

Welcome!

LGBTTIQQ2SAA+
Micheline Montreuil
Trans, marriage and passport

LGBT

Me Hélène Montreuil

Summary of topics covered

Micheline Montreuil

Who is she?

What she does

The salami technique

Subtle smells of discrimination

LGBT Marriage

Passport « X »



Your presenter

Me Hélène Montreuil

Lawyer, CRHA and Adm.A.

Who am I?

- I am transgender.
- I will never be a CLL= Cute Little Lady.
- I will never be a BTYM = Beautiful Tall Young Man.
- I am not proud to be transgender just as I am not ashamed to be transgender.
- I am who I am.
- I am Hélène Montreuil.
- www.helenemontreuil.ca
- www.maitremontreuil.ca

Who am I ? II

- **American – I live in America (continent)**
- **British – I live under British laws**
- **Francophone – It is my mother tongue**
- **Canadian – My family has been living in Canada since 1637**
- **Christian – Religion I learned from my parents**
- **Occidental – I feel at home in Europe and in the United States**
- **White – It is a physical reality**
- **Intellectual – I have read and studied a lot**
- **Woman – By choice**
- **LGBT – It is a fact**
- **Conclusion : I am a **tutti frutti** or a blend of many specific characteristics that make me who I am.**

Introduction of Me H el ene Montreuil I

- Me H el ene Montreuil, D.E.S.S. in ethics, D.E.S.S. in Human Resources and Organization, M.B.A., Di. Adm., LL.L., CCVM, B.Ed., Adm.A., CRHA has been a lawyer in private practice since 1976 and lecturer at the University of Quebec in Rimouski since 1984, mainly in Labor Law, Administration and Negotiation of the collective agreement, Human resources management and Ethics.
- She studied at the University of Manitoba, at Laval University, at the University of Ottawa, at the University of Paris I - Panth on-Sorbonne and at the University of Quebec at Rimouski in Common Law, Law civil, human resources and organization, administration, education and ethics.

Introduction of Me H el ene Montreuil II

- She has written numerous administration and law books and presented several briefs both to the House of Commons in Ottawa and to the National Assembly of Quebec.
- She has also lectured and given training in Canada and the United States.
- She focuses her activities mainly on labor law, human rights law and disciplinary law.
- In case law and in the present day, she has been known as **Micheline Montreuil**.

See:

- www.micheline.ca



HÉLÈNE
MONTREUIL

LES AFFAIRES ET LE DROIT

DEUXIÈME ÉDITION

LexisNexis

This book:

<https://store.lexisnexis.ca/fr/categories/products/les-affaires-et-le-droit-skusku-cad-6422/details>

Books written by Hélène Montreuil
<http://recif.litterature.org/recherche/ecrivains/montreuil-helene-1985/>

Books authored or co-authored by Hélène Montreuil

2020 - Les affaires et le droit, 2^e édition

2012 - Les affaires et le droit

1999 - Le droit, la personne et les affaires, 2^e édition

1994 - Le droit, la personne et les affaires

1993 - Organisation et dynamique de l'entreprise - Approche systémique, 2^e éd

1991 - Initiation au droit commercial

1990 - Organisation et dynamique de l'entreprise - Approche systémique

1988 - Droit des affaires, 2^e édition

1986 - Droit des affaires

1984 - Le marketing

1984 - Introduction à la comptabilité de gestion

1983 - L'entreprise d'aujourd'hui

1983 - L'entreprise et la gestion des opérations

1973 - Principes de base de la natation et du sauvetage

Hélène Montreuil's Diplomas

2018 - D.E.S.S. in ethics- Université du Québec à Rimouski

2007 – Teaching certificate– Ministère de l'éducation du Québec

2006 – Bachelor of Education- Université du Québec à Rimouski

1981 – Securities Trading Course- ICVM

1978 – Masters in Business Administration- Université Laval

1977 - D.E.S.S. in HR - Université de Paris I - Panthéon-Sorbonne

1976 - Diploma in administration - Université Laval

1974 – Certificate of Studies in Common Law - University of Ottawa

1974 – Law degree - Université Laval

1973 - Certificate of Studies in Common Law - University of Manitoba

Hélène Montreuil is married to Michèle Morgan
Another lawyer and author
Am I heterosexual, gay, lesbian, trans or ????



Books written by Michèle Morgan

1979 - Pourquoi pas le bonheur?

1983 - Les Clés du bonheur

1990 - Dialogue avec l'âme sœur

1997 - Petits Gestes et Grandes Joies

1998 - Le mieux de la peur

2007 - Le Goût d'être heureux

1999 - Le Courage d'être heureux

2011 - Suivre le courant et découvrir l'essentiel de sa vie

2017 - La Belle de l'Au-delà

2018 - Isabelle

www.michelemorgan.ca

<http://recif.litterature.org/recherche/ecrivains/morgan-michele-1994/>

Summary of the presentation

- **Who is Micheline Montreuil ?**
- **What she has done for the LGBT community**
- **Subtle smells of discrimination**
- **Developing the salami technique**
- **Marriage for all**
- **Your passport: M, F or X ?**
- **Why ?**
- **In my passport, I have a « F »; does it show when you look at me ?**
- **Where are we going?**

Comments

- **Multiplying letters in LGBTTIQQ2SAA complicates everything for all, in Canada and abroad: is it necessary to stand out at all cost ?**
- **Could I plead the violation of my rights in court?**
- **In front of which tribunal ?**
- **Is it a crime to be a LGBT individual?**
- **What do you think?**

Who are you LGBTTIQQ2SAA? Do you see yourself?



