, the Canadian government changed the CSP category to "dangerous sexual offender" (DSO), and added a new provision that allowed the state to designate anyone "who [was] likely to commit another sexual offense" as a DSO.¹⁷ As such, "being convicted of gross indecency could lead to being classified as a DSO since ... there was a perceived likelihood of continuing to engage in these activities."¹⁸ These policies further stigmatized homosexuality, and contributed to

¹² Ibid.; Steven Maynard, "Through a Hole in the Lavatory Wall: Homosexual Subcultures, Police Surveillance, and the Dialectics of Discovery, Toronto, 1890-1940," *Journal of the History of Sexuality* 5, no.2 (1993): 222, <https://www-jstor-org.ezproxy.library.uvic.ca/stable/3704198>.

¹³ Maynard, "Through a Hole in the Lavatory Wall," 224-225.

¹⁴ Kinsman and Gentile, *The Canadian War on Queers*, 72-73.

¹⁵ Ibid., 73.

¹⁶ Warner, *Never Going Back*, 19.

¹⁷ Kinsman and Gentile, *The Canadian War on Queers*, 73.

¹⁸ Ibid.

societal assumptions that queer sexuality was ‘deviant.’ Indeed, Kinsman and Gentile assert that such policies were developed amid the assertion that homosexuality was a “character weakness,” and thus, “a national security risk.”¹⁹

The belief that homosexuality was a “character weakness,” led to an aggressive and systematic campaign against LGBTQ2+ public servants and military personnel. The Canadian security apparatus associated ‘sexual deviance’ with communism, and sought to surveil, interrogate, and fire queers.²⁰ Beginning in 1959, the “homosexual screening program” was created in the Canadian public service, and by 1967 the Royal Canadian Mounted Police (RCMP) had a list of 9000 people who were believed to be homosexual.²¹ This list was compiled with the use of invasive and duplicitous surveillance and interrogation techniques. RCMP officers would surveil queer spaces – such as gay bars – and photograph those they believed to be queer.²² The RCMP would then interrogate queer civil servants and ask them to identify other queers whom they recognized in the photos; officers promised these “informants” that their information would not result in prosecutions.²³ Police categorized their master list of homosexuals into three categories: (1) “confirmed,” to describe those who had admitted their homosexuality; (2) “alleged,” to describe those who were identified by an informant; and (3) “suspected,” to capture those who were believed to be queer.²⁴ The security apparatus was focused on excising the ‘homosexual threat,’ devoting significant labour and monetary resources to do so. During the 1960s, the Canadian government also funded

¹⁹ Ibid., 75.

²⁰ Ibid.

²¹ Ibid., 3.

²² Ibid., 158-167.

²³ Ibid.

²⁴ Ibid., 166.

flawed scientific research to create a “fruit machine,” which it hoped could definitively confirm one’s homosexuality.²⁵ Discriminatory campaigns against LGBTQ2+ public servants and military personnel continued from the 1950s through to the 1990s, until Michelle Douglas successfully brought a federal court challenge in 1992.²⁶

Despite reforms to partially decriminalize homosexuality, state oppression of LGBTQ2+ communities continued. In 1969, the Trudeau government decriminalized “gross indecency” and “buggery” for same-sex sexual activity between two (and only two) consenting adults over the age of 21.²⁷ In 1987, the Mulroney government repealed “gross indecency” provisions, renamed “buggery” as “anal intercourse,” and lowered the age of consent to 18.²⁸ Both periods of reform maintained a dichotomous age of consent between heterosexual and gay sex, with straights permitted to consent at age 14, while gay and bisexual men were required to be 18 years old to consent to anal sex.²⁹ Despite the Harper government’s 2008 reforms – which raised the heterosexual age of consent to 16 – the age of consent for anal sex remained at 18, thus evidencing the continued presence of legal homophobia in Canadian statute.³⁰

Regardless of the 1969 reforms, the Canadian state continued its persecution of LGBTQ2+ military personnel and the policing and raiding of queer spaces. Between 1975 and 1985, police forces conducted militaristic and violent raids on gay bathhouses – as well as lesbian and gay bars – in Montreal, Ottawa, Toronto, and Edmonton.³¹ In 1981,

²⁵ Gary Kinsman, “‘Character Weaknesses’ and ‘Fruit Machines’: Toward an Analysis of the Anti-Homosexual Security Campaign in the Canadian Civil Service,” *Labour/Le Travail* 35 (Spring 1995): 153-159, <https://www.jstor.org/stable/25143914>.

²⁶ Egale Canada, “The Just Society Report,” 28-29.

²⁷ *Ibid.*, 37-39.

²⁸ *Ibid.*

²⁹ Smith, “Homophobia and Homonationalism,” 6.

³⁰ *Ibid.*, 9.

³¹ Warner, *Never Going Back*, 107.

the Toronto Police systematically raided and damaged four bathhouses, arresting 324 people, which prompted outrage and riots in Toronto's LGBTQ2+ community.³² The criminalization of homosexuality, the purging of queer public servants, and the violent policing of queer spaces highlights the disturbing level of homophobia and heterosexism in Canada's recent past. Yet, these oppressive policies and events have also served as opportunities of resistance and mobilization for queer and trans communities.

Given the deleterious effect of state-sanctioned discrimination and oppression on LGBTQ2+ communities, the 2017 apology offered a significant opportunity for the Canadian government to renegotiate citizenship for queer and trans persons. A vast number of LGBTQ2+ persons were grossly harmed by the criminalization of homosexuality and the enforcement of a strict gender binary. The government therefore needed to ensure that its apology made amends for a variety of harms. Certainly, LGBTQ2+ persons purged from the military and civil service, those entrapped and arrested for cruising, and those captured in the militaristic bathhouse raids were particularly harmed by state-sponsored homophobia and transphobia. To ensure an expansive apology, it was necessary for the government to consult broadly with LGBTQ2+ communities. To better understand how state policies affected diverse communities, the government should have emphasized consultations with trans and non-binary persons, two-spirit peoples, and queer people of colour. Therefore, in order to determine the inclusivity of the process, this research project places a significant emphasis on analyzing the pre-apology consultation process.

Literature Review

³² Ibid., 110-113.

The preceding section has demonstrated the state's abhorrent treatment of LGBTQ2+ persons and the necessity of an apology to atone for these injustices. We now embark on a literature review to justify and situate this project within existing literature, highlight the gaps it aims to fill, and the different perspectives on apologies and citizenship. This project is primarily justified by a significant literature gap: research has not yet been conducted on the 2017 LGBTQ2+ apology. It is further justified by the existing literature on political apologies and citizenship.

Sociologist Nicholas Tavuchis interrogates the phenomenon of apology in an effort to understand how apologies affect relationships.³³ He observes that regardless of whether an apology is issued to an individual or a collective, it is frequently delivered to respond to “the violation of an unstated, but consequential, moral rule.”³⁴ Moreover, Tavuchis highlights that apologies are “relational” by nature, and posits that they go beyond a specific offence, and thus transcend “expediency” and “reconciliation.”³⁵ That is to say that apologies cannot be quantified merely through their ability to redress wrongs, as they also invoke an affective realm, which is harder to measure. Thus, when one examines the ‘authenticity’ of an apology, it is imperative to assess both the elements of redress that flow *from* an apology and emotional responses *to* the apology. This is because apologies perform different kinds of work, and it is possible for apologies to perform one task well and fall short on another. Tavuchis also suggests that impetus to issue an apology shifts with “changes in social behaviour and cultural expectations.”³⁶ Why, for instance, was the LGBTQ2+ apology issued in 2017, when it was first called

³³ Nicholas Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford University Press: Stanford, 1991).

³⁴ *Ibid.*, 3.

³⁵ *Ibid.*, 7.

³⁶ *Ibid.*, 13.

for in 1998?³⁷ Tavuchis also notes that failing to apologize, and accept responsibility for past wrongs, would jeopardize relationships, the “legitimacy” of morality, and the broader social fabric.³⁸ As such, we see that apologies can help to mend relations between parties and to maintain social harmony.

Tavuchis also differentiates apology from other expressions of remorse. Whereas “an account” uses excuses to gain sympathy from an aggrieved party – and lessen the vulnerability inherent in delivering such a statement – an apology fully acknowledges that there is “no excuse, defense, justification, or explanation for [a harmful] action.”³⁹ Tavuchis advances that for apologies to be “authentic,” they must express a “regret” that serves to orient an offending party in a state of reflexivity; regret “reminds us of what we were before we erred.”⁴⁰ From this discussion, one begins to understand how an apology differs from an explanation or an account. Indeed, we could reflect on the apologies that we have issued or received in our own lives, and consider whether these instances were actually *apologies*, or if they were in fact *accounts*.

Importantly, Tavuchis notes that apologies are “speech acts,” in that they necessitate a verbal utterance, without which written or other tactile forms of redress would be unsuccessful.⁴¹ Thus, if we wish to better understand how the relationship between the federal government and queer communities is being renegotiated, it is beneficial to assess the apology *itself*. Tavuchis also observes that apologies may be

³⁷ Gary Kinsman and Patrizia Gentile first called for an apology in 1998; see Gary Kinsman and Patrizia Gentile, “*In the Interests of the State*”: *The Anti-Gay, Anti-Lesbian National Security Campaigns in Canada – A Research Report* (Sudbury: Laurentian University, 1998), referenced in Gary Kinsman, “In the interest of the state: the National Security Campaign Against Gay Men and Lesbians,” *Canadian Dimension*; *Winnipeg* 32, no.5 (Sep 1998): 13-15, <https://bit.ly/2BP414H>.

³⁸ Tavuchis, *Mea Culpa*, 13.

³⁹ *Ibid.*, 17.

⁴⁰ *Ibid.*, 19-20.

⁴¹ *Ibid.*, 22-23.

utilized as a “means of precluding or containing socially disruptive conflicts,” which may have disruptive effects over time.⁴² Taking an apology up as a mechanism to contain conflict could result in future separation or animosity between groups.⁴³ To clarify, it is the rhetoric of a “speech act” that an apologizer would use to restrain conflict. Indeed, if the government used the 2017 apology as a mechanism to contain LGBTQ2+ resentment – by integrating queers within the state – this could lead to greater animosity in the future, especially if the apology is not substantiated by real action. As such, our analysis endeavours to discern the government motivations for issuing the 2017 apology. By motivations, we mean both the political goals of the Liberal government and the state-centered goals of the Canadian government. If the government did seek to subvert queer activism and resistance through its “speech act,” we must recognize the potential ramifications for LGBTQ2+ citizenship.

Tavuchis distinguishes between apologies issued to individuals and those issued to groups. The “meaning” of an apology act lays “in a social bond between the Offender and Offended,” regardless of another party’s knowledge of the harm.⁴⁴ That is to say that a bond exists between the perpetrator of harms and the recipient of harms, even if other parties were privy to the injustices. In the 2017 apology, this bond existed between the Canadian government, which had sanctioned discriminatory policies, and LGBTQ2+ communities, which had experienced injustice at the hand of state policies. While broader Canadian society is implicated in the perpetuation of homophobia and transphobia, it was not a constituent of the apology. In his discussion of apologies between collective entities, Tavuchis posits that “the Many” are comprised of “artificial and intangible

⁴² Ibid., 35.

⁴³ Ibid.

⁴⁴ Ibid., 47.

bodies,” which exist independently, and are constructed through human “purposes, efforts, and discourse.”⁴⁵ While these groups inherently exist, they cannot communicate independently. Thus, a group apology process involves certain features and negotiations that differentiate it from an apology process involving “human beings.”⁴⁶

Tavuchis highlights how the legitimacy of a group apology depends on a “written record,” and that an apology is thereby “fashioned for the record.”⁴⁷ In other words, since the party writing an apology is acutely aware that the text will become part of the “written record,” it drafts it with this in mind. As a result, group apologies tend to include “abstract, remote, measured, and emotionally neutral terms,” and create “distance between those empowered to speak . . . and the actual protagonists.”⁴⁸ That is to say that an apology offered on behalf of an offending group to an offended group is necessarily abstract, and consequently cannot speak to all identities or concerns within the offended group. Due to the construction of collective apologies, Tavuchis suggests that they cannot express “sorrow” as interpersonal apologies do, but rather that their main purpose is to “[put] things on [the] public record.”⁴⁹ He states that after the emotional delivery of apology is complete, the apology *itself* and “acknowledgement” of it, will remain part of “the collective record.”⁵⁰ Thus, we must recognize that the 2017 apology faces the same limitations that all collective apologies do: it is fashioned for the record. Further, in an effort to explore “the collective record,” it is useful to examine LGBTQ2+ *acknowledgement* of the apology through queer and trans reactions *to* the apology.

⁴⁵ Ibid., 99.

⁴⁶ Ibid., 100.

⁴⁷ Ibid., 102-103.

⁴⁸ Ibid., 103.

⁴⁹ Ibid., 104, 116-117.

⁵⁰ Ibid., 117.

Melissa Nobles provides a salient discussion of how governments use political apologies to renegotiate relationships with marginalized communities. She presents a “membership theory of official apologies,” and highlights how apologies rely on the support of “political elites,” naturally transpiring when “aggrieved groups” and political elites both desire an apology.⁵¹ In other words, apologies only occur when governments and marginalized communities share a want for an apology, though their motivations for wanting such an apology may differ. Nobles posits that political apologies provide an historical context of harm, which help to elicit broad support for contemporary reconciliatory action.⁵² We should therefore be aware of the ways in which the 2017 apology narrated LGBTQ2+ oppression, and consequently, how this narrative has affected associated policies of redress.

Nobles also interrogates the power differential between political elite and minority groups, suggesting that while minority groups must fight for recognition, political elites have the agency to “do as much or as little as they choose.”⁵³ She suggests that, in deciding whether or not to apologize, state actors create and are influenced by “political, electoral, legal, and affective” limits.⁵⁴ We can thereby observe that the Canadian government, which has long exercised power *over* LGBTQ2+ communities, possessed power *over* queers in the pre-apology period, and continues to occupy this position in the post-apology period. Nobles also theorizes that political actors only issue apologies when they believe in advancing “minority group claims,” yet these political actors perceive of “reconciliation narrowly and in largely affective ways,” devoid of

⁵¹ Nobles, *The Politics of Official Apologies*, 3.

⁵² *Ibid.*

⁵³ *Ibid.*, 23-24.

⁵⁴ *Ibid.*, 24.

substantive “political, legal, or economic alterations.”⁵⁵ As such, we can hypothesize that while LGBTQ2+ activists first called for an apology in 1998, the government likely did not issue an apology until “political, electoral, legal, and affective” elements aligned in 2017. We can further hypothesize that despite the government’s willingness to apologize, the post-apology period lacks substantive broad-based reform, as it is likely “narrow” and “affective.”

Nobles asserts that one purpose of political apologies is to “alter the terms of membership” by “dampening animosities and fostering feelings of national unity.”⁵⁶ Apologies also “morally judge, assign responsibility, and introduce expectations about what acknowledgment of ... [unjust] history requires.”⁵⁷ Thus, apologies transcend past harms and have future implications.⁵⁸ That is to say that apologies repudiate past injustices, and commit the state to making amends and altering its future behaviour. As contemporary redress claims require an acknowledgement of historical oppression and its deleterious effects, Nobles asserts that apologies exemplify a state’s “moral, political, and sometimes legal” responsibilities to right the wrongs endured by apology groups.⁵⁹ LGBTQ2+ communities therefore seek to ameliorate the harms of state-sanctioned oppression and the effects of homophobic and transphobic policy; by apologizing, the state commits itself to these ends. Indeed, politicians issue apologies to renegotiate “citizen status,” “political arrangements,” and to “influence affective attachments.”⁶⁰ Nobles expounds, however, that political actors’ ideological perspectives on “citizenship

⁵⁵ Ibid., 33.

⁵⁶ Ibid., 112, 135.

⁵⁷ Ibid., 2.

⁵⁸ Ibid.

⁵⁹ Ibid., 112.

⁶⁰ Ibid., 135.

and group rights,” affect their receptiveness to the concerns of apology groups, consequently influencing policy.⁶¹

Nobles’ conceptualization is useful for assessing the LGBTQ2+ apology as it provides a theoretical framework from which to operate. Through an assessment of the pre-apology and post-apology period, as well as LGBTQ2+ reactions to the apology, we can gain a better understanding of the way in which queer and trans citizen status, political arrangements, and affective attachments are being transformed by government action (or inaction). Indeed, an analysis of the pre-apology period provides insight into the political arrangements between LGBTQ2+ communities and the government, but also the political arrangements within queer and trans communities. Similarly, an investigation of the post-apology period allows us to examine the substantial changes that the government has undertaken, and thereby, an opportunity to see whether or not the government conceives of LGBTQ2+ reconciliation “narrowly,” as Nobles theorizes. Finally, an examination of LGBTQ2+ reactions to the apology *itself* will help to illuminate changes in affective attachments and LGBTQ2+ citizenship. Ultimately, our effort to examine the pre-apology and post-apology period will shed light on the Liberal government’s political and state-centered motivations for issuing the 2017 apology, and also, highlight queer and trans reflections on these undertakings.

Amid skepticism of the political motivations for issuing apologies, Janna Thompson takes up a defence.⁶² Thompson suggests that an apology’s “meaning” can be

⁶¹ Ibid., 144.

⁶² Janna Thompson, “Apology, Justice, and Respect: A Critical Defense of Political Apology,” in *The Age of Apology: Facing Up to the Past*, eds. Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud, and Niklaus Steiner (Philadelphia: University of Pennsylvania Press, 2008), 31-32.

derived from the feelings and beliefs a group has in response to an apology.⁶³ She posits that an apology delivered only to “restore harmonious relationships or make people feel better” can be regarded as insincere, but importantly, if an apology does these things – while also aiding in a process of “reparative justice” – then it can be credited with greater sincerity.⁶⁴ Here, we see the importance of assessing redress actions associated with the apology. By analyzing these actions, we can better ascertain whether the government issued the 2017 apology as a means to secure concrete advancements in LGBTQ2+ equality, or simply to make community members *feel better*.

Thompson attempts to address scholarly criticisms of political apologies. She poses three primary questions with regard to state apologies: (1) can citizens in contemporary times make amends for the transgressions of past citizens?; (2) How can state entities express or experience contrition?; and, (3) how can states pledge not to commit future harms?⁶⁵ Rather than solve these problems, Thompson acknowledges that not all citizens in a state will feel remorse, and that according to liberal democratic ideals of liability, “moral debts” are not transferred to future generations.⁶⁶ Further, she theorizes that a state’s commitment to avoid repeating harms is arbitrary, as future governments can undo the policy actions of the apologizing government.⁶⁷ Nonetheless, she suggests that problems of citizen accountability and honouring commitments are overstated, as states often live out their commitments through international treaties and agreements.⁶⁸ Thompson therefore calls for a framework that sets out reasons “why

⁶³ Ibid., 32.

⁶⁴ Ibid., 33.

⁶⁵ Ibid., 35.

⁶⁶ Ibid., 35-37.

⁶⁷ Ibid., 37-38.

⁶⁸ Ibid., 38.

citizens ought to take responsibility for wrongs committed by their state ... and why they are morally entitled to make commitments concerning the future, which bind their successors as well as themselves.”⁶⁹

Thompson sees a “genuine apology” as a transformational moment that reconstitutes relations between two peoples, involves participation of the afflicted group and the perpetrators, and includes a binding commitment to avoid repeating harm.⁷⁰ Importantly, dual participation requires agreement on “a common understanding of the injustice,” the conditions for issuing the apology, and a dialogue about the substantive actions to follow an apology.⁷¹ Given Thompson’s genuineness framework, it is important to assess the LGBTQ2+ apology from several vantage points. Firstly, to gain a fuller understanding of its influence in reshaping relations between the Canadian government and LGBTQ2+ communities, we must examine the apology act *itself*. Secondly, in order to conceptualize the “common understanding of injustice,” we need to understand the level of queer and trans involvement in shaping the narrative of historical injustice, in the consultation and drafting process that preceded the apology, and in the dialogue about associated redress actions. Thirdly, to determine the government’s commitment to avoid repeating homophobic, transphobic, and heterosexist actions, we must assess associated policy changes.

One tool that aids us in assessing the 2017 apology is political scientist Matt James’ criteria of authenticity. Using eight criteria, James groups notable Canadian

⁶⁹ Ibid.

⁷⁰ Ibid., 42-43.

⁷¹ Ibid.

apologies into categories of “apology,” “quasi-apology,” and “non-apology.”⁷² His criteria can be used by states to generate “meaningful apologies,” and can also be used by scholars to assess the strength of specific apologies, differentiate apologies from one another, and examine “the moral consistency” of a state’s aggregate apology records.⁷³ James’ criteria are designed to capture authenticity, and in light of Thompson’s work, demonstrate a continued preoccupation with genuineness in the literature. Sheryl Lightfoot, however, suggests that the James criteria – in only assessing authenticity – may miss other aspects that, when accounted for, could mark an apology as a “failure.”⁷⁴ She notes that the James criteria focus solely on “the state actor,” and cannot possibly assess the state’s emotions in issuing an apology.⁷⁵ Furthermore, Lightfoot posits that looking only at an apology through the lens of authenticity, “fails to consider the perspectives of the recipients of the apology.”⁷⁶ She asserts that apologies must respond to the wishes of victims, not just those of the state.⁷⁷ As such, while the James criteria are helpful in assessing the LGBTQ2+ apology, we see that it is absolutely essential to consider queer and trans reactions to the apology. With that said, given that the 2017 apology has not been assessed against the James criteria, it is useful to do so, both to fill a gap in the literature and to assess the apology’s authenticity; this exercise will take place in Chapter Three.

⁷² Matt James, “Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada,” in *The Age of Apology: Facing Up to the Past*, eds. Mark Gibney et al., 137-153. (Philadelphia: University of Pennsylvania Press, 2008).

⁷³ *Ibid.*, 139.

⁷⁴ Sheryl Lightfoot, “Settler-State Apologies to Indigenous Peoples: A Normative Framework and Comparative Assessment,” *Native American and Indigenous Studies* 2, no.1 (Spring 2015): 20, <https://www-jstor-org.ezproxy.library.uvic.ca/stable/10.5749/natiindistudj.2.1.0015?pq-origsite=summon>.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*, 21.

⁷⁷ *Ibid.*

Alice MacLachlan submits that apologies must be cognizant of gender dynamics and offers us a theoretical framework for “gendering” apologies.⁷⁸ She observes that since apologies derive much of their power from the “narrative” they disseminate, apologies can fail by neglecting to provide an accurate account of harm.⁷⁹ Accordingly, MacLachlan states that apologies must acknowledge and respond to “gendered harms,” which can be understood as wrongs broadly “committed against women,” or to women who do not fit “gendered ideals of femininity and motherhood.”⁸⁰ This perspective is particularly salient when considering the LGBTQ2+ apology, given the fact that historical harms may have been experienced differently, depending on one’s specific identities within the LGBTQ2+ community. Further, MacLachlan’s theorization is particularly salient given that the criminalization of homosexuality was also utilized to enforce heterosexist gender norms. As such, it was essential that the 2017 apology be inclusive of the diverse gender identities and expressions of trans and non-binary persons.

MacLachlan also suggests that gender has a role in the way that people are socialized to react to “situations of conflict, anger, and resentment,” which can result in women “prematurely accepting apologies.”⁸¹ Moreover, she posits that the “social identities” of the “apologizer and recipient” affect the “relational” nature of apology, and that without proper negotiation, an apology can perpetuate existing power dynamics.⁸² It is therefore important to examine the ways in which the 2017 apology might have altered the power differential between the government and LGBTQ2+ communities. MacLachlan

⁷⁸ Alice MacLachlan, “Gender and Public Apology,” *Transitional Justice Review* 1, no.2 (2013): 126-147, <http://dx.doi.org/10.5206/tjr.2013.1.2.6>.

⁷⁹ *Ibid.*, 130.

⁸⁰ *Ibid.*, 131, 135.

⁸¹ *Ibid.*, 135 – 136.

⁸² *Ibid.*, 138.

also recognizes that the act of apologizing must effectively incorporate the perspectives of those wronged; considerable consultation in advance of an apology is therefore essential.⁸³ By examining the consultation process in the lead up to the 2017 apology, we will gain a fuller understanding of how trans and non-binary persons were represented. MacLachlan’s theory on gendering apologies is a useful tool in our project, and in Chapter Two, we will extend her analysis to capture the unique considerations for which an apology to LGBTQ2+ communities must account.

We conclude our literature review with a discussion of T.H. Marshall and Bryan S. Turner’s work, which will provide further theoretical guidance for this project’s engagement with the concept of citizenship.⁸⁴ Marshall posits that citizenship is comprised of “civil, political, and social” elements, which were once bound together in a “local” version, but have evolved into three parallel forms that are now inherently “national.”⁸⁵ While these three forms of citizenship rights were once united, they diverged in the twelfth century as judicial and political institutions separated, and the “village community” dissolved.⁸⁶ Marshall suggests that following this separation, civil, political, and social rights would not re-align themselves until the twentieth century.⁸⁷ He posits that this evolution occurred gradually with civil rights emerging in the eighteenth century, political in the nineteenth, and social in the twentieth.⁸⁸ Turner contends, however, that Marshall neglects “the role of social class, new social movements, or social

⁸³ Ibid., 141.

⁸⁴ T.H. Marshall, *Citizenship and Social Class and other essays* (Cambridge: Cambridge University Press, 1950); Bryan S. Turner, “Contemporary Problems in the Theory of Citizenship,” in *Citizenship and Social Theory*, ed. Bryan S. Turner (Newbury Park: SAGE Publications Ltd., 1993).

⁸⁵ Marshall, *Citizenship and Social Class*, 10-12.

⁸⁶ Ibid., 12-14.

⁸⁷ Ibid.

⁸⁸ Ibid., 14.

struggle,” in catalyzing expansion of citizenship rights.⁸⁹ Certainly, the LGBTQ2+ movement has had an integral role in fighting for the expansion of civil, political, and social rights to trans and queer persons. The extension of these rights was not inherently natural, but rather, the result of mobilization and protest.

Marshall also perceives citizenship as “a status bestowed on those who are full members of a community,” and he suggests that societies are motivated to achieve “a fuller measure of equality,” by bestowing *citizenship* on more people.⁹⁰ Turner, however, rejects the notion of “a single version of citizenship,” submitting instead that multiple versions exist.⁹¹ This conceptualization of citizenship is especially pertinent to our research question on the 2017 apology’s associated implications for LGBTQ2+ citizenship within Canada. Indeed, if multiple versions or dimensions of citizenship exist within a single state, then it must be possible for queer and trans persons within Canada to experience citizenship differently, even in light of equality advancements. Marshall also states that societies create an “ideal citizenship,” and compare citizenship – as it actually exists – against this ideal; for Marshall, societies are incentivized to move closer to the ideal.⁹² The concept of ideal citizenship is useful in our analysis because it allows us to assess whether or not queer and trans communities really wish to assimilate into such an ideal, and if yes, whether they are able to do so. A more holistic discussion of LGBTQ2+ interaction with the concept of citizenship occurs in Chapter Three.

⁸⁹ Turner, “Contemporary Problems in the Theory of Citizenship,” 8.

⁹⁰ Marshall, *Citizenship and Social Class*, 28-29.

⁹¹ Turner, “Contemporary Problems in the Theory of Citizenship,” 11.

⁹² Marshall, *Citizenship and Social Class*, 28-29.

Methods and Approaches

While Alain Noël speaks of an “idiographic, single-outcome study,”⁹³ this thesis can best be understood as a case study of an official apology, which examines a single-outcome: that of the LGBTQ2+ apology. A case study, though, is necessarily about more than an outcome. As such, this thesis captures the entirety of the apology process – from the pre-apology to post-apology periods – and considers its implications for LGBTQ2+ citizenship. This project analyzes a particular instance of apology, because it believes that such an apology is an important and momentous event in the history between LGBTQ2+ persons and the Canadian state. It holds that description and analysis of this case is important because, in light of reprehensible injustices, it has implications for LGBTQ2+ redress and equality. This project also recognizes that queer and trans stories are often relegated to societal peripheries, and therefore sees a certain necessity in expounding the details of this story. This case study also contributes its analysis of the LGBTQ2+ apology to existing literature on political apologies and to our understanding of the work that apologies do. It also contributes to our understanding of LGBTQ2+ activism, citizenship, and inclusion more broadly. Specifically, it aims to provide an analysis of one instance of apology that can be useful to researchers who wish to examine other instances of apology or LGBTQ2+ inclusion. Indeed, given the momentous 2017 event, and the growing number of government apologies, it is essential to understand the political importance and effects of apology. To accomplish these goals, and to respond to the research question, this project employs a variety of methods, broken down into two phases.

⁹³ Alain Noël, “Studying Your Own Country: Social Scientific Knowledge for Our Times and Places,” *Canadian Journal of Political Science* 47, no.4 (2014): 662, <https://bit.ly/30Av0tY>.

The first phase involves reviewing primary and secondary material to analyze LGBTQ2+ involvement in, and reaction to, the LGBTQ2+ apology. My analysis utilizes secondary sources to contextualize the history of oppression and LGBTQ2+ activism in Canada. It examines the period leading up to the apology through a selection of primary materials produced by LGBTQ2+ activists and organizations, along with secondary press accounts. While mainstream media sources are used, where possible, an emphasis is placed on LGBTQ2+ press, through sources such as Xtra. It also relies on primary material produced by the Government of Canada, and on the Parliament of Canada's *Hansard*. These sources are used to highlight the dialogue between the Canadian government and LGBTQ2+ activists in advance of the apology and in responses to associated redress. This project also engages with materials released by leading LGBTQ2+ organizations such as Egale and the Canadian Centre for Gender and Sexual Diversity (CCGSD), and uses some material from smaller LGBTQ2+ organizations. These efforts capture a broader array of reactions to the apology and highlight respective similarities and differences between large and small LGBTQ2+ rights groups.

The second phase utilizes interviews to better understand how, and to what ends, the apology has influenced, and might be likely to influence, the relationship between LGBTQ2+ persons and the Canadian government. Semi-structured interviews involving three participant groups were conducted. These groups are made up as follows: (1) 2 participants who are elected representatives; (2) 2 participants who are representatives from LGBTQ2+ community organizations; and (3) 2 participants who are academics/professors that specialize in LGBTQ2+ equality and/or history. The second participant group includes both representatives who speak on behalf of their respective

organization, and those that speak for themselves. It should also be noted that while the third participant group focuses on academics/professors, these scholars may also be characterized as LGBTQ2+ activists. Given the small number of interviews conducted, participants were chosen for their knowledge of, or involvement in, the 2017 apology. Recruitment criteria were inclusive of all ages, genders, sexualities, ethnicities, or classes; there were no exclusion criteria. The interviews presented an opportunity for those with first hand experience to *talk back* to the research findings at the conclusion of the first phase of the project.⁹⁴

My main hypothesis at the outset of this project is derived from Nobles' theorization that political actors perceive of "reconciliation narrowly and in largely affective ways," devoid of substantive "political, legal, or economic alterations."⁹⁵ As such, reconciliation is unlikely to reconstruct state institutions or destabilize heteronormativity and cisnormativity. Instead, political apologies "[foster] feelings of national unity,"⁹⁶ and thereby work to integrate apology groups within the state. My hypothesis therefore is twofold: (1) prevailing LGBTQ2+ organizations seek inclusion within the Canadian state and thereby have a favourable view of the 2017 apology, which they see as enhancing LGBTQ2+ citizenship; (2) meanwhile, smaller and more diverse LGBTQ2+ groups, desiring a re-oriented state, resist state integration and thereby raise greater objection to the 2017 apology. Indeed, whereas the first group accepts

⁹⁴ See Appendix B, C, and D for a draft set of interview questions, a copy of the recruitment email, and the participant consent form. In total, thirteen interview invites were sent and six agreed to participate in an interview. Interviews were conducted in accordance with University of Victoria ethics protocol number 18-1143.

⁹⁵ Nobles, *The Politics of Official Apologies*, 33.

⁹⁶ *Ibid.*, 112.

renegotiated citizenship as offered by the government, the second group agitates for inclusion and citizenship on its own terms.

Limitations

This thesis aims to understand the affective and effective outcomes of the apology, but I must account for the limitations of this work. First, the time period between the 2017 apology and my 2019 analysis is relatively short, and as such, my thesis cannot possibly capture the full implications of the apology. Indeed, while an engagement with LGBTQ2+ reactions to the apology and a survey of relevant policy changes in the post-apology period is central to this work, I acknowledge that these efforts are incomplete. The passage of time will provide for a more complete analysis and likely shed additional light on my research conclusions. Second, the LGBTQ2+ reactions surveyed in Chapter Three are drawn from available primary and secondary materials, and thus represent only a subset of LGBTQ2+ communities. While I have attempted to gather accounts from individuals with varied experiences and perspectives, I was unable to undertake a coordinated effort to fully analyze the experiences of all groups that comprise LGBTQ2+ communities. The use of surveys or the conduct of a larger number of interviews would have aided such an analysis. Indeed, my pool of interviewees is small and does not capture a wide variety of LGBTQ2+ identities, which limits the generalizability of participant responses to other LGBTQ2+ actors.

