

# The Marc Hall Prom Predicament: Queer Individual Rights v. Institutional Church Rights in Canadian Public Education

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In 2002 Marc Hall's principal denied him permission to take his boyfriend to his Catholic high-school prom. In examining the politicization of the ensuing prom predicament, we critique Catholicized education and what we perceive to be the Catholic Church's efforts to privatize queerness as it segregates being religious from being sexual. We situate this privatization as the failure of the Catholic Church to treat vulnerable queer Catholic youth with dignity and integrity as the church sets untenable limits to queer. Examining Canadian case law regarding individual rights, we argue for the importance of upholding the *Canadian Charter of Rights and Freedoms* in the name of democratic principles.

Keywords: queer youth, individual rights, institutional church rights, Catholic Church, *Canadian Charter of Rights and Freedoms*, Supreme Court of Canada, Court judgments

En 2002, le directeur de l'école catholique que fréquentait Marc Hall lui a interdit d'être accompagné de son petit ami au bal des finissants. En analysant le débat politique qu'a déclenché cette décision, les auteurs critiquent la catholicisation de l'éducation et ce qu'ils considèrent comme la tentative de l'Église catholique de privatiser l'allosexualité (« queerness ») en séparant la religion de la sexualité. Selon eux, cette privatisation témoigne de l'incapacité de l'Église catholique de traiter avec dignité de jeunes catholiques homosexuels vulnérables en leur imposant des restrictions insoutenables. En étudiant la jurisprudence canadienne touchant aux droits de la personne, les auteurs plaident en faveur de l'importance de respecter la Charte canadienne des droits et libertés au nom des principes démocratiques.

Mots clés : jeunes homosexuels, droits de la personne, droits des Églises, Église catholique, Charte canadienne des droits et libertés, Cour suprême du Canada, jugements de la cour.

INTRODUCTION: MARC HALL'S PROM REQUEST AND THE  
PRIVATIZATION AND POLITICIZATION OF QUEER

In writing our account of people and events surrounding Marc Hall's request to attend the prom in his Catholic high school with his boyfriend, we proceed not only inspired by Marc's courageous undertaking, but also motivated by our own histories of schooling as marginalized gay Canadian youth. We cannot escape the politics of our own locations, which are shaped by such influences as history, culture, and ideologies and communities of exclusion (Giroux, 1992). Thus we begin with narrative vignettes of our pasts that provide some explanation but never any apology for our collective passion.

*André:* I attended the same Catholic school from primary through junior high. That school was in a small community where everyone I knew was Catholic, and where life focused around the small church that had a granite grotto dedicated to Our Lady of Lourdes as its backdrop. As a young boy, the Catholic religion gave me some comfort, but it was always mixed with guilt and fear about being a bad boy, a sinner, and someone who might go to hell.

I spent high school in an all boys' Jesuit school that the principal-priest continuously referred to as a Roman Catholic public school. It was there that I had my first crushes on certain male teachers and other students. It was also there that I remember repeatedly experiencing or witnessing overt and subtle expressions (in word and in action) of heterosexism, sexism, and homophobia. Many students called me a faggot; some mentally and physically abused me. However, sometimes it was a teacher who became the problem. For example, stamped indelibly in my memory is the response of that principal-priest — my grade-11 religion teacher — who, when one of my friends asked him about homosexuality during a religion class, abruptly responded, "There's just no place to put it!" Apart from the inappropriateness of his response, I never forgot the homophobic sentiment in his retort. His words silenced me. I felt ashamed.

Silence and shame about my gayness are indelible parts of my history. While they have had enduring effects on my life, I have learned to live wholly as a gay person intellectually, emotionally, sexually, and so on. For me, the legacy of Catholic schooling is a wedge between sexuality and religion, which I see as two incompatible forces in my life. My peace now comes from people who respect my gayness and who do not reduce my physical expression of love for another man to an act of grave depravity.

*Kris:* My experience of schooling was not marred by religious ideology, practices, or interference. However, like André, both growing up queer and going to school were

marked by invisibility and silences. In retrospect, I do not remember much about my public-school experience. In order to survive, I learned that it was best to simply turn off all my emotions and feelings. I dealt with my “difference” by becoming an average student who always tried to blend in rather than stand out from the crowd.

As a queer youth, religion was always something outside my lifeworld. It was just another kind of oppression, an oppression that I avoided. I didn’t need religious people telling me that I was deviant, immoral, or disordered. I got enough of those messages in school hallways and in my classes everyday.

Today I have tremendous respect and admiration for the many queer youth whose courage and convictions drive them to demand their human and civil rights. Instead of the invisibility and silences that marked my experiences of schooling, many making up today’s queer student body are vocal, visible, and proud. They are making their schools key sites in their struggles for social justice and cultural recognition and respect.

The story regarding Marc Hall’s request to have his principal give him permission to take his boyfriend Jean-Paul Dumond to his Catholic high-school prom is ultimately part of the larger narrative of what we perceive to be the Catholic Church’s institutional efforts to privatize queer — to keep it hidden, invisible, silent, unannounced — in religion, education, and culture. In privatizing queer, the institutional Catholic Church aligns its actions to its particular exclusionary beliefs about queer without regard for broader public law and legislation that is in keeping with Section 15 (1) of the *Canadian Charter of Rights and Freedoms*. This section has provided protection against discrimination on the ground of sexual orientation since 1995 when, in *Egan and Nesbit v. Canada*, the Supreme Court of Canada unanimously agreed that sexual orientation was a protected category under the *Charter* (MacDougall, 2000). Since then, sexual orientation has been *read in* to Section 15 (1). In education, this decision has resulted in Canadian teachers’ federations and associations amending their codes of professional conduct and statements of teachers’ rights and responsibilities to include sexual orientation as a character of person to be protected against discrimination in keeping with the law of the land (CTF & ETFO, 2003).

Despite this remarkable change, we maintain that the Catholic Church continues to privatize queer by defining and setting parameters to it in institutional terms that segregate being religious from being sexual in ways that limit queer acceptability, access, and accommodation. For

those who succumb to it, this privatization is about policing the queer body; that is, it is about “silencing oneself, self-censorship, and self-consciousness in mind and body” (Frankham, 2001, p. 465). These self-guarded reactions represent complicity in maintaining the hegemony of heterosexism as a cultural technology, that systematically privileges heterosexuality, assumes that everyone is (or ought to be) heterosexual, and values heterosexuality while reducing homosexuality to deviance and intrinsic evil (Friend, 1998; Grace, Hill, Johnson, & Lewis, 2004). In using heterosexism as a never innocent cultural technology in asserting its authority, the Catholic Church engenders institutional perspectives and practices that deliberately frame meanings, identities, values, and codes of behaviour (norms and standards) in heteronormative terms (Grace & Benson, 2000; Simon, 1992). In this light, heterosexism is the precursor to homophobia, which is an ignorance-and-fear-based manifestation of symbolic and/or physical violence in relation to a homosexual positionality as an undesirable identity and expression. As Friend (1998) reminds us, “Homophobia ensures that violating the rule of heterosexuality has consequences” (p. 142).

