Queering Family Law after Same-Sex Marriage

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Canadian family law has dramatically evolved from the original concept of addressing the needs of the monogamous heterosexual nuclear Canadian family. Since the legalization of homosexual relationships, queer families in Canada have confronted the assumptions made by the dominant family law regime. In *Egan v. Canada*¹ the Supreme Court of Canada heard the first same-sex relationship case. Since then, queer families have accessed the courts numerous times. Given the growing visibility and frequency of queer families in Canadian courtrooms, queer issues have become vitally important for Canadian family lawyers to understand and engage.

Practitioners are faced with a growing demand for specialized and sensitive legal services geared towards a queer clientele. These clients have new and interesting questions that demand competent engagement. For example, the queer litigants in *(A.).*(A.) v. *(B.)*B.² asked why we assume a child may only have two parents and questioned assumptions about our definition of parenthood. To properly address family law’s newest clients, practitioners may need to consider alternative tools for addressing these types of questions. Family law practitioners can use queer legal theory to better understand and advocate for their clients. Utilizing a legal queer theory analysis, practitioners can critically examine developments in our industry while becoming better prepared for the changing face of Canadian family law.

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¹ [1995] 2 S.C.R. 513
² [2007] W.D.F.L. 1110
In “Queering Sexual Orientation: A Call for Theory as Praxis”, Francisco Valdes calls for a “second” stage of sexual orientation scholarship. This paper builds on Valdes’ call by proposing the incorporation of queer legal theory into everyday family law practice. A full history of the genesis and development of queer legal theory is outside of the scope of this paper. However, we will briefly introduce the concept of a queer theory and expand on the concept of queer legal theory. After establishing the core basics of queer legal theory we propose a number of take away strategies any family law practitioner can engage with in their everyday practise. Finally, recognizing that language is an important tool for critical analysis, this paper goes on to explore how legal terminology and the language used in both courtrooms and offices can impact the experience of queer clients. Language as a rhetorical tool has significant power to productively trouble the existing heteronormative model of family law. We will combine this historical, practical and linguistic analysis into a cohesive and immediately applicable set of tools for Canadian family law practitioners.

It is important to understand the historical context within which these concepts developed. Accordingly, this paper begins its analysis with an overview of the legal status of queer individuals in Canada, commencing with the legalization of homosexuality in 1968.

I. Historical Overview

It was not that long ago that queer families were criminalized. There were, of course, queer families. However, the complete absence of any kind of regulation beyond prohibition made healthy, consensual queer families invisible both socially and in the eyes of the law. The pathologizing and criminalization of queer desire and queer families constrained our ability to understand queerness in terms that allowed for positive representations. In 1965 Everett Klippert was arrested. He acknowledged to the police that he had been having sex with other consenting adult men for 24 years and was unlikely to change this behavior. Two years later, he was sentenced to an indefinite term in prison as a "dangerous sex offender." In their rejection of Klippert’s appeal, the Supreme Court of Canada pointed out:

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The evidence of the two psychiatrists was to the effect that the appellant was likely to commit further sexual offences of the same kind with other consenting adult males, that he had never caused injury, pain or other evil to any person and was not likely to do so in the future.⁴

Klippert’s “sexual offenses” were confined solely to having sex with other consenting adult men. The Supreme Court of Canada upheld a lower court ruling which sentenced him to life imprisonment (the maximum penalty).⁵

It was only a few weeks after the Court's decision that Attorney General Pierre Trudeau introduced bill C-150 to Parliament to liberalize the Canadian Criminal Code. He famously said:

It's bringing the laws of the land up to contemporary society I think. Take this thing on homosexuality. I think the view we take here is that there's no place for the state in the bedrooms of the nation. I think that what's done in private between adults doesn't concern the Criminal Code. When it becomes public this is a different matter, or when it relates to minors this is a different matter.

Homosexual acts between consenting adults were no longer a crime upon these amendments to the criminal code becoming law in 1968. Trudeau stopped at the behaviour being “public,” which failed to address an essential element of the recognition of queer families by the law. Family law is, at its core, exactly the process of publically acknowledging a private relationship or collection of relationships. Despite this lack of public recognition of queer families, this moment remains pivotal in the history of Canadian queer families, as it was the first time that it was possible for a queer relationship to be recognized by the law as anything other than a criminal perversion.

⁴ [1967] SCR 822
⁵ religioustolerance.org Timeline of GLBT rights in Canada Years 1965 to 1999
There was a trend of liberal attitudes towards homosexuals through the 70s including the addition of homosexuals and bisexuals to the Quebec Charter of Rights and Freedoms in 1977 and releasing bans on admitted homosexuals immigrating to Canada in 1978. However, the 80s saw much of this progress stall. Former MP and Senator Pat Carney introduced a bill to Parliament in 1980 to add "sexual orientation" to the Canadian Human Rights Act but it failed to pass. Svend Robinson introduced similar bills in 1983, 1985, 1986, 1989, and 1991 but none succeeded. When the Charter of Rights and Freedoms was created in 1982, it did not include sexual orientation as a protected ground.

The Canadian Human Rights Commission ruled that same-sex couples, including those who had children, should be considered families in 1989 but it would not be until 1995 that the first province, Ontario, would allow same-sex couples to apply jointly for adoption.

In 1995, the Supreme Court ruled that that the term "sexual orientation" was to be read in to Section 15 of the Canadian Charter of Rights and Freedoms. This was an essential development in the course of the law and would allow Provincial Courts of Appeal to rule that bans on same-sex marriage were unconstitutional almost 10 years later. This was brought full circle in Vriend v. Alberta where the Supreme Court of Canada read “Sexual Orientation” into what was then called the Individual Rights Protection Act (Alberta) setting the stage for all provinces to include sexual orientation in their human rights legislations.