My work nonetheless offers a compelling and interesting case study of one instance of apology. While the predictive ability and generalizability of my research conclusions to other similar cases is restricted – due to the limitations of this project – there is still much that this thesis offers to the literature on political apologies, citizenship,

and LGBTQ2+ activism. Indeed, my analysis of the pre-apology period demonstrates the shortcomings of the government's consultation process and can be assessed in relation to the pre-apology periods experienced by other apology groups who have embarked, or are about to embark, on their respective processes of redress. Additionally, by assessing the LGBTQ2+ apology's authenticity, one may place it in dialogue with other political apologies. Further, my analysis of queer and trans reactions to the apology provides a preliminary record of the early affective outcomes of the 2017 apology, and the policy analysis undertaken in this thesis documents the government's redress efforts in the period immediately following the apology. My analysis also demonstrates the importance of continued activism after the apology and the way in which the apology can serve as a rhetorical tool to demand additional changes, something that may be generalizable to other political apologies. Perhaps the most salient finding of this thesis is the observation of two LGBTQ2+ citizenship factions within Canada, which may be analyzed in future research on the 2017 apology or on LGBTQ2+ activism more broadly. It is my sincere hope that this thesis will be useful to members of LGBTQ2+ communities who wish to learn more about the 2017 apology and to academics that are interested in the topic or wish to undertake future research.

Chapter Outline

Now that the research problem, purpose, questions, and limitations of this project have been laid bare, we can move forward. Chapter Two begins with a longer historical discussion of the criminalization of queer sexualities and the purge of LGBTQ2+ civil servants and military personnel. It then uses MacLachlan's theory on gender and the public apology to address the unique considerations for which an apology to queer and

trans persons must account. Following this analysis, it surveys LGBTQ2+ activism and the origins of the apology. The chapter concludes by outlining the consultation process, the voices that were involved in this process, the associated failures of this process, and some broader criticisms of the apology.

Chapter Three begins by applying James' criteria of authenticity to assess the LGBTQ2+ apology. It then considers LGBTQ2+ reactions to the apology *itself*, presenting the views of mainstream organizations such as Egale, before turning to the voices of other LGBTQ2+ persons. It proceeds to an analysis of the associated actions of redress, or lack thereof, and demonstrates the continued presence of legal homophobia and recent LGBTQ2+ activist attempts to use the apology in battles for expanded equality. It also provides a glimpse into the restrictive model of renegotiated citizenship the government has offered. This chapter concludes by invoking Marshall and Turner's citizenship theorization to examine the effects of the 2017 apology *itself*, queer and trans reactions to the apology, and post-apology policies on LGBTQ2+ citizenship. Chapter Four presents the findings of the interviews conducted with each of the three participant groups. It provides additional context for the 2017 apology and highlights responses that both reinforce and challenge my preliminary conclusions. Chapter Five then summarizes the research project's primary findings.

Before advancing any further, it is important to mention a brief note on terminology. Throughout this thesis, I use the term homophobia and it should be understood that I intend for this to also capture biphobia. Furthermore, I use the acronym LGBTQ2+ to better capture all members of queer and trans communities. When discussing the purge or early queer activism, I recognize that LGBTQ2+ may be an

anachronistic term, as phrases such as gay and lesbian liberation were more common at the time. However, I believe that the purposes of this project are best served through the use of this umbrella term. Writing this thesis in 2019, I see a responsibility and obligation to ensure that this work is as inclusive and representative of as many LGBTQ2+ persons as possible.

The following chapters offer some interesting findings. Through an examination of the pre-apology period, we see the emergence of two groups that called for an apology: the We Demand An Apology Network, comprised of scholars and purge survivors, and Egale Canada, which authored the *Just Society Report*. In exploring consultations in the lead up to the apology, we observe that rather than form a public inquiry or adopt Egale's calls for an open mediation process, the government created an advisory council, which lacked transparency and accountability. The government-led consultation process highlights the government's desire to maintain control of the apology narrative. When evaluating the apology *itself*, we determine that the apology is best characterized as a robust quasi-apology. Throughout our consideration of LGBTQ2+ reactions to the apology, we see a desire for the apology to be substantiated by action, and also a concern that the apology could be used to co-opt queer and trans persons within a colonial national project. An analysis of the post-apology period illuminates some government accomplishments, but also sheds light on significant shortcomings and failures. We thereby conclude that the government is unwilling to undertake broad-based reforms to enhance LGBTQ2+ equality, instead offering a renegotiated citizenship that allows oppressive power structures to persist unchallenged. Our analysis leads to the observation

of two citizenship strands within LGBTQ2+ communities: one that seeks Canadian citizenship *in spite* of queerness and another that seeks a *Queered citizenship*.

The interview findings provide further context for both the pre-apology and post-apology periods. Specifically, we see broad consensus that the government's consultation process was exclusive and secretive. We also observe that despite failures with the advisory council process, many interview participants found the apology moving. They also observe that the apology certainly had significance to purge survivors and broader LGBTQ2+ communities. While all participants expressed some disappointment with the post-apology policy processes, reactions were mixed. Some were deeply concerned about government failures in this period, whereas others simply felt that the government was moving slowly, but that equality advancements would continue. My proposed Canadian-Queered citizenship continuum was problematized somewhat by two participants on the basis of terminology and these criticisms are addressed. Ultimately, this thesis presents an important case study of an official apology, and offers interesting insights into the relationship between LGBTQ2+ communities and the government, as well as intra-community relationships.

Chapter 2: The Pre-Apology Period

Introduction

The 2017 LGBTQ2+ apology was a long overdue and much anticipated event for many queer and trans persons.¹ The moment was especially significant for those civil servants who had been fired for their sexual orientation or gender identity, as the apology was accompanied by a significant redress package. On the morning of November 28, 2017, the same day on which the apology was issued, the federal government announced a settlement agreement with purge survivors.² The government agreed to pay \$145 million, including \$110 million to compensate survivors, \$15 million for “historical reconciliation, education, and memorialization efforts,” and \$15 million to cover survivors’ legal fees; it also agreed to provide personalized apology letters from the civil service or military if requested by the claimant.³ Furthermore, the government introduced an accompanying Bill C-66 entitled, the *Expungement of Historically Unjust Convictions Act*, which allows those convicted of “consensual sexual activity between same-sex persons related to the offences of gross indecency, buggery, and anal intercourse” to seek expungement of their records.⁴ A protracted period of activist demands and a rushed government-led consultation process preceded the 2017 apology and associated redress package. Little is known about the voices included in drafting the apology and associated

¹ Kathleen Harris, “Our Collective Shame: Trudeau delivers historic apology to LGBT Canadians” *CBC News*, November 28, 2017, <https://www.cbc.ca/news/politics/homosexual-offences-exunge-records-1.4422546>.

² Canada, Todd Edward Ross, Martine Roy, and Alida Satalic v. Her Majesty the Queen [Settlement Agreement], [2018] T-370-17 (FC), <http://lgbtpurge.com/wp-content/uploads/2018/04/Final-Settlement-Agreement.pdf>; CBC News, “Canadian government and former federal employees reach settlement in ‘gay purge’” *CBC News*, April 21, 2018, <https://www.cbc.ca/news/politics/canada-gay-purge-settlement-1.4630114>.

³ Ibid.

⁴ Canada, Bill C-66, *Expungement of Historically Unjust Convictions Act*, 1st sess. 42 Parliament, 2018, SC 2018, <https://bit.ly/2q5QQp9>.

redress legislation. In order to understand whether or not the apology was inclusive of diverse LGBTQ2+ voices, it is essential to examine the pre-apology period.

In an effort to better understand which LGBTQ2+ community members were most responsible for influencing the 2017 apology, it is useful to investigate the origins of the 2017 apology. While the apology was issued to all LGBTQ2+ persons in Canada, an analysis of the pre-apology period highlights the voices that the government prioritized. This chapter will examine the origins of the apology, analyze the LGBTQ2+ voices most instrumental in catalyzing it, and consider whether or not some queer and trans voices were relegated to the margins. Given Nobles' theorization that the claims of apology groups "rely on an understanding of historical oppression,"⁵ it is useful to further explore the history of state-sanctioned discrimination. This effort will also allow us to analyze whether or not the apology and associated redress policies are mitigating these injustices, and consequently how they might be renegotiating LGBTQ2+ citizenship. This chapter then uses MacLachlan's framework for gendering apologies to present the unique considerations for which government should account when apologizing to trans and queer persons. Following engagement with this theoretical approach, we showcase early queer resistance and activism and examine the actors and community organizations that called for the apology. Through an analysis of the effects of the government's pre-apology consultation process on the stories of queer and trans communities, we investigate the shortcomings of the apology and the associated redress process. Finally, this chapter presents some criticisms of the apology and discusses how apologies can be used to achieve future redress, which is helpful for considering the model of renegotiated citizenship offered by the government.

⁵ Melissa Nobles, *The Politics of Official Apologies* (New York: Cambridge University Press, 2008), 112.

A History of Discrimination and Oppression

We begin with a more detailed historical sketch of the state's oppression of LGBTQ2+ communities. This effort is necessary for several reasons. First, far too few Canadians are familiar with the historical oppression of LGBTQ2+ communities and the purge of queer civil servants and military personnel. This thesis provides an opportunity to learn not only about the apology but also about the oppression that came before it. Second, highlighting the reprehensible actions of the state provides grounds for the 2017 apology. Third, showcasing this history illuminates the unique struggles endured by LGBTQ2+ persons and provides context for the resistance and activism that surfaced. And finally, surveying this history in Chapter Two provides us the opportunity to reflect on the lasting effects of these policies when we undertake a discussion on the continued presence of legal homophobia in the post-apology period, which occurs in Chapter Three.

As discussed in Chapter One, there is a long history of regulation and criminalization of homosexuality by successive Canadian governments. The imposition of homophobic policies and laws stigmatized LGBTQ2+ persons, contributing to repression and fear within queer communities. One such policy – the 1961 creation of the Dangerous Sexual Offender (DSO) designation – affected George Everett Klippert, who disclosed to the Royal Canadian Mounted Police (RCMP) that he had engaged in consensual same-sex activity.⁶ He pleaded guilty to “four counts of gross indecency” and was sentenced to a three-year period of imprisonment.⁷ After he was incarcerated, psychiatrists determined that he was a DSO and as such, he was subjected to “indefinite

⁶ Tom Warner, *Never Going Back: A History of Queer Activism in Canada* (Toronto: University of Toronto Press, 2002), 46.

⁷ Ibid.

detention.”⁸ Klippert appealed to the Supreme Court of Canada, but in 1967, the Court shockingly denied his appeal.⁹ In doing so, the Court observed that, “[Klippert] was likely to commit further sexual offences of the same kind, though he never did cause injury, pain, or other evil to any person.”¹⁰

The Klippert miscarriage of justice catalyzed the federal government to enact reform. As discussed in Chapter One, the Pierre Trudeau government decriminalized homosexuality in 1969 for two consenting adults over the age of 21, thus creating a differential age of consent. As mentioned, the discriminatory age of consent persisted through the 1987 Mulroney reforms and the 2008 Harper reforms to consent laws. In March 2018, Justin Trudeau’s government introduced Bill C-75, which received Royal Assent in June 2019. The bill repealed section 159 of the Criminal Code, which set the age of consent for anal sex at eighteen, and has thereby created a uniform age of consent at 16.¹¹ While the government eventually moved to partially decriminalize consensual same-sex activity, the years of criminalization resulted in the arrest of many LGBTQ2+ persons, and the perpetuation of both homophobia and transphobia. Given the historical criminalization of consensual gay sex – and the discriminatory age of consent following its 1969 ‘partial’ decriminalization – it is imperative that the government’s expungement legislation remedy these injustices.

While the Canadian government worked to criminalize homosexuality in law, it also carried out a systematic purge of LGBTQ2+ public servants and military personnel,

⁸ Ibid.

⁹ Ibid.

¹⁰ Egale Canada Human Rights Trust, “The Just Society Report: Grossly Indecent Confronting the Legacy of State Sponsored Discrimination Against Canada’s LGBTQ2SI Communities.” June 2016: 32, <https://bit.ly/2D25JBB>.

¹¹ Canada, Bill C-75, *An Act to Amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st sess. 42 Parliament, 2018. <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-75/royal-assent>.

which continued well after the 1969 decriminalization of homosexuality. Indeed, between the 1950s and 1990s, “thousands of [LGBTQ2+] workers ... were terminated from their careers” in the federal government.¹² In the midst of the Cold War, the security apparatus focused on queer public servants, who were otherwise loyal and dedicated employees. The RCMP saw homosexuality as a “character weakness” that could be exploited by the Soviet Union; thus queer public servants constituted a “national security threat.”¹³ While “the notion of character weakness covered alcoholism, sexual promiscuity, having illegitimate children, and gambling,” one “RCMP character weaknesses officer” categorized “the focus [as] ‘ninety percent homosexual.’”¹⁴ In other words, negative perceptions of homosexuality within the federal government and RCMP – no doubt enforced by the legal categories of ‘buggery’ and ‘gross indecency’ – justified an invasive campaign to identify and fire queer people in the public service. This effort was led by the “interdepartmental Security Panel,” which included representatives from the Privy Council, Cabinet, the military, the RCMP, and – beginning in 1957 – the Civil Service Commission chair.¹⁵ The RCMP carried out secret investigations for the panel, and allowed deputy ministers to make “decisions about dismissals or transfers.”¹⁶

Government fixation on identifying queer public servants intensified in the 1960s and beyond. A December 1963 Cabinet directive established a process whereby an investigation was initiated each time an individual applied for or was promoted to a civil

¹² Egale Canada, “The Just Society Report,” 71.

¹³ Gary Kinsman, “‘Character Weaknesses’ and ‘Fruit Machines’: Toward an Analysis of the Anti-Homosexual Security Campaign in the Canadian Civil Service,” *Labour/Le Travail* 35 (Spring 1995): 134, <https://www.jstor.org/stable/25143914>.

¹⁴ Gary Kinsman and Patrizia Gentile, *The Canadian War on Queers: National Security as Sexual Regulation* (Vancouver: UBC Press, 2010), 47.

¹⁵ *Ibid.*, 77-78.

¹⁶ Kinsman, “‘Character Weaknesses’ and ‘Fruit Machines,’” 140-141.

service position; if the individual was found to be gay, they would “be transferred to a less sensitive position or be dismissed.”¹⁷ There are many disconcerting examples of the techniques used to identify and investigate queer public servants. The RCMP established a unit by the name of A-3 to “hunt down and purge homosexuals within its ranks and within the government.”¹⁸ The investigative unit, likely composed predominantly of heterosexual men, apparently thought that they could identify every queer person in the public service. Early efforts saw the RCMP attempt to use red dots to mark “the groupings of homosexuals on [an Ottawa] city map,” but these attempts were abandoned after several maps were “overcome with red ink.”¹⁹ Given the challenge in mapping queer gathering places, the RCMP was forced to diversify its methods, focusing instead on the interrogation of public servants that it had ‘identified’ as LGBTQ2+.

The RCMP employed sinister and duplicitous surveillance and interrogation techniques. In one example, the RCMP confronted a naval officer pseudonymously named Harold, informed him that they knew he was homosexual, and demanded he tell them the names of other queer people.²⁰ Officers juxtaposed Harold’s loyalty to Canada with “loyalty to his gay friends,” implied that homosexuality was “a treasonous act,” and that to be “[loyal] to his homosexual friends” was to be “[disloyal] to Canada.”²¹ When Harold informed the officers that he did not know other queer people in the public service, the RCMP applied further pressure by “[threatening Harold] with [criminal] charges.”²² Kinsman notes Harold’s observation that by threatening charges, the RCMP

¹⁷ Kinsman and Gentile, *The Canadian War on Queers*, 112-113.

¹⁸ Kinsman, “‘Character Weaknesses’ and ‘Fruit Machines,’” 149.

¹⁹ John Sawatsky, *Men in the Shadows: The RCMP Security Service* (Toronto: Doubleday Canada Limited, 1980), 127-128.

²⁰ Kinsman and Gentile, *The Canadian War on Queers*, 116-118.

²¹ *Ibid.*, 118.

²² *Ibid.*, 119.

ironically engaged in the very conduct they were concerned the Soviets would employ: blackmail.²³ This practice of identifying queer public servants through informants was widespread. Indeed, one officer recounts that he would ask informants whether new attendees at gay house parties were employed in the public service.²⁴ The RCMP would also photograph gay men whom it thought were public servants, and would show these photographs to informants in an effort to confirm the RCMP's suspicions.²⁵ The use of informants to identify other LGBTQ2+ public servants was undoubtedly invasive and exploitative.

The state's obsession with identifying LGBTQ2+ public servants resulted in bizarre, unethical, and discriminatory experiments. The Security Panel commissioned a Carleton University psychologist named Frank Robert Wake to develop "a mechanism for both [the] uncovering and disposing of queers," which came to be known as "the fruit machine."²⁶ Wake's research received federal government funding from "National Health and Welfare" and utilized several tests to 'detect' homosexuality.²⁷ One of these tests, "the pupillary response test," involved "[projecting] a visual stimulus" and "[photographing] the pupil of the eye," in an effort to detect a subject's unconscious response to an image.²⁸ Each stimulus was "designed to elicit the subject's interest in males or females," and early experimentation with this technology saw it used on 14 males and 7 females.²⁹ Yet, the RCMP found it difficult to recruit subjects for several reasons: they did not have contacts in the lesbian community, they were unsure how to

²³ Ibid.

²⁴ Ibid., 165.

²⁵ Ibid.

²⁶ Ibid., 168.

²⁷ Kinsman, "'Character Weaknesses' and 'Fruit Machines,'" 154-155.

²⁸ Ibid., 156

²⁹ Kinsman and Gentile, *The Canadian War on Queers*, 182-183.

“[solicit] normal females” (read straight women), and its own members refused to participate out of fear of being identified as “fruits.”³⁰ Despite Wake’s best efforts, the “fruit machine” was abandoned in 1967 due, in part, to the difficulty of “perfecting the technology,” the discredited notion that there were “differences [between] homosexual [and] heterosexual responses to images,” and the flawed belief that there were “only two essential sexualities,” which failed to account for bisexuality.³¹ This project represented the state’s heterosexist assumptions and adherence to a strict gender binary in blatant disregard for the privacy and diversity of LGBTQ2+ communities.

The purging of LGBTQ2+ civil servants had devastating effects on those who were interrogated and fired. In a 1967-1968 report, the RCMP claimed that they had reports on an estimated 9000 people who were “known [or] suspected homosexuals.”³² While gay men were more visible in the ‘national security’ campaign, lesbian women “were [also] perceived as national security threats,” and faced greater persecution in the military.³³ Indeed, the “Special Investigative Unit” (SIU) was responsible for investigating homosexuals in the military, and intensified its activities in the 1980s, which resulted in the discharge of more lesbian women.³⁴ The SIU surveilled soldiers suspected of homosexuality, conducted lengthy interrogations, and demanded intimate information on the sex lives of these women.³⁵ Poulin, Gouliquer, and Moore document the health effects of the purge on these women. They observe that many women reported

³⁰ Ibid., 187.

³¹ Ibid., 188.

³² Kinsman, “‘Character Weaknesses’ and ‘Fruit Machines,’” 142.

³³ Kinsman and Gentile, *The Canadian War on Queers*, 54-55.

³⁴ Carmen Poulin, Lynne Gouliquer, and Jennifer Moore, “Discharged for Homosexuality from the Canadian Military: Health Implications for Lesbians,” *Feminism & Psychology* 19, no.4 (Nov. 2009): 498, <https://doi.org/10.1177/0959353509342772>.

³⁵ Ibid., 501.

feeling loneliness, shame, and diminished self-esteem.³⁶ The women interviewed also reported effects on their physical and social health, including “exhaustion, sleep disturbances,” and withdrawal.³⁷ Egale Canada also noted that purged civil servants faced “financial, professional, and social consequences” along with “psychological trauma.”³⁸ The outing and purging of LGBTQ2+ public servants undoubtedly traumatized those affected and negatively affected their health.

While a full historical description of state criminalization and police oppression of queer communities is beyond the scope of this project, this section has illuminated the gravity of state misconduct, whether conducted by Liberal or Conservative governments. Given the magnitude of harm inflicted on LGBTQ2+ communities, the state is responsible for rectifying its harms. One can therefore see how an apology to queer and trans persons could mark the commencement of a redress period. We now embark on assessing the unique considerations a government should take into account when apologizing to diverse LGBTQ2+ communities.

Diverse Communities and Experiences: Apologizing to LGBTQ2+ Communities

Apologies have become somewhat ubiquitous, and perhaps formulaic, in Canadian society. Yet, there are a number of unique considerations an apology to LGBTQ2+ communities must incorporate to ensure full inclusion of diverse sexualities and gender identities. With the help of Alice MacLachlan’s work on gendering apologies, we can observe these conditions and consider how effective the LGBTQ2+ apology was at integrating them. MacLachlan states that despite an increase in the number of

³⁶ Ibid., 506-507.

³⁷ Ibid.

³⁸ Egale Canada, “The Just Society Report,” 73.

apologies issued, “apologies for harm against groups of women remain relatively rare.”³⁹

We see a similar trend in apologies to LGBTQ2+ peoples: even though queer identities have been near universally persecuted, there are only a few instances of LGBTQ2+ apologies globally.⁴⁰

The first government to apologize to LGBTQ+ persons for the criminalization of same-sex activity was the state of Victoria, Australia. In May 2016, Premier Daniel Andrews issued an emotional apology in parliament for homophobic laws and police entrapment of LGBTQI persons, and introduced accompanying expungement legislation.⁴¹ In his landmark apology, Andrews stated that, “this parliament and this government are to be formally held to account for designing a culture of darkness and shame.”⁴² With the exception of the Canadian apology, other apologies to LGBTQ+ communities have not matched the tone or official setting of the Victorian apology. In October 2016, the German government announced its plan to pardon and compensate 50,000 gay men who were persecuted under anti-gay laws in the post-Nazi era.⁴³ While an official apology was not initially part of the move, German President Frank-Walter Steinmeier spoke at a June 2018 event to apologize and ask “forgiveness.”⁴⁴ In January 2017, the United Kingdom similarly passed legislation to issue pardons to those

³⁹ Alice MacLachlan, “Gender and Public Apology,” *Transitional Justice Review* 1, no.2 (2013): 131, <http://dx.doi.org/10.5206/tjr.2013.1.2.6>.

⁴⁰ Graeme Reid, “Justin Trudeau’s Apology Will Resonate Globally,” *Human Rights Watch*, December 6, 2017, <https://www.hrw.org/news/2017/12/06/justin-trudeaus-apology-will-resonate-globally>.

⁴¹ Melissa Davey, “Victoria to become first government to apologise for gay convictions,” *The Guardian*, May 23, 2016, <https://bit.ly/32moxF5>; Daniel Andrews, “‘Unimaginably wrong’: Victoria’s gay conviction apology speech in full,” *The Guardian*, May 24, 2016, <https://bit.ly/2G37xKo>.

⁴² Andrews, “‘Unimaginably wrong’: Victoria’s gay conviction apology speech in full.”

⁴³ Caroline Mortimer, “German government to pay €30m in compensation to gay men convicted under historical sex laws,” *Independent*, October 10, 2016, <https://bit.ly/2YcjZSt>.

⁴⁴ Associated Press, “German president apologizes to gays for decades of injustice,” *CBC News*, June 3, 2018, <https://bit.ly/2NKiPtg>.

convicted under homophobic laws.⁴⁵ Prime Minister Theresa May issued an apology of sorts in April 2018 when she addressed a convention of Commonwealth nations and acknowledged her regret for the U.K.'s role in the criminalization of homosexuality.⁴⁶ Neither Steinmeier nor May's comments were delivered in an official setting, nor were they as fulsome as either Andrews' or Trudeau's remarks. We see, then, that the tenor of the U.K. and German apologies differ greatly from the Victorian and Canadian apologies. Indeed, when the Canadian government embarked on its apology process in 2017, the Victorian apology was the only model that existed. It therefore had the difficult task of devising a consultation process and an apology that was inclusive of diverse LGBTQ2+ identities.

MacLachlan suggests that apologies can be issued for "past and present government policies of reproductive violence," that are "gendered-based [sic] both because they are committed against women, and because their spurious justifications invoke gender ideals."⁴⁷ A parallelism exists with reference to queer and trans communities, in that state oppression and violence was both perpetrated directly against LGBTQ2+ persons and rationalized through homophobia, transphobia, and strict adherence to a gender binary. MacLachlan posits that "gender complicates [apology]" due to the differing socialization of women, in which they are expected to be "compassionate and giving rather than angry and vindictive," unlike privileged men.⁴⁸ One can thereby extrapolate that differences in socialization exist for queer people

⁴⁵ Owen Bowcott, "UK issues posthumous pardons for thousands of gay men," *The Guardian*, January 31, 2017, <https://bit.ly/2jBGvvo>.

⁴⁶ Meka Beresford, "LGBT campaigners hope British PM's apology over anti-gay laws will fuel change," *Reuters*, April 17, 2018, <https://reut.rs/2xCWToT>.

⁴⁷ MacLachlan, "Gender and Public Apology," 135.

⁴⁸ *Ibid.*, 135.

broadly, but also for varying identities within the LGBTQ2+ community. That is to say that different societal expectations or assumptions exist for different types of queers: gay men are expected to be more effeminate and lesbian women more masculine. These assumptions may have resulted in the exclusion of queer individuals or communities who did not easily fit within these established categorizations. They may have also contributed to an expectation that LGBTQ2+ persons would be willing to accept *whatever* apology they were offered.

An apology that does not adequately incorporate diverse voices may further entrench existing power dynamics and norms. Indeed, apologizers can “come out of [an] apology looking better and not worse,” simply be showing that they are “right-thinking” in “[recognizing] moral norms” and “[facing] up to past misdeeds.”⁴⁹ It is fair then to ask whether the government came out of the LGBTQ2+ apology looking better, and if it did, whether it was at the expense of queer and trans communities that were excluded from the apology. Further, if the apology excluded diverse LGBTQ2+ communities, such as two-spirit, trans, non-binary, and queer people of colour, then the unique harms endured by these communities may have gone unacknowledged. How then has the 2017 apology effectively deconstructed what Kinsman and Gentile call, “heterosexual hegemonies,” defined as “the social practices and ideologies” that construct “queer sexualities” as “deviant, abnormal, and unnatural”?⁵⁰ Even if the apology embarked on some deconstruction of “heterosexual hegemonies,” it may do little to decolonize society, deconstruct cisgender hegemonies, and combat racism, consequently failing two-spirit, trans, and non-binary identities, as well as queer people of colour.

⁴⁹ Ibid., 137.

⁵⁰ Kinsman and Gentile, *The Canadian War on Queers*, 5.

According to MacLachlin, by bringing “[hidden] harms” from the private into the public, “[naming] harms to women as wrongful harms” gives public apologies more potential to alter “problematic gender dynamics and public conceptions of gender.”⁵¹ Sandra Chu discusses the public and private realm in relation to Chinese head-tax redress, suggesting that as Chinese women were relegated to the private realm of the home, the negative effects caused by their forced separation from their husbands via the head tax and subsequent “Chinese exclusion” legislation, was not considered part of the public realm.⁵² Similarly, LGBTQ2+ persons have historically – and perhaps contemporarily – been relegated to the private realm, and therefore, the negative effects of the purge, the criminalization of homosexuality, and continued legal homophobia, are not adequately captured in the public realm. The apology, therefore, represented an opportunity to bring these private identities and experiences into the public realm. Furthermore, those who identify as two-spirit, trans, non-binary, or as queer people of colour are further relegated to the private realm. It is therefore harder for these diverse communities to have their voices heard in the consultation process, and subsequently, to have their specific injustices mended in the post-apology period. Additionally, given that the purge was shrouded in secrecy,⁵³ and that queer and trans persons were forced to live secret lives – and sometimes still are – the 2017 apology offered an opportunity to increase public awareness of widespread discrimination.

The narratives of an apology, and who is included in crafting them, matter a great deal for an apology’s capacity to achieve redress. That is to say that an apology must

⁵¹ MacLachlan, “Gender and Public Apology,” 139.

⁵² Sandra Ka Hon Chu, “Reparation as Narrative Resistance: Displacing Orientalism and Recoding Harm for Chinese Women of the Exclusion Era,” *Canadian Journal of Women and the Law* 18, no.2 (2006): 415-416, <https://muse-jhu-edu.ezproxy.library.uvic.ca/article/230227/pdf>.

⁵³ Sawatsky, *Men in the Shadows*, 127.

integrate the lived experiences of a diverse array of queer and trans persons in order for that apology to both have meaning and offer broad renegotiation of LGBTQ2+ citizenship. MacLachlan rightly observes that, “misrepresenting, neglecting, or glossing over wrongs, and failing to acknowledge victims and their experiences, risks re-inflicting harms of silencing and disrespect.”⁵⁴ In crafting the 2017 apology, government actors and LGBTQ2+ stakeholders had an immense responsibility to ensure the inclusion of those who had experienced unique harms. If the government failed to include the voices of two-spirit, trans, and non-binary persons, along with queer people of colour in the consultation process and apology *itself*, the apology may have had the unintended consequence of re-inflicting harm on these individuals. For example, solely taking into account the harms inflicted on white, gay, cisgender men does not adequately account for the harms endured by racialized, lesbian, trans women.

MacLachlan postulates that “without consultation and attention to what victims themselves have to say, apologies remain wrongdoer narratives,” which can “further [objectify] the victim” and be “paternalistic at best.”⁵⁵ Once again, we see that effective consultation with a broad coalition of queer voices is essential. MacLachlan calls us to move beyond “the conditions for performance of public apology,” and to instead consider “who is in a position to offer such apologies” and to what “extent ... the agency of the victims is prioritized” both before and after the apology.⁵⁶ Examining the origins of the LGBTQ2+ apology, and the consultation process, will help us in determining who was included and who might have been excluded. Further, we must consider how LGBTQ2+

⁵⁴ MacLachlan, “Gender and Public Apology,” 140.

⁵⁵ *Ibid.*, 141.

⁵⁶ *Ibid.*, 142.

persons were served by the accompanying redress legislation, *the Expungement of Historically Unjust Convictions Act*.

While it is essential to consider LGBTQ2+ communities in our analysis of the apology, we must not lose sight of the fact that governments and states also derive benefits from political apologies. Melissa Nobles notes that “political actors use apologies ... to express support for and advance the ideas and policies they favour.”⁵⁷ We must therefore be wary of the LGBTQ2+ apology privileging a limited narrative favoured by the Liberal government, over a more heterogeneous and intersectional narrative preferred by diverse queer and trans voices. Additionally, Nobles argues that “political actors use [apologies] as proof that the government recognizes its obligations to mend current disadvantages, because they are the result, in part, of past government actions and policies.”⁵⁸ If the LGBTQ2+ apology sets out the disadvantages the government intends to correct, we must ask whether all disadvantages have been accounted for, especially if some voices were relegated in drafting the apology?

Diverse communities must also be able to raise additional or new concerns that arise after the apology. Here we heed MacLachlan’s argument that “in gendered contexts, where the apology may be one step in a longer process of negotiated narrative and meaning, ‘good’ apologies leave space for resistance as well as acceptance.”⁵⁹ One apology cannot alleviate all harm and hurt experienced by queer and trans survivors of oppression, and as such, resistance and dissent must be supported. Finally, Nobles submits that “political actors use apologies as platforms for announcing new policy

⁵⁷ Nobles, *The Politics of Official Apologies*, 111.

⁵⁸ *Ibid.*

⁵⁹ MacLachlan, “Gender and Public Apology,” 143.

directions and promoting societal reconciliation.”⁶⁰ We see this in a number of initiatives undertaken by the government, including the *Expungement of Historically Unjust Convictions Act* and Bill C-75. As such, if political apologies are the root of new policy directions – and the undertaking of societal reconciliation – then it undoubtedly matters who is at the table to draft an apology, what the apology says, what it is for, how it is performed, and who gets listened to after the apology. Having considered the question of why who gets heard matters, we can proceed to an examination of the origins of the apology.

Origins of the Apology: Resistance and Activism

LGBTQ2+ communities have a long history of resistance and activism in the face of systemic oppression. Early roots of the movement can be traced to the 1960s, and especially the period following the 1969 partial decriminalization of same-sex activity and the 1969 Stonewall riots.⁶¹ Young people involved in the lesbian and gay liberation movement embraced their sexuality, taking up rallying cries like “out of the closets and into the streets,” and “gay is just as good as straight.”⁶² On August 28, 1971, “activists gathered for the first cross-country gay rights demonstration”⁶³ and Toronto Gay Action delivered a brief entitled “We Demand,” stating ten demands for LGBTQ2+ equality that included an end to “harassment of lesbian and gay government employees by the RCMP.”⁶⁴ This early call for reform is indicative of the community’s ability to successfully mobilize and demand inclusion. Over time, these efforts would materialize

⁶⁰ Nobles, *The Politics of Official Apologies*. 111.