Institutional churches have been among the most invasive cultural forces in making certain that there are consequences for living queer. They “historically have taught and often still teach children [and youth] that homosexuality is wrong and undesirable and that gays and lesbians are ‘bad’ – unless perhaps they are ashamed of what they desire and repress their feelings” (MacDougall, 2000, p. 98). Marc Hall’s prom predicament provides an opportunity to reflect critically on this pedagogy of negation, and on what the institutional Catholic Church and those who safeguard it do to youth whom they demean or dismiss and fail to protect (Silin, 1992). In the legal hearing emanating from this predicament, the Catholic Church attempted to achieve its apparent goal of keeping queer privatized by using its constitutional right to make decisions with respect to denominational education to stake a claim to power over the individual in public space. As a gay Catholic youth, Marc Hall has resisted this privatization. Indeed in events leading up to the granting of an interlocutory injunction enabling him to take his boyfriend to the prom, Marc continuously made being, desiring, and acting queer personal and political. His resistance created a dilemma

resulting in a lawsuit against his principal and Catholic School Board after they denied his request. The heart of the dilemma is captured in this question: Does the School Board's decision align with institutional church rights regarding the provision of denominational education as guaranteed in Section 93 of the *Constitution Act, 1867*, or does it violate Marc's individual human rights as protected under Section 15 of the *Canadian Charter of Rights and Freedoms* (Elliott & Paris, 2002; MacKinnon, 2002)? The Canadian judicial system still has to make a decision regarding this matter of institutional versus individual rights. The May 10, 2002, decision granting the interlocutory injunction did not address this more substantive issue.

As the prom story unfolded, church-supporting interest groups and the Coalition in Support of Marc Hall all staked claims in deliberations over Marc's individual rights versus the Catholic Church's institutional rights. The coalition included groups such as the Canadian Auto Workers' Union, Catholics for Free Choice, and Egale (Equality for Gays and Lesbians Everywhere) Canada, the latter being the national queer organization engaged in cultural work and political action to support the spectral community of those marginalized due to sex, sexual, and gender differences. Thus, Marc's story is also a story of the politicization of his prom predicament. To reflect the contextual, relational, and dispositional complexities of this story, we employed two research methods. First, we engaged extensively in document analysis. This included a chronological analysis of reports and commentaries, press releases, and newsletters from various news groups and organizations. We reviewed open letters written by those with vested interests in the prom predicament, including the Catholic bishop for the Durham region of Ontario, various politicians, and Egale Canada. We also examined legal records, including the legal factum prepared by the lawyers representing the Coalition in Support of Marc Hall and the court record prepared by Justice Robert MacKinnon in granting the interlocutory injunction. As well, we surveyed material from two key websites: the Marc Hall website called *Have Your Voice Heard* (Ryan, Hood, & Hall, n. d.) and the Durham Catholic District School Board website (DCDSB, n. d.). Second, having built our knowledge and understanding of interest groups and events shaping the prom predicament, we conducted a two-hour, open-ended

interview and held follow-up discussions with Marc who helped us build a deeper understanding of how he mediated the whole politicized process and how it affected him. The interview took place on October 3, 2002, nearly five months after his prom had taken place.

Drawing on these sources, we begin this paper with a chronology and analysis of events and interest groups shaping, and indeed politicizing, Marc's prom predicament. We incorporate a critique of Catholicized education and what we perceive as the Catholic Church's efforts to privatize queer by defining and setting parameters to queer in institutional terms that segregate being religious from being sexual. We discuss how we construe this privatization as a failure of the Catholic Church to treat queer Catholics, especially vulnerable queer Catholic youth, with dignity and integrity as they set untenable limits to queer acceptability, access, and accommodation. We examine case law regarding individual rights that has been impacted by Section 15 (1) and Section 1 of the *Canadian Charter of Rights and Freedoms*. Because Marc's lawsuit has recently been dropped, leaving the issue unsettled, we conclude with a queer perspective on the importance of upholding the *Charter* in the name of democratic principles.

#### IT'S MY PROM, TOO! THE UNFOLDING OF THE MARC HALL PROM PREDICAMENT

##### *Marc Takes a Stand: Choosing Resistance, Being Resilient*

The stories of queer youth as at-risk individuals are well documented in narratives about confusion, depression, substance abuse, alienation, truancy, quitting school, gay bashing, running away, and suicide (Epstein, O'Flynn, & Telford, 2001; Friend, 1998; Grace & Wells, 2001; Herdt, 1995; Human Rights Watch, 2001; Quinlivan & Town, 1999; Ryan & Futterman, 1998). When youth are labeled as both queer and at risk, this can "doubly pathologize" them, accentuating their alienation and difference (Quinlivan & Town, 1999, p. 512). Increasingly though stories of at-risk youth are being transgressed by stories of queer youth as advocates, social activists, cultural workers, and survivors (Grace & Wells, 2004; Friend, 1998; Weis & Fine, 2001). These stories of resilience locate queer youth as thrivers who mediate "a paradoxical mix of

empowerment and conflict” as they contest “sanctioned silences and institutionalized invisibility” (Friend, 1998, pp. 138-139). Marc Hall is the epitome of these thrivers. He has been contesting the status quo and transgressing the limits to individual freedom put in his way, especially by the institutional Catholic Church as an exclusionary cultural formation. His story captures his struggle to be, become, and belong through a series of chosen, calculated, and uneasy acts of resistance that reflect key tenets of queer theory. These tenets include interrogating the hetero-regulated construction of normality that has traditionally placed queer on the margins of “normal”; deconstructing the cultural-and-power-laden categories of sexuality, gender, and desire; and contesting the heterosexual/homosexual binary as an exclusionary organizing principle (Dilley, 1999; Grace & Hill, 2004). The Marc Hall prom predicament provides us with a rich opportunity to engage these tenets as we research and theorize “why/how/when lives are homosexualized, ‘queered’ outside the norm” (Dilley, 1999, p. 469). Moreover, as a story of resilience, Marc’s narrative helps us to understand how we might fulfill the political and pedagogical task of queer theory: to question presumptions, assumptions, dispositions, and perspectives, especially those that are not generally questioned (Dilley, 1999). As we do so, we ought to remember that it “is not a question of ‘*who* is queer,’ but ‘*how* is queer;’ not so much ‘*why* are they queer,’ but ‘*why* are we saying *they* are queer?’” (Dilley, 1999, p. 459, emphases in original). Deliberating such questions is vital to making sense of Marc’s story of resistance and resilience.

When the prom predicament erupted, Marc was 17 years old and a grade-12 student at Monsignor John Pereyma Catholic Secondary School in Oshawa, Ontario. He had recently declared his gay sexual orientation to his parents, friends, and his high school. Marc had attended Pereyma since grade 9, and he had also attended Catholic schools as an elementary and junior-high student. At the end of his grade-11 school year, Marc approached his English teacher with whom he had excellent rapport, asking her to speak to his principal Mike Powers about an issue he sensed might be problematic: Marc wanted to attend his Catholic high-school prom with his boyfriend Jean-Paul. With no response forthcoming from the principal after his English teacher spoke with him,

Marc approached Mr. Powers directly early in his grade-12 school year to request permission. With the principal seemingly avoiding him, Marc remained persistent. Finally, on February 25, 2002, Mr. Powers refused Marc permission, maintaining that interacting with a same-sex partner at the prom would constitute a form of sexual activity that contravened the teachings of the Catholic Church (MacKinnon, 2002). Although the Catechism of the Catholic Church upholds that homosexuals should not be subjected to unjust discrimination, it nevertheless explicitly states, "Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity, tradition has always declared that 'homosexual acts are intrinsically disordered'... Under no circumstances can they be approved" (CCCB, 1994, at para. 2357, p. 480). During our interview with him, Marc provided this recollection of what he perceived as the Catholic Church's unjust discrimination toward him.

