Canada's Same-Sex Marriage Law;

Exception to or Exemplar of Canada's Family Policy?

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Abstract

Family policy in Canada is primarily concerned with assisting parents raise their children. This fairly singular approach to family policy is ironic given that Canada does not have a nationally-coordinated family policy. The development of a national family policy has been hampered by Canada's decentralized governmental structure (i.e., federal and provincial, as well as territorial, governments) and other factors such as diverse geography and different traditions (e.g., a tradition of common law in English Canada, and civil law in Quebec). A recent addition to Canada's family policy is Bill C-38, The Civil Marriage Act (2005), the law legalizing same-sex marriage. To put Canada's same-sex marriage law into context, this article presents some preliminary statistics about same-sex marriage in Canada, and considers whether same-sex marriage legislation is a good example of Canadian family policy, or an exception to the rule that Canadian family policy focuses primarily on helping parents socialize their children.

Key words: same-sex marriage, legislation, family policy, parenting, children

Introduction

Family policy is largely a 20th century invention. It developed first in Europe and spread over the course of the century to North America and other parts of the world (e.g., Australia, China, Japan). Family policy is seen as a subset of social policy (e.g., Kamerman & Kahn, 1997), and it illustrates a government's attempts to regulate the lives of its citizens and the relations among them. From the government's perspective, life events such as birth, marriage, and death have to be monitored and regulated (e.g., China's one-child policy) in order to promote the well-being of a nation. Gender equality, sexual reproduction, child-rearing practices, domestic violence, and inheritance are all examples of issues that can be covered by family policy (e.g., Baker, 1995; Conway, 2003; Vail, 2002), although some issues take priority over others depending on the concerns of a given nation. Sweden, for example, explicitly uses family policy to foster equality rights (Vail, 2002).

In the Canadian context, family policy refers primarily to legislation and governmental programs that support parents in raising their children. Why the emphasis on children? Because "children are the source of renewal of the human capital of an economy" (Baril, LeFebvre, & Merrigan, 2000, p. 5), or an investment in the nation's future (e.g., Beauvais & Jenson, 2001). Thus, Canadian family policy focuses primarily on families with children (e.g., Baker, 1995; Conway, 2003; Vail, 2002), reflecting the common practice in the family policy field of defining families as multi-generational system of parents raising children (e.g., Kamerman & Kahn, 1997). As one example of Canadian family policy, same-sex marriage legislation (i.e., Bill C-38, the Civil Marriage Act, 2005) is not, however, explicitly concerned with children. Although in some cases same-sex marriages involve children, in most cases they do not (e.g., Statistics Canada,

2010). The purpose of this paper is to briefly review family policy in Canada, to examine same-sex marriage in Canada, and to determine whether same-sex marriage legislation is an exception to, or an exemplar of, Canadian family policy.

Definitions of Family Policy

In Canada, as in other countries, there is no general consensus on how to define family policy (Baril et al., 2000) beyond a vague notion of "state intervention in family life" (Baker, 1995, p. 3). Family policies have been developed to promote gender equality (e.g., Vail, 2002), to regulate sexuality and reproduction (e.g., Baker, 1995), to balance work and family life (e.g., Skrypnek & Fast, 1996), as well as to support parents who are raising children. One Canadian researcher defined family policy as "a coherent set of principles about the state's role in family life which is implemented through legislation or a plan of action" (Baker, 1995, p. 5). Another Canadian researcher described family policy as "the policies, programs, laws, and regulations designed explicitly to support families in raising children. It includes policies that support parents and communities in providing environments that ultimately assist a child's development" (Vail, 2002, p. 3).

According to Baker (1995), there are three categories of Canadian family policy. The first category of family policy involves legislation (both federal and provincial) addressing family issues such as marriage, reproduction, and divorce. Canada's Civil Marriage Act (2005) is an example of this category. The second category involves governmental support for family income (e.g., parental leave and benefits, family allowance, and child tax credits); an example of this category is the federal family allowance program that ran nationally from 1945 to 1992, in which Canadian mothers received monthly "baby bonus" cheques from the government. The

third category of family policy involves provision of services such as child care, child protective services, and home care. Quebec's $7-a–day subsidized child care program is an example of this category.