⁶¹ Kinsman and Gentile, *The Canadian War on Queers*, 222.

⁶² Warner, *Never Going Back*, 61.

⁶³ Kinsman and Gentile, *The Canadian War on Queers*, 255.

⁶⁴ Miriam Smith, “LGBTQ Activism: The Pan-Canadian Political Space,” in *Queer Mobilizations: Social Movement Activism and Canadian Public Policy*, ed. Manon Tremblay (Vancouver: UBC Press, 2015), 47.

into political and legal victories. A December 9, 1978 Toronto Police raid on the Barracks bathhouse incited a demonstration of over four hundred people, and the formation of a legal defense fund, which later became the Right to Privacy Committee.⁶⁵ Demonstrations grew larger following the coordinated raids of four Toronto bathhouses on February 5, 1981; the next day some three thousand protestors marched on a police precinct and the Ontario legislature.⁶⁶ These examples of protest are emblematic of the grassroots nature of the LGBTQ2+ movement to quickly respond to crises encountered by its members.

Following the implementation of the *Charter of Rights and Freedoms*, the radical rallies and demonstrations of the movement gave way to a more institutional approach. In 1986, an organization named Egale (Equality for Gays and Lesbians Everywhere) was formed, comprised mostly of lawyers and civil servants.⁶⁷ Miriam Smith observes that the organization “did not advocate for gay liberation or sexual freedom but, rather, emphasized legally based rights protections.”⁶⁸ As Egale became highly influential in a number of landmark victories for LGBTQ2+ communities, including the attainment of a government apology, it is important to note its legalistic origins and the social class of its members. Indeed, lawyers and civil servants of higher socioeconomic status may adopt an institutional approach over one rooted in grassroots activism. As we will see, Egale’s approach to the 2017 apology and redress package was quite administrative and legalistic, which may have missed LGBTQ2+ persons from lower socioeconomic backgrounds.

⁶⁵ Warner, *Never Going Back*, 109.

⁶⁶ *Ibid.*, 110-111.

⁶⁷ Smith, “LGBTQ Activism,” 48.

⁶⁸ *Ibid.*

The roots of the LGBTQ2+ apology can be traced to a legal victory and an initial call for an apology, both of which occurred in the 1990s. Michelle Douglas was employed by the Canadian Armed Forces (CAF) and received “top secret security clearance” to join the SIU, but in 1988, the SIU “initiated an investigation into her sexuality.”⁶⁹ Following a two-month interrogation, Douglas acknowledged that she is lesbian, and was demoted and later dismissed.⁷⁰ In 1990, she sued the armed forces for wrongful dismissal, and after the armed forces appealed to the Supreme Court, the Court decided in 1992 that her dismissal violated Section 15 of the Charter.⁷¹ As a result, the Department of National Defense repealed its ban on gays and lesbians in the military, allowing LGBTQ2+ persons to serve openly.⁷² This ruling exemplifies the role that legal institutions have in promoting equality under the law, and particularly how the introduction of the Charter revolutionized the fight for LGBTQ2+ equality. Given that this ruling struck down a historical policy of queer exclusion within the CAF, it serves as a permanent record of the injustice perpetrated against queer persons.

The first call for a government apology to LGBTQ2+ communities came from Gary Kinsman and Patrizia Gentile in a 1998 report delivered alongside members of the Canadian Labour Congress, the Public Service Alliance of Canada, and Egale.⁷³ The report called for “an official apology from the Canadian government for the injustices done to hundreds of gay men and lesbians and a commission of inquiry into the broad-

⁶⁹ Kinsman and Gentile, *The Canadian War on Queers*, 412.

⁷⁰ *Ibid.*, 412.

⁷¹ *Ibid.*, 413.

⁷² Warner, *Never Going Back*, 196.

⁷³ Gary Kinsman and Patrizia Gentile, “In the Interests of the State”: *The Anti-Gay, Anti-Lesbian National Security Campaigns in Canada – A Research Report* (Sudbury: Laurentian University, 1998), referenced in Gary Kinsman, “In the interest of the state: the National Security Campaign Against Gay Men and Lesbians,” *Canadian Dimension; Winnipeg* 32, no.5 (Sep 1998): 13-15, <https://bit.ly/2BP414H>. 13-15.

ranging national security campaigns.”⁷⁴ This original demand from scholars, supported by two labour organizations and an LGBTQ2+ rights organization, demonstrates that an official apology had been a long sought after initiative. Furthermore, while the government did eventually issue an apology, it did not heed the Kinsman and Gentile demand for an inquiry commission.

In 2016, following the 2015 election of the Liberal government, two groups pressured the government to act. In a February 27, 2016 article, the *Globe and Mail* declared that upon briefing the Prime Minister’s Office (PMO) on the case of Everett Klippert, the government signalled its intent to pardon Klippert, and to consider pardons for those with past convictions of gross indecency or buggery.⁷⁵ Following the government’s announcement, Egale formed the “Klippert Committee” and tasked it with conducting a review of discriminatory provisions in Canada’s justice system.⁷⁶ Gender Studies professor Suzanne Lenon observes that as it was this committee which produced the *Just Society Report*, the apology Egale “asked for [was] in response to the federal government’s announcement and not vice versa.”⁷⁷ We see, then, that while media organizations, such as the *Globe and Mail*, and LGBTQ2+ organizations, such as Egale, helped to catalyze an apology, the government was already considering moving forward with LGBTQ2+ redress. As such, we can presume that the government had political motivations for issuing an LGBTQ2+ apology from the outset.

⁷⁴ Ibid.

⁷⁵ John Ibbitson, “Everett Klippert’s story: The long, late redemption of a man punished for being gay in the 1960s,” *The Globe and Mail*, February 27, 2016, <https://tgam.ca/2j5V3W4>.

⁷⁶ Egale Canada, “The Just Society Report,” 118-119.

⁷⁷ Suzanne Lenon, “‘Making It Right,’ Keeping It White: Race and the Demand for Queer Redress,” in *Canadian Journal of Women and Law* 30 no.3 (2018): 550, <https://muse-jhu-edu.ezproxy.library.uvic.ca/article/713415>.

A second LGBTQ2+ group that was instrumental in demanding an apology was the We Demand An Apology Network. Formed in 2015, and comprised of purge survivors and LGBTQ2+ scholars, the group “pushed for a state apology, redress, and the expungement of criminal code convictions for consensual same-sex activities.”⁷⁸ Indeed, on June 8, 2016, representatives of the We Demand an Apology Network – including Martine Roy, Gary Kinsman, and Lynne Gouliquer – released a memo calling for “a public and official government apology and redress process for all those affected by the purge campaign.”⁷⁹ Along with an official apology, the memo demanded broad pardons for anyone affected by the criminalization of homosexuality.⁸⁰ Egale’s calls in the *Just Society Report*, similarly focused on the need for legal reforms to remedy the broader criminalization of queer sex and LGBTQ2+ identities, and also discussed the harms of the purge. Clearly, the We Demand Network saw an apology as the commencement of redress and not the attainment of it. Therefore, as discussed earlier, it is imperative that we assess the post-apology policy period to determine how the government has substantiated its 2017 apology.

Following the release of the We Demand Network memo, the leading LGBTQ2+ rights organization in Canada released its report. On June 13, 2016, Egale Canada published its wide-ranging *Just Society Report*, which reviewed the historical oppression of LGBTQ2+ persons, examined discriminatory provisions of the Criminal Code, and

⁷⁸ Gary Kinsman, “The Apology from ‘Above and Below.’ Expanded Version,” *Radical Noise*, Dec 5, 2017, <https://bit.ly/2KCJoPj> (accessed 5 Apr 2019).

⁷⁹ We Demand an Apology Network, “The We Demand an Apology Network submission on the urgent need for an official state apology and redress for those affected by the anti-gay/anti-lesbian purges in the public service and the military,” (June 8 2016): 1, <https://bit.ly/2PiHY9T>. (accessed 25 Nov 2018).

⁸⁰ *Ibid.*

presented solutions to government.⁸¹ The report called on the government to “prepare an open-textured and inclusive apology for Canada’s history of oppression,” and suggested “government and [LGBTQ2+] community representatives enter a year-long mediated negotiation.”⁸² Egale declared that the negotiation should focus on legal reform, expungement provisions, monetary reparations, and commemoration; it also suggested that negotiation could include discussion of a “postponed apology.”⁸³ Inherent in these recommendations was Egale’s desire to have LGBTQ2+ stakeholders at the table, thereby preventing the government from unilaterally proceeding with either an apology or accompanying legislation. By demanding a year-long negotiation process, Egale was attempting to prevent the apology from being dominated by, in MacLachlan’s words, “wrongdoer narratives.”⁸⁴

Egale set several parameters around the government’s prompt adoption of the report. It requested that government (1) “accept [the] report in principle” and “move to phase [two] of implementations” by July 3, 2016; (2) “negotiate the mandate of the mediator” and suggested that former Supreme Court Justice, the Hon. Frank Iacobucci, fill this role; and (3) that Iacobucci “deliver his report to government within [one year] of his appointment.”⁸⁵ This ambitious timeline is reflective of the urgency with which Egale hoped to attain an apology, especially given the aging population of purge survivors. Considering the PMO’s progressive attitudes on the Klippert case, Egale’s requests were also attempts to ensure LGBTQ2+ inclusion in the drafting of expungement legislation or

⁸¹ Egale Canada, “Egale’s Just Society Committee Releases Review of LGBTQ2SI Discrimination in Criminal Code,” June 13, 2016, <https://egale.ca/the-just-society-report/>. (accessed 25 Nov 2018).

⁸² Egale Canada, “The Just Society Report,” 99.

⁸³ Ibid.

⁸⁴ MacLachlan, “Gender and Public Apology,” 141.

⁸⁵ Egale Canada, “The Just Society Report,” 112.

reform of the Criminal Code. In thinking about why the We Demand Network and Egale issued their respective briefs days apart, it is likely that both organizations were attempting to capitalize on a new political opportunity, that of a Liberal government. Indeed, after nearly ten years of a Conservative government, LGBTQ2+ activists were presented with a more progressive government – early in its mandate – that had signalled a willingness to act.

Before proceeding to a discussion of the government’s reaction to Egale’s demands, it is useful to consider the suggestions that the *Just Society Report* made with reference to an apology. Egale declared that in addition to being “open-textured,” an apology “must embrace feminism and intersectionality,” “be inclusive of all identity-based [characteristics] within Section 15(1) of the Charter,” and adopt “intersectionality,” which it defined as recognizing the overlapping nature of “race, class, disability, aboriginal status, gender, and sexuality.”⁸⁶ To justify the “open-textured and intersectional” apology it demanded, Egale highlighted the way in which sexual orientation was read into Section 15(1) of the Charter as “an analogous ground,” in the *Egan* [1995] decision and as “an immutable characteristic” in the *Vriend* [1998] decision.⁸⁷ Thus, the *Just Society Report* asserted that Supreme Court jurisprudence provided “support for the operationalization of intersectionality in reparations, an apology, and pardons.”⁸⁸ We have already seen that for apologies to be inclusive, they must consider the unique lived experiences of individuals with intersecting identities. Egale’s pronouncement suggested its concern for varying queer and trans communities and its desire to secure an inclusive apology. The report further proclaimed that, “every

⁸⁶ Ibid., 100.

⁸⁷ Ibid., 100-102.

⁸⁸ Ibid., 102.

marginalized person within the [LGBTQ2+] community has a qualitatively unique experience of oppression,” which could only be captured through the “open-textured construction” of an apology.⁸⁹ By calling the attention of the government to the diverse experiences of queer and trans persons, Egale hoped to ensure the inclusion of various narratives in the apology.

The report also stated that, “the text of an apology should not foreclose the potential ameliorative scope of the government’s goodwill declaration,” in reference to the fact that “mainstream sexual orientation and gender identity activism often fails to consider the qualitative and contextual experience of [LGBTQ2+] oppression.”⁹⁰ In other words, an apology should transcend ‘mainstream’ concerns and contain considerable breadth, in order to resonate with diverse queer and trans voices. As MacLachlan states, failing to recognize survivor experiences “risks re-inflicting harms of silencing and disrespect.”⁹¹ Finally, in setting out a path for negotiations, the report suggested that the government “enter a mediated negotiation between community stakeholders and organizations led by Egale,” submitting that the Truth and Reconciliation model offered a laudable example.⁹² Egale reaffirmed its commitment to include all “appropriate stakeholders and communities,” be they individuals or organizations.⁹³ The *Just Society Report* was aspirational in its desire to ensure that the process of apology and redress was representative of varying identities and perspectives within LGBTQ2+ communities. Indeed, the report considered many LGBTQ2+ communities including those affected by the criminalization of same-sex relations, those purged from the military or civil service,

⁸⁹ Ibid., 100.

⁹⁰ Ibid., 100.

⁹¹ MacLachlan, “Gender and Public Apology,” 140.

⁹² Egale Canada, “The Just Society Report,” 104.

⁹³ Ibid.

and trans, intersex, and two-spirit prisoners affected by state adherence to the gender binary.⁹⁴

While Egale's report expressed a clear desire to embrace the principles of intersectionality, Suzanne Lenon problematizes this assertion. She suggests that while the *Just Society Report* took up the banner of intersectionality, it did not adequately interrogate structural power dynamics, and instead conflated intersectionality with diversity.⁹⁵ In doing so, Lenon theorizes that diverse identities "appear to exist on the outside of the white supremacist, settler colonial, and (cis)gender normative power relations" responsible for these very identities.⁹⁶ That is to say that by failing to acknowledge existing power structures, the *Just Society Report* did not do the difficult work of challenging and subverting these unequal structures. Lenon observes that this failure provided for "white gay men [to] remain at the centre of the call for an apology to be intersectional."⁹⁷ By considering two-spirit peoples as "one-element" of LGBTQ2+ identity, Lenon posits that the report "[hid] truths that are not able to be spoken," because without Canada's assimilative origins, there would be no "white settler state" for "white lesbian/gay/queer settler sexuality" to be integrated within.⁹⁸ Exposing the racist and oppressive origins of the Canadian state would have required Egale to undertake a deeper interrogation of queer settler sexuality, and to problematize the very idea of queer inclusion within Canada.

Further objections to the *Just Society Report's* claims of intersectionality are raised with respect to two-spirit peoples and Black people. In the report's chapter on

⁹⁴ Ibid., 5.

⁹⁵ Lenon, " 'Making It Right,'" 556.

⁹⁶ Ibid., 557.

⁹⁷ Ibid.

⁹⁸ Ibid., 559.

“Policing and Prisons,” Lenon observes a dearth of “discussion about racism and anti-Black racism,” despite the work of Black Lives Matter Toronto “to address anti-Black policing.”⁹⁹ Additionally, the report did not situate law enforcement and the justice system as institutions “that maintain the logic and structure of white settler colonialism.”¹⁰⁰ These findings suggest that the report’s engagement with intersectionality was superficial at best. Lenon is also critical of the report’s failure to acknowledge that the concept of “national security,” as discussed in relation to the purge, has historically – and continues to be – “directed at Indigenous peoples and nations.”¹⁰¹ By glossing over the way in which militarized state institutions contribute to the “quashing [of] contemporary Indigenous land struggles,” the *Just Society Report* ignored the ongoing existence of oppressive power structures and the presence of the state on “occupied Indigenous lands.”¹⁰² From Lenon’s criticisms, one must acknowledge that while Egale’s report appears to wholeheartedly embrace the principles of intersectionality, its engagement with these principles is lacking. While making efforts to be inclusive of a wide range of LGBTQ2+ identities, the report failed to acknowledge and challenge power structures, and thus risked perpetuating cycles of oppression. Nonetheless, Egale’s proposed mediation process might have provided an opportunity for diverse voices to be heard and – at least in theory – to expose and subvert these oppressive power structures.

Having discussed Egale’s demands – and some criticisms of the *Just Society Report* – we turn to an examination of the government’s response to them. On August 11,

⁹⁹ Ibid., 560.

¹⁰⁰ Ibid.

¹⁰¹ Ibid., 561.

¹⁰² Ibid.

2016, the *Globe and Mail* reported that the prime minister intended to apologize to LGBTQ2+ Canadians and that the Liberal government planned to “act on most or all of the recommendations” from the *Just Society Report*.¹⁰³ Egale Canada’s executive director, Helen Kennedy, commended the government’s announcement,¹⁰⁴ and one of the report’s authors, Michael Motala, also expressed his optimism.¹⁰⁵ Despite its announcement, the government did not proceed with the mediated negotiation process as outlined in the report. Instead, in November 2016, the prime minister appointed Member of Parliament (MP) Randy Boissonnault as Special Advisor on LGBTQ2 issues and issued a press release that re-affirmed government support for the *Just Society Report*.¹⁰⁶ Boissonnault was tasked with “[defining] the scope and nature” of an LGBTQ2+ apology and suggested that consultations would include a focus on two-spirit peoples.¹⁰⁷ Assigning this role to an MP allowed the government to establish its own priorities and agenda in proceeding with an apology, something that would not have been possible if subject to the purview of a mediator. Additionally, choosing an MP to head up the apology process, rather than a minister, provided some distance and cover for the prime minister and his government.

By spring of 2017 a number of LGBTQ2+ stakeholders were frustrated with the delayed apology. Kennedy vocalized Egale’s frustration saying that, “everything the

¹⁰³ John Ibbitson, “Justin Trudeau to apologize for historic persecution of gay Canadians,” *The Globe and Mail*, August 11, 2016, <https://tgam.ca/2AR23z3>.

¹⁰⁴ Egale Canada, “Egale Applauds Prime Minister Trudeau’s Announcement of Apology to Persecuted Gay Canadians,” August 12, 2016, <https://bit.ly/2FYyF9o>. (accessed 25 Nov 2018).

¹⁰⁵ Michael Motala, “Egale’s Fight for LGBTIQ2S equality, when it rains, it pours,” *CBA/ABC: The National*, August 17, 2016, <https://bit.ly/2b0Oyya>.

¹⁰⁶ Prime Minister’s Office, “Prime Minister Announces Special Advisor on LGBTQ2 Issues,” November 15, 2016, <https://bit.ly/2BOXmaC>. (accessed 25 Nov 2018).

¹⁰⁷ Andrea Hunter, “Apology part of mandate for LGBTQ adviser Randy Boissonnault,” *CBC News*, November 15, 2016, <https://bit.ly/2E0b77G>.

government needs to do is in [the *Just Society Report*].”¹⁰⁸ Motala, concerned by the lack of progress, even suggested that the government was “using [LGBTQ2+] issues as a bit of a PR stunt.”¹⁰⁹ These reactions from representatives of the We Demand Network and Egale are indicative of their reservations about the government’s intentions. By rejecting Egale’s negotiation framework, the government was no longer reliant on the voices of LGBTQ2+ persons, which left queer stakeholders on the outside looking in. It is likely that the government was concerned that apologizing before settling the class action lawsuit would affect negotiations. However, Douglas Elliott – the lead author of the *Just Society Report* and member of the class action legal team – observes that, “issuing an official apology has never resulted in civil liability.”¹¹⁰

While Boissonnault committed the government to apologize “before the end of 2017,” he also emphasized the importance of separating the apology from “the class action suits” and “other policy initiatives like pardons and expungements.”¹¹¹ In response, Kinsman stated that, “this is a limited victory” and reiterated his demands for “a firm commitment of an associated redress process.”¹¹² Consultations did not officially get underway until September 2017,¹¹³ and took place in an expedited fashion with the apology delivered on November 28, 2017. Given that the *Just Society Report* was released in June 2016, the government took a considerable amount of time to proceed

¹⁰⁸ John Ibbitson, “Advocates frustrated by federal inaction on apology to gay Canadians,” *The Globe and Mail*, March 12, 2017, <https://tgam.ca/2PhWpLi>.

¹⁰⁹ John Paul Tasker, “Ottawa to Formally apologize to LGBT community for past wrongs,” *CBC News*, May 17, 2017, <https://bit.ly/2SqM7KU>.

¹¹⁰ R. Douglas Elliott, “So Sorry: The Legal Myths and Social Realities of the Official Apology,” *C4E Journal* 11 (2017), <https://bit.ly/2HZmmyU>.

¹¹¹ Dylan C. Robertson, “The Canadian federal apology for gay arrests, firings is coming – by end of 2017,” *Xtra*, May 23, 2017, <https://bit.ly/2Sn4Uqg>.

¹¹² *Ibid.*

¹¹³ Privy Council Office, “New Advisory Council to help Government of Canada develop an apology for injustices faced by LGBTQ2 communities,” September 18, 2017, <https://bit.ly/2QBaet1>. (accessed 25 Nov 2018).

with the commitments it had affirmed in August 2016. Nonetheless, Helen Kennedy expressed her “hope that the apology [would] reach beyond the surface and into the hearts of all [LGBTQ2+] community members in Canada.”¹¹⁴

This section has traced the origins of the 2017 apology. We have found that two LGBTQ2+ groups – the We Demand An Apology Network and Egale Canada – both seized on the political opportunity presented by a newly elected Liberal government to catalyze an LGBTQ2+ apology. Indeed, while broader civil liberties organizations have joined LGBTQ2+ communities in advocating for enhanced legal equality in the past, such as through their role as interveners in *Reference re Same-Sex Marriage* [2004],¹¹⁵ these organizations were not visible in the calls for an apology. As Kinsman noted, the apology was brought about by “growing number[s] of people coming forward [especially from the military] to talk publicly about their experiences of being purged and to push for justice.”¹¹⁶ The We Demand Network was only formed because these individuals were willing to come forward. Further, Kinsman observed that when the government stalled on the apology timeline in spring 2017, the We Demand An Apology Network and Egale both issued media releases condemning government inaction.¹¹⁷ He also noted that the Network reached out to Pride organizations across the country to express their concern that Prime Minister Trudeau was permitted to walk in Pride parades, even though “he was not coming through on meeting [the Network’s] important demands.”¹¹⁸ According to Kinsman, “within a week” of engaging with Pride committees, the government

¹¹⁴ Egale Canada, “Canada’s Apology to the LGBTQI2S Community,” November 27, 2017, <https://bit.ly/2SuIGTy>. (accessed 25 Nov 2018).

¹¹⁵ *Reference re Same-Sex Marriage* [2004] 3 S.C.R. 698, 2004 SCC 79, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2196/index.do>.

¹¹⁶ Kinsman, “The Apology from ‘Above and Below.’”

¹¹⁷ Ibid.

¹¹⁸ Ibid.

committed to issuing the apology.¹¹⁹ He characterized these efforts by grassroots purge survivors and activists as evidence of “the apology from below.”¹²⁰ Certainly, Egale’s *Just Society Report* was also instrumental in pushing the government to act. As such, we see the formation of two broad apology constituencies: one prevailing LGBTQ2+ rights organization in Egale, and a looser contingent of grassroots activists in the We Demand An Apology Network.

Excluded Voices: Consultations and Criticisms on the Path to Redress

We turn now to some of the shortcomings of the apology and the associated process of redress. In doing so, we begin by examining the consultations that took place in the lead up to the LGBTQ2+ apology. As mentioned, official consultations began in earnest on September 18, 2017 with the formation of an advisory council co-chaired by Randy Boissonnault and Marie-Laure Leclercq, a trans activist and lawyer.¹²¹ The council was designed to “provide advice on the scope and issues to be addressed,” in order to “ensure that an apology [would be] inclusive and meaningful.”¹²² In addition to the co-chairs, the council was comprised of eleven individuals, including Albert McLeod, Svend Robinson, Helen Kennedy, Laurent Maurice Lafontant, Marni Panas, Kate Shewan, Sue Genge, Reverend Gary Paterson, and Shelley Colter.¹²³ Of these individuals, one identifies as two-spirit, one is a queer person of colour, and three are trans. While the committee brought together persons with backgrounds in varied LGBTQ2+ communities, Stephen Maynard observes that the council “[had] no

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Privy Council Office, “New Advisory Council to help Government of Canada,” <https://bit.ly/2QBaet1>.

¹²² Privy Council Office, “Backgrounder: New Advisory Council to help Government of Canada develop an apology for injustices faced by LGBTQ2 communities,” September 18, 2017, <https://bit.ly/2QG7cnz>. (accessed 25 Nov 2018).

¹²³ Ibid.

representation from anyone with firsthand experience of the government's anti-queer practices" and also was devoid of historians.¹²⁴ These individuals were nonetheless expected to "advise on appropriate and respectful content and language for the apology ... [and] key aspects of a federal reconciliation agenda with LGBTQ2 communities."¹²⁵ This council was intended to supplant the mediated negotiation process recommended by Egale and was compelled to operate on an accelerated timeline. Whereas the *Just Society Report* had advocated for a year-long consultation process, the advisory council had just over two months to offer advice on both an apology and reconciliation agenda. The speed with which the council was expected to do its work represented the savvy nature of the government: by rushing through consultations, the government ensured that it maintained control of the process.

The council's rushed timeframe suggests that the consultation process was far from exhaustive, and in fact, likely excluded some LGBTQ2+ communities. According to Gary Kinsman, the council did not meet more than four to six times,¹²⁶ but an exact number is not known. Further, while the government rejected Egale's proposed mediation process, it certainly recognized the importance of having Egale onboard with its advisory council process. Given that the government's efforts were arguably tied to the *Just Society Report*, criticism from Egale might have undermined its entire process. The inclusion of Egale's executive director, Helen Kennedy, on the advisory council, was likely a government attempt to legitimate its process. These efforts seemed to appease Egale because Douglas Elliott, lead author of the *Just Society Report*, claimed in

¹²⁴ Stephen Maynard, "To Forgive and Forget? Homonationalism, Hegemony, and History in the Gay Apology," *C4E Journal* 11 (2017) <https://bit.ly/2ri3hyC>.

¹²⁵ Privy Council Office, "Backgrounder: New Advisory Council," <https://bit.ly/2QG7cnz>.

¹²⁶ Gary Kinsman, email correspondence with Michael McDonald, July 11, 2019.

November 2017 that the consultation process “involve[d] significant LGBTQ2 community involvement and outreach.”¹²⁷ But what did he mean by “significant involvement and outreach”? Surely a council of eleven individuals – granting their diverse backgrounds – cannot qualify as “significant.” Furthermore, in its report, Egale had called for the negotiation process to be “led by Egale,”¹²⁸ but at no point did it raise any objection to the government’s advisory council. With that said, it is also likely that Egale was satisfied that the government was at least moving forward with the apology, and thereby accepted the consultation process, however flawed it was. Egale was eager to participate in any process that saw the government take responsibility for the injustices it had perpetrated, especially in light of the aging purge survivors.

The 2017 government led LGBTQ2+ consultation process starkly contrasts with the negotiation process that led to the 1988 apology for the internment of Japanese Canadians. The National Association of Japanese Canadians (NAJC) first submitted its demands to the federal government in 1984, which was followed by a 1986 proposal, and a 1987 brief outlining NAJC’s stance.¹²⁹ The period between 1984 and 1988 was characterized by on and off again negotiations; while the government ended talks with the NAJC in 1987, negotiations began again in earnest after a two-day rally on Parliament Hill in April 1988.¹³⁰ Audrey Kobayashi observes that the September 22, 1988 agreement between the NAJC and the government was reached because the government agreed to both a *bilateral* negotiation process and individual compensation

¹²⁷ Elliott, “The Legal Myths and Social Realities of the Official Apology.”

¹²⁸ Egale Canada, “The Just Society Report,” 104.

¹²⁹ Audrey Kobayashi, “The Japanese-Canadian Redress Settlement and its Implications for ‘Race Relations,’” *Canadian Ethnic Studies* 24, no. 1 (1992): 3, <https://bit.ly/31gF2lq>.

¹³⁰ *Ibid.*, 3-4.

for those interned during World War II.¹³¹ While the Mulroney government accepted the process proposed by the NAJC, the current Trudeau government rejected the negotiation process advanced by Egale.

The reluctance of the Trudeau government to allow Egale to lead negotiations may have been a result of the purge survivors' concurring class action suit. Indeed, while the 1988 Japanese redress agreement included individual compensation along with an apology, the 2017 LGBTQ2+ consultation process on the apology was divorced of settlement negotiations. Interestingly, the class action lawsuit was only launched in November 2016 in an attempt to "force the government to the bargaining table," amid government inaction on the *Just Society Report's* recommendations.¹³² It is likely that had the government promptly pursued Egale's proposed mediation process, a class action suit may not have been launched in the first place. The issue of compensation for purge survivors would have then been dealt with in conjunction with the apology. Even in spite of the class action, there was no legitimate reason for the government to pursue a rushed model that lacked transparency. Indeed, the government could have chosen to pursue a more exhaustive and open process modeled after the Truth and Reconciliation Commission.

The legitimacy of the consultation process, and consequently the legitimacy of the LGBTQ2+ apology, is undermined by the lack of available information on it. For its part, the government maintained that the advisory council was only "one avenue of engagement," declaring that, "stakeholder outreach and bilateral conversations" were

¹³¹ Ibid., 4-5.

¹³² Murray Brewster, "Ottawa faces class-action lawsuit over fired LGBT civil servants," *CBC News*, November 1, 2016, <https://bit.ly/2WQv5eW>.

“ongoing.”¹³³ Yet, extraordinarily little is known as to what these “ongoing” conversations involved and there is not currently a public record of stakeholders consulted. While the LGBTQ2 Secretariat distributed a four-question survey to elicit feedback on the apology,¹³⁴ we do not know which organizations or individuals were asked to participate. Further, the distribution of this survey appears to have been somewhat arbitrary. Only after Aaron Devor, the Chair in Transgender Studies at the University of Victoria, reached out to Boissonnault’s office to express his concern that trans men were not represented on the advisory council, did the LGBTQ2 Secretariat share its survey with him, in an effort to consult with trans-masculine communities.¹³⁵ The four-questions shared with LGBTQ2+ stakeholders were: from your perspective, why should the Government of Canada apologize to LGBTQ2 people living in Canada? Are there specific examples of wrongs that you feel should be addressed? What actions can the government undertake in order to promote awareness of the issues LGBTQ2 people have faced, and foster understanding going forward? And what can the government do to demonstrate ongoing commitment to promoting equality for LGBTQ2 people?¹³⁶

The Canadian Centre for Gender and Sexual Diversity (CCGSD) identified the lack of information on consulted stakeholders as an issue. Specifically, it asked the government to provide public information on the steps taken to draft the apology, offer an “official invitation” to affected groups to participate in consultations, establish an online “consultation and feedback” mechanism, share a “full list of [consulted] stakeholders,”

¹³³ Privy Council Office, “New Advisory Council to help Government of Canada,” <https://bit.ly/2QBaet1>.

¹³⁴ CCGSD, “Draft Addressing the history of discrimination by the Government of Canada against LGBTQ2S+ persons,” November 2, 2017, <https://bit.ly/2Qxa8Tf> (accessed 25 Nov 2018).

¹³⁵ Aaron Devor, interview by Michael McDonald, Victoria BC, June 14, 2019.

¹³⁶ Ibid.; CCGSD, “Draft Addressing the history of discrimination.”

and allow these stakeholders to provide feedback on “a draft of the apology.”¹³⁷ The government did not deliver on any of these requests. Further, the haste with which it approached the apology’s consultation process – both in terms of the advisory council and the ad hoc distribution of the survey – illuminates the government’s political motivations for issuing the apology in the first place. Indeed, once the government decided to apologize, it seems that it was far more interested in issuing the apology as quickly as possible, than it was in broadly consulting with LGBTQ2+ communities about the apology.

The dearth of knowledge extends to the activities of the advisory council itself; while we know it existed, we know little of what was discussed or who was consulted. In fact, Maynard observes that “council members were forced to sign a confidentiality agreement,” and that when Gary Kinsman was asked to sit on the council, he refused because of this requirement.¹³⁸ In his letter to the LGBTQ2 Secretariat, Kinsman outlined his reasons for refusing to sign the “contract and confidentiality agreement.”¹³⁹ He noted that the purge campaigns occurred “in the name of national security ... [amid] a very high level of secrecy.”¹⁴⁰ Thus, by conducting consultations in secret, the advisory council process perpetuated secrecy; instead, it should have sought to end secrecy by pursuing “a more public and participatory process.”¹⁴¹ Further, Kinsman highlighted that while working on *The Canadian War on Queers*, he and Gentile were confronted with redacted Access to Information Program (ATIP) requests in the name of “national

¹³⁷ Ibid.

¹³⁸ Maynard, “To Forgive and Forget?”

¹³⁹ Gary Kinsman, “Why I Could Not Sign The Contract And Confidentiality Agreements To Be On The Advisory Council For An Apology,” *Radical Noise*, September 27, 2017, <https://bit.ly/32cLQ3Q>. (accessed 2 July 2019).