Marriage is sometimes seen as the pinnacle of equality for queer families. One of the important developments in the process of legalizing same-sex marriage came in 1999 when the Supreme Court of Canada, in M. v. H. ruled that the opposite-sex definition of “spouse” in Part III of Ontario’s Family Law Act was an unjustified violation of Section 15 of the Charter. The Court suspended its order that the definition be severed from the Act to enable

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6 *Ibid*
7 *Ibid*
8 [1995] 2 SCR 513
9 [1998] 1 SCR 493
10 Martha McCarthy & Joanna Radbord, ““We Are Family” Family Law for Same-Sex Couples” (Kelowna: National Family Law Conference, 2002)
Ontario legislators to develop an appropriate remedy, and stressed that its decision was not concerned with marriage.\footnote{Sexual Orientation and Legal Rights: A Chronological Overview, Mary C. Hurley, Law and Government Division, Revised 26 September 2005}

In reaction to developments like this, parliament passed, with overwhelming support, a resolution to re-affirm the definition of marriage as "the union of one man and one woman to the exclusion of all others" in 1999.\footnote{Jay Makarenko, “Gay & Lesbian Rights: From Criminals to Equality” (mapleleafweb.com, January 1, 2007)} It wasn’t long before the courts and public opinion began to changes things. Court proceedings were commenced challenging the constitutionality of banning same-sex marriage in every province and territory. It is important to note that every court that reached a decision ruled in favour of same sex marriage regardless of the province. The first decisions in these cases came from Ontario in \textit{Halpern v. Canada}\footnote{95 C.R.R. (2d) 1}, Quebec in \textit{Hendricks v. Quebec}\footnote{[2002] R.J.Q. 2506}, and then British Columbia in \textit{Barbeau v. British Columbia}.\footnote{2003 BCCA 251} Each of those courts held that limiting marriage to opposite-sex couples was discriminatory and contrary to Section 15, the equality clause of the Canadian Charter of Rights of Freedoms. The governments of Canada, Ontario, Quebec and British Columbia each mounted an opposition to the recognition of same-sex marriage by presenting a defence to the court challenges brought by their citizens.

On June 10, 2003, the Ontario Court of Appeal ruled on an appeal from \textit{Halpern}. Contrary to the lower court decision and the decisions in Quebec and British Columbia, the Court of Appeal chose not to stay its judgment and ruled that same-sex marriage was available throughout Ontario immediately. Shortly thereafter the first legally recognized same-sex marriages were performed.\footnote{[2003] O.J. No. 2268}
Similar decisions followed suit in Yukon in *Dunbar & Edge v. Yukon (Government of) & Canada (A.G.)*\(^{17}\), Manitoba in *Vogel v. Canada*\(^{18}\) and Nova Scotia in *Boutilier v. Canada (A.G.)*\(^{19}\). In the latter two cases the Canadian and Provincial governments did not oppose the applications. The governments of Ontario, Quebec and British Columbia all opposed the legalization of same-sex marriage in court. Manitoba was the first provincial government to refrain from doing so. *Vogel* was also the first time the Canadian federal government chose not to defend the ban on same-sex marriage. Public opinion was also changing rapidly.\(^{20}\) Despite having overwhelmingly supported the vote to define marriage as between one man and one woman only a few years earlier, the Liberal party chose to shift its position and work towards same-sex marriage, reflecting the dramatic change in public opinion.

In 2003, the Liberal government referred a draft bill on same-sex marriage to the Supreme Court of Canada, and asked the following questions:

1. Is the annexed Proposal for an Act respecting certain aspects of legal capacity for marriage for civil purposes within the exclusive legislative authority of the Parliament of Canada? If not, in what particular or particulars, and to what extent?

2. If the answer to question 1 is yes, is section 1 of the proposal, which extends capacity to marry to persons of the same sex, consistent with the Canadian Charter of Rights and Freedoms? If not, in what particular or particulars, and to what extent?

3. Does the freedom of religion guaranteed by paragraph 2(a) of the Canadian Charter of Rights and Freedoms protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?

\(^{17}\) 2004 YKSC 54
\(^{18}\) [1995] 2 W.W.R. 513
\(^{19}\) [2000] 3 F.C. 27
\(^{20}\) *supra* note 5
4. Is the opposite-sex requirement for marriage for civil purposes, as established by the common law and set out for Quebec in s. 5 of the Federal Law-Civil Law Harmonization Act, No. 1, consistent with the Canadian Charter of Rights and Freedoms? If not, in what particular or particulars and to what extent?

The Supreme Court of Canada answered that the federal government did have legislative jurisdiction regarding the definition of marriage; that same-sex marriage was consistent with the Charter; and allowing religious officials to opt out of performing marriage may be protected by the Charter. The Court chose not to answer question four.21

Emboldened by the Court reference and a swing in popular opinion, Parliament passed Bill C-38, the Civil Marriage Act22, in 2005. By this time most provinces had already affirmed same-sex marriage in court, while the remaining jurisdictions were on their way to doing the same.

Following this, same-sex divorce became problematic. Married same-sex couples who were residents of Canada and wished to divorce were able to apply as any married couple. However it became clear that same-sex couples who married in Canada but now lived in a jurisdiction which did not recognize same-sex marriage had no ability to apply for a divorce in Canada due to the Divorce Act’s residency requirements. Specifically, a couple from a jurisdiction that does not recognize same-sex marriages could visit Canada to be married. However, if they returned to their home jurisdiction and wanted a divorce, they would have been unable because of Canada’s residency requirements to apply for divorce. In 2012 the Conservative government addressed the issue of allowing non-resident couples who were married in Canada, but whose marriages were not recognized in their home jurisdiction, to apply for divorce in Canada (Civil Marriage of Non-residents Act 2013).23

21 Reference Re: Same Sex Marriage 2004 SCC 79
22 SC 2005, c 33
23 Civil Marriage of Non-residents Act S.C. 2013, c. 30
The period from 1965 to 2012 saw significant changes in the visibility and legitimization of queer relationships and behaviours. Those individuals engaged in same-sex sexual behaviour went from being at risk of criminal prosecution to having their partnerships and families recognized by the law. This slow move toward legitimization now includes queer couples having the sanction of marriage and the ability to end those relationships through divorce.

II. Introduction to Queer Theory and Queer Legal Theory

A basic understanding of some of the historical legal milestones in queer Canadian legal history helps frame the context for queer family law. Legal practitioners are expected to have a large and diverse array of tools available to critically assess and analyze the specific queer contexts that queer clients bring to the courts. Clients engage legal counsel because they expect cutting edge and competent assistance to help them analyze their problems and to craft creative solutions to those problems. Top lawyers are expected to do more than rigidly apply facts to our legal structures. True legal analysis involves a broader and more nuanced range of skills. Queer legal theory is one framework that family practitioners can utilize in crafting strategies to help clients navigate complex legal problems.

Defining queer theory is no easy task. Heavily influenced by deconstructionism and post-structuralism, queer theory defies basic categorization. Theorists and scholars have developed a number of competing theories regarding the meaning and use of queer theory. Queer theory encompasses all of these overlapping perspectives and refuses to be confined or pinned down.