*Marc:* When I started school in grade twelve and more and more people were talking about the prom, I approached Mr. Powers and asked to speak to him because he hadn't gotten back to me. I'd see him in the halls and tell him that I had to talk to him about something. I did this three or four times before he responded. One day I was sitting in my English class, and he buzzed me down to the office. After I walked into his office, he told me that he had been thinking about my request for several months. He said that he talked to our pastor about it as well as the school board. Basically, Mr. Powers said that I couldn't bring JP [Jean-Paul] to the prom because it was against school policy and the Catholic teachings. I sat there in shock. While I had expected the worst, I still felt betrayed. I had learned in religion class to love thy neighbor and to treat everyone the way that you want to be treated. It felt like my pastor, the school board, and Mr. Powers were all contradicting those teachings. That's when I got really upset. I started crying. He kept saying, "I'm sorry! I'm sorry!" I got up and left the room.

In reality Marc was just another casualty of what has become known as the 1986 *Halloween Letter* in which the Catholic Church privatized queer in institutional terms by emphatically denying queer Catholics the individual right to live as whole persons in the fullness of their sexuality. In this infamous (at least to many of us who are queer) letter, the Congregation for the Doctrine of the Faith (CDF) made the Catholic position on homosexuality explicit. Describing homosexuality as a phenomenon, these Catholic gatekeepers described "the homosexual



condition or tendency . . . as being ‘intrinsically disordered,’ and able in no case to be approved of” (DCD, n. d., p. 1). Having located the “homosexual condition” (p. 1) as an “objective disorder” (p. 2), they asserted, “Although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil” (p. 1). The CDF said that acting on the inclination was sinful, requiring a “conversion from evil” (p. 5). Placing the institutional church above civil law and legislation, they emphatically stated, “It is true that . . . [the Church’s] position cannot be revised by pressure from civil legislation or the trend of the moment” (p. 4). Apparently, it cannot be revised by theological research either. For example, philosopher and professor of religion Cornel West (1996) concludes from his research that “Jesus is not only silent on the issue [of homosexuality], but he goes about engaging in forms of touch and intimate relation, not sexual that we know of, but in intimate relation in the best sense of sensual” (p. 365). Moreover, he asserts that the condemnation of homosexual acts is based on “thin and impoverished conceptions of the gospel” (p. 365). As well, Father Daniel A. Helminiak (2000), a theologian and Roman Catholic priest who has ministered to lesbian, gay, and bisexual Catholics since 1977, concludes from his research, “The Bible supplies no real basis for the condemnation of homosexuality” (p. 19). Believing that a choice between religion and sexuality is a choice between God and human wholeness, Helminiak maintains that to deny or be afraid of one’s sexuality is to “short-circuit human spontaneity in a whole array of expressions—creativity, motivation, passion, commitment, heroic achievement” (p. 26).

The Halloween Letter, which we maintain represents symbolic excommunication of queer persons who choose to live full spiritual and sexual lives, continues to be the Catholic word on homosexuality and as such impacts the Catholic educational approach to it. For example, in November 2004, the education commission of the Ontario Conference of Catholic Bishops released *Pastoral Guidelines to Assist Students of Same-Sex Orientation*, a document intended to help school chaplains, guidance counselors, principals, and teachers to address the “pastoral challenge” of counseling and caring for lesbian and gay students (Swan, 2004, p. 4). Bishop Paul-André Durocher, who headed the team of authors who

drew up the guidelines, made it clear that the document was aligned with the Catechism of the Catholic Church and the October 1986 letter from the CDF (Swan, 2004). In other words, the pastoral guidelines repeated the Catholic stance that homosexuals are called to chastity, which, as Durocher put it, “will involve for them celibacy also” (Swan, 2004, p. 4). The guidelines represent part of an effort by Ontario’s Catholic bishops to counter anti-gay bigotry and bullying in their schools. They align with the earlier culturally deficient approach of the Ontario Catholic Family Life Educators Network, which has usually limited its consideration of homosexuality to the context of anti-sexual harassment education (see, for example, Podgorski, 2001).

*The Prom Predicament Continues to Unfold*

After his meeting with Mr. Powers, Marc was very upset. When he got home, he told his parents about the devastating meeting with the principal. Deeply concerned, Audy and Emily Hall requested a meeting with Mr. Powers with Marc present. During that meeting, which occurred the following week, Marc read a letter he had drafted to the principal. Marc told us about the origin of the letter.

*Marc:* When Mr. Powers said no to me the first time, and I knew that he was going to have a meeting with my parents and me, that’s when I wrote it. I read it to him in front of my parents.

In this excerpt from the letter, Marc demonstrated his determination and resilience in the face of what he perceived as unequal individual treatment due to his gay sexual orientation.

*Marc:* I just want to be treated like a normal human being, because guess what . . . that is what I am. I mean, look at me, I’m not here to cause trouble. I have an 82% average, a lot of friends, and a great family. . . . Don’t you see that I’m not fighting for this just because it’s my prom? It’s my whole life and the lives of other gay people. I’m fighting for what so many people don’t understand. I’m trying to speed up the process of equality because I am sick of being treated like someone absent of feeling and emotion. I have been waiting for my prom since grade 9. Prom, to some people, is an important step in someone’s life. It makes you realize that you’re actually finishing high school and that this event is one of the last times you and your friends will all be together. So maybe I’ll take things to the next level [to court], but it’s better than not

caring about anything. ... Not only is what you are doing morally unjust, but you are also violating the laws of the *Ontario Human Rights Act*. Hopefully we can resolve this issue peacefully and before it escalates into a legal hearing. (Ryan, Hood, & Hall, n. d., p. 1-2)

Despite the letter and Marc's fervor, no progress was made at this meeting. In his conversation with us, Marc reflected, conveying his sense of sadness and loss.

*Marc:* After I read the speech I felt that what I wrote didn't mean anything to him. My mom thought that if she and my dad agreed that I could go with JP, then it would be okay. But Mr. Powers still said no, saying it was against the Catholic teachings. I just sat there and started crying again. He just said, "I'm sorry." Those were basically the two meetings – very, very emotional.

In refusing to change his mind, Mr. Powers discriminated against Marc because he was gay. Moreover, he took *in loco parentis* to the extreme, overriding parental authority by ignoring Marc's parents' desire to have their son and Jean-Paul attend the prom together. The Halls have been loving and accepting parents. Their support for their gay son has grown through Marc's coming out and their coming to terms with his gayness. Marc recounts the emotional process that took its toll on all of them.