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

security.”¹⁴² He therefore refused to be part of a consultation process that continued to “keep [purge campaign] information out of the public domain.”¹⁴³ Kinsman also criticized the consultation process for its hypocrisy in asking members to “collect information and views for the council” from “members of groups and networks [that] they [were a] part of,” but simultaneously did not allow members to seek input on apology proposals.¹⁴⁴ He also felt that the advisory council should have undertaken a more fulsome discussion of “redress and compensation” in addition to the apology, that – to establish greater separation from the government – someone other than Randy Boissonnault should have chaired the council, and that the council should have committed to a “nation to nation” approach with Indigenous peoples.¹⁴⁵ Lastly, he expressed his reservation that he would be unable to use anything he either learned in the process or produced for the council in his later research or scholarly writing.¹⁴⁶ Kinsman’s letter highlighted the many robust concerns he had with the process, and underscores our argument that the consultation process was needlessly secretive.

The only records of consultation submissions appear to come from outside sources such as the CCGSD brief or the We Demand Network’s September 14, 2017 memo containing updated “points needed in an official, public, state apology.”¹⁴⁷ The central point is that, had the government accepted the *Just Society Report* in full, including the terms that laid out a broad mandate for a mediator to consult with LGBTQ2+ peoples, then the consultation process would have been more open and

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ CCGSD, “Draft Addressing the history of discrimination.”; We Demand an Apology Network, “Points needed in an official, public, state apology,” September 14, 2017, <https://bit.ly/2FYDMfY>. (accessed 25 Nov 2018).

inclusive. As it stands, we know little of how the advisory council was formed or what took place during the consultation process. We cannot refer back to an official report, as we would have been able, had Mr. Iacobucci served as mediator. Moreover, while a year-long negotiation process would have lent itself to the inclusion of a broader array of two-spirit, trans, non-binary, and queer people of colour's voices, their individual narratives remain lost.

Further concerns have been raised regarding the content of Bill C-66, the *Expungement of Historically Unjust Convictions Act*. While the *Act* allows individuals to seek expungement of criminal records related to “gross indecency, buggery, and anal intercourse,”¹⁴⁸ scholars have raised concerns with its limited scope. In a December 2017 press release, “gay and lesbian historians” including Tom Hooper, Patrizia Gentile, Gary Kinsman, and Stephen Maynard called on the government to expand the bill's focus to allow the expungement of “bawdy house, indecent act, obscenity, and vagrancy” convictions.¹⁴⁹ Given that these offences have all been used to criminalize LGBTQ2+ communities, allowing expungement for them is essential to achieving redress. The press release criticized the *Act*'s exclusion of “bawdy house laws,” given that the prime minister mentioned “bathhouse raids in his apology.”¹⁵⁰ This suggests that while the government was eager to please LGBTQ2+ persons with its apology, it was unwilling to fully substantiate the apology with broad-based reforms.

To correct convictions that resulted from the discriminatory differential age of consent, the *Act* mandates that “the persons who participated in the activity were

¹⁴⁸ Canada, Bill C-66, *Expungement of Historically Unjust Convictions Act*.

¹⁴⁹ Radical Noise, “Gay and Lesbian Historians Declare that lack of Consultation and a Rush through Parliament Produce a Flawed Bill C-66 (The Expungement Bill),” December 11, 2017, <https://bit.ly/2zFUzPs>. (accessed 25 Nov 2018).

¹⁵⁰ *Ibid.*

[sixteen] years of age or older.”¹⁵¹ Given that the heterosexual age of consent was raised from fourteen to sixteen in 2008, historians rightly criticized “the bill [for demanding] a higher age of consent for same-sex activity than heterosexual activity for periods prior to 2008.”¹⁵² This oversight projects a differential age of consent into the past, and thereby continues to criminalize same-sex sexual activity. The press release condemned the parliamentary committee process for failing to seek input from LGBTQ2+ advocates “with expertise in areas covered by the bill.”¹⁵³ Indeed, the committee heard from only four witnesses employed, somewhat ironically, by the Department of Public Safety, the Parole Board of Canada, and the RCMP.¹⁵⁴ Failure to consult with queer and trans communities before drafting expungement legislation is detrimental to meaningful redress. Indeed, such negligence would have been avoided with an exhaustive consultation process headed by a mediator. Instead, the government has created a limited and onerous process, which as of October 2018, had contributed to only seven applications for expungement.¹⁵⁵

Given the *Just Society Report*’s role in catalyzing an apology, Stephen Maynard argues that the apology’s origins were rooted in a “top-down” approach, emblematic of a “demobilized queer constituency” that focused on targeting the government rather than “bringing a movement together.”¹⁵⁶ Certainly it seems that the We Demand Network’s approach was more committed to a grassroots “apology from below,” to use Kinsman’s

¹⁵¹ Canada, Bill C-66, *Expungement of Historically Unjust Convictions Act*.

¹⁵² Radical Noise, “Gay and Lesbian Historians (The Expungement Bill).”

¹⁵³ *Ibid.*

¹⁵⁴ Standing Committee on Public Safety and National Security, “Bill C-66,” 1st sess. 42 Parliament, Meeting 91, December 11, 2017, <https://bit.ly/2SsYMgd>. (accessed 28 Nov 2018).

¹⁵⁵ Kathleen Harris, “Law permitting destruction of LGBT criminal records has seen low uptake so far,” *CBC News*, October 24, 2018, <https://www.cbc.ca/news/politics/expungement-lgbt-criminal-record-1.4872703>.

¹⁵⁶ Maynard, “To Forgive and Forget?”

phrase.¹⁵⁷ Yet, even if “top-down” organizations like Egale dominated the call for an apology, its proposed mediation process – if truly modeled after the Truth and Reconciliation Commission – might have brought queer communities closer together. Further, such a model could have better captured more marginalized LGBTQ2+ voices, and therefore aided in ensuring an inclusive apology. Indeed, by allowing the government to proceed with its own advisory council, trans and queer communities lost their best opportunity for a truth telling process.

Maynard submits that by issuing an apology, the government hoped “to have it accepted so that queer citizens’ national loyalty [could] be re-secured and their inclusion within the nation restored.”¹⁵⁸ Maynard’s assertion aligns with Nobles’ theorization that apologies are used “to change citizen status and political arrangements and influence affective attachments.”¹⁵⁹ We have, however, made the case that an apology to LGBTQ2+ communities must account for what MacLachlan terms, “hidden harms” and that such an apology should work to bring private harms into the public sphere. Given that queer people, and especially two-spirit peoples, trans and non-binary persons, and queer people of colour are relegated to the private realm, it was imperative for the consultation process to include these diverse voices. As the advisory council process was shrouded in secrecy, it is unclear how exhaustive government consultations were. We have suggested, though, that the rushed nature of the process likely resulted in the exclusion of some LGBTQ2+ communities. As such, while the 2017 apology may elevate the citizen status of some queers – and indeed re-secure their national loyalty and inclusion in Canada – more marginalized LGBTQ2+ persons may see their status as

¹⁵⁷ Kinsman, “The Apology from ‘Above and Below.’”

¹⁵⁸ Ibid.

¹⁵⁹ Nobles, *The Politics of Official Apologies*, 135.

second-class citizens go unchanged. Further, the lack of transparency in the consultation process did little to destabilize heterosexual hegemonies, cisgender hegemonies, combat racism, and decolonize society. In a sense, the inherent privacy of the consultation process continued to relegate LGBTQ2+ persons to the private sphere, all the while protecting the public sphere for straight, cisgender, white, settlers.

While the state may see an apology as a way to “look to the future and move forward,”¹⁶⁰ queer and trans persons may see it as an overdue recognition of past harms and a tool for dismantling the structural injustices that remain. Matt James and Jordan Stranger-Ross argue that through “ongoing critical engagement,” political apologies can be taken up to “establish linkages between [an apology’s] account of wrongdoing and present-day structures or attitudes.”¹⁶¹ By doing so, one “militate[s] against political apologies as instruments of finality that reify injustice.”¹⁶² That is to say that by linking past wrongs to present-day harms, groups ensure that apologies do not mark the end of redress, but instead act as part of a larger and ongoing process of redress. Indeed, LGBTQ2+ actors can use the 2017 apology’s acknowledgement of past harms to expose ongoing injustices that persist in law, policy, and societal attitudes today. James and Stranger-Ross also advocate for a “social accountability perspective,” which calls on us to “challenge official apologetic accounts by linking the relevant injustices to the large-scale patterns of wrongdoing that apologies tend to ignore and ... [seek] to efface.”¹⁶³ Therefore, if the government hoped to relegate its oppression of queer and trans

¹⁶⁰ Ibid.

¹⁶¹ Matt James, Jordan Stranger-Ross, and the Landscapes of Injustice Research Collective, “Chapter 14: Social Accountability after Political Apologies,” in *Landscapes of Injustice: A New Perspective on the Internment and Dispossession of Japanese Canadians*, ed. Jordan Stranger-Ross (Montreal; Kingston: McGill-Queens Press, Forthcoming), 551.

¹⁶² Ibid., 583.

¹⁶³ Ibid., 553.

communities to the past, LGBTQ2+ activists have an opportunity to utilize the apology's admissions in seeking further alleviation of ongoing homophobic and transphobic injustice. As we move forward in this thesis, we will see the significant amount of legal homophobia that persists in a still hetero/cis-sexist Canada, and how activists are harnessing the apology to agitate for enhanced equality.

The decision to accept an apology rests with individual queers, but the government can still benefit politically by earning the approval of the prevailing LGBTQ2+ organization, Egale. Nick Smith reminds us that it will take time to evaluate whether the government follows through on the promises it made in the apology,¹⁶⁴ and perhaps it will take longer given the consultation issues explored in this chapter. However, in an effort to assess the apology's effects, Chapter Three embarks on an assessment of the substantive changes enacted by the government in the post-apology period. By acknowledging that the 2017 apology had significance or meaning for queer and trans communities, we are not mandated to forgive, nor are we precluded from manifesting anger about continued or past injustices. It is indeed incumbent on the government and LGBTQ2+ communities alike to heed MacLachlan's call to "leave space for resistance."¹⁶⁵ In proceeding on the path of redress, the government should be guided by the comments of the Speaker, Geoff Reagan, who issued the following words after the apology: "Those whom we have wronged, those to whom we have caused great suffering, whether by commission or omission, do not owe us their forgiveness. Acknowledging our nation's past injustices does not wipe the slate clean."¹⁶⁶

¹⁶⁴ Nick Smith, "Apologies as Remedies, Apologies as Weapons: Considerations for the Trudeau Administration," *C4E Journal* 7 (2017) <https://bit.ly/2zFXrvE>.

¹⁶⁵ MacLachlan, "Gender and Public Apology," 143.

¹⁶⁶ Canada *House of Commons* Debates, Nov 28, 2018 (Mr. Geoff Reagan, Speaker), <https://bit.ly/2KHxVfW>.

Conclusion

Given the deplorable ways in which the state and its security apparatus criminalized and targeted queer and trans bodies, spaces, and acts, an apology was long overdue. We have seen that two groups precipitated the apology: the prevailing LGBTQ2+ rights organization, Egale, and a grassroots collection of purge survivors and scholars in the We Demand An Apology Network. Despite the *Just Society Report's* calls to the contrary, the pre-apology period was characterized by a restrictive, rushed, and secretive government-led consultation process, which allowed heterosexual and cisgender hegemonies to persist unchallenged. Had the government instead pursued a public process, modeled after the Truth and Reconciliation Commission – as suggested in Egale's *Just Society Report* – it may have better captured the lived experiences of diverse LGBTQ2+ communities, especially those of two-spirit peoples, trans and non-binary persons, and queer people of colour. Further, by bringing LGBTQ2+ identities from the private into the public, such an effort could have lent itself to a disruption of heterosexual and cisgender hegemonies. We have seen that apologies have the ability to renegotiate citizenship for aggrieved groups, and have theorized that the consultation process may have undermined the elevation of citizenship for the most marginalized LGBTQ2+ communities. Nonetheless, apologies are not acts of finality and indeed can be harnessed by queer and trans activists in an ongoing redress process. We turn now to the post-apology period, and a consideration of the redress policies pursued by the government. Our analysis will hint at the model of renegotiated citizenship that the government is prepared to offer and will expose two differing perspectives on citizenship within LGBTQ2+ communities.

Chapter 3: The Post-Apology Period

Introduction

By issuing its November 2017 apology, the Government of Canada acknowledged its role in the criminalization of same-sex activity and the broader oppression of LGBTQ2+ persons. The apology is also a public record of Canada's heterosexist society, and evidences the presence of what Miriam Smith terms "legal homophobia."¹ The apology may also be construed as a renegotiation of queer and trans belonging, given that scholars such as Melissa Nobles theorize that governments use apologies to renegotiate relationships with marginalized communities.² Nobles asserts that political apologies have implications for the restructuring of "national membership," which she characterizes as comprised of "legal, political, and affective" realms.³ Given that LGBTQ2+ communities have existed – and perhaps still do – on the peripheries of society, this chapter considers the existence of queer and trans persons in relation to categories of national membership and citizenship. Specifically, it considers queer and trans reactions to the apology *itself* and assesses the policy changes (or lack thereof) in the post-apology period. Such an effort is undertaken to analyze the effects of the apology and policy changes on the national membership and citizenship of LGBTQ2+ persons within Canada. This chapter provides an overview of the apology and associated policy changes, and engages with the reactions of LGBTQ2+ persons to both.

In order to better understand the implications of the apology and associated policy changes, one must consider the voices of queer and trans individuals and organizations.

¹ Miriam Smith, "Homophobia and Homonationalism: LGBTQ Law Reform in Canada," *Social and Legal Studies* (January 2019): 4, <https://doi-org.ezproxy.library.uvic.ca/10.1177/0964663918822150>.

² Melissa Nobles, *The Politics of Official Apologies* (New York: Cambridge University Press, 2008), 42.

³ *Ibid.*

This chapter begins with an assessment of the apology's "authentic" nature according to political scientist Matt James' criteria.⁴ It then considers the reactions of LGBTQ2+ organizations, individuals, and academics to the apology *itself*, highlighting differences in opinion. The third section probes the substantive post-apology policy changes brought by the government, as well as pertinent policy failures or shortcomings. In presenting this overview, the chapter engages with LGBTQ2+ reactions to these actions, and exposes the continued dominance of legal homophobia and heterosexism, even in the midst of apology. This chapter concludes by considering the effect of both substantive policy changes and LGBTQ2+ reactions to the apology, in relation to questions of national membership and citizenship. Our analysis will demonstrate that the government is interested in offering a restrictive model of renegotiated citizenship, one that integrates LGBTQ2+ communities within the state, but does not disrupt heterosexual or cisgender hegemonies. A tension is thereby exposed between prevailing activists who make a claim to Canadian citizenship *in spite* of queerness, and more radical activists who desire a *Queered citizenship* that deconstructs the settler-colonial state.

Evaluating the Apology's Authenticity

We begin our discussion of the LGBTQ2+ apology with an assessment of its authenticity. In his 2008 work, James utilized eight criteria to categorize a number of Canadian apologies as "apology, quasi-apology, and non-apology."⁵ As stated by James:

An authentic political apology: 1) is recorded officially in writing; 2) names the wrongs in question; 3) accepts responsibility; 4) states regret; 5) promises non-repetition; 6) does not demand forgiveness; 7) is not hypocritical or arbitrary; and 8) undertakes—through measures of publicity, ceremony, and concrete

⁴ Matt James, "Wrestling with the Past: Apologies, Quasi-Apologies, and Non-Apologies in Canada," in *The Age of Apology: Facing Up to the Past*, eds. Mark Gibney et al., 137-153. (Philadelphia: University of Pennsylvania Press, 2008).

⁵ *Ibid.*, 145-146.

reparation—to both morally engage those in whose name apology is made and to assure the wronged group that the apology is sincere.⁶

Using these criteria, James considered the 1988 Japanese internment apology, the January 1998 “Statement of Reconciliation” to Indigenous peoples, and the November 1990 apology for the internment of some 700 Italian Canadians – with alleged Fascist ties – between 1940-1943.⁷ Of these, James characterized the Japanese apology as the only one to meet the bar of authenticity.⁸ His work also considered some notable non-apologies to Northern Quebec Inuit, who were relocated 1800 kilometers north of their land, and to the approximately 5000 Ukrainian Canadians interned during the First World War.⁹ Notably, James’ work took place before the 2006 apology to Chinese Canadians for the “Chinese head tax,” the 2008 apology to Indigenous peoples for residential schools, the 2016 Komagata Maru apology, the 2017 LGBTQ2+ apology, the 2018 apology to Jewish refugees, and the recent 2019 apology to Inuit with tuberculosis, among others.¹⁰

Our analysis of the LGBTQ2+ apology therefore affords us the opportunity to assess its authenticity according to James’ criteria. Such an effort fills a gap in the literature on Canadian apologies and is also beneficial to contextualizing our broader discussion of government policy changes and LGBTQ2+ reactions to the apology.

Further, in relation to Nobles’ membership theory, James’ criteria provide a glimpse into

⁶ Ibid., 139.

⁷ Ibid., 139-142.

⁸ Ibid. 139-140

⁹ Ibid., 142-145.

¹⁰ Campbell Clark, “PM offers apology, ‘symbolic payments’ for Chinese head tax,” *Globe and Mail*, June 23, 2006, <https://tgam.ca/2tlwmwY>; Canada *House of Commons* Debates, June 11, 2008 (Mr. Stephen Harper, Prime Minister), <https://bit.ly/2XdtgW3>; CBC News, “Justin Trudeau apologizes in House for 1914 Komagatu Maru incident,” *CBC News*, May 18, 2016, <https://bit.ly/2O4XINq>; Catherine Porter, “Trudeau Apologizes for Canada’s Turning Away Ship of Jews Fleeing Nazis,” *New York Times*, Nov 7, 2018, <https://nyti.ms/2VHEEcm>; David Common, “Trudeau to apologize for mistreatment of Inuit with tuberculosis,” *CBC News*, Mar 7, 2019, <https://bit.ly/2VMN95S>.

both the state's commitment to renegotiate LGBTQ2+ citizenship and the way in which activists can utilize the apology to advocate for further redress.

Prime Minister Justin Trudeau delivered the LGBTQ2+ apology on November 28, 2017 in the House of Commons.¹¹ Trudeau spoke for approximately twenty-eight minutes, issuing an apology of 2492 words in total (according to Hansard's English translation).¹² The apology therefore satisfies the first criterion in that there is a public and written record in Hansard. Further, the apology explicitly named the harms perpetrated by the state against LGBTQ2+ communities, including the criminalization of queer and trans identities, policing and entrapment of LGBTQ2+ persons, censorship of books and magazines, the legitimization of hatred and violence, and the purging of LGBTQ2+ civil servants and military personnel.¹³ The government also accepted responsibility for these harms and issued a series of direct apologies for particular wrongs. One such statement reads:

For government censorship and constant attempts to undermine your community-building, for denying you equality and forcing you to constantly fight for this equality, often at great cost, for forcing you to live closeted lives, for rendering you invisible, and for making you feel ashamed, we are deeply sorry. We were so very wrong.¹⁴

The apology also affirmed that the government would “never again” engage in the harmful practices of past, declaring that “discrimination and oppression of LGBTQ2 Canadians will not be tolerated anymore.” The apology therefore met the first five criteria enumerated by James.

¹¹ Canada *House of Commons* Debates, November 28, 2018 (Mr. Justin Trudeau, Prime Minister), <http://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-240/hansard#Int-9810667>.

¹² Ibid.; CPAC, “Government Apologizes to LGBTQ2 Canadians,” House of Commons Proceedings, Nov 28, 2018, <http://www.cpac.ca/en/programs/house-of-commons/episodes/55773645>.

¹³ Canada *House of Commons* Debates, Nov 28, 2018 (Mr. Justin Trudeau).

¹⁴ Ibid.

In considering the remaining three criteria, we note that the sixth criterion is designed to ensure that an apology is given without reservation, by the perpetrator of harm, without any expectations of the aggrieved party. While the apology does not mention the word ‘forgiveness,’ it does use some language that could be inferred as asking for forgiveness. Despite acknowledging that work remains, Trudeau suggests that the apology can be “a turning point,” that the government believes in “righting past wrongs,” and that “with dialogue and understanding, we will move forward together.”¹⁵ Such language seems to place harms firmly in the past, and could be construed as asking for forgiveness from LGBTQ2+ communities. The apology, though, does not ‘demand’ forgiveness. It does, however, diverge into some fairly nationalist sentiments at times, suggesting that “we are Canadians and we want the best for each other,” that Canada is a world leader in LGBTQ2+ equality, and that Canada gains strength from diversity.¹⁶ Yet, there is no evidence that Canada’s government, or its heterosexist society, have ever wanted the ‘best’ for queer and trans people; the evidence suggests the opposite. The government also uses the apology to praise itself for introducing legislation to repeal unconstitutional anal sex provisions in the Criminal Code, and to expunge the records of those with historically unjust convictions.¹⁷ However, as we will see, many LGBTQ2+ advocates have criticized the shortcomings and limitations of both of these enactments. Importantly though, the government does affirm its commitment to ensure that the history of state-sanctioned oppression is “known and publicly accessible,” and to “honour and

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

memorialize” early LGBTQ2+ activists; it also references the settlement with survivors of the purge.¹⁸

Therefore, the LGBTQ2+ apology clearly met the first five criteria for apology: there is a written record, the government named the harms, took responsibility, proclaimed regret, and vowed not to repeat its actions. The apology, by placing harms in the past, inadequately satisfied the sixth criterion. However, the authenticity of the apology is most challenged by the seventh criterion. While the words are not arbitrary – and do appear to express genuine sentiment – it is inherently hypocritical to praise oneself for policy actions that have garnered substantial criticism from LGBTQ2+ communities. Moreover, the continued presence of legal homophobia in Canada, which can be understood as homophobic provisions encoded in law,¹⁹ exposes government hypocrisy. The government did not mention enactments beyond the repeal of section 159 of the Criminal Code, or the expungement of unjust convictions. Finally, the government did engage in publicity, ceremony, and concrete reparation – though some may argue that legislative shortcomings imperil the tangible benefits of reparation – and thereby met the eighth criterion. Thus, the LGBTQ2+ apology falls just short of full authenticity – though it may meet the bar for some – and is best understood as a robust quasi-apology.

Regardless of a government’s adherence to particular criteria, Alice MacLachlan highlights the pragmatic function of an apology. Particularly, she observes that a public apology exposes a pattern of oppressive behaviours, generates a “national conversation” on particular wrongs, and provides for the government to be held accountable to its

¹⁸ Ibid.

¹⁹ Smith, “Homophobia and Homonationalism,” 2.

commitments.²⁰ As such, while criteria are helpful in assessing the authenticity or robustness of an apology, they are limited in their ability to assess the meaning of an apology to the affected community. Moreover, criteria do not account for the fact that apologies are living entities, in that the legacy and significance of an apology is subject to change depending on the substantive action that follows. In categorizing the apology as a robust quasi-apology, due to the perpetuation of legal homophobia, we integrate Sheryl Lightfoot's perspective with James' criteria. Specifically, we recognize her claim that "assessing the value of state apologies" must transcend the mere utterance of an apology, and also assess the way in which apologies "help move toward a restored and just relationship" between a state and an apology group.²¹ Therefore, we turn now to an analysis of LGBTQ2+ reactions to the apology *itself*, before considering the policy changes of the post-apology period.

The Apology: LGBTQ2+ Reactions

The reactions surveyed in this section are drawn from the day of the apology and the weeks and months that followed.²² As such, these accounts are contextualized against the early period of post-apology redress, and thus, do not account for reactions to the full post-apology record.

²⁰ Alice MacLachlan, "Gender and Public Apology," *Transitional Justice Review* 1, no.2 (2013): 144-145, <http://dx.doi.org/10.5206/tjr.2013.1.2.6>.

²¹ Sheryl Lightfoot, "Settler-State Apologies to Indigenous Peoples: A Normative Framework and Comparative Assessment," *Native American and Indigenous Studies* 2, no.1 (Spring 2015): 21, <https://www-jstor-org.ezproxy.library.uvic.ca/stable/10.5749/natiindistudj.2.1.0015?pq-origsite=summon>.

²² This time frame was selected due to the number of primary and secondary accounts about LGBTQ2+ reactions to the apology. This can be attributed in part to media and LGBTQ2+ communities expressing pronounced interest in the November 2017 apology in the period immediately following its issuance.

On the eve of the apology, Egale issued a press release declaring its hope for a more inclusive Canada, free from anti-LGBTQ2+ discrimination and hatred.²³ By doing so, Egale recognized the apology as an important moment that could help to renegotiate the relationship between LGBTQ2+ communities and the government. Similarly, Pride at Work Canada – an organization that focuses on building inclusive workplaces – viewed the apology as official government recognition of “historical realities” whose systemic effects persist in contemporary society.²⁴ Pride at Work’s comments elucidate its hope that the 2017 apology can be invoked by activists to militate against ongoing transphobic and homophobic attitudes. Indeed, Pride at Work acknowledged that substantial challenges remain to build a society where all LGBTQ2+ persons can live openly and authentically, both at home and at work.²⁵ It seems, then, that both organizations saw the apology as a mechanism to, as Matt James states, “hold apologizers to account and to produce more adequate collective understandings of injustice.”²⁶ That is to say that the apology can be used to both call for an expanded process of redress and increase broader awareness of historical injustices. In May 2018, Egale bestowed its *Egale Leadership Award* on Prime Minister Trudeau for his outspoken support of LGBTQ2+ equality, his government’s efforts to pass gender identity and expression protections in Bill C-16, and his issuance of an official apology.²⁷ We can therefore see that despite the shortcomings

²³ Egale Canada, “Canada’s Apology to the LGBTQI2S Community,” November 27, 2017, <https://bit.ly/2SuIGTy>. (accessed 25 Nov 2018).

²⁴ Pride at Work Canada, “Yesterday and Today: A response to Justin Trudeau’s Apology to LGBTQ2 Communities,” November 29, 2017, <https://bit.ly/2v7KkRq> (accessed 10 Apr 2019).

²⁵ Ibid.

²⁶ Matt James, “Narrative Robustness, Post-Apology conduct, and Canada’s 1998 and 2008 Residential Schools Apologies,” in *The Palgrave Handbook of State-Sponsored History After 1945*, ed. Berber Bevernage and Nico Wouters (London: Palgrave Macmillan, 2018), 843.

²⁷ Egale Canada, “Prime Minister Justin Trudeau to Accept the 2018 Egale Leadership Award,” May 9, 2018, <https://bit.ly/2IGgyLF> (accessed 8 Apr 2019).

of Bill C-66 and Bill C-75, which we will explore further, Egale continues to hold a positive perspective of the apology.

Scholarly reaction to the LGBTQ2+ apology has been less favourable. Sociologist Gary Kinsman, a member of the We Demand an Apology Network, has been a notable critic. Kinsman criticized the apology for invoking a sense of patriotism to Canada, suggesting that this constitutes an “apology from above,” rather than an “apology from below” that is predicated on queer activism.²⁸ The apology from above constructs the state as the giver of the apology, rather than the respondent to queer demands for apology. Kinsman suggested that “a Canadian patriotic response” was successfully intertwined with the apology through (1) the exclusionary composition of the government’s apology council; (2) the class action’s existence within “a still heterosexist legal regime”; (3) the control and branding exercised by the Liberal government over the apology; and (4) the narrative formulated by conventional media sources.²⁹ In these concerns, we see a worry that the apology serves the needs of the state over those of queer and trans communities. Indeed, Kinsman posited that through the invocation of the term “patriots” – with reference to those who survived the purge – the government “[attempted] to incorporate [queers] back into the mainstream of a still heterosexist, transphobic, racist, and sexist ‘Canada.’”³⁰

While Kinsman was grateful that the government accepted responsibility for its “war on queers,” he observed that the apology was “very white,” in that it did little to address the colonization of Indigenous peoples or the concerns of refugees and people of

²⁸ Gary Kinsman, “The Apology from ‘Above and Below.’ Expanded Version,” *Radical Noise*, Dec 5, 2017, <https://bit.ly/2KCJoPj> (accessed 5 Apr 2019).

²⁹ *Ibid.*

³⁰ *Ibid.*

colour.³¹ His statement suggests that the apology did not disrupt heterosexual and cisgender hegemonies, mitigate racism, or decolonize society. As suggested in Chapter Two, the apology's ability to disrupt these oppressive systems was undermined by the government's rushed consultation process, which perhaps offered an early glimpse at the limited citizenship concessions the government was prepared to offer. For his part, Kinsman implored LGBTQ2+ persons to embrace the history of activism and resistance that has been integral to queer equality enhancements, and indeed, attaining an apology in the first place.³² It is his hope that such an approach will prevent queer and trans communities from "being incorporated as patriotic citizens into Canada as it currently exists," and instead lead these communities to fight injustice "for all oppressed and exploited peoples."³³ In this way, the apology can exist as a crucial state recognition of the oppression endured by LGBTQ2+ communities, but can also serve as an example of the continued need to protest and fight back against the state-led securitization and criminalization of other groups. Kinsman's approach evidences the utility of James and Stranger-Ross' assertion that official apologies can be used to link ongoing injustice to state-acknowledged historical wrongs, thus resisting state attempts to relegate these injustices to the past. Such an effort allows queer and trans actors to push back against the limited citizenship advancement the Canadian government has offered, and to instead demand a more robust and expansive renegotiated citizenship. Further, in Kinsman's reaction to the 2017 apology, we see a clear departure from Egale's perspective. Indeed, while Egale went so far as to award the prime minister for his efforts, Kinsman remains deeply skeptical of government motivations for issuing the apology.

³¹ Ibid.

³² Ibid.

³³ Ibid.

Other scholars have expressed similar skepticism. Stephen Maynard posits that the government has used the apology to highlight its commitment to LGBTQ2+ equality, and thereby bolster its international reputation.³⁴ He suggests that the Liberal government's messaging on the apology has been consistent in its focus on equality and diversity, in a way that seeks to secure queer support for "liberal hegemony" and "homonationalism."³⁵ Coined by professor Jasbir K. Puar, homonationalism can be understood as "a form of sexual exceptionalism" that contains "a regulatory script of normative gayness, queerness, or homosexuality," which is also inherently white and state-centered.³⁶ Through expansions in LGBTQ2+ rights, Puar theorizes that a "national homonormativity" now accompanies a "national heteronormativity," and this homonationalism operates parallel to nationalism in the project of imperialism, as evidenced by the U.S. led war on terror.³⁷ Essentially, by absorbing white "normal" queers within the state, through the extension of rights previously reserved for heterosexuals alone, a state may demand queer allegiance to its national goals. Moreover, LGBTQ2+ communities can be weaponized against racialized others, providing "for rampant exploitation of the very subjects included in discourses of diversity."³⁸ Homonationalism therefore runs in stark contradiction to intersectional movements, which are ideally designed to both recognize and eradicate oppression for all marginalized communities.

³⁴ Stephen Maynard, "To Forgive and Forget? Homonationalism, Hegemony, and History in the Gay Apology," *C4E Journal* 11 (2017) <https://bit.ly/2ri3hyC>.

³⁵ Ibid.

³⁶ Jasbir K. Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham: Duke University Press, 2007), 1-2. <https://read-dukeupress-edu.ezproxy.library.uvic.ca/books/book/1247/>.

³⁷ Ibid.

³⁸ Ibid.

In Maynard's comments, we see a confluence with Kinsman. Both worry about the apology's deleterious effects and see the apology as a mechanism to co-opt queers within the homonationalist project. Indeed, Maynard is troubled that the "apology serves to bind ... queer citizens to the project of liberal hegemony and all that entails – nationalism, militarism, [and] neoliberalism."³⁹ By securing queer cooperation in this liberal hegemony, the state is then free to deploy its security apparatus on other minority groups.⁴⁰ That is to say that the extension of rights to LGBTQ2+ persons has a silencing effect which demobilizes queer communities and weakens the movement, thereby allowing the state to focus its oppressive lens on racialized others without fear of queer uprisings. Maynard's critiques seem probable given that the apology did not subvert oppressive power structures, attempted to relegate harms to the past, and employed a great deal of nationalist rhetoric. Maynard's concerns echo Kinsman's criticisms that the apology did more to make queers into patriotic citizens, than it did to highlight the importance of ongoing queer resistance to intersectional violence and oppression. Suzanne Lenon also sees the apology as a "beneficent, homonational cover for violence," given that redress will necessarily occur "in the context of continued colonial and racialized state violence, deportation, and land dispossession."⁴¹ Therefore, while the apology may serve to alter the relationship between the government and LGBTQ2+ communities – albeit in a limited capacity – it will likely preserve an exploitative status quo in other relationships, such as in the one between the government and Indigenous peoples.

³⁹ Maynard, "To Forgive and Forget?"

⁴⁰ Ibid.