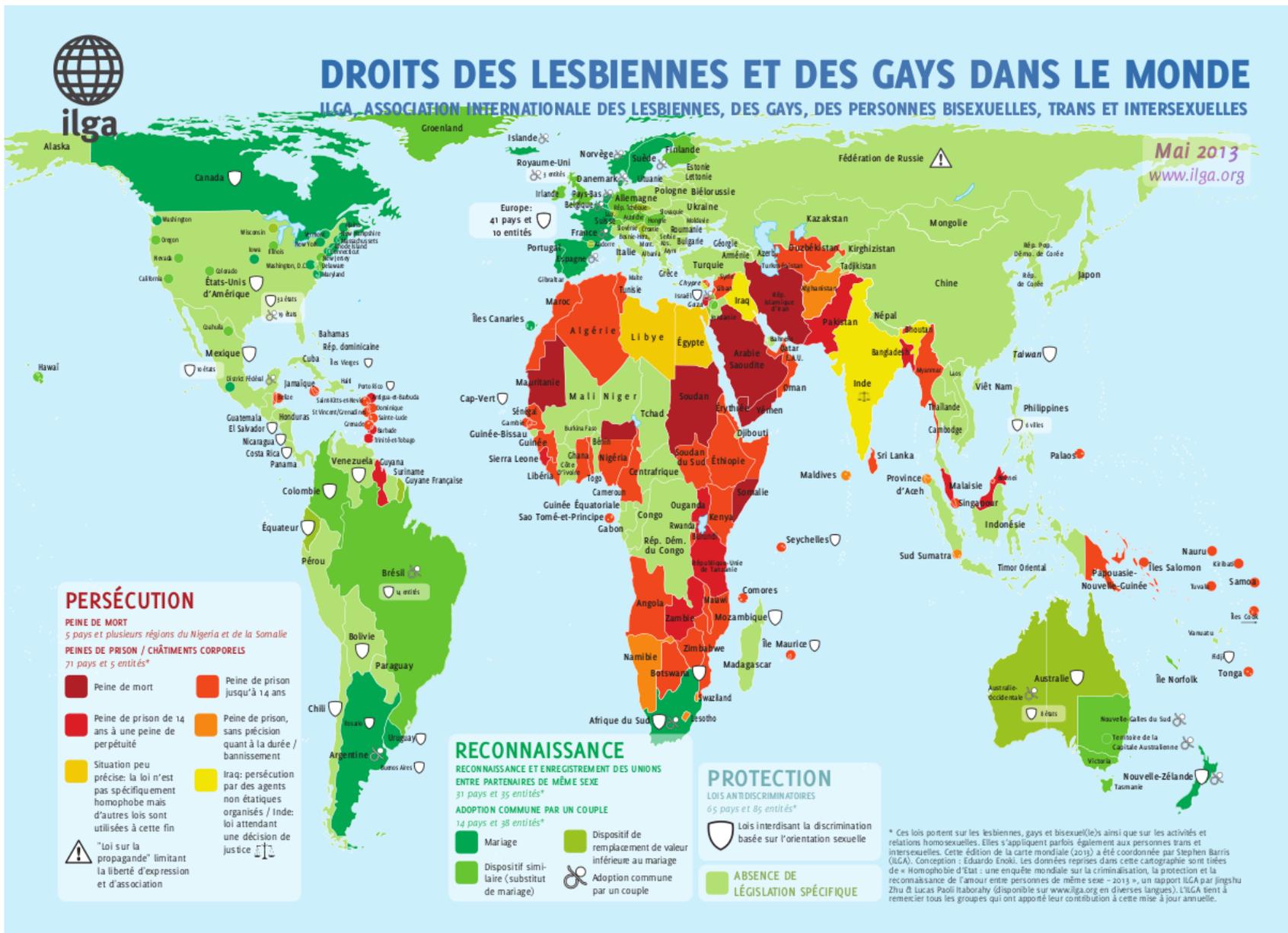
Am I not the same one ?



The LGBT movement in the world

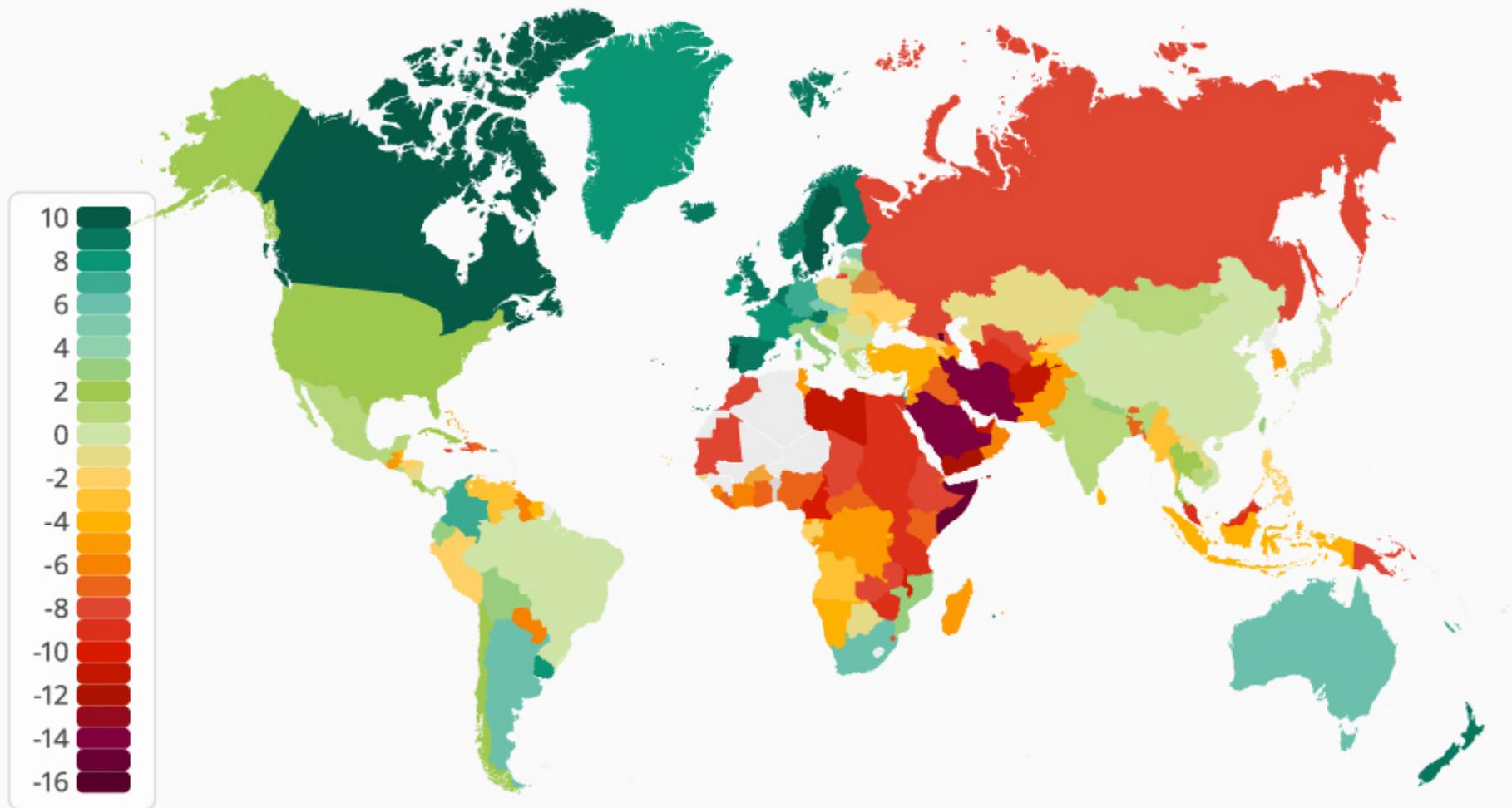
- **ILGA World** – the International Lesbian, Gay, Bisexual, Trans and Intersex Association is the International association for people who are lesbians, gays, bisexuals, trans and intersex.
- It is a global federation of over 1,600 organizations from more than 150 countries and territories campaigning for the rights of lesbian, gay, bisexual, trans and intersex people.
- ILGA World has consultative status with the United Nations ECOSOC.
- ILGA members are based in six regions: Pan Africa ILGA (Africa), ILGA Asia (Asia), ILGA-Europe, ILGALAC (Latin America and the Caribbean), ILGA North America (North America) and ILGA Oceania (Oceania).
- Led by an elected council of 19 representing the global family, ILGA World is queer democracy in action!
- <https://ilga.org/about-us>

LGBT World Map- Search LGBT World Map on Google



Gay-friendly ?

Pays classés selon le Gay Travel Index 2019 *



* plus le score est élevé, plus le pays est libéral et accueillant envers les personnes LGBT.