A comprehensive overview of queer theory is outside of the scope of this paper. However, Watson’s review of the basic elements of queer theory can provide us with some assistance. According to Watson, queer theory is primarily focused on challenging the assumption that identities, such as “homosexual,” “gay” or “lesbian,” are stable identities that we can rely on. Rather, these categories are fragile constructs that are heavily influenced by the heteronormative status quo. Queer theory problematizes rigid adherence to these identity

24 Katherine Watson, “Queer Theory” (2005) 38 Group Analysis 67 at p. 67
categories. The term “queer” provides the opportunity to redefine problematic identity constructions and focus on how the heteronormative hegemony influences and ultimately oppresses all marginalized identities. Teresa de Lauretis is credited as being the first theorist to popularize the term ‘queer’ and explain that replacing the umbrella term ‘homosexual’ with what at first appears to be more nuanced terms like ‘lesbian’ and ‘gay’ is problematic. The terms ‘lesbian’ and ‘gay’ both have the potential to support the problematic gender binary, and its hegemonic gendered hierarchy, through their reliance on a same-sex construction that depends upon a binarized opposite-sex heterosexuality. ‘Queer,’ in contrast, leaves room for a multitude of identities that are recognizable not as positivist and stable identities in and of themselves, but rather are positional in relation to the hegemonic heteropatriarchal norm. By using broad and indefinable terms like ‘queer,’ we intentionally leave space within our definitions and rhetorical constructions for the multitude of factors that influence sex and sexuality, including non-binary and trans gender.25 From a practical perspective, family professionals have to look past the assumptions or stereotypes loaded into identities and remain mindful that even simple problems can have a multitude of nuanced factors that impact our clients. No one client or problem can be summarized by a simple identity, and reliance on these simple identity definitions can negatively impact our ability to best serve our queer clients. Thus queer theory can be an important lens through which we can analyze the enactment and the constitution of sexual identity. It can help us understand the power relationships that are enforced and supported across a hierarchy,26 and allow us to recognize how these hierarchies are still embedded within existing family law practices. Later, this paper outlines a number of labels and identities that may come up while assisting queer clients but it is important to remember that while understanding the generalized use of these identities is valuable, these labels are neither concrete nor universally applied.

While queer theory grew out of liberal ideas of equality,27 it is not directly focused on equality, per se. Rather, it:

25 Ibid at p.71
26 Ibid at p.79
27 Ibid at p.69
Focuses “on the manner in which heterosexuality has, silently but saliently, maintained itself as a hidden yet powerful privileged norm,” and an implicit if not explicit questioning of the goals of formal equality that, on their face simply reify the very categories that have generated heterosexual privilege and Queer oppression.\textsuperscript{28}

This is distinct from gay and lesbian rights theory which uses the hetero/homo binary to highlight discrimination and lack of equality.\textsuperscript{29} Queer theory provides us with a lens that looks past those binaries and focuses on oppression more generally.

The term queer \textit{legal} theory can also be interpreted in different ways. For the purposes of this paper we expand on Foucault’s interrogation of identity. For Foucault, identity is a cultural or historical construction. Attaching identities to individuals, rather than focusing on actions or behaviours, allows the dominant power structures to subject individuals to discipline. In other words, the prescription of identities leads to the control and manipulation of people.\textsuperscript{30} It is not a stretch to see this active within the legal realm. The law is very concerned with categories and identities. Identities can be cultural or historical constructions but they are often also \textit{legal} constructions. Queer legal theory, then, critiques our assumptions in relation to these legal identities and examines how the dominant majority asserts its supremacy by subordinating and marginalizing outsiders.

Some scholars take this examination further. For example, Francisco Valdes argues that queer legal theory is about the “second stage” of sexual orientation scholarship. Valdes advocates for leading legal scholarship that moves beyond an examination of equality and discrimination and “focuses on the effects of discrimination - subordination - in multidimensional terms”\textsuperscript{31}. The focus on subordination more generally permits us to examine intersections of oppression. While exploring the impact of our clients’ sexual

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\textsuperscript{28} Laurie Kepros, “Queer Theory: Weed or Seed in the Garden of Legal Theory?” \textit{(1999/2000) 9 Law & Sexuality Rev. Lesbian Gay Bisexual & Legal Issues 279 at 284}

\textsuperscript{29} Elaine Craig, “Converging Feminist and Queer Legal Theories: Family Feuds and Family Ties” \textit{(2010) 28 Windson Y.B. Access Just. 209 at 213}

\textsuperscript{30} \textit{supra} note 24 at 70

\textsuperscript{31} \textit{supra} note 3 at 92
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orientation on a matter, we can also examine ways in which their gender, race, class or levels of normative ability also impact their needs.

Queer legal theory readily applies to family law. By calling ourselves “family law practitioners” rather than “matrimonial lawyers”, “parenting advocates” or “domestic contract specialists” we have already taken an important first step. We have refused to fall into the trap of burying the meaning of what we do in overly nuanced ways. Family law calls for a wide application of a large number of skills across multiple areas of law.

Queering family law involves more than simply expanding our roles as practitioners to include queer clients. Decades of painful cases of discrimination being brought to light have taught us that our preoccupation with categories and with controlling people based on how they fit into those categories is no longer working, and perhaps has never worked. Using the traditional concept of a monogamous heterosexual family as a model against which others are measured is a recipe for further oppression and subordination of a growing class of people who find themselves marginalized by that model because they do not fit within it. This sentiment is eloquently expressed in Kimberly Richman’s Courting Change:

The temptation to restrictively police the boundaries of family law by maintaining rigid rules about members’ legal identities and rights according to what the ‘average’ family looks like now will only serve to damage the family of tomorrow - or those that fall within the margins today.  

For example, one can criticize the majority decision from the Supreme Court of Canada in Canada (Attorney General) v. Mossop as a case where the rigid adherence to boundaries reinforced the subordination of queer individuals. In that case Mossop was denied bereavement leave from his employer when he attended the funeral of his same-sex partner’s father. At that time Mossop’s collective agreement permitted him leave upon the death of an “immediate family” member including a father-in-law. The Canadian Human Rights Commission decided that Mossop had been discriminated against on the basis of his

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family status, a ground protected under the human rights legislation. That decision was overturned by the Federal Court on review. The Federal Court found that the Human Rights Commission erred in finding there was family status discrimination. Rather, the Federal Court recategorized the type of discrimination as sexual orientation discrimination, a ground that was not protected at the time.