⁴¹ Suzanne Lenon, "'Making It Right,' Keeping It White: Race and the Demand for Queer Redress," in *Canadian Journal of Women and Law* 30, no.3 (2018): 562, <https://muse-jhu-edu.ezproxy.library.uvic.ca/article/713415>.

Maynard is also highly critical of Egale's appeal to liberal hegemony in its 2016 report. By entitling it "The Just Society Report" – a clear reference to Pierre Trudeau's *Just Society* – and by referencing Canada's peacekeeping efforts under Lester B. Pearson, Egale sought to align its interests with those of the government.⁴² Miriam Smith also suggests that Egale's "nationalist" and "partisan discourse" focused on inclusion, and ran contrary to the "activist campaign" that centered its efforts in exposing government wrongdoing.⁴³ Further, Suzanne Lenon theorizes that Egale's articulation of "intersectionality as diversity" in the *Just Society Report*, serves to provide Egale "a position of white queer innocence," where it could act as a "saviour."⁴⁴ These converging perspectives suggest that Egale's motivations for taking up the call for an apology may have been more about gaining favour with the government – and legitimating its own position as the arbitrator between queer communities and the government – than about centering the concerns of LGBTQ2+ activists. The primary scholarly concern appears to be that an apology – which could have served to delegitimize oppressive power structures and to reflect a multiplicity of LGBTQ2+ identities – became in fact, a statement that primarily served government interests, by co-opting queers within the national project and allowing state security practices to persist unchallenged.

As we have suggested, the 2017 apology can act as a rhetorical tool, which queer actors can invoke in their ongoing fight for equality. Critical Race and Ethnic Studies professor John Paul Catungal, noted that while the apology risks being a mere "symbolic gesture," devoid of meaningful action, it also has the potential to be taken up by

⁴² Ibid.

⁴³ Smith, "Homophobia and Homonationalism," 14.

⁴⁴ Lenon, " 'Making It Right,'" 562

LGBTQ2+ communities to call for further change.⁴⁵ We will see this potential evidenced in some of the queer testimonies given to the Justice Committee on Bill C-75. Catungal, though, is also concerned that the apology may be used to juxtapose Canada's acceptance of LGBTQ2+ rights with other countries, "which can have the racist effect of ranking cultures and countries using LGBTQ-friendliness as a metric of progress and civilization."⁴⁶ He suggests that such an approach may also render persisting LGBTQ2+ injustices invisible; this is especially true for trans persons and queer people of colour in Canada.⁴⁷ Queer scholars are clearly concerned that the 2017 apology may be weaponized against LGBTQ2+ communities. Still, Language and Literacy Education professor Mary Bryson recognized the practical utility of the apology. She suggested that the apology could act as motivation for public bodies – such as universities – to examine the burdens that their policies impose on trans and non-binary individuals, and seek to undue these harms through more inclusive approaches.⁴⁸ Her reaction situated the apology within broader social change, rather than as a sole instance of government acknowledgement of wrongs, thereby evidencing James' assertion that apologies can help develop "collective understandings of wrongs."

We transition now from a consideration of scholarly reaction, to an analysis of more general queer reactions to the apology. In a press scrum on Parliament Hill, Svend Robinson – the first openly gay MP and a member of the government's apology advisory council – referenced the memories of those affected by the purge, and suggested that

⁴⁵ "The significance of Trudeau's apology to LGBTQ Canadians," *UBC News*, Nov 20, 2017, <https://bit.ly/2GoT7Vt> (accessed 8 Apr 2019).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

while it was “a great day for [Canada],” more work remained.⁴⁹ Specifically, Robinson pointed to the fact that even today, “[he cannot] donate blood as a gay man,” and that “the Criminal Code of Canada still says that anal intercourse is a crime for anybody who is under eighteen.”⁵⁰ For those directly affected by the purge, the apology represented an important and long overdue acknowledgement of government fault. Lucie Laperle was surveilled, interrogated, institutionalized, publicly outed, and discharged from the military for being lesbian.⁵¹ After nearly taking her own life, Laperle sought support from Veterans Affairs, but said that what she really wanted was for the government to say: “yes, it’s true, what happened to [her].”⁵² She mentioned the “satisfaction” she took in seeing the government’s official apology, and spoke intimately about her encounter with the prime minister, in which he personally apologized to her; Laperle said that “[she] could see he really meant it.”⁵³ Laperle’s reaction highlights the fact that many purge survivors had waited their entire lives for an apology. Marilyn Neudorf, who is lesbian, similarly said that the apology “really touched [her] heart,” given that she has witnessed homophobic violence throughout her life.⁵⁴ These reactions suggest that while the apology was personally meaningful to Robinson, Laperle, and Neudorf, Robinson also felt that the apology needed to be substantiated by real action. As we will see in our upcoming analysis of the post-apology policy process, some government shortcomings

⁴⁹ CPAC, “Svend Robinson on the LGBTQ2 Apology,” *Headline Politics*, November 28, 2017, <https://bit.ly/2GnU4gC> (accessed 1 Apr 2019).

⁵⁰ *Ibid.*

⁵¹ Verity Stevenson, “All I wanted was for the government to say, ‘Yes, it’s true,’” *Macleans*, Dec 6, 2017, <https://bit.ly/2IzCyYd>.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ CBC News, “Historic apology from federal government receives mixed reaction from Saskatoon’s LGBT community,” *CBC News*, Nov 29, 2017, <https://bit.ly/2IyISiQ>.

undermine the apology, but it is also too early to tell whether the government will move forward with additional reforms.

The Manitoba Rainbow Resource Centre held a community event that focused on LGBTQ2+ reactions to the apology; the panel contained representatives from a range of perspectives and backgrounds. In an effort to capture the accounts of a broader array of LGBTQ2+ identities, we have chosen to explore their reactions to the 2017 apology. Albert McLeod, one of eleven individuals on the apology's advisory council, was tasked with bringing two-spirit and Indigenous considerations to the table.⁵⁵ He observed that while there was a section of the 2017 apology, which dealt with the harmful attitudes of colonizers toward two-spirit peoples, it is often left out of media discourses.⁵⁶ We see here that while the government did include mention of two-spirit communities in its apology, the reference was not widely disseminated to mainstream Canadian society. Annie Feldshmid, a member of a queer youth group, observed that – despite the inclusion of two-spirit communities – the apology lacked intersectionality, and did not account for misogyny or the oppression of trans communities.⁵⁷ Furthermore, she suggested that the apology was “just words,” which are meaningless without expanded trans healthcare, enhanced government support of gay-straight alliances/gender-sexuality alliances (GSAs), and dedicated efforts to combat LGBTQ2+ youth homelessness.⁵⁸ Feldshmid's reaction suggested that for her, the apology should be tied to substantive action, and combat the inequality experienced by queer and trans youth. Brandy Pollard, a trans rights activist suggested that the apology missed trans people and lesbian women, and

⁵⁵ Rainbow Resource Centre, “Community Responses to the Recent Federal Apology,” March 19, 2018, <https://bit.ly/2Gdw3Yq> (accessed 30 Mar 2019).

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

thus was “misogynistic.”⁵⁹ She observed that trans people were subjected to longer periods of institutionalization than LGB persons, and stated that without meaningful action, the apology would also be “just words.”⁶⁰

Others on the Manitoba panel expressed similar sentiments to Feldshmid and Pollard. Edmund Machona, a volunteer with an immigrant assistance group and an advocate for queer people of colour, suggested that while the apology was “a good first step,” it failed to “address the history of colonialization,” and neglected “black and brown bodies,” as well as trans rights.⁶¹ It seems that Machona’s primary concern was that the apology missed an opportunity to address intersecting oppressions related to racism, sexism, transphobia, and homophobia. Still, others saw the apology in a different light. Muhammad Assan spoke about his experience growing up in a country where being queer is still illegal and observed that, while work remains, “Canada today is much different from the Canada of the past.”⁶² Assan’s perspective highlights how individuals’ lived experiences influence their reactions to the apology. Those who have experienced oppression in other state contexts are more likely to see Canada as ‘accepting,’ whereas those who have persevered through anti-queer state violence within Canada are likely to raise greater objection.

Jim Kane, a person living with HIV and someone whose friends were affected by the criminalization of same-sex relations, saw the apology as “the beginning of the next phase, not the [end].”⁶³ Similarly, Christopher Little-Gagné – a queer representative for the Public Service Alliance of Canada (PSAC) – wondered if the Liberal government’s

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

LGBTQ2+ commitments would be upheld under successive governments.⁶⁴ His concern expressed a fear that while the current government, despite its shortcomings, has been relatively queer-friendly, there is no safeguard to prevent a future Conservative government from discriminating against LGBTQ2+ persons. Little-Gagné also suggested that the apology lacked sincerity and noted that many people still choose to hide their sexual identity at work, for fear of being subjected to workplace hostility.⁶⁵ His comments illuminated the very real fears that many queer and trans people continue to experience, regardless of an official apology or state ‘tolerance’ of queerness. From this survey of LGBTQ2+ reactions to the apology, we observe that while many see the apology as a necessary and long overdue government acknowledgement, more must be done to both eradicate transphobia and homophobia, and secure a truly accepting and equal society.

This section has demonstrated the significant tension that exists between the prevailing LGBTQ2+ organization – Egale – and more critical scholarly voices, including Gary Kinsman, who was instrumental in founding the We Demand An Apology Network. Whereas Egale sees the apology as a monumental victory for LGBTQ2+ inclusion and redress, scholars such as Maynard and Kinsman worry about the more insidious effects of the apology. These scholars are concerned that the apology may contribute to the homonationalist project by silencing queer voices amid ongoing injustice against the racialized other. Further, the mere utterance of an apology may be taken up by the government as evidence of its commitment to LGBTQ2+ equality, regardless of substantive policy failures. As we move forward with an analysis of the post-apology

⁶⁴ Ibid.

⁶⁵ Ibid.

policy process, we will see examples of LGBTQ2+ activists invoking the apology to advocate for enhanced reforms. We will also observe some significant government shortcomings and failures in the post-apology period. These failures would seemingly be a concern for many of the voices surveyed in this section given the consistent feeling that the apology must be substantiated by concrete action, lest it become “just words.”

Associated Actions of Redress: LGBTQ2+ Commentary

To begin, we must acknowledge the importance of Bill C-16, which codified ‘gender identity’ and ‘gender expression’ in the *Canada Human Rights Act*, and added hate crime provisions to the Criminal Code.⁶⁶ The bill was introduced in May 2016 and passed in June 2017, well before the November apology. A previous effort to pass similar legislation in Bill C-279 failed when Parliament dissolved for the 2015 election.⁶⁷

Leading up to the election, efforts to garner the support of Conservative politicians resulted in the legislation excluding ‘gender expression’ and instead focusing on the more narrowly defined term of ‘gender identity.’⁶⁸ Despite these efforts, the bill was imperilled by what law professor Kyle Kirkup characterizes as “a cynical series of amendments, adjournments, and delays,” pioneered by Conservative Senator Don Plett.⁶⁹

With the election of a more progressive government in 2015, advocates were determined to see the legislation passed. From the outset, Conservative Senator Denise Batters raised objections to the inclusion of ‘gender expression,’ and some scholars, such

⁶⁶ Canada, Bill C-16, *An Act to amend the Canadian Human Rights Act and the Criminal Code*, 1st sess. 42nd Parliament, 2017, SC 2017, <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-16/royal-assent>.

⁶⁷ Canada, Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)*, 2nd sess. 41st Parliament, 2013, <https://www.parl.ca/LegisInfo/BillDetails.aspx?billId=6251806&Language=E>.

⁶⁸ Kyle Kirkup, “The origins of gender identity and gender expression in anglo-American legal discourse,” *University of Toronto Law Journal* 68, no.1 (Jan 2018): 111, <https://bit.ly/2GjUfbJ>.

⁶⁹ Kyle Kirkup, “A new bill is a good start. But gay and trans people need much more,” *Globe and Mail*, May 17, 2016, <https://tgam.ca/2GoWPYg>.

as Jordan Peterson and Bruce Pardy, launched what Kirkup judges to be “ill-conceived criticisms” about potential harms to free speech.⁷⁰ The Canadian Bar Association, urging the passage of the legislation, dispelled claims that the bill negatively affected free speech and asserted that the bill would work to reduce the disproportionate levels of violence to which trans people are subjected.⁷¹ The legislation succeeded in passing, and seemed to represent the Liberal government’s willingness to enhance LGBTQ2+ equality. The bill was well received by the trans community and allies. Amanda Ryan from Gender Mosaic noted the bill’s passage as “a significant step toward further understanding, further equality, and further opportunities to educate.”⁷² The Director of Research, Policy, and Development for Egale lauded the government’s efforts, signalling Egale’s hope that the bill represented “the beginning of a meaningful program of action” to support trans people.⁷³ Certainly, the enshrinement of anti-discrimination provisions represented a positive and long-overdue step toward equality.

We turn now to a discussion of the discriminatory age of consent for anal sex in the Criminal Code, and the government’s attempts to rectify it. Section 159 previously criminalized anal intercourse, with an exception granted to married heterosexual couples or two consenting adults over the age of 18, provided the act took place “in private.”⁷⁴ Conversely, the age of consent for other sexual acts is 16 with no specification that the act must occur “in private,”⁷⁵ thereby evidencing a dichotomy between straight and gay

⁷⁰ Kirkup, “The origins of gender identity and gender expression,” 111.

⁷¹ René J. Basque, “RE: Bill C-16, An act to amend the Canadian Human Rights Act and the Criminal Code (gender identity and expression),” *Canadian Bar Association*, May 10, 2017, <https://bit.ly/2JgOBL0> (accessed 28 Mar 2019).

⁷² Trans Equality Canada, “Trans Equality Canada Applauds Legislation to Protect Trans Individuals,” May 17, 2016, <https://www.transequalitycanada.com> (accessed 28 Mar 2019).

⁷³ *Ibid.*

⁷⁴ Criminal Code of Canada, RSC 1985, c C-46, s. 159, ss. 1-2 <https://bit.ly/2Ik2p7n>.

⁷⁵ *Ibid.*, s. 152.

sex. The law also stated that anal intercourse is deemed not to be a private act “if it is engaged in in a public place or if more than two persons take part or are present,”⁷⁶ which also criminalized multiple-partner sex for queer men, something not restricted for heterosexuals. Smith traces the origins of this double standard to the 1969 partial decriminalization of homosexuality, in which the Pierre Trudeau government set an age of 21 for anal sex, despite the age of consent being 14 for heterosexual sex.⁷⁷ Throughout the 1969 debates, politicians who advocated reform cast homosexuality as abnormal and deviant, and pathologized it as a “medical condition” that deserved treatment, not imprisonment.⁷⁸ This entrenched homophobia – in both law and political debate – suggests that early decriminalization of same-sex relations was restricted to the “private” realm, while the “public” sphere persisted as strictly heterosexual in nature.⁷⁹ Dichotomous consent laws maintained heterosexist hierarchy: queers continued to be relegated to the periphery, while straights were permitted unfettered access to society.

The differential age of consent for heterosexual and gay couples persisted, even amid further reform. When the Mulroney government revised the Criminal Code in 1987 to eliminate “gross indecency” and rename “buggery” as “anal intercourse,” it kept a discriminatory age of consent in place, lowering it from 21 to 18, and keeping the heterosexual age of consent at 14.⁸⁰ This was done despite the efforts of openly gay MP Svend Robinson, and the recommendations of a 1985 parliamentary committee to create

⁷⁶ Ibid. s. 159, ss. 3.

⁷⁷ Smith, “Homophobia and Homonationalism,” 6.

⁷⁸ Ibid.; Gary Kinsman, *The Regulation of Desire: Homo and Hetero Sexualities*, 2nd ed. (Montreal: Black Rose Books, 1996), 264-273.

⁷⁹ Ibid., 273.

⁸⁰ Smith, “Homophobia and Homonationalism,” 6.

uniform consent laws.⁸¹ Then Justice Minister Ramon Hnatyshyn, in defending the differential age of consent stated that, “medical experts are not certain at what age sexual preference is established, and many argue that the age is fixed only in the later teen years.”⁸² He also highlighted “the heightened danger of contracting [AIDS]” as a reason for maintaining a higher age of consent for anal sex.⁸³ These comments represented overtly homophobic assumptions that “children might ‘turn’ gay, and that turning gay is a bad thing,” and also perpetuated AIDS-related stigma to queer bodies and sex.⁸⁴ Homophobic attitudes continued in 2008, with the Harper government’s reform of consent laws. Despite parliamentary committee appearances from LGBTQ2+ organizations, such as the Coalition for Lesbian and Gay Rights of Ontario (CLGRO), the government refused to entertain reforms of anal sex provisions.⁸⁵ Indeed, while the Harper government raised the heterosexual age of consent from 14 to 16, it left the age of consent for anal sex untouched at 18.⁸⁶

The entrenchment of a differential age of consent is particularly egregious when one considers the many judicial decisions that found section 159 unconstitutional. The Ontario Appeals Court, in *R. v. C.M.* (1995), was the first judicial body to find unconstitutionality.⁸⁷ Justice Abella (a current Canadian Supreme Court justice), found that the differential age of consent violated section 15 protections of sexual orientation in

⁸¹ Ibid.; Patrick J. Boyer and Canada, Parliament, House of Commons, Sub-Committee on Equality Rights, *Equality for all: Report of the Parliamentary Committee on Equality Rights*, (Ottawa: Queen’s Printer, 1985); Egale Canada Human Rights Trust, “The Just Society Report: Grossly Indecent Confronting the Legacy of State Sponsored Discrimination Against Canada’s LGBTQ2SI Communities.” June 2016: 39, <https://bit.ly/2D25JBB>.

⁸² Egale Canada, “The Just Society Report,” 39.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Smith, “Homophobia and Homonationalism,” 9.

⁸⁶ Ibid.

⁸⁷ Ibid., 6-7.; For a detailed analysis of jurisprudence on s. 159, see Smith, “Homophobia and Homonationalism.”

the Charter because, “anal intercourse is a basic form of sexual expression for gay men”; and thus, because of the law, gay adolescents cannot consent to sexual activity in the same way as their heterosexual peers can.⁸⁸ Despite this finding, and the many that came after it, differential consent laws remained in the Criminal Code until June 2019, when Bill C-75 received Royal Assent. Smith posits that government complicity in legal homophobia is evidenced by its unwillingness, to appeal any of these lower court decisions to the Supreme Court, which almost certainly would have struck down the law.⁸⁹ Instead, successive Liberal and Conservative governments were content to stand idle while the discriminatory provisions reinforced the ‘deviant’ nature of homosexuality to queer youth and broader LGBTQ2+ communities. Most alarming is the fact that people were recently charged under the provision: from 2013-2015, 167 people were charged, and seven convicted under section 159.⁹⁰ Even at the fifty-year mark of the ‘decriminalization’ of homosexuality in Canada, gay sex remained criminalized.

The preceding sketch demonstrates how pernicious homophobia is and that, even following the apology, the current government contributed to its perpetuation. The attempts of the Trudeau government to implement a uniform age of consent were characterized by slow movement. The government introduced legislation to repeal section 159 on three separate occasions: Bill C-32 in November 2016, which was not brought to a second reading; Bill C-39 in March 2017, which also stalled after first reading; and Bill C-75 in March 2018, which was only passed by the Senate on June 13,

⁸⁸ *R. v. C.M.* [1995] CanLII 8924 (ON CA), <http://canlii.ca/t/231v2>.

⁸⁹ Smith, “Homophobia and Homonationalism,” 8-9.

⁹⁰ *Ibid.*, 10.

2019 and received Royal Assent on June 21, 2019.⁹¹ Smith posits that the slowness with which the Liberal government moved to reform consent laws, despite its majority in parliament, evidences “ongoing legal homophobia.”⁹² Smith defines legal homophobia as “a formal-legal inequality in which homosexuality is treated as different from and inferior to heterosexuality.”⁹³

What, then, has changed since the 1969 reforms? Certainly, LGBTQ2+ persons enjoy a considerably greater degree of *de facto* equality, owed in large part to movement actors and Charter victories, but they still exist on societal peripheries. Despite the LGBTQ2+ apology, Canadian law remained coded with homophobia, and even a ‘sympathetic’ government did not act swiftly to enact reform. Indeed, LGBTQ2+ activists had criticized the government for its reluctance to repeal bawdy house provisions, which have criminalized queer bodies, acts, and spaces.⁹⁴ Due in large part to the efforts of LGBTQ2+ historians, the Justice Committee eventually amended C-75 in October 2018 – after NDP MP Murray Rankin voiced support – to repeal vagrancy and bawdy house provisions.⁹⁵ Nonetheless, historian Tom Hooper observes that many anti-queer relics remain in the Code, including “indecent acts” and “obscenity.”⁹⁶

⁹¹ Smith, “Homophobia and Homonationalism,” 10; Canada, Bill C-32, *An Act related to the repeal of section 159 of the Criminal Code*, 1st sess. 42nd Parliament, 2016, <https://bit.ly/2v8jVTj>; Canada, Bill C-39, *An Act to amend the Criminal Code (unconstitutional provisions) and to make consequential amendments to other Acts*, 1st sess. 42nd Parliament, 2017, <https://bit.ly/2GnORpl>; Canada, Bill C-75, *An Act to Amend the Criminal Code*.

⁹² Smith, “Homophobia and Homonationalism,” 11.

⁹³ *Ibid.*

⁹⁴ *Ibid.*, 10-11.; Rob Salerno, “Liberals’ justice reform bill leaves out some queer people and sex workers, activists say,” *Xtra*, May 2, 2018, <https://bit.ly/2GqpbZc>.

⁹⁵ Rob Salerno, “Laws that affect LGBT people in Canada may soon be struck down. Other sections of the Criminal Code are still anti-queer,” *Xtra*, Oct 29, 2018, <https://bit.ly/2UYOWYp>; Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights (JUST), *Study: An Act to Amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st sess. 42nd Parliament, 2018, Committee Report 22, <https://www.ourcommons.ca/DocumentViewer/en/42-1/JUST/report-22/>.

⁹⁶ Salerno, “Laws that affect LGBT people in Canada may soon be struck down.”

Many LGBTQ2+ advocates who testified before the Justice Committee during its study of Bill C-75 used the apology as a rhetorical tool to encourage the adoption of amendments. Egale Canada, CCGSD, and a conglomerate of LGBTQ2+ historians all submitted briefs to the Committee calling for the repeal of “bawdy house,” “indecent act,” “vagrancy,” and “obscenity” provisions, along with other discriminatory laws.⁹⁷ Hooper’s testimony referenced the prime minister’s apology for bathhouse raids saying, “the government has specifically apologized for this unjust law,” in an attempt to implore the Committee to repeal bawdy house provisions.⁹⁸ Gary Kinsman called for the elimination of indecent act provisions stating “in the national security purge campaign, which the Prime Minister apologized for ... indecent act was the charge that the RCMP threatened to use” in order to intimidate gay and bisexual men to reveal the identities of other queer public servants.⁹⁹ Calla Barnett, representing the Canadian Centre for Gender and Sexual Diversity (CCGSD), stated that “Bill C-75 is a wonderful opportunity for us to honour the apology made by the Prime Minister,” and referenced the fact that “the apology delivered last year by the Prime Minister explicitly refer[red] to the use of bawdy house laws to criminalize the [LGBTQ2+] community.”¹⁰⁰ Egale’s Robert Leckey also suggested that the continued criminalization of queer sexuality has negative consequences for the most marginalized LGBTQ2+ persons.¹⁰¹ Hooper, Kinsman, and Barnett’s testimony demonstrate that the apology can be an important rhetorical tool,

⁹⁷ Patrizia Gentile et al., “Another Limited Bill: Gay and Lesbian Historians on C-75,” June 11, 2018, <https://bit.ly/2v3Df4j> (accessed 25 Mar 2019); Jeremy Dias, “Jeremy Dias to Hon. Jody Wilson-Raybould,” *CCGSD*, May 17, 2018, <https://bit.ly/2lyxgfk> (accessed 3 Apr 2019); Robert Leckey, “Brief to Standing Committee on Justice and Human Rights,” *Egale*, 25 Sep 2018, <https://bit.ly/2UJutb2> (accessed 3 Apr 2019).

⁹⁸ Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, *Minutes of Proceedings*, 1st sess. 42nd Parliament, Meeting No. 108, 25 Sep, 2018, <https://bit.ly/2IuQYcl>.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

which activists can use to call for further reform. Indeed, by linking the apology's account of harms to contemporary injustices, these activists are taking up James and Stranger-Ross' call for "ongoing critical engagement" with an apology.

The reluctance of the Liberal government to repeal vagrancy and bawdy house provisions and its outright failure to repeal indecent act and obscenity provisions, suggest that the government is unwilling to enact sweeping overhauls of anti-queer Criminal Code provisions. By association, the government is also reluctant to engage in robust renegotiation of LGBTQ2+ citizenship and membership in Canada. In its 2017 apology, the government stated that, "discrimination against LGBTQ2 communities is not a moment in time, but an ongoing centuries-old campaign," and consequently, that it "wante[ed] to be a partner and ally to LGBTQ2 Canadians in the years going forward."¹⁰² However, the conduct of the Liberal government calls this statement into question. By moving slowly with reform, and at times ignoring the calls of LGBTQ2+ activists – as in the case of indecent act and obscenity provisions – the government continues to perpetuate legal homophobia. As such, the "partnership" and "allyship" that the government offers in the post-apology period seems as limited as its renegotiated citizenship is restrictive. Indeed, it appears that the government is relying on LGBTQ2+ communities to accept the peace offerings of an apology and limited redress, over the more substantive and broad-based reforms activists demand.

The restrictive citizenship offered by the government is also evidenced when one considers Bill C-66, *The Expungement of Historically Unjust Convictions Act*. From the bill's introduction, LGBTQ2+ activists criticized it for its limited scope, noting that it focused only on expunging convictions due to gross indecency, buggery, and anal

¹⁰² Canada *House of Commons* Debates, Nov 28, 2018 (Mr. Justin Trudeau).

intercourse.¹⁰³ Queer historians Gentile, Hooper, Kinsman, and Maynard called for the inclusion of “bawdy house, indecent act, obscenity, and vagrancy provisions,” to allow for the expungement of these convictions.¹⁰⁴ In response, Public Safety Minister Ralph Goodale suggested that the government had decided to proceed with Bill C-66 as is, because bawdy house provisions were still criminalized.¹⁰⁵ This begs the question as to why the government did not originally repeal bawdy house provisions, especially when one considers that the Supreme Court found in *Bedford* [2013] that these provisions violated the security of sex workers.¹⁰⁶ Indeed, if the government had repealed these provisions at the outset, it could have included them in the expungement legislation. Gentile and the historians also criticized the onerous expungement criteria, which require an applicant to prove that one’s conviction resulted from a same-sex act, that it was consensual, and that all participants were over the age of 16 at the time of the act.¹⁰⁷ They suggested that proving consent many years after the act could be exceedingly difficult, and were critical that the bill set 16 as the required age of consent, when prior to 2008, the heterosexual age of consent was 14.¹⁰⁸ Here we see a further instance of legal homophobia: even as the government created a uniform age of consent in one bill, it continued to criminalize queer sex in another.

¹⁰³ Radical Noise, “Gay and Lesbian Historians Declare that lack of Consultation and a Rush through Parliament Produce a Flawed Bill C-66 (The Expungement Bill),” December 11, 2017, <https://bit.ly/2zFUzPs>. (accessed 25 Nov 2018).

¹⁰⁴ Ibid.

¹⁰⁵ John Ibbitson, “Senators face difficult choice over Bill C-66,” *Globe and Mail*, April 20, 2018, <https://tgam.ca/2KGYJJN>.

¹⁰⁶ *Canada (Attorney General) v. Bedford* [2013] 3 SCR 1101, 2013 SCC 72, <https://bit.ly/237Se6r>.

¹⁰⁷ Ibbitson, “Senators face difficult choice over Bill C-66.”; Canada, Bill C-66, *Expungement of Historically Unjust Convictions Act*, s. 25.

¹⁰⁸ Radical Noise, “Gay and Lesbian Historians (The Expungement Bill).”

Gentile, Hooper, Kinsman, and Maynard also criticized Bill C-66 for mandating the destruction of conviction records, in the event of an expungement.¹⁰⁹ Given that historical records serve both as a permanent acknowledgement of injustice and a memorialization of those subjected to oppression, these queer activists urged the government to develop a mechanism to both preserve expungement records and protect the privacy of those convicted.¹¹⁰ These sentiments were echoed in a submission by the CCGSD and one by AIDS Action Now!, Queer Ontario, and Queers Crash the Beat, in which it was asserted that “Bill C-66, as drafted, reproduces the very discrimination it was intended to ameliorate.”¹¹¹ The Canadian Bar Association also called for changes to the bill to better respond to the concerns of LGBTQ2+ communities, highlighting that “LGBTQ2S persons have been prosecuted using every offence possible – not just those most obvious in 2018.”¹¹² Despite these demands, Bill C-66 passed without amendment, leaving individuals arrested in bathhouse raids unable to receive expungement for their convictions.¹¹³ We see here that the commitment of the government to be “partners” and “allies” of queer communities has not materialized into action. Ron Rosenes, one of those affected by the raids, authored a deeply personal and impassioned brief to the Justice Committee in its study of Bill C-75, urging the Committee to repeal bawdy house provisions and leave “19th century notions of indecency behind us.”¹¹⁴ Now that the amended C-75 has become law, the government may add vagrancy and bawdy house

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ CCGSD, “Recommendations to fix Bill C-66: Let’s make the Apology count,” <https://bit.ly/2P8RkGE> (accessed 28 Mar 2019); Marcus McCann, “Submissions of Aids Action Now!, Queer Ontario, and Queers Crash the Beat,” Feb 13, 2018, <https://bit.ly/2Unp3gt> (accessed 3 Apr 2019).

¹¹² Loreley Berra and Francis Durnford, “Re: Bill C-66, Expungement of Historically Unjust Convictions Act,” *Canadian Bar Association*, April 30, 2018, <https://bit.ly/2IluTNX> (accessed 30 Mar 2019).

¹¹³ The Current, “There’s a ‘major contradiction’ between Trudeau’s apology to LGBTQ Canadians and Bill C-66, prof says,” *CBC Radio*, June 25, 2018, <https://bit.ly/2IA4N9l>.

¹¹⁴ Ron Rosenes, “Bill C-75 must leave no one behind,” <https://bit.ly/2IlwhjD> (accessed 3 Apr 2019).

offences to the list of historical convictions for which one may receive expungement,¹¹⁵ but it has not yet indicated whether it intends to do so.

Legal homophobia is also present in the continued legacy of the so-called “gay panic” defense in Canadian courtrooms. Egale noted in its *Just Society Report* that despite the 1969 reforms, “Indecent Assault on a Male” which “criminalized ‘every male person who assaults another person with intent to commit buggery’” remained in the Criminal Code.¹¹⁶ Although the Indecent Assault provision was repealed in 1985, elements of it remain in section 232, which provides for a “provocation” defense to reduce a murder conviction to the lesser charge of manslaughter.¹¹⁷ Disturbingly, there are many Canadian examples of heterosexual men employing this defense in their murder of gay men. A 1997 study of provocation defense cases identified 16 of 115 cases in which male defendants asserted that men ‘coming on’ to them incited their homicidal actions.¹¹⁸ The 2005 murder of Robert Nicholson by Sebastian Bouchard is a recent example. Both were intoxicated, and after Nicholson kissed his friend Bouchard, who was straight, Bouchard threw Nicholson to the ground and stomped him to death.¹¹⁹ Bouchard’s defense painted Nicholson’s advance as provocation, arguing that Bouchard suffered a lapse in judgment, and that he was therefore only guilty of manslaughter.¹²⁰ The jury rejected the claim and found Bouchard guilty of murder, and while the case was retried on a technical ground, Bouchard was once again found guilty of murder in

¹¹⁵ Salerno, “Laws that affect LGBT people in Canada may soon be struck down.”

¹¹⁶ Egale Canada, “The Just Society Report,” 37.

¹¹⁷ Criminal Code, ss. 156-158 [Repealed, R.S., 1985, c. 19 (3rd Supp.), s. 2]; Criminal Code, s. 232.

¹¹⁸ Justin Ling, “Why do Canadian courts still allow the ‘gay panic’ defense?” *Xtra*, Feb 8, 2014, <https://bit.ly/2IzJgOc>.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

2016.¹²¹ The fact that such a defense could be employed as recently as 2016 is alarming. The government has not signalled an intent to reform this antiquated provision.