*Marc:* I actually remember the exact date that I came out to my parents – May 23<sup>rd</sup>, 2001. I actually remember the situation. My mom was downstairs watching *Wheel of Fortune* in the living room. I was upstairs in my room telling myself that I had to tell her. I went downstairs twice intending to do it, but each time I chickened out. Finally, the third time, I told her. I started off babbling about how people get older and have different sexual attractions, but when I came to the point of telling her I was gay I froze. My mom looked at me and said, "I think I know what you are trying to say. Are you trying to tell me that you like boys?" I said, "Yes." She said, "I kind of thought so." And then the whole crying thing began.

A few days later she told my father. He continued to talk to me, asking little things like "How was your day?" A few weeks later he and I went to the cemetery where my brother is buried. My dad started talking to my brother Marcel's grave, saying how I was still the same person that I always was, and how he and my mom were going to take care of me. My dad said he would be behind me 100 per cent. Ever since then we've been really close. My mom and I have always been close.

My parents' point of view is that God created me the way I am, and they love all of

me no matter what. The Catholic teachings say to love everybody basically. My parents' view never changed. My dad has said countless times that because the Catholic School Board made this decision doesn't mean that it is right. He also believes in a God who loves everyone. My dad says that he doesn't pray to the school board, he doesn't pray to the priest, he prays to God. My parents never rejected me, and supported me right from the beginning. If I never had their support I probably wouldn't have done anything.

Strong parental support like this is usually a key reason why queer youth like Marc thrive and are so resilient (Friend, 1998). Indeed many parents do not react so well when a child announces being queer (Grace & Wells, 2001; MacDougall, 2000). Some appear as traumatized by this announcement as they might be if they had been told that their child had a terminal illness. They experience a profound sense of loss and grief inextricably linked to cultural homophobia and interwoven in heteronormative thoughts like there will be no grandchildren. More compassionately, they may worry that their child might become a victim of violence. However, Marc's parents were able to put their love for their child first and move beyond any trauma to nurture their queer child. Throughout the prom predicament, Marc's parents remained supportive, despite the barrage of media attention and other difficulties emanating from the politicization of Marc's request.

All Marc wanted was to attend his prom with his boyfriend. However, in hegemonic terms, his wish amounted to a transgression of the prom as a heteronormalized rite of passage and a hyper-heterosexualized cultural technology.

In secondary schools, the "prom" ... provides a space where, however uncomfortably, students are expected to interact, producing themselves as feminine and masculine in iconically heterosexual and exaggerated ways. The heterosexualization of this process is often unremarked, and young people are seen generally within a developmental discourse of "normal" gender development. (Epstein, O'Flynn, & Telford, 2001, p. 152)

As a hyper-heterosexualized cultural event, the school prom has functioned not only to replicate the masculine, the feminine, and the heterosexual pairing of male and female, but it has also operated to mark and police heterosexuality as the desired and assumed expression of

sexuality. The heterosexual/homosexual binary assists this regulation as it “function[s] to reinforce certain practices through signalling the disadvantages and dysfunctionality of other practices” (Frankham, 2001, p. 457). The Catholic prom, framed within the precepts and myths of Biblical patriarchy and religious tradition, which are cultural technologies of control, is perhaps the ultimate expression of hyper-heterosexual policing, even as it disdains any form of sexual expression by youth expected to be chaste and non-sexual. This is interesting if not hypocritical. After all, the Catholic religion, which is as an apparatus of controlled knowledge, a political force, and “a superb instrument of power for itself, [is] entirely woven through with elements that are imaginary, erotic, effective, corporal, sensual, and so on” (Foucault in a taped discussion in 1978, in Carrette, 1999, p. 107). Within Catholic ideology, heteronormative knowledge has been safe, protected, unquestioned, and exclusionary knowledge that is ensconced “within hegemonic regimes of truth in relation to gender and sexuality” (Epstein & Sears, 1999, p. 2). Indeed the Catholic Church as a regulative institution has policed gender and sexuality (Epstein & Johnson, 1998; Grace & Benson, 2000). Catholic schools are conduits for this policing. Thus across sex, sexual, and gender differences, “everyone lives, daily, a relation to the heterosexual norm both within and outside the [Catholic] school” (Epstein & Johnson, 1994, p. 221).

*The Politicization of Marc’s Prom Predicament*

In the aftermath of Marc’s two distressing and unsuccessful meetings with his principal Mr. Powers, a website *Have Your Voice Heard* was set up in response to his prom predicament. The home page featured a picture of Marc with Lance Ryan and Cassy Hood, two of his close friends who created the website where they set up a message board and posted the letter that Marc had written to his principal. On the home page Cassy, Lance, and Marc stated that the purpose of the website was to assist in the fight against the segregation of gay students in the schools of Durham region and elsewhere (Ryan, Hood, & Hall, n. d.). In a website editorial entitled *Prejudice in Catholic Schools*, Cassy asserted that the principal’s refusal to permit Marc to attend the prom with Jean-Paul

was an act of discrimination and harassment. She categorically admonished educational leaders: "Discrimination from peers is a large enough burden to homosexuals, but this kind of harassment coming from principals, teachers, and school boards is abominable. There is no excuse. It's illegal, immoral, and unfair" (Ryan, Hall, & Hood, n. d., p. 1).

What followed next is a complex set of events. Through the involvement of diverse interest groups in the prom predicament, Marc experienced a politicization of his youth, his sexuality, and his individual right to participate in school activities. In a real sense his activism was not planned, but provoked. It was provoked not only by a Catholic Church and school that he felt had failed him, but also by supporters who saw this citizen student as a youth with a cause advanced by Section 15 (1) of the *Canadian Charter of Rights and Freedoms*. This section states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (DJC, 2003, p. 4)

Although this equality provision protecting individual rights came into force in 1985, it took a decade before sexual orientation was *read into* Section 15 (1) in *Egan and Nesbit v. Canada* (Lahey, 1999; MacDougall, 2000).

The politicization of the prom predicament was truly set in motion during the March break that came a few days after Marc and his parents met with Mr. Powers. As Marc told us, news of his situation and the subsequent establishment of the website spread quickly.

*Marc:* During the March break more and more people got to see the website. In Windsor, Ontario, a guy named Chris Cecile who hosts a weekly radio show called *Queer Radio* saw the website. I think he's the one who got the whole thing rolling using email. That's when other radio stations and newspapers started to call me. After the March break, I got ambushed by TV cameras outside my school. That happened for a while. I did all my interviews during lunch break.

Another person that really stands out is George Smitherman. He's a gay MPP [Member of Provincial Parliament] from Toronto. He contacted me through the website email. We got together and started formulating plans to pressure the school

board. He organized the press conferences at Queen's Park [home to the Ontario provincial legislature] and various rallies. He's been there from the beginning, and he's become a family friend.

The media coverage that escalated in the wake of this grassroots activism included national attention in a news story covering Marc's prom predicament that aired on the March 18, 2002 edition of CTV National News. Although the extent of the exposure was quite helpful in terms of the politicization process, it was much less helpful to Marc on a personal level because it left him even more visible and, consequently, more vulnerable to violence and retaliatory dangers (D'Augelli, 1998). Marc shared his experience of the threats and violence that came with openly taking a stand.