Source : Spartacus Gay Travel Index 2019 - Spartacus International Gay Guide

The friendliest countries for LGBT people LGBT

- According to the Spartacus Gay Travel Index 2019, the most LGBT-friendly countries and tied for the top of the rankings are Canada, Portugal and Sweden.
- The Berlin, Germany-based Spartacus International Gay Guide provides tips for gay travelers on its website and mobile app.
- Its most recent index ranks 197 countries according to 14 criteria, such as the existence or not in a given nation of anti-discrimination laws, laws on the rights of transgender people, laws on marriage and civil partnership, or laws on adoption, transgender rights and persecution.
- Chechnya ranks last. The guide says the country is involved in "state-organized persecution and murder of gay men."

The friendliest countries for LGBT people II

- Radio Canada International contains many reportings on the rights of LGBT people are the world.
- <https://www.rcinet.ca/fr/2019/03/01/pays-les-plus-amicaux-au-monde-envers-les-voyageurs-lgbt-le-canada-no-1-les-etats-unis-no-47/>
- <https://www.rcinet.ca/fr/2018/05/01/une-majorite-des-canadiens-sous-estime-les-problemes-des-lgbt-dans-le-monde/>
- You can also see the Spartacus Gay Travel site at :
- <https://spartacus.gayguide.travel/blog/gay-travel-index-2019/>

The friendliest countries for LGBT people III

- **The SPARTACUS Gay Travel Index is updated annually to inform travelers about the situation of lesbian, gay, bisexual, and transgender (LGBT) people in 197 countries and regions.**
- **One of this year's rising stars is India, which, thanks to the decriminalization of homosexuality and an improved social climate, has risen from 104 to 57 on the Travel Index. In 2018 the criminalization of homosexual acts was abolished in Trinidad and Tobago and Angola as well.**
- **With the legal recognition of same-sex marriage, Austria and Malta were also able to secure a place at the top of the SPARTACUS Gay Travel Index 2019.**
- **However, the situation for LGBT travelers in Brazil, Germany and the USA has worsened. In both Brazil and the USA, the right-wing conservative governments have introduced initiatives to revoke LGBT rights achieved in the past. These actions have led to an increase in homophobic and transphobic violence. There has also been an increase in violence against LGBT people in Germany. Inadequate modern legislation to protect transgender and intersex persons as well as the lack of any action plan against homophobic violence have caused Germany to drop from 3rd to 23rd place.**

The friendliest countries for LGBT people IV

- Countries such as Thailand, Taiwan, Japan and Switzerland are under special observation. The situation is expected to improve in 2019 as a result of the discussions on the introduction of legislation to legalize same-sex marriage. Thailand has already moved up 20 places to rank 47 thanks to a campaign against homophobia and the introduction of laws to recognize same-sex civil partnerships. The already announced introduction of same-sex marriage laws could make Thailand the most LGBT-friendly travel destination in Asia.
- In Latin America, the decision by the Inter-American Commission on Human Rights (IACHR/CIDH) to require nearly all Latin American countries to recognize same-sex marriage has caused a sensation. So far, same-sex marriage is legal only in the countries of Argentina, Colombia, Brazil, Uruguay and in some individual states of Mexico.
- Some of the most dangerous countries for LGBT travelers in 2019 include again Saudi Arabia, Iran, Somalia and the Chechen Republic in Russia, where homosexuals are widely persecuted and threatened with death.

International Day Againsts Homophobia, Transphobia and Biphobia

- International Day Against Homophobia, Transphobia and Biphobia is a global day celebrated on **May 17**. It is sometimes referred to for short as World Day Against Homophobia.
- **May 17** was chosen at the initiative of Louis-Georges Tin as the symbolic date for the international day against homophobia and transphobia to commemorate the decision of the World Health Organization or WHO of **May 17, 1990** to no longer view homosexuality as a mental illness.
- It was on **May 17, 2005** that the anti-homophobia day initiative was first organized internationally, thanks to the efforts of Louis-Georges Tin, a French professor and activist. He was the chairman of the IDAHO Committee between 2005 and 2013.

Transgender Day of Remembrance

- **Transgender Day of Remembrance (TDoR)**, takes place on **November 20** around the world, to commemorate the memory of trans people murdered for transphobic motives and to draw attention to the violence suffered by trans communities.
- **Trans Day of Remembrance** is held on **November 20** of each year in honor of Rita Hester, who was killed on **November 28, 1998** in Allston, Massachusetts, in a transphobic hate crime.
- It was started in **1998** by **Gwendolyn Ann Smith**, a graphic designer, columnist and trans activist.

International Day for Transgender visibility

- International Transgender Visibility Day is an annual event that takes place on **March 31** and is intended to celebrate transgender people and raise awareness of the discrimination they experience around the world.
- The first international transgender visibility day was held on **March 31, 2009**.
- The special day was created by Michigan-based transgender activist Rachel Crandall in 2009 in response to the lack of an LGBT celebration day dedicated to transgender people, citing frustration that the only known day that is dedicated to trans people was the trans day of remembrance which honors transgender people who have been victims of hate crimes, but no day was dedicated to celebrating living members of the transgender community.

Rainbow or LGBT Flag I

- **The rainbow flag is a flag representing stripes in the colors of a rainbow. The use of the rainbow flag is an ancient tradition common to many cultures. It generally evokes peace, diversity and harmony.**
- **Today, the rainbow flag has been known as the Lesbian, Gay, Bisexual and Transgender or LGBTQ+ flag since 1978.**
- **The first rainbow flag used as a symbol of the LGBT movement was designed and handmade by the American graphic designer and activist Gilbert Baker, then 27 years old, for the Gay and Lesbian Freedom Day Parade in San Francisco on June 25, 1978.**
- **The first flag has eight stripes. Gilbert Baker gives each of the colors a meaning described on the following page.**

Rainbow or LGBT Flag II



Rose : la sexualité
Rouge : la vie et la guérison
Orange : la santé et la fierté
Jaune : la lumière du soleil
Vert : la nature
Turquoise : la magie / l'art
Bleu : la sérénité / l'harmonie
Violet : l'esprit

You can find the different LGBT symbols at:

https://en.wikipedia.org/wiki/LGBT_symbols

https://en.wikipedia.org/wiki/Transgender_flags

<https://en.wikipedia.org/wiki/LGBT>

Rainbow or LGBT Flag III



Transsexualism in the world I

- From a legal point of view, in its first judgment of October 10, 1986 relating to transgender persons, the European Court of Human Rights defines them as "persons who, while physically belonging to one sex, have the feeling of belonging to another sex".
- A transgender person is someone whose gender does not match the sex assigned to them at birth.
- A Council of Europe report estimates that one in 500 people are affected by transidentity.
- Trans people are particularly discriminated against. A US report in February 2011 found that 90% of transgender people faced discrimination in the workplace and were twice as unemployed as the general population, and more than half were harassed or rejected when they did try to access public services. Members of the transgender community also face high levels of discrimination in health care.
- <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-FR.asp?fileid=17853&lang=FR>

Transsexualism in the world II

- **Transidentity is when a transgender person has a different gender identity from the sex assigned at birth, unlike a cisgender person.**
- **The terms “transsexual” and “transsexualism” are old medical terms, abandoned by doctors and considered pathologizing by Francophone activists.**
- **Transidentity is distinguished from intersex, which according to the UN refers to situations of people "born with sexual characteristics that do not correspond to the typical definitions of" male "and" female ".**
- **The Larousse dictionary defines "transsexualism" as a disorder of sexual identity in which the subject feels a discrepancy between their "psychological sex" and their biological sex.**
- **Some people recommend using the terms “gender identity” and “transgender person”.**

Transsexualism in the world III

- The term transsexualism is considered pathologizing.
- "Transsexualism" was included in 1980 in the list of mental disorders (DSM) established by the American Psychological Association (APA).
- As this document has been revised, the term has changed to "gender identity disorder" and then "gender dysphoria". Likewise, the 11th version of the WHO International Classification of Diseases replaced "transsexualism" with "gender incongruence".
- Today many people reject the idea that transidentity is a disease. APA psychiatrists insist that it is transphobia and not transidentity as such that can be a source of unease.
- A person who is not trans is referred to as "cisgender", a term constructed in opposition to "transgender".
- Personally, I am transgender and that is enough for me.