The government has also failed to make progress on other issues of importance to queer communities, such as HIV non-disclosure. In two 2012 Supreme Court decisions, it was established that persons living with HIV must disclose their status before engaging in sexual activity only when there is a “realistic possibility of transmission.”¹²² The Court found that if an HIV+ person’s viral load was low or undetectable, the “realistic” possibility of transmission was negated.¹²³ In a 2016 World AIDS Day statement, then Justice Minister Jody Wilson-Raybould committed to mitigating the over-criminalization of HIV non-disclosure in Canada; these sentiments were echoed in a 2017 Justice ministry report, which called for reforms to align the law with the Court’s 2012 rulings.¹²⁴ Initially, there was little government action to enact reforms. In October 2018, the Canadian HIV/AIDS Legal network authored a letter to Minister Raybould, calling on the government to both enact Criminal Code reforms and develop prosecutorial guidelines to prevent improper prosecutions.¹²⁵ Gentile, Hooper, Kinsman, and Maynard – in their brief to the Justice Committee on C-75 – also called for similar reforms to prevent the “further [stigmatization of] people living with HIV.”¹²⁶ In June 2019, the Justice Committee released a report calling on the government to create a new Criminal Code provision and prosecutorial directive that applies “to the non-disclosure of an

¹²¹ *R. v. Bouchard*, [2014] 3 SCR 283, 2014 SCC 64 <https://bit.ly/2IBQEbF>; *R. v. Bouchard*, [2015] ONSC 4795 <http://canlii.ca/t/gkfmn>.

¹²² *R. v. Mabior*, [2012] 2 SCR 584, 2012 SCC 47, <https://bit.ly/2UWBS63>; *R. v. D.C.*, [2012] 2 SCR 626, 2012 SCC 48, <https://bit.ly/2GnipTH>; Canada, Department of Justice, “Criminal Justice System’s Response to Non-Disclosure of HIV,” Dec 1, 2017, <https://bit.ly/2UgT7dW>, 11-16.

¹²³ Department of Justice, “Criminal Justice System’s Response,” 12.

¹²⁴ *Ibid.*, 28-32.

¹²⁵ Richard Elliot, “Open Letter to Federal Minister of Justice and Attorney General of Canada,” *Canadian HIV/AIDS Legal Network*, Oct 29, 2018, <https://bit.ly/2VN7XKw> (accessed 5 Apr 2019).

¹²⁶ Gentile et al., “Another Limited Bill,” 6.

infectious disease (including HIV) [only] when there is actual transmission.”¹²⁷ In other words, persons living with HIV would not be required to disclose their status, provided their viral load was undetectable, as this would negate the possibility of transmission. It is too early to tell whether or not the government will move forward with reform.

The government has adopted an incremental approach to reforming blood donation policies for men who have sex with men (MSM) that has left discriminatory policies in place. While the Liberal party promised to end the ban on MSM blood donations during the 2015 election – and a petition to do so remains on its website today – the Trudeau government has so far only reduced the deferral period.¹²⁸ In 2016, the Canadian Blood Services amended the five-year wait period for MSM donors to one-year, and in 2018, submitted a proposal to Health Canada to reduce the deferral period to three months.¹²⁹ This proposal was accepted in May 2019, and as such, the current deferral period is three months for MSM donors.¹³⁰

As the policy stands, MSM donors must abstain from same-sex activity for at least three months prior to donating; no exception is permitted for gay or bi men in monogamous relationships. The government has come under widespread criticism for its failure to deliver on its 2015 promise. NDP MPs have pressured the government to end the discriminatory blood ban, invoking the 2017 apology in their criticisms, and PSAC has taken issue with the prime minister’s neglect to provide a timeline for full repeal of

¹²⁷ Canada, Parliament, House of Commons, Standing Committee on Justice and Human Rights, *The Criminalization of HIV Non-Disclosure in Canada*, 1st sess., 42nd Parliament, 2019, Committee Report 28, <https://www.ourcommons.ca/DocumentViewer/en/42-1/JUST/report-28/>.

¹²⁸ John Paul Tasker, “Gay men abstinent for a year cleared by Health Canada to donate blood,” *CBC News*, June 20, 2016, <https://bit.ly/2GsbmcN>; Liberal Party of Canada, “Ending MSM Blood Donation Ban,” <https://bit.ly/1MDvmBz> (accessed 8 Apr 2019); Liberal Party of Canada, “Ending the Gay Blood Ban,” <https://bit.ly/2ZcoycO> (accessed 8 Apr 2019).

¹²⁹ Canadian Blood Services, “Men who have sex with men,” <https://bit.ly/2NSkOvb> (accessed 8 Apr 2019).

¹³⁰ Kelly Grant, “Health Canada reduces waiting period for blood donation for men who have sex with men,” *Globe and Mail*, May 8, 2019, <https://tgam.ca/2XyXhjB>.

the practice.¹³¹ The Canadian AIDS society continues to call for a behavioural-based approach to blood donation that focuses on high-risk activities, rather than one's sexual orientation.¹³² As it stands, the policy perpetuates the notion of gay sex being 'riskier' than straight sex, and thus 'deviant.' Government inaction thus far once again suggests that the renegotiated citizenship proffered by the government lacks robustness.

The government's hesitancy to implement a ban on conversion therapy¹³³ for minors, and its subsequent politicization of the issue, represents its continued refusal to cede control of LGBTQ2+ reforms to the activists demanding them. NDP MP Sheri Benson presented a petition in January 2019, on behalf of LGBTQ2+ activist Devon Hargreaves, to ban conversion therapy for minors.¹³⁴ Somewhat surprisingly, the Justice Minister responded by saying that while conversion therapies "do not reflect the values of our government or those of Canadians," the regulation of the practice is largely a provincial one, due to the involvement of healthcare professionals.¹³⁵ This was a particularly cynical example of one level of government using the veil of federalism to "pass the buck" to another level of government, as discussed in Kathryn Harrison's work on federalism and environmental policy.¹³⁶ Many persons who carry out conversion therapy do not have professional health designation and the federal government has

¹³¹ Ryan Maloney, "After LGBTQ2 Apology, NDP Presses Trudeau To Scrap Blood Ban For Gay Men," *Huffington Post*, Nov 28, 2017, <https://bit.ly/2VUIMXy>; Robyn Benson, "A letter from PSAC National President Robyn Benson to federal health minister," *Public Service Alliance of Canada*, Dec 15, 2017, <https://bit.ly/2IvOv1a> (accessed 8 Apr 2019).

¹³² Grant, "Health Canada reduces waiting period for blood donation."

¹³³ Conversion therapy is a widely discredited practice that purports to change an individual's sexual orientation or gender identity. For more information, see Canadian Psychological Association, "CPA Policy Statement on Conversion/Reparative Therapy for Sexual Orientation," <https://bit.ly/2NPml5v> (accessed 12 July 2019).

¹³⁴ Devon Hargreaves, "Petition to the Government of Canada," Canada, Parliament, House of Commons, 1st sess. 42nd Parliament, E-1833 (Conversion Therapy), Sep 20, 2018, <https://bit.ly/2OWIs9G>.

¹³⁵ David Lametti and Canada, "Response to Petition," Parliament, House of Commons, 1st sess. 42nd Parliament, Petition no.: 421-03168, Feb 1, 2019, <https://bit.ly/2ZdgJnl>.

¹³⁶ Kathryn Harrison, *Passing the Buck: Federalism and Canadian Environmental Policy* (Vancouver: UBC Press, 1996).

jurisdiction over the Criminal Code. It was therefore hard to read the government's refusal to ban the practice as anything but a lack of what Johnson and Tremblay term, political will¹³⁷ to write and pass complex legislation in an election year.

However, in a June 2019 letter to provincial justice ministers, the federal government suddenly reversed course. Indeed, it now acknowledged that it was “considering Criminal Code reform concerning conversion therapy.”¹³⁸ By pursuing its own course of action, rather than favourably responding to Hargreaves' earlier calls, the government maintains full control over the process. Further, with parliament having risen for the summer, and a fall election on the horizon, the government is under no direct pressure to introduce and pass legislation to ban the practice, as it would have been had it accepted Hargreaves' petition in February 2019. The Liberal party can also use a promise to ban the practice as a lightning rod in the fall election to contrast its ‘progressive’ credentials with those of the Conservative party. While the government plays politics, LGBTQ2+ youth remain vulnerable to conversion therapy in much of Canada, as only Nova Scotia, Ontario, Manitoba, and the city of Vancouver have banned or restricted the practice.¹³⁹

The federal government has also released a new \$1 coin to commemorate the fiftieth anniversary of the ‘decriminalization’ of homosexuality and provided funding to

¹³⁷ For more on the concept of political will, see Carol Johnson and Manon Tremblay, “Comparing Same-Sex Marriage in Australia and Canada: Institutions and Political Will,” *Government and Opposition* 53, no.1 (January 2018): 131-158, <https://bit.ly/2Wzc64u>.

¹³⁸ Emma Graney, “‘End the shameful practice’: Feds urge Alberta to ban conversion therapy,” *Edmonton Journal*, July 9, 2019, <https://bit.ly/2xLVBlE>.

¹³⁹ Perlita Stroh, “Ottawa rejects plea for nationwide ban on conversion therapy,” *CBC News*, March 23, 2019, <https://bit.ly/2HBncTr>.

Historica Canada for a new Heritage Minute on Jim Egan's legacy.¹⁴⁰ These contributions are government attempts to rectify past and ongoing injustice, and follow through on its apology commitment to "honour and memorialize" queer and trans activism. However, Gary Kinsman and others have criticized the new coin, suggesting that it gives both a false perception that full equality was achieved in 1969 and minimizes the role of queer activists in enhancing LGBTQ2+ equality.¹⁴¹ The coin is representative of a larger government effort to bring LGBTQ2+ persons within the fold of citizenship and relegate wrongs to the past. Indeed, there are few things more official than a state's currency. Yet, given the government's perpetuation of legal homophobia, continuance of the MSM blood ban, and its hesitancy to ban conversion therapy, we see that the citizenship proffered by the government is limited. Indeed, the government's apology statement that "discrimination and oppression of LGBTQ2 Canadians will not be tolerated anymore," rings hollow. In fact, the government continues to tolerate homophobic policy in the present and with many LGBTQ2+ persons continuing to experience systemic discrimination, wrongs cannot be relegated to the past. If the government hopes to holistically renegotiate LGBTQ2+ citizenship, it must enact broad-based reforms in line with the demands of LGBTQ2+ activists.

Despite these shortcomings, the government has offered some positive signals of its desire to enhance queer and trans equality. In Budget 2019, the federal government referenced the term "LGBTQ2+" multiple times, and integrated these communities

¹⁴⁰ Dean Beeby, "New loonie to commemorate end of laws against homosexuality," *CBC News*, Dec 20, 2018, <https://bit.ly/2FeVudW>; Historica Canada, "Historica Canada releases first LGBTQ2 Heritage Minute about pioneer gay activist Jim Egan," June 13, 2018, <https://bit.ly/2ZhBQFh> (accessed 8 Apr 2019).

¹⁴¹ Mike Miksche, "Canada's LGBTQ Coin: Honorable Gesture or Distortion of History?" *CCGSD*, April 7, 2019, <https://bit.ly/2DbckYv> (accessed 10 Apr 2019).

within its larger budget framework.¹⁴² Specifically, the budget provides \$20 million over 2 years to support LGBTQ2+ organizations, a further \$1.2 million to fund the LGBTQ2+ Secretariat through 2021, and \$25 million to create a “pan-Canadian suicide prevention service,” which it notes will support at risk queer and trans youth.¹⁴³ The budget also employed a gender-based analysis plus (GBA+) and suggested that LGBTQ2+ communities will directly benefit from fifteen policies in the budget, and indirectly benefit from a further seven policies.¹⁴⁴ The integration of queer and trans identities in the budget framework suggests that the government is at least mindful of its responsibility to alleviate systemic inequality, even if it is hesitant to enact broad-based reform. The government has also committed \$450 000 to Toronto Pride “to improve the relationship between Toronto LGBTQ2 communities and the criminal justice system,” as well as to promote the fiftieth anniversary of the “decriminalization” of homosexuality in Canada.¹⁴⁵ This funding follows on the heels of “Project Marie,” in which the Toronto police engaged in an undercover operation to ticket 72 people in a public park, popular for cruising.¹⁴⁶ This operation is reminiscent of the bathhouse raids of past, and evidences the continued policing of queer sexuality. Stephen Maynard observes that the police actions in the Marie Curtis Park are representative of the fact that apologies can be vacuous if a “change in practice” does not follow.¹⁴⁷

¹⁴² Canada, Department of Finance, “Investing in the Middle Class: Budget 2019,” March 19, 2019, <https://bit.ly/2TnGEEU>.

¹⁴³ Ibid., 156-157, 170-171.

¹⁴⁴ Ibid., 253.

¹⁴⁵ Canada, Public Safety Canada, “Government of Canada working with Pride Toronto to improve safety of LGBTQ2 communities,” Nov 24, 2018, <https://bit.ly/2IAdiBh>.

¹⁴⁶ Jacques Gallant, “Tickets withdrawn after ‘morality raids’ in Etobicoke’s Marie Curtis Park,” *Toronto Star*, Oct 29, 2017, <https://bit.ly/2PgCKNC>.

¹⁴⁷ Maynard, “To Forgive and Forget?”

Perhaps the most promising news came in the June 2019 release of a Health Committee report on the health of LGBTQ2+ communities in Canada. In it, the Committee proposed twenty-three recommendations to address many concerns raised by LGBTQ2+ activists. The recommendations, among other things, suggest that the government end the MSM blood ban and other discriminatory policies related to queer and trans organ and blood donation, ban conversion therapy, end the over-criminalization of HIV, increase access to HIV treatment and prevention drugs such as PrEP,¹⁴⁸ approve HIV home-testing mechanisms, and provide universal access to gender-affirming surgeries.¹⁴⁹ These reforms might help to mitigate some barriers still faced by LGBTQ2+ communities. The government has not yet responded to this report, and as such, it is too early to judge the government's willingness to move forward with these expansive reforms.

This section has surveyed both the substantive changes undertaken by the government to enhance LGBTQ2+ equality and the notable shortcomings of the government's approach. It has also chronicled the government's failure to act on a number of important priorities for LGBTQ2+ communities. We have demonstrated that despite some positive steps, the government's approach to the post-apology policy process has lacked the broad-based reforms demanded by queer actors. Furthermore, these actors have been forced to fight to have their voices heard by the government, relying on the parliamentary committee process to demand additional reforms in the case of Bill C-75. Even still, LGBTQ2+ activists' victories were limited; while they secured

¹⁴⁸ PrEP refers to Pre-Exposure Prophylaxis, which can be taken to reduce the likelihood of HIV transmission.

¹⁴⁹ Canada, Parliament, House of Commons, Standing Committee on Health, *The Health of LGBTQIA2 Communities in Canada*, 1st sess., 42nd Parliament, 2019, Committee Report 28, <https://www.ourcommons.ca/DocumentViewer/en/42-1/HESA/report-28>.

the repeal of bawdy house and vagrancy provisions, they failed to attain government support for the repeal of obscenity and indecent act provisions. The government's reluctance to enact these reforms, along with its failure to act on ending provocation defence, reversing the over-criminalization of HIV non-disclosure, and totally repealing the MSM blood ban, suggest that the systemic effects of legal homophobia and the predominance of heterosexism are not easily reversed by an apology.

While the apology *itself* was perhaps sincere, the government's actions in the post-apology period evidence the restrictive model of renegotiated citizenship that it has offered LGBTQ2+ communities. Importantly, Matt James argues that we should be hesitant to judge apologies on their post-apology records, because even if an apology fails in this regard, it may still have "value as an apologetic narrative."¹⁵⁰ Indeed, we have seen several examples of activists using the apology in their calls for reform, and it is possible that the Health Committee's study on LGBTQ2+ health only came about as a result of the apology. Therefore, while we have argued that the apology is undermined by the post-apology period, we must at least recognize that the apology will continue to have potential in redefining narratives around LGBTQ2+ inclusion and enhanced equality.

Policy Changes and Apology Reactions: Implications for Citizenship

We conclude our discussion of reactions to the 2017 apology and the associated policies of redress by considering their respective implications for the national membership and citizenship of LGBTQ2+ persons within Canada. T.H. Marshall theorizes that citizenship can be understood in terms of civil, political, and social

¹⁵⁰ James, "Narrative Robustness," 838-839.

elements.¹⁵¹ The civil element comprises individual rights; the political involves “the right to participate in the exercise of political power”; and the social concerns “economic welfare and security,” along with the right “to live the life of a civilized being according to the standards prevailing in society.”¹⁵² It is self-evident that LGBTQ2+ persons have historically – and perhaps contemporarily – been denied each of these aspects of citizenship. Indeed, queer persons did not have individual or personal freedoms, they could not *openly* run for office, and they certainly did not enjoy a public or “civilized” life. It could be argued that despite equality advancements, queer and trans people continue to be denied these rights in light of ongoing legal homophobia, societal discrimination, and poor economic outcomes.¹⁵³ In Marshall’s evolutionary view, citizenship progressed from civil rights, to political rights, and finally to social rights, in a way that suggests, according to Bryan Turner, “a peaceful or gradual transition towards citizenship.”¹⁵⁴

Turner contends, however, that while citizenship works to create “universalistic membership,” it also “promotes social conflict and social struggle where the social entitlements are not fulfilled.”¹⁵⁵ That is to say that a *citizen* conceptualizes *citizenship* as an idealized and unifying entity of which they are a part, and thus assumes that they will derive certain benefits. When these benefits fail to follow, the idealized notion is

¹⁵¹ T.H. Marshall, *Citizenship and Social Class and other essays* (Cambridge: Cambridge University Press, 1950), 10.

¹⁵² *Ibid.*, 10-11.

¹⁵³ Lori E. Ross and Anita Khanna, “What are the needs of lesbian, gay, bisexual, trans, and queer (LGBTQ+) people that should be addressed by Canada’s Poverty Reduction Strategy (CPRS)?” *Canadian Coalition Against LGBTQ+ Poverty (CCALP)*, <https://lgbtqhealth.ca/projects/docs/prsjointsubmission.pdf> (accessed 13 Apr 2019).

¹⁵⁴ Marshall, *Citizenship and Social Class*, 10-28; Bryan S. Turner, “Contemporary Problems in the Theory of Citizenship,” in *Citizenship and Social Theory*, ed. Bryan S. Turner (Newbury Park: SAGE Publications Ltd., 1993), 8.

¹⁵⁵ Turner, “Contemporary Problems in the Theory of Citizenship,” 8-12.

shattered, and these groups of *citizens* fight back. *Citizenship*, then, acts as a point of comparison, by which all persons can view themselves in relation to the ideal *citizen*,¹⁵⁶ who in Canada is white, cisgender, straight, wealthy, and male. For LGBTQ2+ communities, the policing of their sexualities and identities shattered illusions of citizenship and had a mobilizing effect, as these queer and trans communities pushed for justice. Turner posits that “a single version of citizenship” does not exist, and that varied factors generate multiple “forms of citizenship.”¹⁵⁷ Indeed, queer and trans people are second-class *citizens*, whose lives have been systematically devalued and undermined by state actors. Therefore, our primary question is: in what ways has the apology, and its associated forms of redress, served – or not – as a resource in the battles to elevate *second-class* LGBTQ2+ citizens to *full* citizens?

The apology offered the state a unique opportunity to help integrate queers within the realm of citizenship. Nobles suggests that apologies allow states to “justify” policies that “redistribute political authority and economic resources substantially over the long term.”¹⁵⁸ We have seen the apology used by the federal government to justify its legal reforms, and by queer activists to call for enhancements to these policies. While these advances would seem to suggest an elevation of second-class citizenship to full citizenship, we have also witnessed substantial policy shortcomings and government failures to act. Therefore, given the apology’s effects on government policy, we are compelled to wonder whether the government had more cynical motivations for issuing the apology.

¹⁵⁶ Marshall, *Citizenship and Social Class*, 28-29.

¹⁵⁷ Turner, “Contemporary Problems in the Theory of Citizenship,” 9-11.

¹⁵⁸ Nobles, *The Politics of Official Apologies*, 139.

While we have demonstrated that the utterance of the 2017 apology was significant for many LGBTQ2+ persons, and particularly purge survivors, it is apparent that the government also had political motivations to issue it. The government's glacial approach to eradicating legal homophobia in the Criminal Code and ending the MSM blood ban seem to evidence these motivations. The government's wilful politicization of LGBTQ2+ rights is further evidenced by its decision to wait until parliament had risen for the summer, before expressing its support for banning conversion therapy. While the government could seek broad-based policy reforms to more quickly catalyze equality, it seems content to move slowly on some issues, and not at all on others. Indeed, this illuminates the restrictive renegotiated citizenship framework that the government has offered to LGBTQ2+ communities in the post-apology era. Government inaction suggests that it thinks it has already 'done enough' to shore up LGBTQ2+ support in advance of the 2019 election. In the event it has not, it offers a further promise to ban conversion therapy. Therefore, from the government's perspective, the apology may have just as much to do with politics, as it has to do with the elevation of LGBTQ2+ citizenship. Still, Kinsman and Maynard's comments remind us that the 2017 apology served the homonationalist project, which might also have motivated the government to issue the apology.

When considering the reactions of LGBTQ2+ organizations and activists to the apology, as well as their respective roles in the substantive post-apology policy process, we see the emergence of two citizenship factions. The first camp makes claims to Canadian citizenship *in spite* of queerness. Such an approach seeks inclusion within the

Canadian “citizenship regime”¹⁵⁹ so as to be part of a broader national collective. It packages queerness in a homonormative fashion, so as to be more appealing to the state, and gain acceptance within a heteronormative society. The prevailing LGBTQ2+ rights organization – Egale – subscribes to this approach. This is not surprising given that Smith observes how, in order to turn claims into policy, governments require coherent demands.¹⁶⁰ Egale serves as the entity by which queer claims are refined and distilled.

The second camp diverges from the first in that it desires a *Queered citizenship* that resists the hegemonic liberal model of citizenship. This approach is taken up by figures such as Kinsman and Maynard, and centres queer activism and resistance within an anti-oppressive citizenship framework. Such a perspective embodies Turner’s description of a citizenship that accepts “differences, differentiation, and pluralism,” so as not to become a repressive “political instrument of the state.”¹⁶¹ The *Queered citizenship* approach creates space for the intersecting identities of all LGBTQ2+ persons, combating both homonormativity and homonationalism, while also challenging racism and colonialism. Indeed, Smith highlights how “inclusion entails a cultural loss of a previously identifiable queer community,” and similarly how the homonormative *queer family* erases the sexual freedom that has long inhabited the LGBTQ2+ movement.¹⁶² For the first faction, the apology represents a momentous occasion in which the state welcomes queers into the citizenship regime. The second group – while acknowledging the importance of state apology for harms – opposes the apology’s reconstituting of the

¹⁵⁹ Jane Jenson, "Fated to Live in Interesting Times: Canada's Changing Citizenship Regimes," *Canadian Journal of Political Science* 30, no.4 (1997): 627-644, <http://www.jstor.org.ezproxy.library.uvic.ca/stable/3232250>.

¹⁶⁰ Miriam Smith, “LGBTQ Rights and Citizenship in the Neoliberal Age,” in *Citizenship as a Regime: Canadian and International Perspectives*, eds. Mireille Paquet, Nora Nagels, and Aude-Claire Fourot (Montreal & Kingston: McGill-Queen’s University Press, 2018), 109-111.

¹⁶¹ Turner, “Contemporary Problems in the Theory of Citizenship,” 15.

¹⁶² Smith, “LGBTQ Rights and Citizenship in the Neoliberal Age,” 112-115.

Queer citizen as the *Canadian* citizen. Whereas the first faction appears content to work within institutional norms, the second group resists the institutionalization of LGBTQ2+ rights.

Sidney Tarrow theorizes that social movements “which collaborate too closely with institutions ... can become imbued with their logic and values,” whereas movements that are “too alienated from institutions risk isolation and sectarianism.”¹⁶³ Maynard, Smith, and Lenon have highlighted how Egale’s *Just Society Report* invoked partisan and nationalist discourse to frame the apology, thus evidencing the institutionalism exhibited by Egale. Tarrow also argues that “movements that adapt too well to their societies’ cultures lose the power of opposition” as their adaption legitimates “existing power arrangements,” resulting in the loss of a movement’s “most militant supporters.”¹⁶⁴ As discussed, it appears that the 2017 apology did not radically disrupt heterosexual hegemonies, cisgender hegemonies, racism, or colonialism, and perhaps this is a result of the approach Egale took. Yet, it is unclear how an official apology could have been attained in a different way, given that one can expect a government to be resistant to the destabilization of the very power structures that grant it legitimacy, and indeed, sovereignty. We have suggested that a more open consultation process, modelled in the form of a Truth and Reconciliation Commission could have done more to include diverse identities and subvert these structures, but this is not guaranteed. While imperfect, the apology serves as a state acknowledgement of harm, which as James and Stranger-Ross suggest, can be used to link historical injustices to contemporary injustices. It is feasible,

¹⁶³ Sidney Tarrow, *Power In Movement: Social Movements and Contentious Politics*, 2nd ed. (New York: Cambridge University Press, 1998), 208.

¹⁶⁴ *Ibid.*, 110.

then, that the apology can be invoked by LGBTQ2+ activists to not only demand additional reforms, but also to agitate for the very *Queered citizenship* that they desire.

The tension between these two divergent perspectives exposes a larger chasm within LGBTQ2+ communities. While some LGBTQ2+ activists believe that ameliorative policies and the extension of rights to queer communities is necessary to attain inclusion, others worry about how rights-based approaches actually work to subvert LGBTQ2+ activism and identities. This section has discussed how the co-option of queers within the national project can lead to the weaponization of LGBTQ2+ identities against racialized others. Further, government actions – such as the one taken in the apology – can serve to weaken queer communities, resulting in a diffuse and demobilized movement less capable of articulating and advocating for its demands. Elites, therefore, may have diminished political will to address the ongoing concerns of trans and queer communities. Instead, these elite actors may point to previous concessions as evidence of their support for LGBTQ2+ equality. With demobilized queer movements and diminished political will, the most marginalized persons – both within and external to LGBTQ2+ communities – may have their concerns ignored or overlooked. Should this happen, the words of the 2017 apology will ring hollow. Nonetheless, it is important to state that recognition and resistance to the homonationalist project does not require *a priori* rejection of equality rights, but rather a commitment to ongoing resistance within an anti-oppressive and anti-racist framework. In furthering this commitment, activists can harness the apology to condemn ongoing systems of oppression.

Conclusion

The apology is best understood as a robust quasi-apology, which falls just short of full “authenticity,” due to the continued presence of legal homophobia. Our survey of LGBTQ2+ reactions suggests that most individuals believe the apology must be substantiated by action. Further, individuals with intersecting identities were more critical of the apology, noting that it failed to meaningfully include lesbian women, trans people, and queer people of colour. While mainstream organizations such as Egale are extremely positive about the apology, scholarly reaction is mixed, with Kinsman and Maynard expressing reservations as to the potential homonationalist effects of the apology. In our post-apology policy analysis, it is demonstrated that despite the government enacting some positive reforms – such as protecting gender identity and expression and repealing the discriminatory age of consent – its legislation to reform the Criminal Code and expunge convictions has been deeply flawed. Many activists have invoked the apology in their claims for further reform to varying degrees of success. Indeed, these activist strategies evidence the utility of James and Stranger-Ross’ assertion that an official apology can be used to combat ongoing injustices. By using acknowledged historical harms to condemn contemporary wrongs, activist concerns may gain traction with political elites. Undoubtedly, the government has been missing in action on a number of important files to LGBTQ2+ communities including, ending provocation defense, mitigating the over-criminalization of HIV non-disclosure, repealing the MSM blood ban, and banning conversion therapy for minors. Furthermore, the government’s incremental approach to addressing LGBTQ2+ equality evidences the government’s political motivations for issuing the apology.

The invocation of Nobles' membership theory throughout this thesis allows us to conclude that the government has offered a restrictive model of renegotiated citizenship to LGBTQ2+ persons. While the government wishes to integrate LGBTQ2+ communities within the state, it is unwilling to enact broad-based reforms or upset heterosexual and cisgender hegemonies to do so. While not the driving purpose of this research project, an examination of reactions to the LGBTQ2+ apology *itself* and the subsequent policy actions that followed have exposed a significant rift in the type of citizenship LGBTQ2+ actors demand. Indeed, the apology has offered a stage from which to view intra-community differences, which significantly contributes to the broader scholarly understanding of contemporary LGBTQ2+ activism in Canada. We have witnessed the emergence of two camps: one that makes a claim to *Canadian citizenship* and inclusion within the state as it currently exists and another that makes a claim to a *Queered citizenship* that desires a reconstituted state. Both groups value an apology, but while the former seeks inclusion within the state, the latter seeks ongoing queer activism, resistance, and community building. By *Queering citizenship*, it is hoped that heterosexual and cisgender hegemonies can be demolished, racism eradicated, and decolonization achieved. The apology *itself* appears to advance homonormativity and also bring LGBTQ2+ *second-class* citizens closer to *full* citizenship. Importantly though, by allowing heterosexual and cisgender hegemonies, racism, and colonialism to persist unchallenged, the state does not offer a broad renegotiated citizenship for all LGBTQ2+ communities. Instead, it provides a hollowed out citizenship that superficially elevates *some* LGBTQ2+ persons – namely white normative queers – to *full* citizenship, while leaving those with intersecting identities as peripheral *second-class* citizens.

Chapter 4: Interview Results

Introduction

This chapter outlines the findings of the interviews conducted in the second phase of this research project. As mentioned, three participant groups were interviewed: (1) 2 participants who are elected representatives; (2) 2 participants who are representatives from LGBTQ2+ community organizations; and (3) 2 participants who are academics/professors specializing in LGBTQ2+ equality and/or history. These interviews allow us the opportunity to see beyond my arguments and preliminary research conclusions presented in the previous two chapters. Indeed, it is beneficial to check my perspectives and conclusions against those who were immersed or involved in the apology process itself. Insiders who were involved in both the pre-apology and post-apology periods have useful insights to provide. This chapter captures some of their insights and highlights the perspectives that reinforce, challenge, or complicate my earlier interpretations. We begin by considering the perspectives of elected representatives, before showcasing the voices of representatives from LGBTQ2+ organizations, and finally, highlighting the views of LGBTQ2+ scholars. This chapter concludes by summarizing the findings of these interviews.

Elected Representatives

Members of Parliament (MPs) Sheri Benson and Randall Garrison¹ both expressed concern with the pre-apology consultation process. Benson was particularly frustrated with the lack of information provided to MPs, which affected her ability to

¹ Sheri Benson is the MP for Saskatoon West and the NDP Deputy Critic for LGBTQ2 Issues; Randall Garrison is the MP for Esquimalt-Saanich-Sooke and the NDP Critic for LGBTQ2 Issues.

answer constituent questions about the consultation process.² She said that “people [saw her] as ... an out Member of Parliament,” and “[asked her] questions about [an advisory] process that people [thought she] should know about, because [she is] a Member of Parliament, but [she did not].” Similarly, Garrison suggested that since he did not know who was consulted by the council, he could not address questions as to whether the consultation process was inclusive of diverse queer and trans communities.³ These perspectives suggest a convergence with my earlier finding that the legitimacy of the consultation process was undermined by the lack of available information on it. Some involved in the consultation process even approached Garrison to express their unhappiness with its direction and he encouraged them to remain involved, as it was “all [the government was] going to do.” Indeed, it seems that even those directly involved with the process had concerns with it. Benson suggested that the government-led consultation process eliminated the ability of MPs to “scrutinize” the process, and in fact, may have provided “a shield for the government to make mistakes.” Ultimately, for Benson, the advisory council process “fell short on transparency and accountability,” and she is unsure as to why the process was “rushed.” Benson and Garrison’s comments echo my findings that the advisory council process did more to serve the government’s interests than it did those of trans and queer communities.

Benson signaled that while she was initially satisfied with the apology *itself*, the post-apology period has altered her perspective. While she originally felt that the apology was robust, she has been disheartened by the government’s lack of substantive progress

² Unless otherwise stated, all references to Sherri Benson in this section are from a phone interview by Michael McDonald, Victoria BC, June 3, 2019

³ Unless otherwise stated, all references to Randall Garrison in this section are from an interview by Michael McDonald, Victoria BC, June 24, 2019.

on issues such as the men who have sex with men (MSM) blood ban. She also felt that the release of the commemorative \$1 coin suggested that the government did not “[learn] anything from ... [the] apology,” given the fact that the 1969 decriminalization of homosexuality did little to alleviate LGBTQ2+ oppression at the time. With regard to Bill C-75,⁴ Benson observed that, “it takes resources and it takes hard work to move legislation through [parliament], regardless of whether [you have] a majority government [or not].” Her comments suggest that the government lacked the “political will”⁵ to expeditiously advance the legislation. Given our earlier discussion of the post-apology policy period, it seems that the government has lacked political will on a host of LGBTQ2+ issues including banning conversion therapy and ending the MSM blood ban.