Factors Influencing Family Policy

There is, however, no national family policy in Canada (e.g., Conway, 2003; Vail, 2002). A number of factors promote the development of a national family policy including national values, demographic trends, and political structure. According to Vail, non-consensus about the importance of gender equality (e.g., in the United States), or on whether children versus families should take priority in policy decision-making (e.g., in Australia), contributes to the lack of a national family policy. Nations with a tradition of socialist governments (e.g., Sweden) are more likely to have national family policies (Baker, 1995). Demographic trends, such as declining fertility and the aging population, can also influence whether a country has a national family policy (e.g., Baker, 1995).

The biggest factor affecting family policy is Canada's decentralized political structure with two levels of government (i.e., federal and provincial) responsible for policy and legislation (Vail, 2002). For example, marriage falls under federal jurisdiction, but the solemnization of marriage falls under provincial jurisdiction (e.g., in British Columbia, only one member of a couple has to apply for a marriage licence, but she or he has to be 19 years of age. In Saskatchewan, both members of a couple have to apply for a marriage licence, but they only have to be 18 years of age).

Similarly, parental leave and benefits as well as divorce are also affected by Canada's decentralized political structure. At the federal level, unpaid maternity and parental leaves are

available for childbirth or adoption for up to a year, with Employment Insurance benefits paid to

eligible employees for up to 50 weeks (Employment Insurance Act, 1996). Provinces vary,

however, on specific details such as how soon maternity leave can start prior to the expected date

of birth (e.g., 11 weeks in British Columbia, 17 weeks in Newfoundland), or previous length of

employment in order to be eligible (e.g., 0 to 12 months). Divorce is another case where,

although the Divorce Act (1985) is federal, divorce support and child custody laws can fall under

provincial jurisdiction. For example, federal child support guidelines inform most Canadian

jurisdictions; Manitoba, Quebec, and New Brunswick, however, follow provincial child support

guidelines. (Provincial child support guidelines are also used in cases nation-wide when

cohabiting parents separate.)

Furthermore, Canada's decentralized political structure is not the only challenge to a

national family policy. "Disputes over jurisdiction have typified Canadian social policy

development. Added to this, Canada is a large country, relatively sparsely populated by

culturally and racially diverse people from many different backgrounds, with two official

languages, and two different systems of civil law" (Baker, 1995, p. 337). Specifically, law in

English Canada is influenced by British common law, whereas law in Quebec is influenced by

the French *Code Civil*. As an example, laws with respect to cohabitation differ greatly from

province to province, and especially in Quebec where civil code law does not recognize the

relationships of cohabiting couples (e.g., as in the case of inheritance when one member of a

cohabiting couple dies).

In summary, Canada, like the United States, has no national family policy, leading one

author to refer to Canada's "patchwork of entitlements" (Hurley, 2005, p. 3). Several factors

contribute to the lack of a nationally-coordinated family policy, with the most important being Canada's decentralized system of government, in which both the federal government and the provincial and territorial governments take responsibility for family policy. In general, laws about the legality of specific family events such as marriage and divorce (i.e., that they *can* occur) are federal; laws about *how* such events occur are largely provincial. Another important factor has to do with different legal traditions in Canada: common law in English Canada, and civil law in Quebec.

Same-Sex Marriage in Canada

Over five years ago, on July 20, 2005, Canada's same-sex marriage law, or Bill C-38 was signed into law (Hurley, 2005), allowing same-sex couples to marry nation-wide (several provinces had already legalized same-sex marriage beginning in 2003). Following the Netherlands, Belgium, and Spain, Canada was the fourth country in the world to extend marriage to same-sex couples. Such a dramatic policy change does not occur over night. As Dutch legal scholar Kees Waaldijk (2001) predicted, several decades of "small change" precede same-sex marriage legislation. Waaldijk's theoretical model is the only model that I am aware of that examines national progress toward the legalization of same-sex marriage, and as such I have used his model elsewhere to describe Canada's progress toward same-sex marriage (Rose, 2010). In examining laws about homosexuality in Europe, Waaldijk (2001, 2004) concluded that there is a pattern of steady progress toward the legalization of same-sex marriage. This progress involves a standard (i.e., invariant) sequence of events, each preceding the next. According to Waaldijk (2001), this series of "small changes" results in big change: the legalization of same-sex marriage.