In his decision Marceau J.A. expressed concern over the expansion of the “family status” protected ground to include same-sex couples. After acknowledging that homosexual couples can constitute a family, the Court goes on to conduct a nuanced examination of Mossop’s identity as a gay man:

> It is sexual orientation which has led the complainant to enter with Popert into a “familial relationship” (to use the expression of the expert sociologist) and sexual orientation, therefore, which has precluded the recognition of his family status with regard to his lover and that man’s father. So in final analysis, sexual orientation is really the ground of discrimination involved.\(^{34}\)

This, of course, is exactly the type of control by identity that queer legal theory concerns itself with. By focusing on Mossop’s sexual identity rather than his family status (pursuant to the human rights legislation) the Court makes a choice to prevent same-sex couples from accessing heterosexual privilege. The rigid policing of the boundaries of what constitutes a family worthy of protecting fails to properly serve queer Canadian families.

While sexual orientation is now a protected ground across the country, practitioners should still be wary of this type of identity policing in the law. McCarthy and Radborn’s Chapter “We Are Family’ Family Law for Same Sex Couples” details the status of same-sex issues in Canada in 2002.\(^ {35}\) While providing an excellent overview of the status of the law at that time, the authors suggests that the “last major bastion of discrimination against same-sex couples is the denial of the freedom to marry.”\(^ {36}\) Hindsight is never kind to a scholar’s predictions of the future. The reality remains that in Canada queer or alternative families


\(^{35}\) *supra* note 9 at p. 11

\(^{36}\) *Ibid*
still struggle to access the privilege reserved for “traditional” Canadian families, despite having gained the right to marry.

Queer legal theory provides us with a number of lessons practitioners can take away and put to use with clients regardless of their orientation or family structure. All clients are better served by family lawyers who have a fundamental understanding of queer legal theory and, more importantly, how it can be used as a tool to analyze and shape solutions to problems. When approaching even the day-to-day real world problems that clients come to us about, practitioners can employ queer legal theory in practices that include: 1) asking new questions; 2) looking to build coalitions; 3) becoming more comfortable with non-normative narratives and social science in presentation; and 4) becoming accustomed to the language queer clients use to define their experiences.

a) Asking New Questions

In his work Valdes laments the fact that law school fails to prepare students for multidimensional analysis. We are trained to categorize problems in one-dimensional terms. This training is supported by the pervasive single-issue identity politics that has shaped much of our legal development. While focusing on problems as single issue items can be an efficient way to achieve some results in some cases, it can also leave us ignorant of other issues impacting a legal problem. For example, focusing on same-sex marriage as the last major bastion of discrimination against same-sex couples impedes our ability to recognize that our legal structures are still replete with examples of the heteronormative marginalization of queer families.

To start recognizing other dimensions at work, practitioners can simply become better at “asking new questions.” Taking a step away from problems as presented by case law, clients, or other counsel to query other elements at work can broaden and deepen our understanding of an issue. Valdes presents this tactic as a way for scholars to identify how other forms of privilege or subordination blend into a nuanced problem. For example, he

37 supra note 3 at p. 102
38 Ibid at p. 108
is urging us to look for the patriarchy in problems that appear to be about race or to look at the impact of class differences when confronted with a problem about homophobia. He is asking that we always bring an awareness of the many intersections of privilege and marginalization to our examination of an issue, no matter how cut-and-dry it may first appear.

This exercise can help us unpack the nuances involved in any client matter. We can examine a spousal support problem, for example, by incorporating an awareness of instances of oppression and their impact on our clients. Understanding that a queer person’s vocational industry may have deeply ingrained biases and discrimination against queer folks reveals a potentially important component when conducting a spousal support review after that person loses their job. That individual’s need for spousal support may be greater, or their ability to pay spousal support may be lesser, as it could take longer to obtain a new position.

Queer legal theory is about recognizing that problems rarely fit into the categorizations we artificially construct. Asking new questions helps us move beyond our social, historical and legal constructions to fully engage the complex reality faced by our clients. To help us reconcile those realities with effective problem-solving strategies, practitioners can also borrow from queer legal theory’s concepts of coalition-building.

**b) Building Coalitions**

Queer legal theory has had to build viable coalitions internally (between marginalized communities) and externally (with other more established movements) in order to make progress and evolve as a credible movement in its own right. For example, Elaine Craig\(^39\) identifies potential points of tension between feminism, queer theory, and gay and lesbian rights movements as they related to the development of parentage law in *C.(M.A) v. K.(M.)*\(^40\) In that case a lesbian couple sought an adoption order by the non-biological mother of their child without the consent of the biological father. Prior to the application all

\(^{39}\) *supra* note 29

\(^{40}\) (2009) 94 O.R. (3d) 756
three parents had been involved in the parenting of the child. The couple argued that their more traditional two-parent family needed to be protected. The Court dismissed that application, deciding that the best interest of the child does not turn on the protection of a nuclear family structure.

In her analysis of Justice Cohen’s decision, Craig highlights how the three theories converge and overlap with one another. The result of this multidimensional approach is a more broad and rich understanding of the way the decision from *C.(M.A.*) has a nuanced effect on the law and the way queer family structures are or are not recognized by the courts. Craig brings feminism and queer theory together by highlighting the Court’s decision to move away from using sex as a basis to define families. She further enriches her analysis by problematizing the reinforcement of biological supremacy in the relationship between parents and their children. Synthesizing different models of analysis like this can assist us with developing a richer and broader understanding of the way the law impacts our clients. Craig’s exploration of the various overlapping theories respecting *C.(M.A.*) provides a number of launch points for further inquiry into new cases with different variations on the facts.