Garrison also felt that the post-apology period altered his perspective of the apology. He noted that while he “was [initially] more moved by the apology than [he] thought [he] would be,” he was also concerned that the prime minister’s words, devoid of action, would become “just pretty amazing things to say.” Garrison declared that because only seven people have applied to have past convictions expunged, “the apology is a failure.” He suggested that while the government wanted to check the apology off of its list, it has not actually followed through on its commitments to LGBTQ2+ communities. As evidence, he cited the government’s procedure for revising the service records of purge survivors: rather than remove the notes pertaining to one’s discharge, the government simply adds a note stating that the previous notes should not appear on the

⁴ At the time of our interview, it was unclear whether the Senate would pass Bill C-75 before Parliament adjourned for the summer; the bill received Royal Assent on June 21, 2019.

⁵ Carol Johnson and Manon Tremblay, “Comparing Same-Sex Marriage in Australia and Canada: Institutions and Political Will,” *Government and Opposition* 53, no.1 (January 2018): 131-158, <https://bit.ly/2Wzc64u>.

file. While this procedure is set out in the class action settlement,⁶ Garrison observed that there are no restrictions that prevent the government from going farther. Due to government inaction and shortcomings, Garrison posited that while “the apology and the class action lawsuit taken together ... were supposed to be a floor, [they] have [instead] become a ceiling.” Benson and Garrison’s comments further evidence my finding that the apology’s ameliorative potential has been undermined by significant government failures in the post-apology period.

Benson and Garrison both acknowledged the substantial issues that must be overcome to achieve LGBTQ2+ equality. Specifically, both recognized the need to repeal the discriminatory MSM blood ban and were critical of the government’s inaction to ban conversion therapy for minors. Garrison also highlighted the homophobic interim policy for MSM organ donation, which requires doctors to consult with patients about whether or not they are comfortable accepting a donation from a gay donor.⁷ He also called attention to the burdensome process for trans persons wishing to donate blood or organs, which is rooted in assessment of anatomical sex rather than gender identity.⁸ Further, Garrison called for Health Canada approval of HIV home-testing mechanisms to increase accessibility to HIV testing in rural communities. He noted that approval is expected in the fall, and while there are obvious political motivations for the government to do so prior to the 2019 election, he will be satisfied so long as approval is granted. For her part, Benson highlighted the necessity of government action on LGBTQ2+ homelessness, and the need for federal intervention to ensure trans persons have equal access to healthcare

⁶ Canada. Todd Edward Ross, Martine Roy, and Alida Satalic v. Her Majesty the Queen [Settlement Agreement], [2018] T-370-17 (FC), 73, <http://lgbtpurge.com/wp-content/uploads/2018/04/Final-Settlement-Agreement.pdf>.

⁷ Canadian Blood Services, “Men who have sex with men,” <https://bit.ly/2NSkOvb> (accessed 8 Apr 2019).

⁸ Ibid.

and gender affirming surgeries across Canada. Benson called on activists to use the apology as a tool to incite the government to action saying: “this government cares about what people think about them. They care about their public image. So use it ... call them on it.” Benson’s comments in particular highlight the way that LGBTQ2+ activists can use the apology to demand further reforms.

Finally, Benson and Garrison both acknowledged that the apology had the potential to alter the citizenship status of LGBTQ2+ persons. For Benson, the concept of citizenship conjures nationalist imagery, which has caused her to “[grapple] with [the term].” She nonetheless recognized that there is certain merit in being recognized as a citizen when you have previously been rejected by the state, something particularly significant for purge survivors. Garrison was more explicit in his understanding saying, “for me, [the apology] was always about inclusion and injustice,” and that for inclusion to be *real*, injustices must be remedied. This assertion once again suggests that the apology has the potential to renegotiate citizenship, but that this is dependent on the government actions undertaken in the post-apology period. I have argued that these actions lack broad-based reform and thus evidence the restrictive model of citizenship the government has offered. Lastly, Garrison noted that the apology has not mitigated the barriers that exist for LGBTQ2+ persons seeking public office. As someone who received death threats when he was first elected MP in 2011, he noted that while hate and abuse have “mostly tapered off” for him, women – and queer women in particular – still face a great deal of discrimination in politics. We see, then, that while the apology was designed to integrate LGBTQ2+ persons within a unified Canadian citizenship, substantial barriers to inclusion remain.

Representatives of LGBTQ2+ Organizations

Douglas Elliott⁹ chronicled the events of the pre-apology period, which saw the apology handled separately from class action negotiations.¹⁰ Elliott referenced his conversations with a number of senior level staffers in the Prime Minister's Office (PMO), including Mathieu Bouchard, a Senior Advisor to the prime minister. According to Elliott, prior to the release of the Just Society Report in June 2016, the government was considering policies to repeal the differential age of consent and address the wrongs of the purge. It had even contemplated a public inquiry into the harms perpetrated against LGBTQ2+ persons by the Canadian state. However, in fall 2016, frustrated by the government's lack of initiative on implementing the report's recommendations, which included an independent mediation process among other things, Elliott advised the government that the purge survivors were launching a class action. He mentioned that since the PMO had informed him that class action members would not be permitted to provide input on the text of the prime minister's apology, the class did not see any utility in including the apology as part of the settlement process. The government's refusal to allow purge survivors the opportunity to participate in the drafting of an apology evidences the control that the government exerted over the apology narrative.

Elliott also expressed frustration with the government's advisory council process. He noted that it was "the complete opposite of what would have happened at a public inquiry," and "quite different" than the mediation process proposed by Egale. Elliott was

⁹ Douglas Elliott was the Chair of Egale's Just Society Committee and a lead author of the Just Society Report. He was also the lead counsel representing purge survivors in the class action negotiation and settlement process. Mr. Elliott has been a leading activist and lawyer in the LGBTQ2+ movement for some time, appearing before the Supreme Court as an intervener for the Foundation for Equal Families in the landmark *M v. H* [1999] decision, an intervener for the Metropolitan Community Church of Toronto in *Reference Re Same-Sex Marriage* [2003], and as counsel for Hislop in *Canada (AG) v. Hislop* [2007].

¹⁰ Unless otherwise stated, all references to Douglas Elliott in this section are from a phone interview by Michael McDonald, Victoria BC, June 5, 2019.

particularly critical of the government's insistence that no class action plaintiffs serve as members of the advisory council. He felt that the government should "have at least one – and preferably more than one – member of the advisory council who [were] part of the purge." Elliott also criticized the "complete lack of transparency" in the consultation process, suggesting that it bred suspicion amongst LGBTQ2+ communities. He observed that since the advisory council process was "ad hoc," the government could have designed a more inclusive and transparent process. These statements echo my earlier finding that the pre-apology consultation process lacked inclusivity and openness. Elliott did feel, however, that there were a number of good people on the advisory council, including Marie Laure Leclercq and Helen Kennedy.

Jeremy Dias¹¹ expressed similar concerns with the advisory council process.¹² He noted that many people "felt that they [were] left out of the consultation process," and that certain issues were not addressed. Dias mentioned that he was "disappointed" that the government handpicked participants, rather than created an application process, which would have allowed for greater diversity at the table. Instead of designing an expansive process from the outset, Dias suggested that the government simply attempted to fill in the gaps as it went. Dias mentioned that many visible minorities felt that their voices were not represented at the table. He also criticized the lack of transparency in the process and felt that the government should have corrected these issues. Dias' comments further evidence the limitations of the consultation process, and provide some suggestions for alternative paths that the government could have pursued.

¹¹ Jeremy Dias is the founder and former Executive Director of the Canadian Centre for Gender and Sexual Diversity.

¹² Unless otherwise stated, all references to Jeremy Dias in this section are from a phone interview by Michael McDonald, Victoria BC, July 4, 2019.

Regardless of concerns with the consultation process, both Elliott and Dias recognized the significance of the apology as a speech act. Elliott was impressed with both the “content of the apology and how it was delivered.” He felt that the apology was “substantial” and “clearly passionate,” and noted the significance of it being delivered by the prime minister in the House of Commons. Elliott was impressed with the apology’s mention of intersex persons given that the *Just Society Report* had referenced the challenges faced by these communities.¹³ He was also encouraged that the upper echelons of the Canadian defense staff were in attendance, and was impressed that all political parties embraced the apology. Dias stated that the apology was “amazing,” in that it was moving to many purge survivors, some of whom told him that it “saved their life.” While he felt some of the inclusive rhetoric of the apology was problematic – as real barriers for queer and trans communities persist – Dias was encouraged by the apology’s mention of two-spirit peoples. Elliott shared that in the private reception for class-action members that followed the apology, the prime minister met with each purge survivor and that the Chief of Defense Staff, General Jonathan Vance, issued an apology to those in attendance at the reception, which was a way of “welcoming [purge survivors] back to the Canadian armed forces.” We can thereby observe that the apology *itself* was clearly meaningful for some purge survivors. Additionally, as suggested by my previous findings, it is evident that the government used the apology as a means to re-integrate LGBTQ2+ persons within the state broadly, but also within the very security apparatus that had once oppressed them.

¹³ Egale Canada Human Rights Trust, “The Just Society Report: Grossly Indecent Confronting the Legacy of State Sponsored Discrimination Against Canada’s LGBTQ2SI Communities.” June 2016: <https://bit.ly/2D25JBB>.

Elliott recognized that the Liberal government has made substantial progress on LGBTQ2+ equality in the post-apology period, but that there have also been disappointments. He was frustrated with the time it took for the government to repeal the differential age of consent, as well as its decision not to ban conversion therapy.¹⁴ He was also critical of the government's lackluster progress on intersex issues, namely the repeal of section 268(3)(a) of the Criminal Code, which allows for the mutilation of an intersex child's genitals "for the benefit of the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function."¹⁵ Elliott observed that these surgeries should only take place when a child's health is at risk, not based on parental perceptions, given that many intersex persons have found these surgeries "psychologically scarring." Elliott also characterized the exclusion of bawdy house and vagrancy provisions from the original expungement legislation as "a minor disappointment," given that additional provisions can be added by regulation at a later time, something that is now possible with the passage of Bill C-75. Elliott's comments suggest significant government shortcomings in the post-apology period, many of which are chronicled earlier in this thesis. Nonetheless, he emphasized that he has not doubted the government's "sincerity" in correcting "historical wrongs." He also felt that "no government has done more on LGBT issues than [the current] government." While my thesis argues that post-apology shortcomings have undermined the apology's authenticity, Elliott does not appear to share this perspective.

In thinking about citizenship, Elliott emphasized the shared identity between LGBTQ2+ persons abroad, but noted that he conceives of himself as a Canadian citizen.

¹⁴ Following my interview with Mr. Elliott, the federal government indicated it is considering criminalizing the practice.

¹⁵ Criminal Code of Canada, RSC 1985, c C-46, s. 168(3)(a), <https://bit.ly/2Ik2p7n>.

Specifically, Elliott stated that he “[does not] personally favour being called a queer citizen,” noting the historical weaponization of the term “queer.” Instead, he said that he “prefer[s] to be part of a larger group,” believing “that [his] sexual orientation is incidental to [his] status as a Canadian citizen and not the other way around.” Based on the two categories discussed in the previous chapter, it seems likely that Elliott more closely aligns with the *Canadian citizenship* group over the *Queered citizenship* group, respectively. Elliott referenced the fact that LGBTQ2+ persons have historically existed as “second-class citizens” who have faced similar struggles to other oppressed groups. Elliott recognized the tradition of prime ministers apologizing to aggrieved groups, noting that apologies are “tremendously important,” as they help aggrieved persons “feel connected again to the ... country, to society, and to their identity as Canadians.” This statement clearly indicates the way in which apologies are intended to elevate second-class citizens to full citizens, and thereby secure their integration within the state.

LGBTQ2+ Scholars

Gary Kinsman¹⁶ traced the origins of the LGBTQ2+ apology to demands from purge survivors, the formation of the We Demand An Apology Network, and the release of Egale’s Just Society Report.¹⁷ Kinsman suggested that while he and Patrizia Gentile first called for an apology in 1998, few purge survivors were willing to “come out and speak about their experiences,” which changed in the years leading up to the 2017 apology. He observed that the creation of the We Demand An Apology Network, comprised of LGBTQ2+ researchers and purge survivors, increased pressure on the

¹⁶ Gary Kinsman is a Canadian sociologist and a distinguished scholar and a long-time activist in the LGBTQ2+ movement. He authored *The Canadian War on Queers: National Security as Sexual Regulation* (2010) with Patrizia Gentile and was a founder of the We Demand An Apology Network.

¹⁷ Unless otherwise stated, all references to Gary Kinsman in this section are from a phone interview by Michael McDonald, Victoria BC, June 6, 2019.

government. Kinsman indicated that the involvement of Egale in the pre-apology process, an organization that had not previously demanded an apology, increased pressure on the government. He observed that Egale's production of the *Just Society Report* was "rushed" and that, in some ways, it "superseded the We Demand An Apology Network." He suggested that Egale was not originally well connected with purge survivors, but that this changed as Douglas Elliott moved forward with the class action suit. Kinsman posited that Egale attempted to "construct itself" as a mediator "between the federal government ... [and] the LGBT community." This resulted in a shift from a grassroots "apology from below" to "an apology from above." Kinsman suggested that the Liberal government ultimately "came to the realization that an apology was not only something it had to do, but that ... [the apology was] something [that was in its] own interest." Kinsman's comments highlight that the activist origins of the apology were usurped by the prevailing LGBTQ2+ rights organization, Egale, and that the apology served government interests more than it did LGBTQ2+ communities.

Kinsman also raised numerous concerns about the government's advisory council process, echoing some of the objections raised by other interview participants. Specifically, he criticized the nondisclosure agreements that participants were required to sign, noting that anyone who was part of the council was "accountable to the government and to the [LGBTQ2] Secretariat," rather than to queer and trans communities. He also objected to the fact that the council was devoid of purge survivors, saying that the government felt that the class action placed these survivors in "a conflict of interest." However, Kinsman noted that by the same logic, Randy Boissonnault – the government's representative – was also in a conflict. Kinsman opted not to join the advisory council as

he would have been required to isolate himself from the We Demand Network and would not have been able to use any knowledge he gained in his scholarship. Indeed, he felt that “the advisory council was set up in such a way that there was no widespread, broad-based consultation with people in [LGBTQ2+] communities or movements.” Kinsman’s criticisms of the advisory council further evidence the lack of transparency and accountability inherent in the government’s consultation process.

Aaron Devor¹⁸ expressed his concern with the advisory council’s composition.¹⁹ After learning about the consultation process, he was surprised to find that there were no trans men represented on the council. Devor wrote to Randy Boissonnault’s office on September 26, 2017 to share his satisfaction that there were three trans people on the council, but also to explain that the absence of trans men was “a significant oversight.” According to Devor, Boissonnault explained that the advisory council was only meeting a few times and that there was no time left to fix the oversight. Given that the council was formed on September 18, 2017,²⁰ this exchange demonstrated the rushed nature of government consultations. In October 2017, Devor met with Boissonnault in person, and Boissonnault agreed to “[produce] a request for trans masculine input,” which Devor would distribute to his networks. The government then shared the same four-question survey it created to consult with LGBTQ2+ communities more broadly. Devor noted that due to his exchange with Boissonnault, “the trans masculine community did get consulted at some level,” even if only “at the last minute.” Given that trans masculine communities

¹⁸ Aaron Devor is a professor in sociology at the University of Victoria and the world’s only Chair in Transgender Studies.

¹⁹ Unless otherwise stated, all references to Aaron Devor in this section are from an interview by Michael McDonald, Victoria BC, June 14, 2019.

²⁰ Privy Council Office, “Backgrounder: New Advisory Council to help Government of Canada develop an apology for injustices faced by LGBTQ2 communities,” September 18, 2017, <https://bit.ly/2QG7cnz> (accessed 25 Nov 2018).

were only consulted after Devor reached out to Boissonnault, one is left wondering which other communities were left out of the consultation process entirely.

Kinsman felt that the apology itself was not inclusive of diverse queer and trans communities. He categorized the apology as “very white,” noting that there was no “critical analysis of settler colonialism” in the apology and that racism “was not adequately addressed.” Further, Kinsman suggested that the apology did not interrogate power differentials, leaving the “heterosexual hegemony” and the “gender binary system” untouched. He also criticized the prime minister’s use of the phrase “thinking of the day”²¹ to excuse the past actions of the state. For Kinsman, this phrase dismissed the fact that the systematic campaign against LGBTQ2+ persons was initiated by the “highest levels” of government, and thereby insidiously absolved the government from its complicity in the purge. These comments echo James and Stranger-Ross’ observation that the 1988 Japanese apology attempted to blame the harms of internment on “the crisis of war,” when in fact the internment era was characterized by “dozens, even hundreds, of choices to sustain ongoing violations of human and constitutional rights.”²² Similarly, the LGBTQ2+ purge campaigns involved repeated choices by high-level officials in the government and bureaucracy to sustain the violation of LGBTQ2+ communities’ human rights. Kinsman acknowledged that the apology had “emotional and symbolic significance” for those purged, but suggested that for some of these persons, the emotional relief they initially felt might have been temporary. Kinsman posited that the

²¹ Canada, *House of Commons Debates*, November 28, 2018 (Mr. Justin Trudeau, Prime Minister), <http://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-240/hansard#Int-9810667>.

²² Matt James, Jordan Stranger-Ross, and the Landscapes of Injustice Research Collective, “Chapter 14: Social Accountability after Political Apologies,” in *Landscapes of Injustice: A New Perspective on the Internment and Dispossession of Japanese Canadians*, ed. Jordan Stranger-Ross (Montreal; Kingston: McGill-Queens Press, Forthcoming), 554.

apology's use of the rhetoric of "diversity and inclusion," along with its appeal to patriotism served as a ploy to integrate LGBTQ2+ persons within a still heterosexist Canadian state. Kinsman's criticisms further suggest that the apology was used to co-opt queers within the national project, as discussed in Chapter Three.

Kinsman also disapproved of the government's handling of the post-apology period. He said that nearly two years after the 2017 apology, he is likely "much more critical" of it than he was when it was issued. Kinsman expressed frustration with the limited scope of the expungement legislation, in that it only included gross indecency, buggery, and anal intercourse provisions. He also denounced the onerous application process, which has resulted in only a few applications being submitted. While Kinsman and Tom Hooper convinced NDP MP Murray Rankin to support the inclusion of bawdy house and vagrancy provisions in Bill C-75 – which pressured Liberal MPs on the Justice Committee to do the same – the Committee "adamantly refused to include indecent acts" in its amendments. These observations echo my earlier findings that the government's policy approach in the post-apology period has fallen short of LGBTQ2+ activist demands. Kinsman also posited that the Liberal government has used its "support" of LGBTQ2+ rights to construct a "progressive veneer for [itself]," even while it has moved "in a less progressive direction around Indigenous struggles" and pipelines, among other things. This assertion aligns with my suggestion that the government feels it has 'done enough' to shore up LGBTQ2+ support before the October 2019 election.

While Devor also criticized the post-apology period for its slow progress, he was more generous concerning the government's intentions. He acknowledged that the apology has "symbolic value," but that "real change" must follow. He suggested that,

“the process of making the changes that need to flow from [the apology has been] slower and less complete than [he] would like.” Devor recognized the possibility that the government might use the symbolism of the apology to excuse itself from doing more for LGBTQ2+ communities. He therefore stressed the importance of keeping pressure on the government. Nonetheless, Devor highlighted two policies that the government has undertaken, which may have a positive affect on trans communities. Specifically, these are: (1) a government review of all areas where gender and sex information is requested, to determine if collection is necessary; and (2) Statistics Canada’s new policy to collect gender and sex information separately.²³ Devor stressed that these policies may reduce access barriers for trans communities and also provide both the government and researchers with accurate data on the number and locations of trans persons in Canada. He also suggested that the Liberal government’s brand of “being sensitive to injustice” might help activists win additional victories. Furthermore, whereas I suggested earlier that – given the secretive consultation process – we have lost the opportunity to tell LGBTQ2+ stories, Devor suggested that so long as purge survivors and criminalized LGBTQ2+ persons remain alive, the government could fund research to record and document their stories. While this effort may not be as expansive as the mediated consultation process would have been, it is certainly a possibility given the money earmarked for memorialization in the class action settlement. While I have asserted that the government is unwilling to undertake broad-based reforms to enhance LGBTQ2+ equality, instead preferring a piecemeal approach, Devor’s observations complicate this picture somewhat. Indeed, it is possible that the government is simply moving slowly

²³ Canada, Treasury Board of Canada Secretariat, “Modernizing the Government of Canada’s Sex and Gender Information Practices: summary report,” September 2018, <https://bit.ly/2S8YHzC>; Canada, Statistics Canada, “Gender and Sex Variables,” <https://bit.ly/2xy2bll> (accessed 3 July 2019).

with its reforms, and it is also likely that additional reforms are the result of community activism.

Both Kinsman and Devor problematized some of the terminology in my citizenship framework. Kinsman was particularly critical of the term “citizenship” and the idea of “inclusion,” suggesting that “citizenship is always based on inclusion into a nation-state,” which in Canada “is based on the marginalization and the destruction of . . . Indigenous peoples.” He went on to state that Egale has accepted the Canadian state as it is, and has sought inclusion within it. He did acknowledge that my proposed concept of *Queered citizenship* has “a transformative moment to it,” but that the notion of “citizenship” still “includes some people and excludes other[s].” Interestingly, while Kinsman may object to my categorization of citizenship, his problematizing of both the Canadian state and Egale’s acceptance of the state, further evidences my earlier assertion that Kinsman more closely aligns with the *Queered citizenship* faction. Devor, meanwhile, stated his belief that “anybody who lives under a particular government needs to have rights and . . . recognition [from] that government,” but that this does not mean one has to “cheer on the government.” For his part, he troubled the term “Queer” as used in my citizenship categorization, emphasizing that not all trans people see themselves as queer. I fully accept Devor’s assertion; semantically, I do not intend for the term *Queered citizenship* to be reductive in any way, and I understand it to be expansive and fully inclusive of all within LGBTQ2+ communities. Indeed, it could just as easily be termed *Queered/Trans citizenship*, and should one wish to take up my categorization in further scholarship, they are welcome to term it as such. While I recognize the

importance of problematizing terminology, I still see utility in my citizenship characterizations as described.

Conclusion

The interview component of this research project has yielded interesting insights that have both strengthened and challenged my preliminary conclusions. Across all participant groups, we see a consensus that the government's consultation process lacked transparency and resulted in the exclusion of LGBTQ2+ persons. Certainly a public inquiry or Egale's proposed mediation process would have enhanced the efficacy of the consultation process, and possibly improved the robustness of the apology. Nonetheless, we must recognize that the apology had significance and meaning to purge survivors and broader LGBTQ2+ communities, with several interviewees noting that they personally found the apology moving. With regard to the post-apology policy process, all participants expressed their disappointment to varying degrees. While Sheri Benson, Randall Garrison, and Gary Kinsman were very critical, Elliott and Devor were more generous with regard to the government's intentions, suggesting that so long as activists continue to advocate, further victories will be achieved. My citizenship framework was challenged somewhat through the problematizing of terminology, but I did observe that Elliott and Kinsman occupy opposite ends of the Canadian-Queered citizenship continuum. The interview findings have also provided us with additional information about the origins of the apology, the consultation process, and further reforms which are urgently required in order to ensure expanded LGBTQ2+ equality.

Chapter 5: Conclusions

Research Intentions

I embarked on this research project out of a desire to better understand both how the landmark November 2017 apology to LGBTQ2+ communities came about and how the apology has served to alter relationships between these communities and the Canadian government. I theorized that to probe the origins, complexities, and implications of the apology, it was necessary to undertake an analysis of the affective and effective outcomes of the apology. By affective outcomes, I meant the feelings, emotions, and inner states of LGBTQ2+ communities in relation to the apology. Specifically, I was interested in the reactions of LGBTQ2+ rights organizations, queer scholars, and those persons directly affected by state-sponsored homophobia and transphobia. By effective outcomes, I meant the policies pursued by the government in the post-apology period and the ways in which the apology has been taken up by LGBTQ2+ activists to demand further reform.

This thesis has thus traced the origins of the apology beginning with an overview of historical oppression, early queer resistance and activism, the direct demands for apology as outlined by the We Demand An Apology Network and Egale's *Just Society Report*, as well as the government-led consultation process. Events that occurred before the apology have been categorized as belonging to the pre-apology period. This thesis then turned to an analysis of the apology's authenticity through the employment of political scientist Matt James' criteria, a consideration of LGBTQ2+ reactions to the apology *itself*, an analysis of the substantive government policy undertakings and failures after the apology, and an interrogation of the apology's implications for the citizenship of

LGBTQ2+ persons. Finally, this thesis presented the findings of the interviews I conducted with apology actors. Three participant groups were included: elected representatives, representatives of LGBTQ2+ organizations, and academics with a background in LGBTQ2+ equality/history. These interviews were designed as an opportunity for participants to *talk back* to preliminary research findings.

This chapter will summarize the main research conclusions of this project and will highlight some opportunities for future research. It will begin by presenting my research findings in both the pre-apology and post-apology period, and consider how these findings interact with my preliminary hypothesis. It will then examine the contributions of this case study to the larger field of political apologies and LGBTQ2+ activism, and provide some reflections on future research opportunities.

Research Conclusions

This thesis has been driven by two primary questions. These are: how does the 2017 apology function to alter the relationship between LGBTQ2+ communities and the government? And, what are the associated implications for LGBTQ2+ citizenship within Canada? By invoking Melissa Nobles' membership theory of apologies, I am interested in how the apology has been used to renegotiate this relationship in tangible ways, through such things as substantive policy changes or associated redress actions, and also how these actions operate to alter the membership or citizenship of LGBTQ2+ communities. I recognize that my findings are necessarily speculative as there may be other explanations for government policy action or inaction. Nonetheless, my findings demonstrate a pattern of government (in)action, which suggests that while the

government has worked to integrate queers within the state, it has done so in largely restrictive ways that keep existing power dynamics intact.

At the outset, I also proposed several sub-questions: which LGBTQ2+ activists and/or organizations are most responsible for precipitating the 2017 apology? Were some queer or trans voices excluded or relegated during the apology's consultation process in favour of more mainstream voices? Is the apology authentic in light of ongoing transphobia, homophobia, and systemic inequity? And, does the 2017 apology make the government responsible for eradicating legal homophobia and heterosexism, which persist in law and policy? In considering these primary and sub-questions, an additional sub-question appeared: how did the 2017 apology serve to illustrate intra-community differences? Indeed, examining LGBTQ2+ reactions and policy changes in the post-apology period, led me to observe an internal schism around the type of citizenship desired by LGBTQ2+ communities. I hope it is clear how my conclusions answer, or at least, address these research questions.

We begin with the research conclusions related to the pre-apology period. While Gary Kinsman and Patrizia Gentile first called for an apology in 1998, it was not issued until 2017. Somewhat surprisingly, after the Kinsman and Gentile demand for apology, the next notable request for an apology did not arise until June 2016, when both the We Demand An Apology Network and Egale demanded one. This suggests that the original 1998 call for an apology was not widely taken up by LGBTQ2+ communities, possibly due to the fact that the queer movement was still focused on attaining spousal benefits and marriage equality. Interestingly, Egale's June 2016 *Just Society Report* was produced by the "Klippert Committee," which was only struck in February 2016, after the

government signalled its intent to pardon Everett Klippert. As such, Suzanne Lenon observes that while the *Just Society Report* was instrumental in eliciting an apology, it did not incite the government to action. This fact suggests that Egale – and indeed the We Demand Network – saw an opportunity to seize on the political will of a new government that had signalled its desire to ‘right’ historical wrongs. We can thereby conclude that LGBTQ2+ redress has always been on the Liberal government’s agenda, and that despite the role that the We Demand Network and the *Just Society Report* played in the process, the government maintained control of the process throughout. Doing so allowed the government to proffer a restrictive model of renegotiated citizenship, rather than a more expansive model, which could have transformed existing power dynamics. On the contrary, had an apology arisen out of titanic process of LGBTQ2+ activism – which Kinsman understood as an “apology from below” – queer and trans communities would have been better positioned to set the agenda, and hold the government to account throughout both the pre-apology and post-apology period.

The government finally moved to undertake an apology in September 2017, but what followed was a rushed consultation process in the form of an eleven member advisory council. The entire process was shrouded in secrecy: representatives were required to sign non-disclosure agreements and little is known about who was consulted by the council. Indeed, only in the rare instances of external organizations making their submissions public, such as in the case of the CCGSD or the We Demand Network’s submissions, do we have consultation records. Further, while the LGBTQ2 Secretariat distributed a four-question consultative survey, there is no record as to whom this was distributed. The government also ignored the requests of the CCGSD to provide public

information on the steps taken to draft the apology, offer a consultation invite to affected groups, establish an online mechanism to provide feedback, share a list of all consulted stakeholders, and to allow stakeholders to provide feedback on the draft of an apology. In the interviews I conducted, all six participants expressed frustration with the government's consultation process, noting that it lacked transparency and accountability. Several participants suggested that the process was exclusive, and Randall Garrison in particular observed that someone directly involved with the process was unhappy with its direction. We can therefore conclude that the lack of information available on the consultation process, and the secrecy under which it was conducted, undermines the apology *itself*.

We do not know with whom the council consulted, but we do know that the process was not nearly as expansive as it could have been. Based on the fact that trans masculine communities were only sent the four-question survey after Aaron Devor reached out to Boissonnault's office, we can also conclude that the consultation process was relatively *ad hoc*. Throughout the advisory council process, the government was preoccupied with maintaining control of the apology narrative and apologizing on an accelerated timeline. This suggests that the government was more concerned with hastily issuing an apology than it was in consulting with LGBTQ2+ stakeholders. Such an approach evidences the political motivations of the government for issuing the apology. By delivering a quick apology, the government could close the chapter and move on to its next priority.

Had the government pursued a public process, modelled after the Truth and Reconciliation Commission, the apology's reconciliatory potential would have been

enhanced. Such a process would have provided an opportunity for diverse LGBTQ2+ persons to share their stories as part of the public record. Moreover, this testimony would have had the ameliorative potential of exposing and subverting ongoing oppression, systemic discrimination, and unequal power dynamics. Indeed, it would have brought the private harms experienced by queer people, and particularly those of two-spirit, trans, non-binary, and queer people of colour into the public realm. Instead of working to disrupt heterosexual and cisgender hegemonies, combat racism, and decolonize society, the closed consultation process continued to relegate LGBTQ2+ persons to the private sphere, while maintaining the public realm for straight, cisgender, white, settlers.

Instead of allowing the government to be playwright, a public consultation process would have provided trans and queer communities with the opportunity to write the script. Notably, Egale acquiesced – and indeed embraced – the government’s advisory council, despite the fact that it ran counter to the approach it had initially proposed in the *Just Society Report*. Egale’s deference to the government process highlights its willingness to accept *any* apology that sought to integrate and accept queers within the state. The primary conclusion we take from the pre-apology period is that the government-led consultation process, along with Egale’s acceptance of it, are constitutive of what Kinsman termed “the apology from above.”

We turn now to examine the conclusions from the post-apology period. Using Matt James’ criteria, we determined that the 2017 apology is best classified as a robust quasi-apology, falling just short of full authenticity, due to the ongoing presence of legal homophobia. To reach this conclusion, we drew on Lightfoot’s perspective that apologies cannot be judged as speech acts alone, and instead must be assessed in light of the role

they play to restore just relationships between apologizers and apology groups. Further, given MacLachlan's observations about apologies being used to expose patterns of oppression, generate national conversations, and hold the government accountable, we recognized that apologies are living entities whose meanings shift based on the substantive actions that follow. To heed both Lightfoot and MacLachlan's calls, I embarked on an analysis of both LGBTQ2+ reactions to the apology and substantive policy reforms in the post-apology period.

My consideration of LGBTQ2+ reactions to the apology observed that organizations such as Egale and Pride At Work Canada were positively receptive of the apology and indeed hopeful of its ameliorative potential. Scholarly criticisms from Gary Kinsman and Stephen Maynard, however, raise significant concerns about the apology's homonationalist effects to co-opt queers within the colonial national project. The extension of rights to LGBTQ2+ communities secures queer inclusion in the state, thereby demobilizing queer communities, and allowing the state to continue its subjugation and oppression of racialized others. Given these concerns, we observe that the apology, in its failure to unsettle systems of oppression and established power dynamics, served the interests of the state over the interests of LGBTQ2+ communities. Maynard, Smith, and Lenon highlight Egale's complicity in such a homonationalist apology, due to the *Just Society's Report's* invocation of partisan and nationalist discourse, as well as its failure to properly interrogate oppressive power dynamics. In considering the reactions of an array of LGBTQ2+ persons, ranging from former MP Svend Robinson to those directly affected by the purge, we observed that the apology has emotional meaning and is seen as the beginning of redress, rather than the end of it. For

these individuals, the apology must be substantiated by concrete action in order to prevent it from becoming “just words.” In the interviews conducted, several participants acknowledged that they found the apology personally moving, and witnessed the significance it had for purge survivors. Therefore, we can conclude that the speech act of apology had meaning for many LGBTQ2+ persons.