According to Waaldijk's (2001) model, the first event in the sequence involves the decriminalization of homosexuality (i.e., sodomy), and can include the equalization of the age of consent between gay and heterosexual couples; in Canada, the decriminalization of homosexuality occurred in 1969 with an amendment to Canada's Criminal Code (e.g., Fisher, 2004); Canada has yet to equalize age of consent (Ottosson, 2009). The next event involves passing explicit anti-discrimination laws such as equality rights legislation; with an amendment to Canada's Human Rights Act in 1996, Canada passed explicit anti-discrimination law (e.g., Fisher, 2004). The final event leading to the legalization of same-sex marriage involves the recognition of same-sex partners, and the provision of partner benefits; in 2000, Canada passed the Modernization of Benefits and Obligations Act (2000), amending 68 federal statues to extend benefits to members of same-sex couples. According to Waaldijk (2001), once these three events have occurred, the stage is set for a nation to legalize same-sex marriage; as Waaldijk's model predicted, Canada passed same-sex marriage legislation (Hurley, 2005).

Since the passing of Bill C-38, on July 20, 2005, family life in Canada has changed very little. Most Canadian families have not been affected by the new law, as data show that same-sex couples represent an extremely small proportion of all Canadian couples (i.e., less than 1%), and to date only a small percentage (16%, with a high of 21.5% in Ontario, and a low of 9% in Quebec) of all same-sex couples marry (Milan, Vezina, & Wells, 2007). For same-sex couples that marry, however, their lives have changed in meaningful ways (e.g., Webb, 2008). As just one example, on the day two lesbian mothers married each other in Toronto, their 12-year-old son said "Now nobody can say I don't have a real family" (McCarthy, 2008). As with heterosexual marriages, some same-sex marriages end in divorce. Canada's first same-sex

divorce occurred in 2004 (e.g., Canadian Broadcasting Corporation, 2004), before same-sex marriage was legal nationally. In 2003, shortly after same-sex marriage was legalized in Ontario, a lesbian couple married; a week later, they filed for divorce. It took a year for the divorce to be granted (in part because of the discrepancy between Ontario's marriage law--under provincial jurisdiction--and Canada's Divorce Act, 1985, which is under federal jurisdiction).

Preliminary Statistics on Same-Sex Marriage

There are still very few statistics available with respect to same-sex marriage in Canada. Most of the statistics available are either from census and other data collected by Statistics Canada, or from various provinces' departments of vital statistics. Statistics Canada conducts a census every five years (i.e., in 2006, 2011), so to date there has only been one national census since the legalization of same-sex marriage (the most recent census was conducted ten months after the law was passed). Statistics Canada will conduct another national census in 2011, and at that time, we can anticipate a much clearer picture of same-sex marriage in Canada. In addition, each province and territory collects vital statistics data (e.g., births, marriages, deaths), although as each province collects somewhat different data, it is not always possible to make comparisons among them. For example, Ontario, the first province to legalize same-sex marriage (in 2003), does not collect data on the gender of people who marry; thus, Canada's most populous province does not have accurate vital statistics data on the number of same-sex marriages.

British Columbia and Quebec, the second and third provinces to legalize same-sex marriage (in 2003 and 2004 respectively), each have five years of vital statistics data that includes same-sex marriage data. There are both similarities and differences in the same-sex marriage statistics from B.C. and Quebec. As an example of a difference, gay men (57%) are

more likely than lesbians (44%) to marry in Quebec (St. Amour & Girard, 2009). In B.C., on the

other hand, lesbians (56%) are more likely than gay men (44%) to marry (B.C. Vital Statistics

Agency, 2003, 2004, 2005, 2006, 2007, 2008). These gender differences hold for all years that

the vital statistics data are available (see Table 1). In Quebec, 82% of same-sex couples that

marry are residents of Quebec, with 18% residing elsewhere (St. Amour & Girard, 2009). In

B.C., on the other hand, only 45% of same-sex couples that marry are residents of B.C., with

55% residing elsewhere (primarily the United States; B.C. Vital Statistics Agency, 2003, 2004,

2005, 2006, 2007, 2008). This finding indicates that B.C., like Quebec to a lesser extent (St.

Amour & Girard, 2009), is perceived to be a "same-sex marriage destination," particularly by

Americans. These residential differences hold for all years with one exception (see Table 2). In

2008, for the first time, more same-sex residents ($n = 400$) than non-residents ($n = 330$) married

in B.C.