Understanding multiple analytical tools can help us unpack legal developments in case law. We can also look to build coalitions between marginalized groups on a number of issues. The challenge is to produce a coalition to help unpack the consequences of diversity across a number of legal hierarchies. Millbank argues that the concept of biological supremacy marginalizes more than same-sex couples. Heterosexual couples experiencing fertility difficulties are also actively “queering reproduction” by contributing to the discourse over biological supremacy. Millbank groups folks marginalized by biological supremacy by using the term “reproductive outliers”. This grouping creates a coalition that combines the

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41 supra note 29 at p. 219 - 224
42 supra note 3 at p. 93
experiences of people occupying similar marginalized spaces in the legal hierarchy, despite their multitude of orientations and identities.\textsuperscript{44}

Lawyers should be open to the idea of using unlikely allies in building cases and analysing information for their clients. This mutual support and recognition of other forms of oppression strengthens the services we offer to the public.

c) Constructing the Narrative

In her review of Valdes’ queer legal theory, Kepros highlights the “ultimate” goal of queer legal theory, which is “sex/gender dignity and freedom for every individual”.\textsuperscript{45} She goes on to outline a number of strategies to accomplish this. Throughout this exploration we can see a key thread woven through the process of defining queer legal issues, that of either self-claimed or externally-enforced labelling and identity-construction. Queer legal theory concerns itself with the assumptions made when we apply legally constructed identities to individuals. Accordingly, we must push past the assumptions that come with any expressed identity and recognize the individual people bearing the marginalized mantle. We must recognize that there is no single experience of “lesbian,” “gay,” “bisexual,” “trans*,” or even “queer.” Rather, there are only ever individual experiences mediated by hegemonic systems of oppression; systems that are constantly intersecting and overlapping in ways that cannot always be predicted. To move beyond identity-based assumptions and toward individual understanding, lawyers must become more familiar with the narratives and experiences of marginalized individuals.

Kepros writes that “moving towards a Queer legal narrative means Queers must inform judges who… generally lack any personal experience as Queers of the contours of Queer experiences”.\textsuperscript{46} Understanding narratives helps us learn about the real and concrete effects of marginalization. Framing Mossop’s experience as a common-law spouse, rather than focusing on his identity as a gay man may have assisted the court in understanding his discrimination on the basis of his family status. \textit{C.(M.A.)}, in contrast, is a case where the

\begin{itemize}
\item \textit{Ibid} at p. 106
\item \textit{supra} note 28 at p. 294
\item \textit{Ibid} at p. 296
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Court’s careful analysis of the family narrative helped influence the results. Justice Cohen clearly had this narrative in mind when the Court decided against dismantling the child’s non-traditional family. Family law practitioners need to become experts at presenting the narratives and experiences of our clients.

A key element of becoming comfortable with these narratives involves, to some extent, transcending “privacy.” While sexuality does have a private element to it, when oppression occurs as a result of sexual behaviour or orientation, it also functions in public, whether the individual is “out” or not. Kepros argues that privacy has not helped queers. Indeed the enforcement of privacy through the military “don’t ask/don’t tell” policy was specifically intended to impede anti-discrimination and equality struggles in the United States. In the family law context, it similarly impedes progress when Courts incorporate how public parents are about their “lifestyles” when making decisions about custody or parenting. Lawyers can assist clients with embracing the public nature of sexuality and becoming more comfortable with making queer narratives public, but must recognize that for some clients the cost of making their sexuality public would be too high. This is, again, a situation where an awareness of the multiple intersecting issues that queer clients face is critical to the success of family law practitioners in compassionate and effective work with queer clients.

Narratives in the legal context require grounding to be persuasive. By becoming more familiar with advocating the use of social science in legal analysis, practitioners can bridge the gap between their client’s narratives and the legal framework. The social sciences have developed years of studies that help us understand that impact of heterosexism and heteronormativity, among other systems of marginalization and oppression. Our spousal support client from the example given above, for example, can better ground their narrative by explaining the impact of losing one’s job in an industry that actively discriminates against you. While lawyers must become experts at presenting narratives, we can also be mindful of the need to ground these narratives in social science evidence.

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47 Ibid at p. 297
48 Ibid at p. 295
**d) Working with Queer Language**

One of the most enduring criticisms of queer theory comes from the identity politics movement.\(^49\) Identity politics focuses on the shared experience of a class of marginalized people as they fight towards equality and an end to systemic and individual discrimination. Racial politics are often quoted as a good example. Race can unite a group of people who share a particular history of discrimination and cultural subordination. This identity can be used to unify and mobilize members of the same class to fight for equality. Because queer theory challenges the very idea of universal shared experience within identities and calls for a cross-dimensional approach to fighting discrimination, some critics argue queer legal theory limits the ability of groups to work together as a cohesive unit based on shared experience.

Queer legal theory does not universally call for the end of identity politics, however.\(^50\) Rather, it simply shifts the focus to the origins of marginalization and how the heteronormative hegemonic majority asserts its supremacy. Indeed, Valdes argues that scholars should aim to properly conceptualize “sexual orientation” as a category constructed against the hegemonic norm rather than a positivist category within a transhistorical and stable definition, and to fight against stereotypes that conflate orientation with other identity factors.\(^51\) Conceptualizing sexual orientation helps coherently capture the narratives of queer individuals. Being familiar with the way our clients conceptualize their own identities can provide practitioners with a frame of reference for understanding the narrative that our clients present. Further, fighting to avoid conflating experiences into stereotypes involves coming to a fuller and more diverse understanding of the different ways queer people are marginalized. Simply telling marginalized groups minorities their identities no longer matter (legally or socially) disempowers marginalized individuals; it fails to consider how the

\(^{49}\) Ibid at p. 290

\(^{50}\) Ibid at p. 291

\(^{51}\) Ibid at p. 295-296
heterosexist status quo continues to differentially grant access to privilege at the expense of minorities.\textsuperscript{52}

Practitioners can take an important step towards serving the queer community by simply becoming more familiar with queer language. The next part of this paper outlines some of the language used by the queer community in reference to their own experiences. It is important to note that we do not aim to replace the narrative of any member of the queer community with our own definition or imposition of shared experience. Rather, examining the many conceptualizations of gender and sexual orientation within the queer umbrella can help make us more comfortable with the realities that our clients might face on a day-to-day basis.

\textbf{III. Queer Language}

Words can inform our mind, caress and comfort our feelings, excite and thrill our spirit, or warm and kindle the flame of our hearts. They can also slap our face, punch us in the stomach, rattle our nerves, kill our desire, or destroy our self-confidence.\textsuperscript{53}

English novelist and journalist Angela Carter said “Language is power, life and the instrument of culture, the instrument of domination and liberation.” The use of language is of significant importance in the legal profession. “Legal language must be judged by how clearly and effectively it communicates.” \textsuperscript{54} Any discussion of the recent evolution of the law regarding queer relationships and individuals must include a discussion of language and its consequences.