In analyzing the substantive policy actions that followed, we observed well-intentioned efforts on the part of the government to enact reforms. These included the codification of gender identity and expression as protected grounds in the *Canada Human Rights Act*, and its repeal of antiquated and unconstitutional Criminal Code provisions pertaining to anal sex. However, government efforts frequently fell short of queer demands, thus evidencing the restrictive model of renegotiated citizenship the government has offered following the apology. These failures are evidenced by the government’s reluctance to repeal bawdy house and vagrancy provisions – something Ottawa only did after queer activists intervened in the Justice Committee hearing – and by its continued failure to repeal gross indecency and obscenity provisions. Additionally, the failed consultation process around Bill C-66 – the expungement legislation – has created an onerous application process, resulting in only seven submitted applications. Significant failures also include government inaction to end provocation defense, mitigate the over-criminalization of HIV non-disclosure, end conversion therapy, and fully repeal the MSM blood ban. From these policy directions we draw two conclusions: (1) the government is unwilling to undertake broad-based reforms to enhance LGBTQ2+ equality, possibly because it believes it has *done enough* to ensure the political support of

LGBTQ2+ communities; and (2) the continued political reality of legal homophobia and the continuance of a heterosexist society is not easily overcome by apology.

The interviews shed additional light on the post-apology period. In particular, while all participants expressed disappointment with government slowness and inaction in this period, some were more forgiving. Indeed, while I have asserted that the government is unwilling to proceed with broad-based reforms demanded by LGBTQ2+ activists, Aaron Devor suggested that additional reforms are likely to occur as long as activists continue to push for them. Further, Douglas Elliott observed that he has never doubted the sincerity of the government to enact reforms. These assertions complicate my conclusions somewhat. I will concede that despite its failures, the Liberal government has been quite active on LGBTQ2+ issues, and that its policies have enhanced LGBTQ2+ equality in some regards. Further, I acknowledge that it is possible the Liberal government is merely moving slowly with additional reforms. Nonetheless, I would assert that forcing activists to continue fighting for broad-based reform evidences the restrictive model of renegotiated citizenship the government has offered to LGBTQ2+ persons. Indeed, the government's proposed citizenship model seeks to integrate queers within the state as it currently exists, without reorienting state goals or power structures.

One of the principal research conclusions of this thesis arises out of my consideration of the apology's effects on LGBTQ2+ citizenship within Canada. The analysis of the pre-apology and post-apology periods provided a window into intra-community divisions, which allowed us to witness the existence of two citizenship factions. The first faction demands inclusion within the Canadian state and thereby invokes claims to join equally in existing Canadian citizenship *in spite* of queerness.

Egale is the primary constituent of this group. The second faction rejects the homonationalist project, instead making claims to an anti-oppressive and anti-racist *Queered citizenship* that demands significant change in terms of how citizenship in Canada is conceptualized and practiced. We see evidence of this strand in Kinsman and Maynard's scholarly work. Therefore, while both citizenship groups see a place for government acknowledgment of harms through apology, the type of apology demanded by each differs. The *Canadian citizenship* faction desired an apology that integrated LGBTQ2+ persons within the state, and thus, they were satisfied with the apology delivered. The *Queered citizenship* faction desired an intersectional apology that centered activist concerns and subverted oppressive power dynamics; they were therefore disappointed with the apology proffered by the government.

At the outset of this project, I hypothesized that prevailing LGBTQ2+ organizations seek inclusion in the state and thus have a favourable view of the 2017 apology, whereas smaller and more diverse LGBTQ2+ groups desire a re-oriented state, and thereby raise greater objection to the apology. The discovery of a schism in the way LGBTQ2+ communities view citizenship offered an interesting way to probe my hypothesis. Indeed, we see that the prevailing LGBTQ2+ rights organization in the country – Egale Canada – has a positive perception of the apology, evidenced in part by its granting of the *Egale Leadership Award* to Prime Minister Trudeau. In light of what Miriam Smith terms as legal homophobia, and given substantive policy failures in the post-apology period, one is compelled to ask why? Given that Stephen Maynard, Miriam Smith, and Suzanne Lenon observe that the *Just Society Report* appealed to “nationalist” and “partisan discourse,” and mistook intersectionality for diversity, the rationale appears

clear. Egale is satisfied with the apology because the apology gave it exactly what it asked for: the opportunity for LGBTQ2+ persons to be integrated within the Canadian state. Further, Egale received much of the credit and praise for eliciting the apology and thereby its position as the natural mediator between queers and the government has been emboldened. Egale is therefore clearly affiliated with the *Canadian citizenship* strand and, as such, is positively receptive of the apology.

My initial hypothesis is complicated somewhat when considering the second facet: that smaller LGBTQ2+ groups representing more marginalized communities, would raise greater objection. While it may be the case that these groups are indeed more critical of the apology, this thesis did not find conclusive evidence of this fact. This is primarily because these groups have few publicly accessible bulletins on the apology. As such, given time and financial limitations, I was unable to effectively probe these organizations through a primary research process. My research did, however, find evidence of a vocal opposition to the 2017 apology including from Gary Kinsman, one of the founders of the grassroots We Demand an Apology Network. Both Kinsman and Maynard expressed criticism of the apology based on their concerns that the apology serves the homonationalist motivations of the government, more so than it does LGBTQ2+ communities. Specifically, both worry about the way that the apology makes queers into patriotic citizens and binds them to liberal hegemony. I claim, therefore, that Kinsman and Maynard are best situated in the *Queered citizenship* faction. While it is possible – and indeed likely – that smaller LGBTQ2+ organizations, comprised of more marginalized communities, also subscribe to this *Queered citizenship* approach, further research is required.

While the apology has the potential to help renegotiate the relationship between the government and LGBTQ2+ communities, it appears that any renegotiation will take place on the government's terms, and LGBTQ2+ activists will be forced to continue fighting to have their concerns heard. Moreover, these activists will need to commit themselves to do this work within an anti-oppressive framework that rejects homonationalist appeals. To be clear, I do not believe that the 2017 apology is inherently 'bad' or that the work of Egale in the *Just Society Report* should be condemned. It is clear that the report compelled government action and that, however flawed, the report attempted to embrace intersectionality, even if what it actually did was capture diversity rather than expose and challenge power dynamics. It is also apparent that the apology had meaning for many LGBTQ2+ persons and that it serves as an important rhetorical tool for queer and trans actors seeking further equality advancements. Indeed, Matt James and Jordan Stranger-Ross theorize that apologies are "impermanent" entities, which "[help] to fuel, focus, and deepen subsequent activism and inquiry."¹ I do, however, believe that the government's failure to embrace Egale's proposed mediation approach – modelled after the Truth and Reconciliation Commission – was detrimental to diverse LGBTQ2+ voices being heard and also to the subversion of oppressive power dynamics. Further, I see the government's reluctance to embrace broad-based reform of anti-queer policies as contradictory to the essence of the apology, and evidentiary of its political motivations for issuing the apology. I also wholeheartedly agree with the *Queered citizenship* strand's rejection of homonationalism, and believe that LGBTQ2+ activism must take place

¹ Matt James, Jordan Stranger-Ross, and the Landscapes of Injustice Research Collective, "Impermanent Apologies: On the Dynamics of Timing and Public Knowledge in Political Apology," *Human Rights Review* 19, no.3 (2018): 304, <https://link.springer.com/content/pdf/10.1007/s12142-018-0491-9.pdf>.

within an anti-oppressive framework, lest it become a tool for the very oppressive structures it seeks to subvert.

Research Contributions and Future Directions

As mentioned in my introductory chapter, my intent was to ensure that this thesis is as inclusive and representative of as many queer and trans persons as possible. While I have endeavoured to do this throughout, I recognize that this project is not able to capture the full diversity of LGBTQ2+ communities. I believe that a more extensive interview process, particularly with two-spirit peoples, trans and non-binary persons, and queer people of colour, would have enhanced the inclusivity and representativeness of this research project. However, I was limited by time, budget, and the constraints of an M.A. thesis. Regardless, I believe that this thesis is a valuable addition to the literature on political apologies, Canadian citizenship, and LGBTQ2+ activism.

This case study has provided an account of the origins and implications of the 2017 LGBTQ2+ apology. As such, it is hoped that this thesis can serve as a useful addition to the growing body of literature on political apologies, either for those who wish to undertake further research of the LGBTQ2+ apology or other apologies. Further, the uncovering of a schism in how LGBTQ2+ communities view citizenship offers a valuable contribution to scholarship on LGBTQ2+ activism. There is certainly substantial room for future research on the 2017 LGBTQ2+ apology. It would be worthwhile to conduct interviews with representatives of smaller LGBTQ2+ community organizations to gain a better understanding of their reactions to the apology. Further, it would be valuable to conduct interviews with survivors of the purge to contextualize their reactions both at the time of apology and in the post-apology period that followed. Such research

would help to highlight the apology's effects on those LGBTQ2+ persons directly affected by government oppression and criminalization. It is also essential that future research engage with additional policy developments to analyze the apology's ongoing substantive effects for LGBTQ2+ equality in Canada and to contextualize how LGBTQ2+ actors might further use the 2017 apology in their activism.

Throughout this project, it has become clear to me that LGBTQ2+ communities have long resisted state regulation of sexuality and gender identity. Our community elders who undertook protest and resistance in the face of systemic discrimination have inspired me. The stories of purge survivors have called me to reflect on what it means to be a gay man in 2019. I am grateful to those who have fought the battles of yesterday so that I can live openly today. And yet, transphobia and homophobia persist in society today, sometimes overtly, but often in more subtle ways. The 2017 government apology to LGBTQ2+ communities represented a clear landmark in queer history. It is a moment that we should appreciate, but it is also an event that we should harness in continued battles against hatred, discrimination, and oppression. Indeed, as evidenced by the *Queered citizenship* strand, LGBTQ2+ communities must rededicate themselves to subvert the unequal power structures that continue to regulate and police the lives of many, namely Indigenous peoples, racialized others, trans persons, and gender non-conforming people. Only through intersectional, anti-oppressive, and anti-racist approaches can we hope to reconstitute a society that is truly equal and accepting. It is my sincere hope that LGBTQ2+ communities are willing to take up this challenge.

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Appendix A – Apology Transcript

Mr. Speaker, one of the greatest choices a person can make in their life is the choice to serve their fellow citizens. Maybe it is in government, in the military, or in a police force. In whatever capacity one serves, dedicating your life to making Canada, and indeed the world, a better place is a calling of the highest order. Imagine, if you will, being told that the very country you had willingly laid down your life to defend does not want you, does not accept you, sees you as defective, sees you as a threat to our national security, not because you cannot do the job or because you lack patriotism or courage, but because of who you are as a person, and because of who your sexual partners are. Imagine being subjected to laws, policies, and hiring practices that label you as “different”, as “less than”. Imagine having to fight over and over again for the basic rights that your peers enjoy. Imagine being criminalized for who you are.

This is the truth for many of the Canadians present in the gallery today, and many more listening across the country. This is the devastating story of people who were branded as criminals by the government, people who lost their livelihoods, and in some cases their lives. These are not the distant practices of governments long forgotten. This happened systematically in Canada, with a timeline more recent than any of us would like to admit.

Today we acknowledge an often overlooked part of Canada's history. Today we finally talk about Canada's role in the systemic oppression, criminalization, and violence against the lesbian, gay, bisexual, transgender, queer, and two-spirit communities. It is my hope that in talking about these injustices, vowing to never repeat them and acting to right these wrongs, we can begin to heal.

[Translation]

Today, we acknowledge an often overlooked part of Canada's history. Today, we finally talk about Canada's role in the systemic oppression, criminalization, and violence against the lesbian, gay, bisexual, transgender, queer, and two-spirit communities. It is my hope that in talking about these injustices, vowing to never repeat them, and acting to right these wrongs, we can begin to heal.

Since arriving on these shores, settlers to this land brought with them foreign standards of right and wrong, of acceptable and unacceptable behaviour, and of suitable and unsuitable partnerships. They brought rigid gender norms, norms that manifested in homophobia and transphobia, norms that saw the near-destruction of indigenous LGBTQ and two-spirit identities. People who were once revered for their identities found themselves shamed for who they were. They were rejected and left vulnerable to violence.

[English]

Discrimination against LGBTQ2 communities was quickly codified in criminal offences like buggery, gross indecency, and bawdy house provisions. Bath houses 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. Those arrested and charged were purposefully and vindictively shamed. Their names appeared in newspapers in order to humiliate them and their families. Lives were destroyed, and tragically, lives were lost.

[*Translation*]

This did not end in 1969 with the partial decriminalization of homosexual sex. Up until 1988, a twenty-year-old gay man who had sex with another man could still be convicted of a crime.

The imprisonment and criminalization of LGBTQ2 individuals was not the end of it. Other methods of oppression have been rampant throughout our society for generations. Homophobia during the time of the AIDS crisis generated hysteria and propagated fear of gay men.

Books and magazines were stopped at the border under the guise of obscenity offences and customs regulations, the content, words, and images deemed unacceptable. LGBTQ2 families have had to fight their own government for the right to benefits and the freedom to marry, often at great personal cost.

[*English*]

Over our history, laws and policies enacted by the government led to the legitimization of much more than inequality. They legitimized hatred and violence and brought shame to those targeted.

While we may view modern Canada as a forward-thinking, progressive nation, we cannot forget our past. The state orchestrated a culture of stigma and fear around LGBTQ2 communities and in doing so destroyed people's lives.

A purge that lasted decades will forever remain a tragic act of discrimination, suffered by Canadian citizens at the hands of their own government. From the 1950s to the early 1990s, the Government of Canada exercised its authority in a cruel and unjust manner, undertaking a campaign of oppression against members and suspected members of the LGBTQ2 community. The goal was to identify these workers throughout the public service, including the foreign service, the military, and the RCMP, and persecute them. The thinking of the day was that all non-heterosexual Canadians would automatically be at increased risk of blackmail by our adversaries due to what was called “character weakness”. This thinking was prejudiced and flawed.

Sadly, what resulted was nothing short of a witch hunt. The public service, the military, and the RCMP spied on their own people inside and outside of workplaces. During this time, the federal government even dedicated funding to an absurd device known as the “fruit machine”, a failed technology that was supposed to measure homosexual attraction. Canadians were monitored for anything that could be construed as homosexual behaviour, with community groups, bars, parks, and even people's homes under constant watch.

When the government felt that enough evidence had accumulated, some suspects were taken to secret locations in the dark of night to be interrogated. They were asked invasive questions about their relationships and sexual preferences. Hooked up to polygraph

machines, these law-abiding public servants had the most intimate details of their lives cut open.

Women and men were abused by their superiors and asked demeaning, probing questions about their sex lives. Some were sexually assaulted.

Those who admitted they were gay were fired, discharged, or intimidated into resignation. They lost their dignity and their careers, and had their dreams and indeed their lives shattered.

[Translation]

Many were blackmailed to report their peers, forced to turn against their friends and colleagues. Some swore they would end their relationships if they could keep their jobs. Pushed deeper into the closet, they lost partners, friends, and dignity. Those who did not lose their jobs were demoted, had security clearances revoked, and were passed over for promotions.

[English]

Under the harsh glare of the spotlight, people were forced to make an impossible choice: their career or their identity. The very thing that Canadian officials feared, blackmail of LGBTQ2 employees, was happening. However, it was not at the hands of our adversaries. It was at the hands of our own government. The number one job of any government is to keep its citizens safe, and on this we have failed LGBTQ2 communities and individuals time and time again.

It is with shame, sorrow, and deep regret for the things we have done that I stand here today and say we were wrong. We apologize. I am sorry. We are sorry.

For state-sponsored systemic oppression and rejection, we are sorry. For suppressing two-spirit indigenous values and beliefs, we are sorry. For abusing the power of the law and making criminals of citizens, we are sorry.

[Translation]

For government censorship and constant attempts to undermine your community-building, for denying you equality and forcing you to constantly fight for this equality, often at great cost, for forcing you to live closeted lives, for rendering you invisible, and for making you feel ashamed, we are deeply sorry. We were so very wrong.

[English]

To all the LGBTQ2 people across the country, whom we have harmed in countless ways, we are sorry.

To those who were left broken by a prejudiced system, and to those who took their own lives, we have failed you.

For stripping you of your dignity, for robbing you of your potential, for treating you as though you were dangerous, indecent, and flawed, we are sorry.

To the victims of the purge who were surveilled, interrogated, and abused, who were forced to turn on their friends and colleagues, who lost wages, lost health, and lost loved ones, we betrayed you. We are so sorry.

To those who were fired, to those who resigned, to those who stayed at a great personal and professional cost, to those who wanted to serve but never got the chance because of

who you are, you should have been permitted to serve your country, but you were stripped of that option. We are sorry; we were wrong.

Indeed, all Canadians missed out on important contributions you could have and would have made to our society. You were not bad soldiers, sailors, or airmen and airwomen. You were not predators. You were not criminals. You served your country with integrity and courage. You are professionals. You are patriots. Above all, you are innocent. For all your suffering, you deserve justice and you deserve peace.

It is our collective shame that you were so mistreated. It is our collective shame that this apology took so long. Many who suffered are no longer alive to hear these words, and for that, we are truly sorry.

To the partners, families, and friends of the people we harmed, for upending your lives and for causing you such irreparable pain and grief, we are sorry.

[Translation]

As we apologize for our painful mistakes, we must also say thank you to those who spoke up.

To those who pushed back when it was unpopular and even dangerous to do so, to people from across the country, from all walks of life, and of all political stripes, we stand here today in awe of your courage, and we thank you.

[English]

We also thank members of the We Demand an Apology Network, our LGBTQ2 apology advisory council, and the Just Society Committee of Egale, as well as the individuals who have long advocated for this overdue apology.

[Translation]

Through them, we have understood that we cannot simply paint over this part of our history. To erase this dark chapter would be a disservice to the community and to all Canadians.

We will work with the academic community and stakeholders to ensure that this history is known and publicly accessible.

[English]

We must remember, and we will remember. We will honour and memorialize the legacy of those who fought before us in the face of unbearable hatred and danger.

It is my hope that we will look back on today as a turning point, but there is still much more work to do ahead of us. Discrimination against LGBTQ2 communities is not a moment in time, but an ongoing centuries-old campaign. We want to be a partner and ally to LGBTQ2 Canadians in the years going forward. There are still real struggles facing these communities, including for those who are intersex, queer people of colour, and others who suffer from intersectional discrimination.

Transgender Canadians are subjected to discrimination, violence, and aggression at alarming rates. In fact, trans people did not even have explicit protection under federal human rights legislation until this year.

[Translation]

Mental health issues and suicides are higher among LGBTQ2 youth as a result of discrimination and harassment, and the homelessness rates among these young people is staggering.

There is still work to do on blood and organ donation, and the over-criminalization of HIV non-disclosure. The government needs to continue working with our partners to improve policies and programs.

That said, there are important and significant changes coming. The repeal of section 159 of the Criminal Code is working its way through the House of Commons.

[English]

I am proud to say that earlier today in the House we tabled the expungement of historically unjust convictions act. This will mean that Canadians previously convicted of consensual sexual activity with same sex partners will have their criminal records permanently destroyed.

Further, I am pleased to announce that over the course of the weekend we reached an agreement in principle with those involved in the class action lawsuit for actions related to the purge.

Never again will Canada's government be the source of so much pain for members of the LGBTQ2 communities. We promise to consult and work with individuals and communities to right these wrongs and begin to rebuild trust. We will ensure there are systems in place so these kinds of hateful practices are a thing of the past. Discrimination and oppression of LGBTQ2 Canadians will not be tolerated anymore.

[Translation]

With dialogue and with understanding, we will move forward together, but we cannot do it alone. The changing of hearts and minds is a collective effort. We need to work together, across jurisdictions, with indigenous peoples and LGBTQ2 communities, to make the crucial progress that LGBTQ2 Canadians deserve.

[English]

Canada's history is far from perfect, but we believe in acknowledging and righting past wrongs so we can learn from them. For all our differences, for all our diversity, we can find love and support in our common humanity.

We are Canadians and we want the very best for each other, regardless of our sexual orientation or our gender identity or expression. We will support one another in our fight for equality, and Canada will stand tall on the international stage as we proudly advocate for equal rights for LGBTQ2 communities around the world.

To the kids who are listening at home and who fear rejection because of their sexual orientation or gender identity and expression, and to those who are nervous and scared but also excited about what their future might hold, we are all worthy of love and deserving of respect.

Whether you discover your truth at six, 16, or at 60, who you are is valid.

To members of the LGBTQ2 communities, young and old, here in Canada and around the world, you are loved and we support you.

[Translation]

Canada gets a little bit stronger every day that we choose to embrace, and to celebrate, who we are in all our uniqueness.

We are a diverse nation. We are enriched by the lives, experiences, and contributions of people who are gay, lesbian, bisexual, transgender, queer, and two-spirit.

[English]

To the trailblazers who have lived and struggled and to those who have fought so hard to get us to this place, thank you for your courage and thank you for lending your voices. I hope and I know that you look back on all you have done with pride. It is because of your courage that we are here today together reminding ourselves and each other that we can and must do better.

For the oppression of the lesbian, gay, bisexual, transgender, queer, and two-spirit communities, we apologize. On behalf of the government, Parliament, and the people of Canada, we were wrong. We are sorry. We will never let this happen again.

Appendix B – Interview Questions

1. I wonder if you could start by telling me a little about yourself, your work, your involvement or relation to the LGBTQ2+ apology, and if you are comfortable, whether or not you identify as a member of the LGBTQ2+ community?
2. It seemed to me that the apology was about extending inclusion in particular ways to particular types of people. I found it helpful to think about this in terms of demands for citizenship. I see two groups that emerged: one that demanded Canadian citizenship *in spite* of queerness, and another that advocated for a *Queer citizenship* within Canada. What are your thoughts on these categories and on citizenship and queerness more broadly?
3. When you think about the idea of citizenship, how do you see the apology as contributing to the inclusion or renegotiation of LGBTQ2+ citizenship?
4. While the apology was first called for in 1998, it was only issued in 2017. Could you share your thoughts on the lobbying process in the lead up to the apology? I'm also wondering what you think the government's motivations for issuing the apology were?
5. In the Just Society Report, Egale had asked for a year-long consultation process headed by a mediator, but the government did not heed these calls. Instead, a short consultation process took place through an Advisory Council in advance of the apology. Participants on this Council were also required to sign non-disclosure agreements. Do you believe that this consultation process was inclusive of diverse queer and trans communities? Were there any voices that you believe were left out of this consultation process? Do you believe that broader consultations on both the apology and associated legislation should have occurred?
6. Do you believe that the apology was inclusive of Trans and non-binary communities? In what ways was it or was it not inclusive?
7. Thinking about the apology itself, do you see it as a robust apology to both those LGBTQ2+ persons purged from the military and civil service, as well as to broader queer and trans communities who have experienced state-discrimination and legal homophobia?
8. What was your reaction to the apology when it was issued and what is your reaction today? Has the post-apology policy process changed your perspective on the apology?

9. Are you at all concerned that the apology could be used by the Canadian government as a rhetorical tool to demonstrate Canada's progress on LGBTQ2+ equality relative to other countries' progress? Do you worry that the apology could be used to minimize the concerns of trans communities and/or queer people of colour in Canada?

10. What are your thoughts on the government's post-apology approach to policy changes? Have you found this post-apology process sufficient to mitigate legal homophobia and heterosexism? Are there any policy changes that you believe are necessary to achieve queer and trans equality?

11. Do you have any further comments about the 2017 apology to LGBTQ2+ communities in Canada, or any associated policies of redress that you wish to share?

Appendix C – Recruitment Email

Hello [name of individual],

My name is Michael McDonald and I am an M.A. student in the Department of Political Science at the University of Victoria. I am conducting research for my Master's thesis which is entitled: "When the Government Apologizes: Understanding the Origins and Implications of the Apology to LGBTQ2+ Communities in Canada." Dr. Matt James in the Department of Political Science is supervising my thesis and you may contact him with any questions you may have about this research at (250) 721-6489 or at mattjame@uvic.ca. This research is supported by a grant from the Social Sciences and Humanities Research Council (SSHRC) and is being conducted under University of Victoria Ethics Protocol Number 18-1143.

The purpose of this project is to examine and contextualize the 2017 Government of Canada apology to LGBTQ2+ Canadians and attempt to understand its implications. As such, it is necessary to understand the origins of the apology, examine the voices that were included in the apology, investigate whether some voices were excluded, and analyze reactions from LGBTQ2+ community members.

The primary research questions are: How does the 2017 apology alter the relationship between LGBTQ2+ communities and the government? What are the associated implications for LGBTQ2+ citizenship within Canada? The associated sub-questions are: Which LGBTQ2+ activists and/or organizations are most responsible for precipitating the 2017 apology? Were some queer or trans voices excluded or relegated during the apology's consultation process in favour of more mainstream voices? Is the apology authentic in light of ongoing legal homophobia and systemic inequity? Does the 2017 apology make the government responsible for eradicating legal homophobia and heterosexism, which persist in law and policy? What other steps must the government take to achieve redress with LGBTQ2+ communities? How can members of LGBTQ2+ communities work together to ensure that a diversity of voices and experiences are heard?

I would like to invite you to participate in my research. You are being contacted to participate because you are an elected representative, a representative from an LGBTQ2+ community organization, or an academic with a specialization/background in LGBTQ2+ equality and/or history.

Participation in this study will include an audio-recorded in-person, telephone, or Skype interview with me at a date and time that is most convenient for you. I anticipate that the interview will last between 45 and 60 minutes and I will forward the interview questions and consent form to you prior to the interview. I will use the interview results to provide additional context for my research and will present these results in a chapter of my M.A. thesis.

You should not feel any pressure or obligation to participate in this research due to a pre-existing relationship with the researcher. If you do feel pressured or obligated to participate, you should decline this invitation. Please know that your decision to either participate or decline this invitation will not affect any pre-existing relationship.

If you are interested in participating or have further questions about this research, I ask that you contact me directly at mdmcdona@uvic.ca.

Thank you for your consideration and I look forward to hearing from you.

Sincerely,

Michael McDonald
M.A. Candidate
Department of Political Science
University of Victoria

Appendix D– Participant Consent Form



**University
of Victoria**

Participant Consent Form

When the Government Apologizes: Understanding the Origins and Implications of the Apology to LGBTQ2+ Communities in Canada

You are invited to participate in a study entitled “When the Government Apologizes: Understanding the Origins and Implications of the Apology to LGBTQ2+ Communities in Canada.” Michael McDonald is conducting this study with the support of the Social Sciences and Humanities Research Council (SSHRC) under University of Victoria Ethics Protocol Number 18-1143.

Michael McDonald is a graduate student in the department of Political Science at the University of Victoria and you may contact him if you have further questions by email at mdmcdona@uvic.ca.

As a graduate student, I am required to conduct research as part of the requirements for a Master of Arts degree in Political Science. It is being conducted under the supervision of Dr. Matt James. You may contact my supervisor at 250-721-6489 or by email at mattjame@uvic.ca.

Purpose and Objectives

The purpose of this research project is to examine and contextualize the 2017 Government of Canada apology to LGBTQ2+ Canadians and attempt to understand its implications. As such, it is necessary to understand the origins of the apology, examine the voices that were included in the apology, investigate whether some voices were excluded, and look at reactions from inside the LGBTQ2+ community. The primary research questions are: How does the 2017 apology alter the relationship between LGBTQ2+ communities and the government? What are the associated implications for LGBTQ2+ citizenship within Canada? The associated sub-questions are: Which LGBTQ2+ activists and/or organizations are most responsible for precipitating the 2017 apology? Were some queer or trans voices excluded or relegated during the apology’s consultation process in favour of more mainstream voices? Is the apology authentic in light of ongoing legal homophobia and systemic inequity? Does the 2017 apology make the government responsible for eradicating legal homophobia and heterosexism, which persist in law and policy? What other steps must the government take to achieve redress with LGBTQ2+ communities? How can members of LGBTQ2+ communities work together to ensure that a diversity of voices and experiences are heard?

Importance of this Research

Research of this type is important because it will seek to understand the LGBTQ2+ community's reaction to a landmark government apology. This research will highlight the importance of LGBTQ2+ activism and the inclusion of LGBTQ2+ voices and experiences in Canadian politics. Additionally, it is hoped that this research will elevate the perspectives of LGBTQ2+ voices or communities that exist outside mainstream discourses. This research will contribute to our broader understanding of political apologies. Ultimately, it will provide insight into the next steps on the path to full LGBTQ2+ inclusion, acceptance, and equity.

Participants Selection

You are being asked to participate in this study because you are an elected representative, a representative from an LGBTQ2+ community organization, or an academic with a specialization or background in LGBTQ2+ equality and/or history.

What is Involved

If you consent to voluntarily participate in this research, your participation will include an interview of approximately 45-60 minutes that will occur at your convenience. Interviews will occur by phone, via Skype, or in person. The interview will be audio-recorded and some written notes may be taken during the interview.

Inconvenience

Participation in this study may cause some inconvenience to you, including the time required to schedule, prepare, and participate in the interview.

Risks

There are no known or anticipated risks to you by participating in this research. If there is any interview question that you do not wish to answer, you may decline to answer. Before deciding to participate, please also consider any risks or concerns you have around participating in this study. If you provide consent, your responses may be referenced in Michael McDonald's M.A. thesis, and therefore be publicly available. More information on anonymity is provided below.

Benefits

The potential benefits of your participation in this research include the opportunity to reflect on a landmark apology to the LGBTQ2+ community, and for you to share your thoughts on the apology. The potential benefits to society include highlighting the significance of a government apology to a historically marginalized group and showcasing the importance of including a diversity of community voices in drafting an apology. Finally, the project will benefit the state of knowledge on political apologies and LGBTQ2+ politics.

Voluntary Participation

Your participation in this research must be completely voluntary. If you do decide to participate, you have a right to withdraw at any time without any consequences or any explanation. To withdraw from the study, please email Michael McDonald directly at mdmcdona@uvic.ca or express your verbal intent to withdraw from the study during the interview. If you do withdraw from the study your data will be used only if you give written permission. If you do not give written permission to use your data after withdrawing from the study, your data will be destroyed and will not be used in Michael McDonald's M.A. thesis.

Researcher's Relationship with Participants

The researcher may have a relationship to potential participants as a former employee/student/colleague of the participant. To help prevent this relationship from influencing your decision to participate, the following steps to prevent coercion have been taken: you have been informed that you should not feel any pressure or obligation to participate in this research due to a pre-existing relationship. If you do feel pressured or obligated to participate, it has been suggested that you decline to participate. You have also been informed that your decision to either participate or decline to participate will not affect any pre-existing relationship.

Anonymity

As the nature of this research seeks to examine the origins of and reaction to the Government of Canada apology to LGBTQ2+ Canadians, you will be asked to consent to a loss of anonymity. If you consent, you will be identified in the research by name, and have your responses attributed to you by name. You have the option of consenting to one, both, or neither statement(s) listed below. If you do not consent, your responses will remain anonymous and will be attributed to one of the following: your title as an elected representative (such as Member of Parliament, Member of the Legislative Assembly, City Councillor, etc.), a representative from an LGBTQ2+ advocacy group/community organization, or an academic/professor from a post-secondary institution. In the event you decide to remain anonymous, please know that despite every effort to protect your identity, your identity may be inferred from the context of your responses. For instance, the nature and size of the sample from which participants are drawn may make it possible for someone to identify you as an individual participant.

Confidentiality

Your confidentiality and the confidentiality of the data will be protected by storing the audio-recording collected during the interview in a password-protected folder on my personal laptop. Handwritten notes collected during the interview may be transcribed into an electronic copy and stored in the same password-protected folder. Original copies of the notes, along with signed consent forms, will be kept in my supervisor's locked office. At no point will data be uploaded or stored on any cloud technology.

Dissemination of Results

It is anticipated that the results of this study will be shared with others in the following ways: I will produce an M.A. thesis which will be publicly accessible online through UVicSpace. Additionally, a copy of this M.A. thesis will be shared directly with all research participants, and the research may be presented at scholarly meetings.

Disposal of Data

Data from this study will be disposed of upon completion of my M.A. thesis, which is anticipated in August 2019. At that point, audio-recordings and electronic copies of notes will be deleted. Any handwritten notes and all signed consent forms will be shredded. No data will be retained or archived.

Contacts

Individuals that may be contacted regarding this study include the researcher, Michael McDonald and my supervisor, Dr. Matt James. Contact information has been provided at the beginning of this consent form.

In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study, that you have had the opportunity to have your questions answered by the researchers, and that you consent to participate in this research project.

Name of Participant

Signature

Date

PLEASE SELECT STATEMENT ONLY IF YOU CONSENT:

I consent to be identified by name / credited in the results of the study: _____
(Participant to provide initials)

I consent to have my responses attributed to me by name in the results: _____
(Participant to provide initials)

A copy of this consent will be left with you, and a copy will be taken by the researcher.