　　　With respect to similarities, there is a noticeable trend in the number of same-sex

weddings over time in both Quebec and B.C. In each case, there is a big jump in the number of

same-sex weddings from the first partial year following legalization (i.e., 2003 in B.C., 2004 in

Quebec; B.C. Vital Statistics Agency, 2003, 2004, 2005, 2006, 2007, 2008; St. Amour & Girard,

2009) to the first full year following legalization (see Table 1). In addition, in both jurisdictions,

there is a higher than average number of same-sex weddings in the second full year, followed by

a leveling off in the third full year. This pattern suggests an initial period of "catch-up" (St.

Amour & Girard, 2009), as lesbians and gay men took advantage of the opportunity to marry as

soon as they could. This catch-up/level-off pattern is repeated in the number of same-sex

marriages in B.C. compared to all marriages in B.C. (B.C. Vital Statistics Agency, 2003, 2004,

2005, 2006, 2007, 2008). On average, over the five-year period for which complete data are

available (i.e., 2004-2008), 3.75% of all marriages in B.C. were same-sex marriages. In the

second full year after legalization, there was a higher than average percentage of same-sex

marriages (4.47%), followed by a lower than average percentage (2.67%) in the third full year

after legalization.

Other evidence that same-sex couples had to wait in order to marry is their higher than

average age at marrying; in both Quebec (St. Amour & Girard, 2009) and B.C. (Statistics Canada

2007), lesbian and gay individuals who married were approximately a decade older than

heterosexual individuals who married. The average age of lesbians who married in B.C. and

Quebec was 41.5 years; the average age of gay men was 43 years. Over time, both Quebec and

Alberta (Service Alberta, 2005, 2006, 2007) showed a decrease in average age of gay and lesbian

individuals who married. In Quebec, in 2004, gay men who married were on average 44 years of

age, and lesbians were on average 42 years of age (St. Amour & Girard, 2009). By 2008, gay

men who married were on average 42 years of age, and lesbians were on average 40 years of age.

In Alberta (where same-sex marriage became legal only after Bill C-38 was passed in 2005), the

median age of lesbian and gay individuals who married decreased from 40-44 years in 2005, to

35-39 years in 2006, to 30-34 years in 2007 (Service Alberta, 2005, 2006, 2007). The higher

than average age at marrying compared to heterosexuals, coupled with the decreasing average

age at marrying for gay men and lesbians over time, indicate that gay men and lesbians had to

postpone their marriage plans until same-sex marriages were legal.

For over 2/3s of same-sex couples that married, their marriages were first marriages. In

Alberta, 66.1% of same-sex marriages were first-time marriages for both spouses (Service

Alberta, 2005, 2006, 2007); in Quebec, 73.8% of same-sex marriages were first-time marriages for both spouses (St. Amour & Girard, 2009). In Alberta, 27% of same-sex marriages represented a second marriage for one spouse, and 6.8% represented a second marriage for both spouses (Service Alberta, 2005, 2006, 2007). In Quebec, 20.5% of same-sex marriages represented a second marriage for one spouse, and 3.7% represented a second marriage for both spouses (an additional 1.9% of same-sex marriages were conversions from civil unions; St. Amour & Girard, 2009). Furthermore, data from Quebec show that same-sex civil marriages are more common than same-sex religious marriages: 74.1% of lesbian couples and 75.7% of gay male couples had same-sex civil marriages; 25.9% of lesbian couples and 24.3% of gay male couples had same-sex religious marriages (the United Church of Canada, the Unitarian Church, the Metropolitan Community Church, and some liberal Protestant churches and Jewish synagogues conduct same-sex marriages).

Perhaps not unexpectedly, data from Census 2006 show that half of all married same-sex couples (i.e., 50%) live in Canada's three largest metropolitan areas (Statistics Canada, 2009). Over 1/5 of all married same-sex couples in Canada live in the greater Toronto area (21.2%). Another 18.4% live the in greater Montreal metropolitan area, and 10.3% live in the greater Vancouver area. Household composition data, on the other hand, show some interesting differences in terms of gender and marital status (Statistics Canada, 2010). By far, the majority of gay and lesbian couples live alone; 85% of gay male couples, and 74% of lesbian couples live alone. These numbers decrease, however, for married couples; 61% of married gay male couples, and 56% of married lesbian couples live alone. It is hardly surprising that 15% of lesbian couples have one or more children living with them, but married lesbian couples are more likely

(21%) than cohabiting lesbian couples (14%) to have children living with them. Almost 3% of gay male couples have one or more children living with them, but married gay male couples are more likely (8%) than cohabiting gay male couples (2%) to have children living with them.