*Marc:* After the media interviews started at school, some students didn't like the idea of JP going to the prom with me. That's when a lot of name calling like "faggot" and "queer" started. The homophobia increased. For example, they shoved this piece of paper in my friend's locker. It was a really good drawing, but very morbid. It was an old cross and it had cobwebs and spiders and goblins and stuff on it. On the side of the cross someone wrote, "Die Marc, Die!" On top of the drawing were the words, "We're all out to kill Marc Hall!"

When the website first started, 95 per cent of the responses were supportive. As the whole thing continued though, more and more hate mail came. I also started getting letters and other mail at my school. Most of it was pretty supportive, but there was some negative stuff. One card had a picture of a penis, and it said, "Marc Hall sucks cock!" I just threw it out. I realized that if I took a stand like this, there would be some negative feedback.

The worst thing though was feeling unsafe. There was one point in which I was a little nervous. A police officer came to my house and told us that he received information that a group of guys had said they planned to ambush my family and me. My parents and I were all edgy after that. My dad put a piece of wood in the patio door for extra protection in case they broke the lock. That happened a few weeks after the whole media thing blew up.

#### *The Prom Predicament Escalates*

In a March 19, 2002 press release, Grant A. Andrews, Director of Education for the Durham Catholic District School Board, stated the school board's position regarding Mr. Powers's decision.

This action is consistent with the views and values of the Durham Catholic District School Board. As a Catholic School Board, we are charged with upholding the values of the Church. The Church does not condemn an individual for his or her sexual orientation. However, the behaviours associated with a homosexual life style are not consistent with Church teachings and our values as a Catholic School system. We are constitutionally entitled to administer our schools in a manner consistent with the teachings of the Church. (GALE-BC, 2002, p. 4)

This statement preceded the March 25, 2002 school-board meeting at which Marc, his parents, and numerous supporters were present. Despite their presence, Mary Ann Martin, the board chair, said the prom issue was not on the agenda due to insufficient notice, so no one would be heard regarding the matter. Mike Shields, president of Local 222 of the Canadian Auto Workers, Canada's biggest union local and a strong advocate for gay rights, had attended this meeting as part of the Coalition in Support of Marc Hall. When Martin made her announcement, Shields angrily interjected, which resulted in police being called to escort him from board property (365Gay.com, 2002, p. 1).

Subsequently, school-board trustees acknowledged that even if proper protocol had been followed and supporters had been allowed to speak to the prom issue, they would not have changed their minds because they considered allowing Marc to attend his prom with his boyfriend tantamount to condoning homosexual behavior (CBC, 2002a). Thus the school board's decision was predetermined and fixed, bounded as it was by Catholic moral knowledge. "When a certain knowledge opens up the way in advance, the decision is already made, it might as well be said there is none to make; irresponsibly, and in good conscience, one simply applies or implements a program" (Derrida, as cited in Biesta, 2003, p. 144). This is what the school-board trustees did. It is what the principal had already done. It is what the regional bishop, despite feigning distance from the decision-making, would subsequently do.

In an April 4, 2002 open letter to Dalton McGuinty, a Catholic and then Leader of the Ontario Liberal Party and the Official Opposition, Anthony G. Meagher, Auxiliary Bishop of Toronto for the Northern and Durham regions, reiterated the school-board trustees' position. Appearing oblivious in the letter to his ultimate authority and responsibility as bishop of the Durham region, he maintained, "The



decision is obviously not mine to make in this issue" (Meagher, 2002, p. 1). What would he have said if the school principal had decided to let Marc attend the prom with Jean-Paul? The bishop did acknowledge a need for those in authority to be wary in light of the high suicide rate among gay teenagers. And he did go on to say that no student in a Catholic school should ever "be made to feel excluded or ostracized at any school event because of his or her sexual orientation" (p. 1). However, the bishop unequivocally stated, "There is no doubt in my mind that if permission by a principal in our Catholic school system is given for any 17-year old boy to take another male as his 'date' for the prom this will be a clear and positive approval not just of the boy's 'orientation,' but of his adopting a homosexual lifestyle" (p. 1). Elsewhere in the letter, the bishop asserted that Marc was being manipulated. He also distinguished Marc as "the boy" and Jean-Paul as "the 21 year-old man" (p. 2). With his distinctions, his choice of words and italicizations, and his subtext positioning gay men as pedophiles, the bishop reinscribed heterosexism, blatant homophobia, and the pathologization of queer as Catholic cultural technologies scourging queer. He also reinscribed the prom as a heteronormalizing and thus exclusionary social and cultural practice (Weis & Fine, 2001). Moreover, the bishop's Catholicized rhetoric demonstrated that he is certainly not tolerant in the Freirean (1998) sense in which tolerance is viewed as a virtue vital to the political and pedagogical tasks culminating in inclusive education. As Freire (1998) asserts, "I cannot see how one might be democratic without experiencing tolerance, coexistence with the different, as a fundamental principle" (p. 42). If the bishop had been living out the notion of Freirean tolerance, then he would have enabled and supported Marc to attend the prom, not as a favor or courtesy, but as a right of the citizen student in a society that prohibits discrimination. Moreover, he would have honored and encouraged others to honor Marc's difference as a character of person that makes him whole and complete.

At a subsequent school-board hearing on April 8, 2002, the prom predicament was on the agenda and several individuals and groups made presentations. Prior to this hearing Marc, Cassy, and Lance had posted comments on their website. Rage and resilience permeated their

words: "We're trying to prove to them [the school board] how much more organized and sophisticated we are! If they try to blow us off this time, let's watch the roof fall down on them!" (Ryan, Hood, & Hall, n. d., notice board, p. 1). At the hearing George Smitherman suggested the prom issue touched on values undergirding our identity as a nation (Fisher, 2002). However, his comments and those of other supportive parties were made in vain. The Durham Catholic District School Board confirmed the principal's decision, denying Marc permission to attend his prom with Jean-Paul. Suggesting that taking a date to the prom is a form of romantic relationship, Mary Ann Martin, the school-board chair, read from an already prepared statement.

The principal's decision and our decision to support the principal is [sic] consistent with the instruction of the Church to accept Marc with respect, compassion, and sensitivity. Just as the Church urges such an approach, it also draws a line. Like the Church, we accept and support Marc, but we also accept and respect the line that the Church has drawn. Marc wants us to help him cross this line at this Catholic school function. This we will not do. (Andrews, 2002, p. 1)

Hearing this decision, Marc cried. Still he maintained, "I believe in justice and that God loves me for who I am" (CBC News, 2002b, p. 1). He exclaimed, "They [the trustees] promote equality except in some cases. They take Jesus's rule [- do unto others as you would have them do unto you -] and bend it a little bit for their liking" (CBC Toronto, 2002, p. 1). The school board's decision served only to make Marc more resistant and resilient, intensifying his desire to attend his prom with his boyfriend. He left the hearing ready to have his lawyer take his case to court to ask a judge to reverse the school board's decision (CBC Toronto, 2002). At this point, Marc was ready to actualize his desire as performance and to engage in acts of resistance that would make his queer being, acting, becoming, and belonging visible. On a micro-level, he simply wanted the "right to an everyday [experience] not organized by violence, exclusion, medicalization, criminalization, and erasure" (Britzman, 1995, p. 2). However, on a macro-level Marc's acts of resistance would mean much more. As Britzman (1995) asserts,