Transsexualism in the world IV

- Lili Ilse Elvenes, better known as Lili Elbe (December 28, 1882 - September 13, 1931), is a Danish painter and trans woman known to be one of the first people to transition undergoing surgery. sexual reassignment, in 1930. Lili Elbe died in 1931, three months after her uterus transplant, probably because of a transplant rejection.
- Christine Jorgensen (born May 30, 1926 in the Bronx, New York, United States, died May 3, 1989) rose to fame for being the first person in the world to undergo gender reassignment surgery.
- RuPaul (born RuPaul Andre Charles on November 17, 1960 in San Diego) is an American drag queen, singer, actor, and lyricist who rose to fame in the 1990s, where he appeared in several television shows, films as well as musical albums.
- Caitlyn Marie Jenner, born October 28, 1949 in Mount Kisco, New York, is an American television host. A trans woman, she was an athlete, specialist in the men's category of decathlon in the 1970s under the identity of Bruce Jenner. Winning the gold medal at the 1976 Summer Olympics in Montreal, Jenner broke the discipline's world record three consecutive times from 1975 to 1976.

Transsexualism in Quebec

- The most important judgment in the matter of transsexualism in Quebec is that of *Maison des jeunes* identified as :
- *Human Rights and Youth Rights Commission c. Maison des jeunes, Human Rights Tribunal, file number 500-53-000078-970, judgment of July 2, 1998*
- In this 40-page judgment, the Honorable Michèle Rivest provides a comprehensive overview of the law, case law and doctrine regarding gender reassignment.
- At the end of this 40-page judgment, we find 7 additional pages of case law and doctrine.
- This judgment is regularly cited in any case concerning a transsexual, a transgender or a person in a state of transition and it is available on SOQUIJ.

Maison des Jeunes I

- The conclusions read as follows :
- **DECLARES** that transsexualism or the process of unifying disparate sexual criteria is included in the expression "sex" in section 10 of the Quebec Charter of Human Rights and Freedoms;
- **NOTES** that La Maison des jeunes, as well as C.T. and A.T. infringed M.L.'s right not to be dismissed from her job as a street social worker and to have her contract subsequently renewed because she was in the process of transsexualism;
- **NOTES** that the Maison des jeunes, as well as C.T. and A.T. have not discharged their burden of proving that this dismissal was deemed non-discriminatory since it complies with the parameters of the justified professional requirement;

Maison des Jeunes II

- **ORDERS** the defendants to pay jointly and in solidarity to M.L., as compensation, an amount of \$ 5,750.00 distributed as follows :
 - a sum of \$ 1,750.00, as material damage for loss of wages;
 - a sum of \$ 4,000.00 in moral damages for infringement of their right to the recognition and exercise of their rights on an equal basis, without discrimination and for infringement of their right to respect for their dignity;
- **ORDERS** that the Court file be consulted only in the presence of the litigation lawyers;
- **THE WHOLE AMOUNT** with interest since they were served with the proposed remedial measures, date of February 12, 1997, at the rate fixed according to section 28 of the Act respecting the Ministère du Revenu (RSQ, c. M-31), as well as the allows article 1619 CCQ

Maison des Jeunes III

- The important thing is not the amount but the first conclusion that reads like this :
- **DECLARES** that **transsexualism** or the process of unifying disparate **sexual criteria** is included in the expression "**sex**" in section 10 of the Quebec Charter of Human Rights and Freedoms;
- This is an important step forward because although the term "**gender identity**" or the phrase "**gender dysphoria**" is not used, it is the extension of the meaning of the word "**sex**" that is important
- **A transgender or transsexual person is covered by the word sex.**
- This is an important judgment to read.
- The judge makes an excellent detailed analysis of the situation.

Kimberly Nixon vs. Vancouver Rape Relief Society I

- Even if one is a member of the select group of folks holding more nuanced attitudes towards gender, it must be recognized that there are still areas in which work is needed. In the recently **dismissed** application for leave in *Kimberly Nixon v Vancouver Rape Relief Society (B.C.)*, the Supreme Court of Canada (“SCC”) dodged just such a bullet. Looking through the case history it becomes clear that there is a tension between the individual rights of Ms. Nixon to be free from discrimination on the basis of sex and the ability of the Vancouver Rape Relief Society to define itself and the interests it serves.
- At the British Columbia Court of Appeal, the legal analysis of *Vancouver Rape Relief Society v Nixon*, **2005 BCCA 601**, centered on BC’s ***Human Rights Code***, RSBC 1996, c 210, ss. 8, 13, & 41. Ms. Nixon claimed discrimination as a male-to-female transgendered woman who was denied the opportunity to participate in the provision of peer counseling services provided by the Vancouver Rape Relief Society. This denial by the Society was communicated by Ms. Cormier, one of Rape Relief’s facilitators, who had identified Ms. Nixon as transgendered, based solely on her appearance. It was at this point that Ms. Nixon was asked to leave and informed by Ms. Cormier that “a woman had to be oppressed since birth to be a volunteer at Rape Relief and that because she had lived as a man she could not participate . . . men were not allowed in the training group.”
- <https://canliiconnects.org/en/commentaries/36090>

Kimberly Nixon v. Vancouver Rape Relief Society II

- In the case at the Supreme Court of British Columbia, *Vancouver Rape Relief Society v Nixon et al*, **2003 BCSC 1936**, Ms. Cormier listed the collective political beliefs that the Society requires its volunteers not to disagree with:
 1. Violence is never a woman's fault,
 2. Women have the right to choose to have an abortion,
 3. Women have a right to choose who their sexual partners are, and
 4. Volunteers agree to work on an on-going basis on their existing prejudices, including racism.
- The requirement that a woman be a woman from birth was stated to be complementary to the tenets to which all volunteers and members of the Society must subscribe in the Court of Appeal case. Ms. Nixon was awarded \$7,500 by the Human Rights Tribunal for her claim, but this was overturned on appeal. At the Court of Appeal Honorable Madam Justice Saunders stated "In my view, the behavior of the Society meets the test of 'discrimination' under the Human Rights Code, but it is exempted by s. 41."
 - s. 41 If a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or corporation must not be considered to be contravening this Code because it is granting a preference to members of the identifiable group or class of persons.
- The exemption provided by s. 41 applied was enough for Honorable Madam Justice Saunders to determine that the Society had a defense to Ms. Nixon's claim.