Perhaps the most surprising finding concerns other family members (i.e., not children) living in the home with same-sex couples (Statistics Canada, 2010). Approximately 10% of all same-sex couples had another family member living with the home with them, and again, this figure increased for married couples. Almost 1/5 of married lesbians (18%) had another family member living with them, and another 2% had both a child and another family member living with them. For married gay male couples, the increase was even more dramatic: 29% of married gay men lived with another family member (not a child), and another 1% lived with both a child and another family member. Thus, the households of same-sex couples seem to be more complex than we might imagine. In addition, it appears as though living with a child or another family member is possibly a motivating factor in choosing to marry. Lesbians in particular seem to be motivated to marry by having one or more children living with them, whereas gay men seem to be motivated to marry by having another family member living with them. Regardless of the gender difference, the presence an additional family member (child or other member) in the home seems to motivate same-sex couples to marry.

Besides vital statistics and population reports, there is very little published research on the topic of same-sex marriage in Canada. Although there are a number of articles that discuss the historical and legal context of same-sex marriage in Canada (e.g., Cotler, 2006; Mule, 2010; Wilkinson, 2004), there are only two empirical studies published to date. In each case, the study consists primarily of semi-structured qualitative interviews with married (Alderson, 2004;

MacIntosh, Reissing, & Andruff, 2010) and soon-to-be-married (Alderson, 2004) gay and lesbian couples about their experiences of same-sex marriage. In each study, the researchers found that same-sex marriage benefitted the respondents in a number of ways: increased recognition and legitimization in society (i.e., "marriage" as a universally understood construct), the importance of acquiring/having the rights and responsibilities associated with marriage (e.g., spousal benefits), and increased connection to both spouse ("commitment," Alderson, 2004; "closeness," MacIntosh et al., 2010) and family. In each study, a minority of couples had children (33% of couples, mostly lesbian, MacIntosh et al., 2010); many of these participants had adopted her or his spouse's biological child (Alderson, 2004).

Same-Sex Marriage: Exception or Exemplar?

As previously discussed, Canada has no national family policy given its decentralized political structure and distinct cultures (Baker, 1995; Conway, 2003; Vail, 2002). Family policy is therefore is a function of different levels of government, different geographical regions, and different cultural traditions. Nevertheless, most family-related policy falls under provincial jurisdiction, as does health and education. Three types of family policy exist in Canada: family legislation (of which Canada's Civil Marriage Act, 2005, would be an example), support for family income, and governmental services (Baker, 1995). For the most part, family policy in the Canadian context focuses primarily on assisting parents in raising their children (e.g., Baker, 1995; Conway, 2003; Vail, 2002). Children are viewed as the nation's future, and governments in Canada typically take some of the responsibility for socializing and protecting their investment (e.g., Baril et al., 2000; Beauvais & Jenson, 2001).

The question remains: Is same-sex marriage legislation an exception to, or an exemplar of, Canada's family policy? Certainly marriage in general is a good example of family policy, in that marriage promotes state-sanctioned reproduction. "Governments and their agencies regulate marriages and births to minimize social conflicts and birth defects, and to help the transmission of culture and property from one generation to another" (Baker, 1995, p. 6). Extending marriage to same-sex couples is hardly about promoting state-sanctioned reproduction, however. Rather, passing same-sex marriage legislation is primarily about human rights or equality rights (e.g., Alderson, 2004; MacIntosh et al., 2010; Rose & Bureau, 2009). Provincial court systems determined as early as 2003 that not allowing gays and lesbians to marry was unconstitutional, an argument that convinced the federal government to pass Bill C-38, the Civil Marriage Act, in 2005. Promoting equality rights, although less salient in the Canadian context than investing in children, is an important, albeit secondary, aspect of family policy (e.g., Vail, 2002).