Gay and lesbian demands for civil rights call into question the stability and fundamentalist ground of categories like masculinity, femininity, sexuality,

citizenship, nation, culture, literacy, consent, legality, [religiosity,] and so forth; categories that are quite central to the ways in which education organizes knowledge of bodies and bodies of knowledge. (p. 2)

*To the Courts: Marc's Prom Predicament and the Legal Hearing Seeking an Interlocutory Injunction*

On May 6, 2002, a two-day legal hearing began in Whitby, Ontario (CBC News, 2002c). Justice Robert MacKinnon of the Ontario Court of Justice heard the case between plaintiff George Smitherman, in his capacity as litigation guardian of Marc Hall, and defendants Michael Powers and the Durham Catholic District School Board. David L. Corbett was the lead lawyer for the plaintiff; Peter D. Lauwers was the lawyer for the defendants. Through the hearing, Marc sought an interlocutory injunction restraining his high-school principal and the school board from preventing his attendance with his boyfriend at his Catholic high-school prom. However, this was Marc's immediate interest, as Justice MacKinnon (2002) noted.

[T]he substantive thrust of his claims for trial, as pleaded, are for trial court declarations that his *Charter* rights have been violated. Included among the matters in issue for an eventual trial, if pursued, will be the question of whether the School Board's decision falls within its power to make decisions with respect to denominational matters and thus are protected under Section 93 (1) of the *Constitution Act, 1867* and whether the Board's decision violates individual human rights protected under the *Canadian Charter of Rights and Freedoms*, including the right to be free from discrimination on the basis of sexual orientation and age. (at para. 13)

In opening the case, David L. Corbett responded to the school board's assertion that those who don't like Catholic values are free to leave the school and the Catholic Church. He argued that, by accepting public funds, Catholics schools also accept a mandate to provide an education to every student in their care (Egale Canada, 2002). He also argued that the school board, in taking the position of respecting homosexuals while condemning homosexual conduct, made a distinction that had already been rejected by the Supreme Court of Canada in its ruling in the *British Columbia College of Teachers (BCCT) v. Trinity Western University (TWU)* in 2001. In that ruling, while the Supreme Court supported TWU's

constitutional right to offer a “full program [to] reflect ... [its fundamentalist] Christian worldview” (*BCCT v. TWU*, 2001, at para. 2), it made the distinction between the broader right to hold discriminatory beliefs and the more limited right to act upon those beliefs. However, in her dissenting decision in the case, the Honorable Madame Justice L’Heureux-Dubé found that it was reasonable to conclude that without adequate exposure to diversity in teacher-training programs, there would be an “unacceptable pedagogical cost” to students (*BCCT v. TWU*, 2001, at para. 78). Her conclusion amounts to an important caution. If a public educational practice is to be ethical, then it had better be about educating all students including queer students. Unfortunately, in preparing preservice teachers to take up their professional responsibilities, teacher-education programs have generally failed to provide them with any significant focus on sex, sexual, and gender differences (Kissen, 2002). In keeping with Section 15 (1) of the *Charter*, it would seem imperative that “lgbt [lesbian, gay, bisexual, and trans-identified] issues *are* inextricably interwoven into the basic concerns of preservice education” (Kissen, 2002, emphasis added, p. 4).

In representing the principal and the Durham District Catholic School Board, Peter D. Lauwers argued that Catholic Schools are beyond *Charter* reach because of the constitutional protection guaranteed in Section 93 of the *Constitution Act, 1867* (Egale Canada, 2002). He submitted that the plaintiff motion should be dismissed on that ground (MacKinnon, 2002). Unfortunately, as he presented his case, Lauwers, in keeping with the Catholic Church’s disdain of acting queer on seemingly any level, spoke condescendingly about Marc: “He’s an example we cannot approve. He’s a bad example from a Catholic perspective and what he wants to do is not consistent with the teachings of the church” (CP, 2002, p. 1). Lauwers added that, in keeping with Catholic educational values, Marc could be disciplined or expelled if he kissed, held hands, or danced with his boyfriend at the prom (CBC News, 2002d). Lauwers suggested the judge had to examine the mandate of Catholic schools, emphasizing, “We’re about indoctrination, plain and simple” (CP, 2002, p. 1). However, this perspective attempting to justify the actions of the principal and the school board did not “frame inclusiveness as a moral career for all participants” in education (Friend, 1998, p. 158). Indeed it was used to

suggest that those with vested interests in Catholicized education were exempt from such moral behavior and responsibility.

In his judgment made just a few hours before Marc's prom on May 10, 2002, Justice Robert MacKinnon granted an interlocutory injunction. It provided an immediate order allowing Marc to attend his Catholic high-school prom with his boyfriend (Siu, 2002a). The principal and the school board had previously agreed not to cancel the prom if the injunction was granted (MacKinnon, 2002). In this poignant excerpt from the judgment, Justice MacKinnon speaks to protecting rights and promoting inclusion as fundamental Canadian values.

In my view, the clear purpose of Section 15 is to value human dignity in a free society where difference is respected and equality is valued. The praiseworthy object of Section 15 of the *Charter* is to prevent discrimination and promote a society in which all are secure in the knowledge that they are recognized as human beings equally deserving of concern, respect and consideration. ... The record before me is rife with the effects of historic and continuing discrimination against gays. The evidence in this record clearly demonstrates the impact of stigmatization on gay men in terms of denial of self, personal rejection, discrimination and exposure to violence. ... It is one of the distinguishing strengths of Canada as a nation that we value tolerance and respect for others. All of us have fundamental rights including expression, association, and religion.... We, as individuals and as institutions, must acknowledge the duties that accompany our rights. Mr. Hall has a duty to accord to others who do not share his orientation the respect that they, with their religious values and beliefs, are due. Conversely, for the reasons I have given, the Principal and the Board have a duty to accord to Mr. Hall the respect that he is due as he attends the prom with his date, his classmates and their dates. (MacKinnon, 2002)

Following the issuing of the interlocutory injunction enabling Marc to attend his prom with Jean-Paul, Marc's mom Emily Hall said, "I am so very proud of him. He has opened the doors for other gay students" (Siu, 2002b, p. 2). During the interview Marc recounted the emotional events of that momentous decision day.

*Marc:* I remember every moment of that day. The judgment was to be made before five o'clock because that's when the prom started. I expected a phone call at any time. My tux was ready. We were all sitting in my kitchen. It was about 2 o'clock when we got the phone call. I got up and gripped the phone, and I thought, "Please, please let me win!" I answered the phone, and David Corbett said, "Marc, you're going to the prom!" I started jumping up and down and screaming. Everybody in the kitchen

started cheering. Once I got off the phone, my mom phoned all my relatives in New Brunswick saying, "We won! We won!" It was amazing. It was crazy, and it was quite a rush after the decision was made.

Shortly after the decision, dressed in tuxedos that had been laid out just in case the Justice's decision would be good news, Marc and Jean-Paul attended the prom. Marc recounted the unusual scenario and the politicization process that never stopped.

*Marc:* We had our champagne and then the limo came. When JP and I walked outside, people were clapping as we got into the limo. The first thing we did was go down to CAW [Canadian Auto Workers] Local 222 where we had this big, huge media event. We did the media event, but JP and I just wanted to go to the prom and be left alone.