Doctor André P. Grace of the Department of Educational Policy Studies, University of Alberta sums up the importance of language, and its potential consequences, while addressing educators:


\textsuperscript{53} Michael Toorney, \textit{The Power of Language}, 1999

\textsuperscript{54} Peter Tiersma, \textit{Legal Language}, University of Chicago Press, 1999
Finding the right word or terminology can be quite difficult, especially when we are looking to describe a person or a group of persons appropriately. This has certainly been the case when we are trying to find the right words and phrases to describe persons across sex, sexual and gender differences. Naming and describing lesbian, gay, bisexual, trans-identified (LGBT) and other persons across these differences has been a challenge both inside and outside the LGBT community.55

Well-intended practitioners can sometimes struggle with reconciling the identities of their clients and become over-focused on treating all people “equally” while ignoring differences based on sexual orientation and gender. This kind of approach can contribute to the problem of inequality and marginalization. For example, Monica T. Williams discusses a similar problem with racism and “colourblindness”:

In a colorblind society, White people, who are unlikely to experience disadvantages due to race, can effectively ignore racism in American life, justify the current social order, and feel more comfortable with their relatively privileged standing in society… minorities, however, who regularly encounter difficulties due to race, experience colorblind ideologies quite differently. Colorblindness creates a society that denies their negative racial experiences, rejects their cultural heritage, and invalidates their unique perspectives.56

Other marginalized groups can face similar experiences. By ignoring the unique queer narrative practitioners run the risk of disadvantage their clients. Legal issues facing queer clients are often different than they are for straight or cisgender clients. Understanding the language clients use to identify themselves can help practitioners avoid erasing their clients’ unique experiences. Being more comfortable with queer language can also assist lawyers with identifying important elements of a matter. The first step is in learning the language.

\textit{a) Discussing the Community}

56 “Colorblind Ideology is a Form of Racism” Psychology Today Dec 27, 2011
LGBT (Lesbian, Gay, Bisexual and Transgender) is a common initialism that is sometimes used to address a portion of the queer community. Its use was a response to the inadequacies associated with the use of the term “gay” as a blanket term for all non-normative sexual orientations. This blanket term privileges the male and cisgender individuals within that group.\(^{57}\) Homosexual is another umbrella term used to describe same-sex orientations. However, some members of the queer community are averse to using this terminology because of its connection with sexual behaviour and its clinical overtones, and the fact that it does not include non-monosexual identities such as bisexuality, pansexuality, asexuality or other fluid sexualities, or any diverse gender identities.

However the initialism “LGBT” can still be criticized for further marginalizing other non-normative identities. Other variations of the initialism are sometimes used to address this apparent deficiency. For example, LGBTI can be used to include intersex.\(^{58}\) Similarly, initials can be added for other identities such as Questioning, Two-Spirit, Hijra, Pansexual, Polyamorous, Asexual, Queer, and others. This quest for inclusiveness can result in a long acronym that few understand. Currently, QUILTBAG (Queer/Questioning, Undecided, Intersex, Lesbian, Trans, Bisexual, Asexual, Gay/Genderqueer) is gaining popularity.

The phrase Gender and Sexual Diversity (or GSD) is sometimes used as an inclusive alternative to initialisms and acronyms. It is also common to use the term Queer to describe both sexual and gender minorities.\(^{59}\)

However the word “Queer” has a problematic history and continues to be uncomfortable for many within and outside sexual and gender diverse communities. Its use as a derogatory label historically has led many within sexual and gender diverse communities to reject the term as an oppressive one. Often it is seen as having political overtones such as those used in the academic discipline of Queer Theory. Another critique is that it may be too general to


\(^{59}\) Towards Embodying Justice in Relation: Resources on Sexuality, Gender, Discrimination and Responsible Practices, United Church of Canada
have any true meaning for the communities and individuals it represents. Despite these issues, others within sexual and gender diverse communities have embraced Queer as an empowering name, and an inclusive one. It is often used to include both sexual minorities and gender minorities. The title of this paper uses the word Queer to refer to sexual and gender minorities, embracing the academic nature of the word as well as its empowering and inclusive qualities. Practitioners undoubtedly need to choose their words carefully when working with clients from across the sexual and gender spectrum. Returning to this section’s original point, we are deeply aware that “Language has power to shape our relations and it is constantly changing.”

Next, we explore some of the different identities within the queer spectrum. We often think we know what these words mean, but it is important to realize that these identities are not stable and could mean different things to different people. We should be cautious about applying labels to other individuals and to remember that identities are fluid and contextual.

b) Lesbian

Lesbian is a relatively common identity that people often think maintains a stable and consistent meaning. The root of the word is a reference to the poet Sappho, geographically located on the isle of Lesbos, whose writings involved references to love between women. The word came into use in English as a reference to female sexual behaviour around 1825.

Planned Parenthood Toronto defines Lesbian as a female-identified person who is attracted to other female-identified people. Many within the lesbian community may see their attraction as exclusive to other female-identified people, and may distinguish themselves through this exclusivity from other identities such as Bisexual or WSW (women who have...
sex with women) but other lesbians may experience or act on attraction to other genders without feeling that this is contradictory to their identity label.

It is important to remember that the term Lesbian refers to a sexual orientation or identity and not a gender identity. Therefore, it is possible for a person who was designated male at birth to be a lesbian trans woman. It is also important to recognize that not all female-identified people who are in a romantic/sexual relationship with another female-identified person are lesbians despite the tendency to apply this label to women’s same-sex. Since bisexual, pansexual or asexual women may be in relationships with other women, it may not be appropriate to use the term “lesbian couple” to refer to two women in a relationship.

c) Gay

Gay is another identity label, like Queer, that has a troubled history of pejorative use. Today it is used both positively and negatively (How Gay Became Children’s Insult of Choice, BBC News March 18, 2008). Beginning in the 70s the word was used as a catch all for anyone with a non-normative sexual orientation or gender identity. Today Gay is most commonly used to refer to a male-identified person who is attracted to other male-identified people. Some female-identified people attracted to other female-identified people also identify as Gay.65

d) Bisexual

“I have no idea what bisexuality means… [I realized that] I didn’t need to – and couldn’t possibly – cover all the possible meanings that bisexuality can have. To do that would take a whole other book, and even that wouldn’t be close to comprehensive.”66

The roots of the word Bisexual connect it to a binary view of sex and gender, since it was originally used in the late nineteenth and early twentieth centuries to describe what is now known as intersexuality. Freud used the term to refer to a child’s desire for both the mother

65 Ibid
66 Shiri Eisner, Bi: Notes for a Bisexual Revolution, 2013
and the father, a desire which was resolved in either successful heterosexuality or unsuccessful homosexuality. These medicalizing and pathologizing roots can still be seen in contemporary responses to bisexual individuals, who are seen as supporting the gender binary despite strong ties between the bisexual and transgender communities, and who are often accused of going through a phase or being immature.