Kimberly Nixon vs. Vancouver Rape Relief Society III

- The legal case is hardly a slam dunk as it stands. One wonders how it is that the Vancouver Rape Relief Society could not be attuned to a more nuanced understanding of sex and gender issues. The position of the Society as communicated by Ms. Cormier hardly reflects such a sophisticated attitude.
- The Society's screening process for volunteers did not include an element to weed out transgendered individuals and as such leaves transgendered individuals in a position where their participation could depend on what is often referred to as passing. A transgendered woman's ability to fully participate becomes dependent on whether her previous gender is in any way detectable.
- The legal definition of transgendered seems to still be a grey area despite some human rights tribunal cases having touched on the subject. See :
- *Montreuil v National Bank of Canada*, [2004 CHRT 7](#) and
- *Kavanagh v Canada (Attorney General)* ([2001](#)), [41 CHRR 119](#)).

Kimberly Nixon vs. Vancouver Rape Relief Society IV

- It may be prudent for the law when given a chance, such as the one the SCC decided to pass up on in this case, to develop a greater understanding of transgenderism.
- If society believes what it is told of the lives of its transgendered members then the Vancouver Rape Relief Society's complementary position that a woman from birth and be oppressed from birth to qualify as a volunteer need not exclude Ms. Nixon.
- In the ambiguity surrounding the treatment of transgendered individuals in law leaves many issues that still need to be worked out. In this case, the early age at which Ms. Nixon realized her condition seems to suggest that she was indeed *born a woman*, simply trapped in a male body.
- As for the Society's additional requirement of oppression since birth, it is hard to imagine that existing in a body at odds with one's identity would somehow fall short of fulfilling that requirement.

Kimberly Nixon vs. Vancouver Rape Relief Society V

- An interesting question arises :
- Is it useful or necessary for a male-to-female trans person to have the right to work in a women's shelter?
- The question can certainly arise on a legal level, but it can also be asked on an ethical or moral level?
- Is a woman who runs away from a man and takes refuge in a women's shelter entitled to expect to be welcomed and treated by a woman and not by a trans person from male to female?
- Which right is more important: the right of the female victim or the right of the trans person?
- Personally, I would not have applied for such a position considering that I am not a woman born female and that it could upset the woman who comes to the shelter. **This is not only a question of ethics but also of dignity and common sense.**

Synthia Kavanagh vs. Attorney General of Canada I

- This is the case of a male-to-female transsexual who was imprisoned in a penitentiary for men. The judgment summarizes the situation well:
- <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/6582/index.do>
- [1] In Canada, the federal correctional system consists of both men's and women's institutions. In this case, the dispute concerns the Correctional Service of Canada's policy regarding the placement of transsexual inmates, as well as its policy prohibiting inmates' access to sex reversal surgery.
- [2] Synthia Kavanagh was born with a male anatomy. However, from her early childhood, she understood that she was different, that something was wrong. She was eventually diagnosed with a gender identity disorder; that is, her biological or anatomical sex did not match her gender identity, her subjective sense of being a woman.
- [3] Ms. Kavanagh is currently an inmate in the federal correctional system as a result of her conviction for second degree murder in 1989. She was initially sentenced to life imprisonment without eligibility for parole for fifteen years. Her parole ineligibility period was reduced to 10 years on appeal.
- [4] At the time of her incarceration, Ms. Kavanagh was living as a woman. She had been taking female hormones since the age of thirteen and had been deemed fit to undergo sex reassignment surgery. At the time of sentencing, the presiding judge recommended that she be allowed to serve her sentence in a women's institution.

Synthia Kavanagh vs. Attorney General of Canada II

- [5] Despite the recommendation of the trial judge, Ms. Kavanagh was incarcerated at Millhaven Penitentiary, a maximum security male institution in Kingston, Ontario. Over the next eleven years, Ms. Kavanagh, despite repeated, though sometimes conflicting, requests for placement in a women's institution, was incarcerated in various maximum and medium security male institutions in Ontario and British Columbia.
- [6] Ms. Kavanagh's incarceration had an impact on the treatment of her gender identity disorder. She was initially prohibited from continuing to take hormones, which resulted in the loss of many of her secondary female sexual characteristics and caused her great suffering. In 1993, she was allowed to return to hormone therapy; however, despite her repeated requests, Ms. Kavanagh was not allowed to undergo sex reassignment surgery.
- [7] Following these incidents, Ms. Kavanagh filed complaints with the Canadian Human Rights Commission regarding the withholding of hormones, the refusal to allow sex reassignment surgery and her placement in a male institution. In each complaint, she alleged discrimination on the basis of sex and disability.

Synthia Kavanagh vs. Attorney General of Canada III

- **[8] The complaints made by Ms. Kavanagh in a personal capacity against CSC have been resolved. As a result of the settlement, Ms. Kavanagh underwent gender reassignment surgery. She is currently incarcerated at the Joliette Institution for Women, a medium security penitentiary.**
- **[9] Currently, CSC's Health Services Policy allows for the administration of hormones to transsexuals, on the recommendation of a recognized gender identity disorder clinic. Access to hormone therapy is not in this case a contentious issue on which the court must rule. The remaining dispute relates to CSC's policy regarding the placement of transgender inmates at the preoperative stage, as well as a policy restricting inmate access to gender reassignment surgery.**

Synthia Kavanagh vs. Attorney General of Canada IV

- **[195]** Having concluded that CSC is responsible, it remains for us to determine the necessary remedial measures.
- **[196]** The CSC has demonstrated that it is justified not to place preoperative transsexuals in institutions reserved for the target sex. However, we have concluded that the application of section 30 of the CSC Health Services Policy puts transgender inmates at a disadvantage. By requiring that preoperative transsexual inmates be incarcerated with other inmates of the same anatomical structure, CSC policy fails to take into account the particular vulnerability of this group of inmates, as well as the need for accommodation in prison.

Synthia Kavanagh vs. Attorney General of Canada V

- **[197]** In our opinion, there is no need to order that CSC cease to apply the provisions of section 30 of its policy on health services. Nonetheless, steps must be taken by CSC, in conjunction with the Board, to develop a policy to identify and address the needs of transsexual inmates.
- **[198]** We have concluded that section 31 of CSC's Health Services Policy constitutes discrimination based on both sex and disability, and that CSC failed to justify its blanket prohibition on access to it. surgical sex reversal. Therefore, we order that CSC cease to apply the provisions of section 31. CSC will be granted a six-month stay from the date of this decision to consult the Canadian Human Rights Commission on the matter for the development of a new policy in line with these reasons, regarding inmate access to gender reassignment surgery.

Synthia Kavanagh vs. Attorney General of Canada VI

- **[199]** The parties will file in court, within six months of the date of this decision, copies of revised CSC policies regarding the placement of transgender inmates and their access to gender reassignment surgery. The court retains its jurisdiction with regard to any contentious point in the event that the parties cannot agree on any modality of application of these policies.
- **[200]** For the above reasons, we declare that sections 30 and 31 of the CSC Health Services Policy constitute discrimination on the basis of sex and disability, and we order:
 - that CSC take action, in conjunction with the Canadian Human Rights Commission, to develop a policy to identify and address the placement needs of transsexual inmates, in accordance with this decision;
 - that the CSC cease to apply the provisions of article 31 of its policy on health services; (CSC will be granted a six-month delay from the date of this decision to consult with the Canadian Human Rights Commission on the development of a new policy consistent with these reasons, with respect to the 'access of inmates to gender reassignment surgery.)
 - that the parties file in court copies of revised CSC policies regarding the placement of transgender inmates and their access to gender reassignment surgery, within six months of the date of this decision. (The court retains jurisdiction over any contentious issue relating to the manner in which these policies are applied.)