As we were driving to the prom, there was a helicopter from Roger's Television following the limo. As we got to the gateway [where the prom was held], there were cameras and reporters everywhere. Thankfully they weren't allowed inside. Finally, we were at the prom. Students were shouting, "You won!" The principal sat in his chair with his arms crossed, just slouching and staring at everybody. There were some teachers who congratulated me. Most of the students there said that they were really happy that I fought to take JP. They kept saying how happy they were that I was there.

The dinner was good, except we had rubber chicken and gross stuffing. JP and I danced together and slow danced, just like any other normal couple. We kissed just like any normal couple. The prom was worth fighting for, definitely!

Finally attending his prom with Jean-Paul is a testament to Marc's resilience. In the midst of a very public and deeply emotional prom predicament, both he and Jean-Paul struggled to maintain their relationship. Through the tumult and strain Marc remained courageous, proud, vocal, visible, resistant, and resilient, as he raged hard against the institutional forces of a church determined to keep queer privatized.

On January 16, 2004, R. Douglas Elliott, the lawyer continuing to represent the Coalition in Support of Marc Hall, a key intervener in the impending lawsuit, emailed us, providing this update. Regarding the interlocutory injunction, he wrote,

No appeal was taken from that order. However, an injunction is an interim step in a lawsuit. The lawsuit, in which Marc challenges the right of the [Durham Catholic District] School Board to discriminate in these circumstances, is still proceeding. The Board is concerned that unless they have a full trial of that underlying issue

[institutional church rights versus queer individual rights], future cases will be resolved by injunctions and always in favour of the student. (R. Douglas Elliott, personal communication, January 16, 2004)

In further email correspondence on December 14, 2004, Elliott relates,

The trial was supposed to proceed in October, 2004, but lawyers from both parties agreed to seek an adjournment, which was granted by Justice [Brian] Shaughnessy in Whitby on September 30, 2004. His Honour agreed to adjourn the trial (with no further adjournments) to October 11, 2005, on the basis that the Supreme Court of Canada's decision in the same-sex marriage reference will assist the trial court in Marc Hall's case. (R. Douglas Elliott, personal communication, December 14, 2004)

Sadly, Marc Hall dropped his court case on June 28, 2005. There were two key reasons. First, David L. Corbett, who had been representing Marc on a pro bono basis, could no longer act for Marc because he had been appointed as a judge of the Ontario Superior Court of Justice (R. Douglas Elliott, personal communication, August 13, 2005). Second, Marc, now a 21-year-old university student, decided that he just wanted to get on with his life (CP, 2005). In dismissing the action, the Superior Court refused the Catholic School Board's request that the original injunction be officially dissolved, so the original order stands (R. Douglas Elliott, personal communication, August 13, 2005). Because both parties in the case consented to the dismissal, the Catholic School Board cannot appeal and the case is over. Unfortunately, as Justice Shaughnessy related in granting Marc leave to drop the Superior Court case, the interlocutory injunction granted in 2002 does not carry the same weight as would a legal decision arrived at after a trial (CP, 2005). Still we can hope that one day another student will win a similar court case so school doors will be kept open for every queer student including Pete for whom Marc became a gay youth hero. Marc recounts Pete's affirmation.

*Marc:* One day I was sitting in my room doing homework, and I got a phone call from this guy named Pete. He was 14 years old, and he called me to tell me that I was his hero. He wanted to know how to come out to his parents. I told him about my parents. A few weeks later he called again to tell me that he had come out to his mother and that she was supportive of him. I told him I was really proud. I said that coming out is a really hard thing to do, but you really have to be true to yourself.

Looking back, the most important things that I've learned are to be true to your self and to be honest. The Catholic School Board said that if I went to the prom with a girl, and one of my other girlfriends brought JP, we would each have a female date and we could still see each other at the prom. To me, that's a form of lying and not being who I am. Catholics teach you that you should be honest. If I went to the prom with a girl, then that would be dishonest. So just be true to yourself and stand up and be who you are. No one deserves to be oppressed.

#### IN THE NAME OF DEMOCRATIC PRINCIPLES: A CONCLUDING QUEER PERSPECTIVE

Catholic schooling is marked by perpetual power plays inextricably linked to cultural technologies like heterosexism and tradition and by codes of obedience demanding acculturation to Catholicized ways of being, acting, and expressing oneself in the world. It is bent on regulation, which Gore (1998) defines as "controlling by rule, subject to restrictions, invoking a rule, including sanction, reward, punishment" (p. 243). The principal's rejection of Marc Hall's request to attend his Catholic high-school prom with his boyfriend provided an expression of this regulation and an example indicating that Catholic schooling has produced "its own 'regime of pedagogy', a set of power-knowledge relations, of discourses and practices, which constrains the most radical of educational agendas" (Gore, 1998, p. 232). Inclusive education that incorporates queer (as a spectrum of sex, sexual, and gender identities and differences) and queerness (as queer desire, action, and expression) exemplifies such a radical agenda. Catholicity undermines this agenda as it works to privatize queer and pathologize queerness. The simple fact that homosexuality is such a contested topic in Catholic schooling (and indeed in many other conservative quarters in culture) demonstrates how sexual ideology has supplanted democratic principles in the public discourse around queer space and place in education and culture (McKay, 1998).

And yet democratic principles are what the institutional Catholic Church relies on to maintain its right to provide its Catholicized version of denominational education. MacDougall (2000) offers this perspective to explain why maintaining the right to denominational education is so important to institutional churches:



Institutions that once had a more direct role in determining the standards of society now attempt to retain such a role through influencing educational policy. Religions thus fight hard to control and retain public funding for their own schools because of the propagandistic role the schools play. Religions, all of them proselytizing to some degree, . . . expend a great deal of energy to preserve or extend their hold on the school system. (p. 104)

From a Catholic perspective, clergy, school-district management, school principals, and school-board members use denominational education as a vehicle to impose and maintain Catholic tradition. Although this is their right under Section 93 of the *Canadian Constitution*, how far can the Catholic Church go before Canadians say stop in the name of democratic principles that protect individual rights? Can an institutional church be allowed to claim its constitutional right to be absolute, enabling it to use the cloak of denominationalism to justify actions like interfering with Marc Hall's individual right to be free from discrimination based on his gay sexual orientation? Considering that Catholic schools are publicly funded, are not their actions "state actions subject to *Charter* scrutiny" (MacDougall, 2000, p. 104)? In the Marc Hall legal hearing, those with responsibility for Catholic education in Durham District claimed they were exempt from such scrutiny. In making this claim they refused to move outside the parameters of their moral ideology to consider ways that it might be oppressive. As well, they failed to answer a question central to ethical public practice in education: In what ways does the institutional Catholic Church disable inclusive education when it translates its "moral disapproval of homosexuality into a rationale and justification for infringing on the rights of homosexuals" (McKay, 1998, p. 162)?