Furthermore, it is naïve to think that lesbian and gay men exist in a vacuum, without families of origin and families of procreation that they care about and care for, whether in their own home or in extended family settings. Not only do some lesbians and gay men choose to become parents in the context of a gay relationship (e.g., via donor insemination or adoption), but they are even more likely to bring children from previous heterosexual relationships to those relationships (approximately 1/3 of same-sex spouses had been previously married, presumably in heterosexual marriages; St. Amour & Girard, 2009). In addition, lesbians and gay men also have siblings and aging parents of their own, as well as other extended family members—some of whom need care. While the primary rationale for same-sex marriage legislation may have been to further equality rights, assisting same-sex couples to care for their children and other

family members is, perhaps, an unintended side effect. Just as heterosexual couples can receive

parental benefits while caring for a new baby, so too can gay or lesbian couples. Similarly, both

heterosexual couples and same-sex couples can take compassionate leave to look after a

terminally ill in-law.

Although same-sex marriage legislation may not be the best example of family policy in

Canada, neither is it an exception to the rule. Same-sex marriage legislation would be included

in the first category of family policy (i.e., family legislation) according to Baker's (1995)

definition. Furthermore, although the motivation in passing the same-sex marriage legislation

(i.e., equality rights) is not Canada's primary motivation with respect to family policy, it is an

additional factor that influences family policy in Canada as well as in other countries

(particularly the Scandinavian countries; Vail, 2002). And, although not all gay and lesbian

couples are raising children, approximately 40% of married gay and lesbian couples are living

with either a child or another family member (the figure is only 15% for cohabiting gay and

lesbian couples; Statistics Canada, 2010). In other words, a large minority of married gay and

lesbian couples are caring for dependents—and this finding does reflect Canada's primary family

policy concern of supporting parents who are raising children.

To date, there is very little empirical data about how same-sex marriage has affected

Canadian couples and families (e.g., Alderson, 2004; MacIntosh et al., 2010); more empirical

studies would provide better information for practitioners and policy makers alike. For example,

although there is Canadian research about lesbian parenting (e.g., Leblond de Brumath & Julien,

2007; Julien, Jouvin, Jodoin, l'Archeveque, & Chartrand, 2008), and about aging gay and lesbian

family issues (Brotman et al., 2007; Brotman, Ryan, & Cormier, 2003), there is no research yet

available about same-sex divorce. Interestingly, the biggest issue on the subject of same-sex

divorce seems to involve Americans who married in Canada—over 50% of same-sex marriages

in British Columbia between 2003 and 2007 involved American couples—and who subsequently

seek to divorce in American jurisdictions that do not recognize their marriages (Wiltshire, 2009).

Although it is only a minority of gay and lesbian couples who choose to marry in Canada, those

who do seem to be motivated in part by the desire to provide security and legitimacy for their

family members. In addition to upcoming Canada Census data (i.e., following the 2011 census),

more empirical research, both qualitative and quantitative, is needed to shed light on the realities

of lesbian and gay family life in Canada.

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0&GK=0&GRP=1&PID=89034&PRID=0&PTYPE=88971,97154&S=0&SHOWALL=0

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Table 1

Same-Sex Weddings by Gender, 2003-2008

	British Columbia Weddings[a]			Quebec Weddings[b]		
	Female	Male	Total	Female	Male	Total
2003	400	335	735[c]	--	--	--
2004	606	458	1064	97	148	245[c]
2005	569	443	1012	173	278	451
2006	340	273	613	272	349	621
2007	492	370	862	216	251	467
2008	403	328	731	193	262	455

[a]British Columbia Vital Statistics Agency (2003, 2004, 2005, 2006, 2007, 2008)

[b]St. Amour & Girard (2009)

[c]Partial year following legalization of same-sex marriage

Table 2

Same-Sex Weddings by Residence, 2003-2008

	British Columbia Weddings[a]			Quebec Weddings[b]		
	Resident	Other	Total	Resident	Other	Total
2003	287.5	447.5	735[c]	--	--	--
2004	457	607	1064	221	24	245[c]
2005	401.5	610.5	1012	364	87	451
2006	275.5	337.5	613	501	120	621
2007	377.5	484.5	862	403	64	467
2008	400.5	330.5	731	369	86	455

[a]British Columbia Vital Statistics Agency (2003, 2004, 2005, 2006, 2007, 2008)

[b]St. Amour & Girard (2009)

[c]Partial year following legalization of same-sex marriage