Synthia Kavanagh vs. Attorney General of Canada VII

- The most interesting part of the judgment is not found in the conclusions drawn by the Canadian Human Rights Tribunal, but in all the analysis that follows:
 - Treatment of transsexualism – 19 to 28
 - Gender affirming surgery and inmates – 48 to 91
 - Placements of transsexual prisoners at the preoperative stage – 92 to 133
 - Legal principles – 134 to 139

Synthia Kavanagh vs. Attorney General of Canada VIII

- I really liked paragraphs 138 and 139.
- **[138]** Once a prima facie case of discrimination has been established, the onus is on the respondent to prove, on a balance of probabilities, that the discriminatory policy or standard contains justifiable cause. From this perspective, the respondent must now prove:
 - I. that it adopted the standard for an end or for a purpose that is rationally related to the function performed;
 - II. that it adopted the standard in good faith, believing that it is necessary to achieve the end or goal in question;
 - III. that the standard is reasonably necessary to accomplish the end or purpose pursued, in the sense that the responding party cannot deal with persons who exhibit the characteristics of the complaining party without undergoing undue hardship.

Synthia Kavanagh vs. Attorney General of Canada IX

- [139] The term “undue hardship” is not defined in the Act. However, Meiorin and Grismer go a long way in determining whether a defense of undue hardship has been established.
- In Meiorin, the Supreme Court observed that the use of the word “excessive” suggests that some hardship is acceptable; in order to meet the standard, it is essential that the hardship imposed is “excessive”. The Supreme Court also noted that the defendant, in order to prove that the standard is reasonably necessary, must always show that it includes any possibility of accommodation without causing undue hardship. The onus is on the respondent to establish that it has considered and reasonably rejected all viable forms of accommodation.
- The respondent must demonstrate that it was impossible to incorporate positive aspects of individual accommodation into the standard without causing undue hardship. In order to determine whether the respondent's efforts to accommodate have been sufficient, one must take into account the prospect of actual infringement of the rights of others. The adoption of the defendant's standard must be supported by convincing evidence. The proof, consisting of impressions, is generally not sufficient. Finally, the Supreme Court indicated that factors such as the cost of possible accommodation methods should be applied in a flexible and common sense manner, depending on the facts of each case.

Centre for Gender Advocacy vs. Attorney General of Quebec I

- **On January 28, 2021, Justice Gregory Moore, J.C.S. invalidated part or all of articles 59, 71, 111, 115, 132, 146 and 166 of the Civil Code of Quebec which infringe the right to equality and dignity of trans and non-binary persons in the judgment **500 -17-082257-141**.**
- **The parties involved are:**
 - **Centre for gender advocacy**
 - **SAMUEL SINGER**
 - **SARAH BLUMEL**
 - **ELIZABETH HELLER**
 - **JENNA MICHELLE JACOBS**
Plaintiffs
 - **vs.**
 - **Attorney General of Quebec**
Defendant
 - **and**
 - **EGALE CANADA HUMAN RIGHTS TRUST**
 - **LGBT FAMILY COALITION**
 - **GENDER CREATIVE KIDS CANADA**
Stakeholders

Centre for Gender Advocacy vs. Attorney General of Quebec II

- The applicants ask, by way of a declaratory judgment, to invalidate certain articles of the Civil Code of Quebec relating to:
 - ❖ The requirement to be an adult and to be a Canadian citizen to obtain a change in the designation of sex (art. 71, 72 C.c.Q.);
 - ❖ The requirement of the designation of sex on civil status documents (arts. 93, 111, 115, 116, 124, 126, 146 C.c.Q.);
 - ❖ The limited effects of changing the designation of the sex of the transgender parent on the mother / father designation of the birth certificate of her child (art. 132 C.C.Q.);
 - ❖ The impossibility for the transgender minor to request a change of his or her name alone (art. 59, 60 C.c.Q.)

- The plaintiffs argue that these sections violate the rights guaranteed in sections 1, 4, 5 and 10 of the Charter of human rights and freedoms and sections 7 and 15 of the Canadian Charter of rights and freedoms

Centre for Gender Advocacy vs. Attorney General of Quebec III

- The applicants plead that certain articles of the Civil Code of Quebec are invalid because they infringe the rights to integrity, security of the person, life, liberty, dignity, privacy and equality guaranteed by the Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms.
- This appeal claimed the fundamental rights of those left behind in the major legislative reforms carried out in recent years:
 - ❖ Non-citizens who did not have the right to change their name and sex designation with the civil registry
 - ❖ Non-binary and intersex people whose existence was outright denied by the Civil Code
 - ❖ Trans parents who could not change their parental designation on their child's birth certificate after their transition or be designated as "parent" instead of "mother" or "father"
 - ❖ Young trans people who still faced significant barriers to being able to change their name and gender designation.

Centre for Gender Advocacy vs. Attorney General of Quebec IV

- The judgment finds the extreme vulnerability of trans and non-binary people and recognizes that not having access to identity documents that adequately reflect one's gender identity exacerbates this vulnerability.
- The judgment also notes the high suicide rate in this community, especially among trans and non-binary adolescents who have no family support.
- The greatest impact will be that all people who have waited for years to have the same rights as all other Quebecers will finally be able to obtain recognition of their identity by the civil status and will also be able to obtain identity documents that reflect this identity.
- **Finally, the judgment recognizes the** existence of a non-binary identity, **that is, other than "Male" or "Female"**.

Centre for Gender Advocacy vs. Attorney General of Quebec V

- There is also an interesting conclusion:
- The plaintiffs had challenged the requirement to designate a newborn's sex as male or female. In his decision, Justice Moore wrote : “The obligation to designate the sex of a newborn is justified. They do not have a gender identity, so there can be no distinction based on that ground. Articles 111, 115, and 116 of the Civil Code must be amended, however, to allow non-binary people to identify themselves as a parent instead of a mother or father on their children's acts of birth.”
- However, the requirement to give a M or F sex designation also creates pressures on parents and doctors to assign a gender both legally and socially which often they can do through non-consensual surgeries on intersex newborns, which is a violation of their bodily integrity.
- One thing is certain ; it will be interesting to see how the Government of Quebec responds to this judgment.
- The Government of Quebec decided to go to the Court of Appeal.