The Alberta Teachers Association defines bisexuality as being attracted physically and emotionally to both males and females.\(^\text{67}\) However, this definition must evolve as our understanding of gender has evolved, and we must recognize that many bisexual people define themselves as a person who can be attracted to people regardless of gender. This recognizes that men and women are not the only gender identities available. It is important to remember that in a same-sex couple or in a different-sex couple, one or both of the parties may be bisexual. Therefore it may be a mistake to refer to a same-sex couple as a “gay couple” and a different-sex couple as a “straight couple.” Some individuals choose words such as Pansexual, polysexual, multisexual, or fluid instead of Bisexual to describe being attracted to people across the gender spectrum.

\textit{e) Heterosexual}

Just as it is important to name and recognize cisgender individuals as having a gender identity rather than being the “normal” default, it is equally important to recognize that heterosexual or straight individuals have a sexual orientation, and that this orientation can include as much variation in behaviour and attraction as any other sexual orientation. Although heterosexuality most often refers to male-identified individuals who are exclusively attracted to female-identified individuals, and vice versa, this is not always the case. Just as there are lesbians who sometimes have sex with men, and gay men who sometimes have sex with women, there are straight men and women who sometimes engage in same-sex behaviours or experience same-sex attractions.

\(^\text{67}\) supra note 55
f) Transgender

Commonly the last initial in LGBT refers to Transgender, or trans*. This is a shift from sexual identity labels to gender identity labels. Sometimes this differential is difficult to comprehend because of the conflation of sex with gender and sexual orientation with gender identity. A sexual identity or sexual orientation is defined by Planned Parenthood as how a person identifies themselves in terms of the gender of the people they are attracted to. A gender identity is defined as one’s own personal sense of being a man, woman, or other gender. These two categories are not inherently related. A person may identify as heterosexual, homosexual, bisexual or asexual and still be a man, a woman or another gender.

This issue was tackled in the story of a teacher and his sketch of a gingerbread man:

"...then [the facilitator Abbott] ... sketches a picture on a whiteboard at the front of the room: a figure shaped like a gingerbread man, with a smiley face, a heart, and a starburst at the crotch.

Abbott points to the head and explains that gender identity lies there (whether you define yourself as a man, a woman, or somewhere in between); the heart represents orientation (whom you’re attracted to); the starburst connotes sex (your physical characteristics); and the outline, the external shape, stands for gender expression (how you dress, talk, walk, and so on). These various aspects don't line up the same way for everyone, he says.

... Perry, another facilitator, speaks up. "It helps if you understand that for many people, gender is not just two possibilities but many," he says. "Being a man or woman exists on a scale, so it's not either/or. You don't have to be one or the other." 68

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Gender is a complicated matter that so many of us still see in binary terms of men/male and women/female. As described in the Queer Glossary of Bowling Green State University, Gender is:

A complicated set of socio-cultural practices whereby human bodies are transformed into “men” and “women.” Gender refers to that which a society deems “masculine” or “feminine.” Gender identity refers an individual’s self-identification as a man, woman, transgendered [sic] or other identity category. Many tomes have been written on gender, and there are countless definitions. But most contemporary definitions stress how gender is socially and culturally produced and constructed, as opposed to being a fixed, static, coherent essence.69

This document describes Trans* as a range of identifications that can challenge the pervasive binary gender system in some cultures, particularly cultures heavily influenced by Eurocentric colonialism. Transgender is an umbrella term that can include a vast array of differing identity categories such as transsexual, drag queen, drag king, cross-dresser, transgender, bi-gender genderqueer, agender, genderfluid, and a myriad of other identities, though the inclusion of cisgender cross-dressing or drag-performing individuals is deeply contested within the transgender community. It is important to remember that not all individuals who use these identity labels identify as Trans. Like Eisner notes with bisexuality, and we have gestured towards with lesbian, the term Transgender cannot be defined in an uncontested way that encompasses the full spectrum of its use. On the most basic level it is often used by individuals who, for many varying reasons, do not feel that the existing legal and social definitions of gender, that conflate gender with assigned sex at birth and present gender as a fixed and stable identity category, accurately describe their experience.

The issue of language regarding Trans communities is reaching a cultural critical mass. For example, newspapers have traditionally based pronoun use (such as “he” or “she”) largely on the status of sex-change surgery and the physical appearance of the subject, rather than

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69 Bowling Green State University, “Queer Glossary”
http://www2.bgsu.edu/downloads/sa/file29621.pdf
an individual’s stated preference or gender identity. This distinction focuses on the primacy of perceived biological sex over the internal experience of gender. This has started to shift. Associated Press style, according to the 2013 guide, bases pronouns on an individual’s stated preference, though it doesn’t make specific allowances for using novel words. The Globe style guide references AP, relying on “the pronoun preferred by the person in question.”

The Alberta Teachers Association, a professional body which also must struggle with how best to serve its diverse clientele, defines Gender Identity as a person’s internal sense or feeling of being a man or a woman. Knowing that gender exists beyond this limiting binary, we advocate for the addition of “or another gender” to this definition.

g) Cisgender

Cisgender, a word coined in contrast to Transgender, describes individuals whose gender expression is consistent with the gender they were assigned at birth. Cisgender was coined to address the problems with the use of terms such as “normal” to describe those who do not identify as Transgender. An individual who was designated male at birth and continues to identify as male could be referred to as Cisgender, although this could change over a person’s lifetime.

h) Gender Expression

Gender expression relates to how a person presents his, her or their gender to the larger society. Gender expression and gender identity are not synonymous, and gender expression does not provide the viewer with knowledge about an individual’s gender identity. Individuals, whether transgender or cisgender, express themselves in a wide variety of ways and call on gendered presentations such as butch, femme, or androgynous in ways that sometimes do and sometimes do not correlate to their gender identity.