Burdened by what they perceive as the weight of individual rights guaranteed by Section 15 (1) of the *Charter*, we can expect institutional churches to turn more to the Courts to assist them in their efforts to control what happens in schools. No doubt they will rely on the continuing existence of a judicial culture that has long supported them. Historically, the Courts in Canada have sustained a pervasive conservative Christian disposition that discriminates on the basis of sexual orientation (MacDougall, 2000). Indeed, focusing more on institutional church concerns with morality than State concerns with

ethics and equality, “[t]he judiciary has internalized much of ‘traditional’ religious dogma in this area and has tended to give precedence to conservative religious interests over the interests of equality of sexual orientation, especially when young people are involved” (MacDougall, 2000, pp. 99-100). Thankfully, to the benefit of democracy, justice, and ethical educational and cultural practices, this judicial culture has been changing slowly, surely, and in crucial ways. For example, one of the three most important Supreme Court decisions, as ranked by Peter W. Hogg when he was Dean of Osgoode Hall Law School at York University, Toronto, is the *Vriend* decision that confirmed equality rights for lesbian and gay citizens of Canada (Saunders, 2002). Delwin Vriend, an openly gay educator at King’s University College, a Christian college in Edmonton, Alberta, had been dismissed in 1991 on the pretext that his sexual orientation violated that institution’s religious policy. The Supreme Court of Canada handed down its long-awaited decision in *Vriend* on April 2, 1998. The Court’s ruling was in keeping with equality provisions in Section 15 (1) of the federal *Charter* in which sexual orientation, as a protected category of person, is considered analogous to other personal characteristics listed there. Moreover, the *Vriend* decision made it clear that Section 15 (1) of the *Charter* prohibits legislative omission of sexual orientation (Lahey, 1999).

Although the final outcome in *Vriend* is remarkable, there is still need to exercise caution in trusting the judicial system to do the right thing. Comments made by Justice McClung conflating homosexuality with sodomy in the earlier Court of Appeal decision in Alberta favoring King’s College ought not to be forgotten. Replicating biblically incited religious conservative objections to homosexuality, his reasoning exemplifies the tradition in the Courts of “bow[ing] to ‘religious and familial forbiddance’” (MacDougall, 2000, p. 109). Justice McClung’s ruling stands as “an example of the jurisprudence that supports or condones the cleansing of youth by keeping homosexuality and homosexuals away” (p. 111). It cautions us to be wary of justices, bishops, or others with authority who might try to elude the *Charter*. Fortunately, the Supreme Court of Canada is now exerting the kind of ethical leadership focused on the inclusion and integrity of citizens that sends a clear message to all in positions of power. This transformative

leadership was recently demonstrated in its December 9, 2004 *Reference re Same-Sex Marriage*. In this reference, the Supreme Court of Canada (2004) adhered to a most fundamental principle of Canadian constitutional interpretation that maintains, “[O]ur Constitution is a living tree which, by way of progressive interpretation, accommodates and addresses the realities of modern life” (p. 2). The Court held that proposed federal legislation extending the right to civil marriage to same-sex couples was consistent with and indeed flowed from the guarantees of equality rights as protected by Section 15 (1) of the *Charter*. It also held that the guarantee of freedom of religion under Section 2 (a) of the *Charter* was broad enough to protect religious officials from being compelled by the State to perform same-sex marriage contrary to their religious beliefs. What might have been most pertinent to the resolution of issues in the Marc Hall case is this section from the Supreme Court reference:

[T]he mere recognition of the equality rights of one group cannot, in itself, constitute a violation of the s. 15 (1) rights of another. The promotion of *Charter* rights and values enriches our society as a whole and the furtherance of those rights cannot undermine the very principles the *Charter* was meant to foster. Although the right to same-sex marriage conferred by the proposed legislation may potentially conflict with the right to freedom of religion if ... [Bill C-38] becomes law, [which it did on July 20, 2005,] conflicts of rights do not imply conflict with the *Charter*; rather, the resolution of such conflicts generally occurs within the ambit of the *Charter* itself by way of internal balancing and delineation. It has not been demonstrated in this reference that impermissible conflicts—conflicts incapable of resolution under s. 2 (a)—will arise. (p. 2)

With regard to this last point, the Supreme Court of Canada (2004) maintains that the “collision between rights must be approached on the contextual facts of actual conflicts” (p. 12), and that the potential for such a collision does not necessarily imply unconstitutionality. Had the trial in the Marc Hall case proceeded, the onus would have been on the lawyer representing the Catholic School Board to demonstrate the factual existence of impermissible conflicts resulting from a high-school student taking a same-sex partner to a prom. Such a finding would then imply that the right to religious freedom enshrined in Section 2 (a) of the *Charter* is not expansive enough to accommodate Marc Hall’s individual

rights as a gay citizen. From this perspective, the School Board's lawyer would then probably have argued that a true conflict of rights exists. However, in the resolution of any conflict pitting institutional rights against individual rights, the Supreme Court must proceed "on the basis that the *Charter* does not create a hierarchy of rights" (p. 12). If the conflict between rights cannot be reconciled, then, as the *Reference re Same-Sex Marriage* notes, the Court would follow the precedent set in *Ross v. New Brunswick School District No. 15* in 1996 and "find a limit on religious freedom and go onto balance the interests at stake under s. 1 of the *Charter*" (p. 12). However, if the lawyer representing Marc Hall had identified unjustifiable limits that religious freedom placed on the gay youth's individual rights (DJC, 2003), then the argument could be made that the Catholic School Board had violated Section 15 (1) of the *Charter*. Because the *Charter* exists and has the power to protect and expand human rights (DJC, 2003), such untenable limits would be deemed unacceptable, suggesting that, in the realm of individual rights, religion and schooling are separable and Catholic tradition cannot prevail over the *Charter*. In keeping with Section 1 of the *Charter*, however, any limits placed on religious freedom would have to be justified in Canada's democratic society in order to be acceptable (DJC, 2003).

Canada has come a long way since December 22, 1967 when then Justice Minister Pierre Elliott Trudeau proposed amendments to the *Criminal Code* that resulted in the decriminalization of homosexuality. As Trudeau spearheaded this law reform and moved Canada away from state control of individual freedoms like those embodied and embedded in sexuality, he made the poignant and memorable assertion, "The State has no business in the bedrooms of the nation" (Goldie, 2001, p.18). The amendments passed in 1969. During the Marc Hall legal hearing, Justice MacKinnon (2002) reminded us, "The separation of church and state is a fundamental principle of our Canadian democracy and our constitutional law" (at para. 31). If we uphold this democratic principle in relation to schooling, then schools should carry out their public duties in accordance with strictly secular and non-sectarian democratic principles representative of the inclusive cultural democracy that the *Canadian Charter of Rights and Freedoms* protects. In this light, perhaps it is time to add a corollary to Pierre Elliott Trudeau's poignant statement

and say, "Institutional churches have no business in the classrooms of the nation." Although Trudeau's statement was intended to protect the private sexual lives of individuals from public institutional (State) scrutiny, this corollary is different. It is intended to protect the sexual lives of individuals in public spaces like schools from the kind of Catholic institutionalized religious scrutiny embodied in the privatization of queer. Ultimately, the sexual lives of Canadians need to be protected in public *and* private spaces so queer and other persons can be, become, and belong fully and holistically as the *Charter* espouses. With the Marc Hall case dropped, this goal remains to be achieved.

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