Centre for Gender Advocacy vs. Attorney General of Quebec VI

- Below are the conclusions for the judgement:
- **DECLARES** that articles 111, 115, and 116 of the *Civil Code of Québec*, because they oblige non-binary parents to be identified as a mother or father instead of a parent, violate the dignity and equality rights of non-binary parents, and are invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;
- **DECLARES** that article 71, paragraph 1 of the *Civil Code of Québec*, because it does not allow non-binary people to change the designation of sex on their act of birth to correspond to their gender identity, violates the dignity and equality rights of non-binary people, and is invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;
- **DECLARES** that the citizenship requirement at articles 59 and 71 of the *Civil Code of Québec* violates the dignity and equality rights of non-citizens domiciled in Quebec and **STRIKES** the words “who is a Canadian citizen and” (“*a la citoyenneté canadienne et*”) from article 59 and the words “and is a Canadian citizen” (“*et ayant la citoyenneté canadienne*”) from article 71, paragraph 3;

Centre for Gender Advocacy vs. Attorney General of Quebec VII

- **DECLARES** that section 23.2 of the *Regulation respecting change of name and of other particulars of civil status* violates the dignity and equality rights of transgender and non-binary people aged fourteen to seventeen and is invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;
- **DECLARES** that article 132 of the *Civil Code of Québec* must be interpreted and applied to authorize the registrar of civil status to draw up of new acts of civil status for a person whose parent has changed their name or their designation of sex;
- **DECLARES** that article 146 of the *Civil Code of Québec*, because it requires a designation of sex on certificates of civil status, violates the dignity and equality rights of non-binary people and is invalid and of no force or effect and **SUSPENDS** this declaration of invalidity until December 31, 2021;
- **TAKES FORMAL NOTICE** of the registrar of civil status's undertaking to issue, upon application, certificates of civil status that do not include a designation of sex

Contested Articles of the Civil Code of Quebec I

59. A person who is a Canadian citizen and who has been domiciled in Québec for at least one year may be the subject of an application for a change of name.

A child under one year of age, born and domiciled in Québec, is considered to have been domiciled in Québec for at least one year.

71. Every person whose gender identity does not correspond to the designation of sex that appears in that person's act of birth may, if the conditions prescribed by this Code and by government regulation have been met, have that designation and, if necessary, the person's given names changed.

These changes may in no case be made dependent on the requirement to have undergone any medical treatment or surgical operation whatsoever. Subject to article 3084.1, only a person who has been domiciled in Québec for at least one year and is a Canadian citizen may obtain such changes. A child under one year of age, born and domiciled in Québec, is considered to have been domiciled in Québec for at least one year.

The conditions prescribed by government regulation that must be met to obtain such changes may vary, in particular according to the age of the person who is the subject of the application.

Contested Articles of the Civil Code of Quebec II

111. The accoucheur draws up an attestation of birth.

An attestation states the place, date and time of birth, the sex of the child, and the name and domicile of the mother.

➤ **115. A declaration of birth states the name assigned to the child, the sex and the place, date and time of birth of the child, the name and domicile of the father and of the mother, and the family relationship between the declarant and the child. Where the parents are of the same sex, they are designated as the mothers or fathers of the child, as the case may be.**

116. Every person who gives shelter to or takes custody of a newborn child whose father and mother are unknown or prevented from acting is bound to declare the birth to the registrar of civil status within 30 days.

A declaration states the sex and, if known, the name and the place, date and time of birth of the child. The person making a declaration shall also provide a note relating the facts and circumstances and indicating, if known to him, the names of the father and mother.

Contested Articles of the Civil Code of Quebec III

- 132.** A new act of civil status is drawn up, on the application of an interested person, where a judgment changing an essential particular in an act of civil status, such as the name or filiation of a person, has been notified to the registrar of civil status or where the decision to authorize a change of name or of designation of sex has become final. The same applies where an Aboriginal customary adoption certificate has been notified to the registrar of civil status.
- To complete the act, the registrar may require the new declaration he draws up to be signed by those who could have signed it if it had been the original declaration. The new act is substituted for the original act; it repeats all the statements and particulars that are not affected by the alterations and, in the case of an adoption with recognition of a pre-existing bond of filiation, those relating to that bond, specifying their antecedence. In the case of an Aboriginal customary adoption, the new act in addition makes mention, where applicable, of the rights and obligations that subsist between the adoptee and a parent of origin, with a reference to the altering act. Finally, the substitution is noted in the original act.
- 146.** A certificate of civil status sets forth the person's name, sex, place and date of birth and, if the person is deceased, the place and date of death. It also sets forth, if applicable, the place and date of marriage or civil union and the name of the spouse. The registrar of civil status may also issue certificates of birth, marriage, civil union or death bearing only the particulars relating to one certified fact.

Contested Articles of the Civil Code of Quebec IV

- Regulation respecting change of name and of other particulars of civil status- chapter CCQ, r. 4

23.2. An application for a change of the designation of sex that appears in an act of birth of a person of full age must be accompanied by, in addition to the documents referred to in section 4, an affidavit of a person of full age who attests to having known the applicant for at least one year and who confirms that the applicant is fully aware of the seriousness of the application.

An application for a change of the designation of sex for a minor child must be accompanied by, in addition to the documents referred to in section 4, a letter from a physician, a psychologist, a psychiatrist, a sexologist or a social worker authorized to practise in Canada or in the State in which the child is domiciled who declares having evaluated or followed the child and is of the opinion that the change of designation is appropriate.

Hélène Montreuil from 1995 to 2020

- From 1995 to 2020, Hélène Montreuil's life merges with major LGBT demands.
- She was involved in all the fights, more or less present, but the briefs she submitted to the House of Commons of Canada and to the National Assembly of Quebec as well as the judgments she obtained facilitated the opening of many doors.
- As she puts it so well:
- **"I didn't systematically open new doors, but I systematically turned muddy, winding trails into straight, asphalt highways."**

The technique used by H el ene Montreuil

- In the negotiation courses that I give at UQAR, I teach the "salami" or "slicing" technique.
- The "salami" technique is to not ask for a major concession, but rather a large number of small concessions which, taken individually, seem minimal, but, when put together, represent the equivalent of a desired major concession, and sometimes even more.
- It is easier to gain small concessions rather than one large one.
- In a court application, it is easier to succeed with several small wins than with one big win.
- It takes longer and costs more, but it is more efficient. However, you have to have the time and energy to do it.

Salami v. Registrar of Civil Status I

- To start off, it should be noted that the Registrar of Civil Status did not hand down decisions on name changes in accordance with a regulation made by the Government of Quebec, but with unwritten guidelines that the Registrar had set.
- These guidelines therefore had to be invalidated first so that the Quebec government could make a valid regulation.
- What's more, the Registrar of Civil Status did not want to change my name on my birth certificate until the name on my driver's licence and on my health insurance card had been changed first.
- This is an illogical position and has no legal basis because the Société l'assurance automobile du Québec and the Régie de l'assurance maladie du Québec didn't want to change my name on my driver's licence and on my health insurance card so long as my birth certificate had not been changed.
- This makes sense because the driver's licence and health insurance card are issued according to the information appearing on the birth certificate.