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70 Boston Globe, The quickly shifting language of the transgender community, March 9, 2014
71 surpa note 59
Cross-dressing is a context-specific gender performance, and refers to the practice of sometimes wearing clothes that represent a gender other than that with which the subject identifies. This would therefore not apply to a trans woman wearing traditionally feminine clothing. However it may apply to a drag performer, who usually, but not always, crossdresses for performance purposes only\cite{supra note 55} or someone who derives sexual pleasure from dressing in clothing generally identified with another sex but continues to identify with the gender assigned to them at birth.\cite{supra note 59} Cross-dressing is not the only example of context-specific gender expression, however. Many individuals, both cisgender and transgender, perform and express their gender differently depending on where they are, what they are hoping to convey through their gender expression, and who they are with.

Gender identity and gender expression are often closely linked with the term transgender, and transgender individuals are often scrutinized in their performance of gender. This has significant impacts on the experience of transgender individuals in our cissexist society, where “passing” is often seen as success and visible transness is seen as failure. This emphasis on passing differentially impacts trans men, trans women and non-binary trans individuals, and leaves trans women at particular risk for sexual violence and other harms. Non-passing trans women are often un- or under-employed, and face constant discrimination in most spaces. Although it is true that “[m]any transgender people seek support and acceptance from the gay and lesbian community, where gender norms are often more inclusive,”\cite{Ryan & Futterman, 1998, p. 48} it is not always true that they find support and acceptance in those spaces.

The perception that gender is something transgender individuals “express” but cisgender individuals simply inhabit is just one of the ways that cisnormativity impacts the lives of transgender individuals. This also impacts non-normative gender performances by cisgender individuals.
i) Plurality of Gender and Sex

We are beginning to see further expressions of gender outside the binary of men and women including Genderqueer which Planned Parenthood defines as someone who does not identify as a man or a woman, may identify as both a man and a woman, or identifies outside the confines of traditional Western ideas of gender. Other terms that describe identities outside of the gender binary include Agender, meaning someone who identifies as neither a man nor a woman, Bigender, a person who identifies as both male and female, and genderfluid, a person whose gender identity can shift between positions on the gender spectrum.

Although the conflation of sex and gender is a problematic construction that acts to police and erase many trans individuals, it’s important to recognize that sex, as much as gender, is a socially, historically and legally constructed binary. Intersex is a term for those individuals whose genitalia or chromosomal makeup do not fit within the binary construction of male or female sex.

In many non-European-derived cultures, genders beyond men and women are recognized, such as the hijras of India, Bangladesh and Pakistan (who have gained legal identity), the Fa'afafine of Polynesia, and the w worn virgins of the Balkans, among others. In the Canadian context we must look at the identity Two-Spirit, or 2-Spirit, which exists in the Canadian Aboriginal, First Nations and Metis cultures. A Two Spirit person may or may not dually identify as gay, lesbian, bisexual and/or trans*. The term refers to the idea that a person has both a male and a female spirit inside them. This term is specific to Aboriginal, First Nations and Metis people and should not be used as an identity by those outside these communities.

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75 Historical Background and Legal Status of Third Gender in Indian Society, IJRESS Volume 2, Issue 12, December 2012
76 *supra* note 55
If you consider sexual orientation (gay, lesbian, bisexual, straight, etc.) one axis (Abbott’s heart), and gender identity (cisgender, transgender, genderqueer) another axis (Abbott’s head), one could add a third axis based on relationship structure. This may be an area of growing importance for the discipline of family law. There is a common perception that monogamy is the “norm.” However there are those whose lives and loves don’t fit into that category. Planned Parenthood defines Polyamory the practice of having or being open to having ongoing relationships with more than one person at once, with the knowledge and consent of all involved. This is different than Polygamy which is specifically a man married to more than one wife, or the more uncommon practice of polygyny which is specifically a woman married to more than one husband. It is also different than an extramarital relationship that is without the consent of one of the partners. The law still hasn’t evolved to legally recognize families that involve more than 2 romantic or sexual partners at one time.77 While the law may be evolving to recognize families made up of more than 2 parents78 it still does not recognize the possibility of plurality of sexual and/or romantic relationships between those parents.

Heterosexism and Cissexism: Enforcing the Norm

Heterosexism is defined by the Alberta Teachers Association as the assumption that everyone is heterosexual and that this sexual orientation is superior. Cissexism refers to the same sort of assumptions regarding gender identity; assuming that everyone is cisgender and that this gender identity is superior. Heterosexism is often expressed in more subtle forms than homophobia and can be characterized by the “denial, denigration, and stigmatization of non-heterosexual identity, behaviour, relationships or community”.79 This is essential to our understanding of how family law practices must change as we serve queer communities. The law has been based on heterosexist and cissexist assumptions, and is only beginning to

77 Reference re: Section 293 of the Criminal Code of Canada 2011 BCSC 1588
78 supra note 2 and Family Law Act SBC 2011, c 25
79 supra note 63
change. As practitioners, we must understand how our laws and our practices are heterosexist in order to effectively advocate for our clients.

Britt Peterson, the writer of the Boston Globe article The quickly shifting language of the transgender community, sums it up as follows:

So what’s a would-be “ally” (the term for a nontransgender supporter of transgender rights) to do? Start by not presuming anything—like anyone else, transgender people have individual desires about the language they choose for themselves, including both how they describe themselves and what pronouns they use. Once you learn the language someone prefers, embrace it, as more and more publications, workplaces, and schools are beginning to do. “If someone says they are a man, and they don’t want to be called a transgender man or a ‘man who used to be a woman,’ I think that’s really important. That’s just about respect,” Keisling said. This is one area where words can either be a weapon or a powerful means of self-determination.80

As practitioners, understanding these words is important but our use of these words is even more important. Language continues to evolve as does the law and power structures along with it. By listening to our clients and accepting the identities they embrace, we are best positioned to use the language which can best express their lived experience and better advocate on their behalf.

It is cliché to say that the law develops slowly. It is amazing, then, how fast the law has developed respecting queer families. A group of people who were marginalized and neglected by the law just over a decade ago is now facing incredible amounts of regulation. Some of these advances have been positive. However, the law tends to operate by creating category and identification. Accordingly family law practitioners can be of incredible assistance by having a basic and fundamental understanding of the impact of this categorization. Lawyers can take lessons from the queer legal theory movement to provide greater assistance to their clients. The queer world is now full of complicated regulations and has always been full of intricate interactions between systems of oppression. Queer

80 *supra* note 70
clients will be turning more and more towards legal experts who can help them find places for themselves and their queer families. It is incumbent upon family law practitioners to become more comfortable and competent so that we can better serve this marginalized portion of the public.