Salami v. Registrar of Civil Status II

- **The first step was to sue the Société l'assurance automobile du Québec and the Régie d'assurance maladie du Québec to force them to change my name on my driver's licence and on my health insurance card, even though I knew that these two lawsuits were doomed to fail, and that is what happened.**
- **This was intentional because it put an end to an argument by the Registrar of Civil Status and would later be used before other courts.**
- **See Montreuil c. Quebec (Société de l'assurance automobile), Superior Court judgment 200-05-009867-982 dated September 3, 1998**
- **See Montreuil c. The Régie de l'assurance-maladie du Québec, Administrative Tribunal of Quebec judgment SS-10402 dated October 16, 1998, AZ-98091223**

Salami v. Registrar of Civil Status III

- Now that the issue of the driver's licence and the health insurance card was settled, we could use the salami technique against the Registrar of Civil Status; Justice Claude Rioux wrote in:
- **Montreuil c. Directeur de l'état civil, C.S. 200-05-010173-982 of October 27, 1998, in particular at paragraphs 25, 26 and 27.**
- **[TRANSLATION]**
25 The Registrar of Civil Status added this to page 4 of his decision.
 - **WHEREAS** in the present case, the main reason supporting the request for a change of the applicant's name is to ask the Registrar of Civil Status to be able to legally live for all appearances as a woman while the reference to the "male" sex remains unchanged;
 - **WHEREAS** the desire to associate his masculine identity with his feminine appearance does not constitute a serious reason, within the meaning of article 58 of the Civil Code of Quebec, allowing the Registrar of Civil Status to authorize the name change requested by the applicant;
 - **WHEREAS** article 58 of the Civil Code of Quebec, in the opinion of the Registrar of Civil Status, does not allow an individual to change their name to add a first name attributed to the opposite sex, suggesting a name change incidental to a change of sex designation, when the entire change of sex designation process has not yet been finalized and confirmed by medical reports;

Salami v. Registrar of Civil Status IV

- **26** The Registrar of Civil Status also alluded in his decision to the discretionary power conferred on him by law. On this point, the Court cannot agree, given the new article 74 of the *Civil Code of Québec* and the *Commentaires du Ministre de la justice* given under this article and which read as follows:
[TRANSLATION]
 - This article is new in law. Previously, a decision of the Minister of Justice whether or not to authorize a change of name or to change the sex designation was not subject to review. This rule was consistent with the fact that a name change was a privilege, not a right. However, as the Civil Code of Québec changes this situation, it becomes desirable to bring an application for review of the decision of the Registrar of Civil Status. This remedy provides a procedural guarantee, given that the Code lists, in article 58, a certain number of grounds that could justify a change of name and, in articles 71 and 72, sets precise criteria for the change of designation of sex.
- **27** Therefore, the Registrar must base his decision in matters of name changes on relevant facts, established before him, and on valid legal considerations, that is, the legislation and not on the discretionary powers which he could use before the advent of the new *Civil Code of Québec*.
- **Second step:** the case was lost, but so were the discretionary powers that the Registrar thought he had.

Salami v. Registrar of Civil Status V

- Now, the discretionary powers of the Registrar of Civil Status no longer exist. This was confirmed by Justice France Thibault of the Court of Appeal, who wrote:

[TRANSLATION]

•In fact, the legislature made the administrative appeal to the Registrar of Civil Status subject to review before the Superior Court, thus transforming what was considered a privilege before the advent of the Civil Code of Québec into a right.

- This is found in the following judgment:
- **Montreuil c. Directeur de l'état civil, CA 200-09-002310-982 of November 1, 1999**

Salami v. Registrar of Civil Status VI

- Now what about the issue of the sex of the first name?
- Justice France Thibault of the Court of Appeal answered this question.

[TRANSLATION]

•In my opinion, the Registrar of Civil Status and the Superior Court were wrong to conclude that the addition of a so-called female first name to a male person's act of civil status.

•Each person is individualized within our society, that is, they are differentiated from others by their personal and individual characteristics. The legislature has listed four elements which, it seems to me, perform the function of identifying a person: the **last name** allows the person to be designated and ensures the exercise of their civil rights; the **sex** adds to the identification; the **domicile** is used to situate a person in a territorial framework; and the **acts of civil status** ensure awareness of the family situation of an individual because of the legal consequences it entails.

•In conclusion, it must be recognized that, legally, the assignment of a name is not intended to designate the sex of a person. Also, it is incorrect to conclude that the use of a so-called female first name by a male person creates confusion as to their individualization in relation to other members of society.

Salami v. Registrar of Civil Status VII

- Now, what about the long-enough-period-of-use of this new name?
- Justice France Thibault of the Court of Appeal answered this question.

[TRANSLATION]

- In my opinion, the exceptional nature of a change of name, together with the importance of its stability, favours a two-fold obligation: not only must the use be widespread, but it must also have been so for a reasonably long period before it can be concluded that it is in general use. The Registrar of Civil Status requires such use for a five-year period, which seems to me, because of the public order nature associated with legislative provisions, a minimum period of time.
- The question of the period of use of this new first name is therefore settled; it should be five years.

Salami v. Registrar of Civil Status VIII

- Now, what about the Registrar's requirement of using the new first name on the driver's licence and health insurance card?
- Justice France Thibault of the Court of Appeal answered this question.

[TRANSLATION]

•The appellant's second question relates to the impact of the use of the appellant's Bar membership card, driver's licence and health insurance card, all issued in the name of Pierre Montreuil, and of which the modification depends on that of the birth certificate. In my opinion, the appellant is correct in asserting that the general usage dealt with in article 58 CCQ must exclude acts in which the expression of the name depends directly on the act of birth. This seems obvious to me because, otherwise, the exception in article 58 CCQ would be difficult to apply.

- The question of the use of a new first name on driver's licences and health insurance cards is therefore settled; it is a requirement that cannot and must not exist.
- However, I still haven't obtained my first-name change.

Salami v. Registrar of Civil Status IX

- Now, what about the 5-year time limit for changing a first name?
- Justice Gérard Lebel of the Superior Court answered this question in **Montreuil c. Directeur de l'état civil of May 16, 2001, number 200-05-014594-019**

[TRANSLATION]

•[10] . . . If the Registrar of Civil Status does not have written policies and rules in place relating to the use of a name, as claimed by the applicant, there is now, at least since November 1, 1999, a judgment of the Court of Appeal on which the Registrar of Civil Status can rely. And as long as the legislature does not adopt this written policy advocated by the applicant, the Registrar of Civil Status has no other choice but to rely on the existing unwritten policy on which he has testified. According to the Registrar's testimony, no change of name was or has been authorized before or since he took office, without proof of the proposed name's use for an extended period of at least five years. This has not been contradicted, and no one can deny the existence of an unwritten but long-standing policy.

- Justice Lebel's reasons go against the judgment of Justice Claude Rioux of October 27, 1998, which stated that that the Registrar had to base his decision regarding name changes **on relevant facts and valid legal considerations, that is, primarily on the legislation.** The Registrar of Civil Status refused or neglected to have a law or regulation adopted.

Salami v. Registrar of Civil Status X

- Back to the Court of Appeal, and Justices Thérèse Rousseau-Houle and Jacques Delisle agreed with me in the judgment:
- **Montreuil c. Directeur de l'état civil, CA 200-09-003658-017 of November 1, 1999**
- Justice Thérèse Rousseau-Houle recalled the rules of law in these terms.

[TRANSLATION]

- [12] Three main points emerge from this Court's judgment of November 1, 1999:
 - The Registrar and the Superior Court judge were wrong to conclude that the addition of a so-called female first name by a male person creates confusion as to the person's individualization with respect to other members of society.
 - The generalized use dealt with in article 58 CCQ must exclude acts where the expression of the name depends directly on the birth certificate, such as the health insurance card, driver's licence and Bar membership card.
 - The importance of the stability of names favours a sufficiently prolonged use. Due to the public order nature associated with the provisions of the Civil Code relating to name changes, **a period of five years seems to be a minimum period.**

Salami v. Registrar of Civil Status XI

- [15] In her third request for a name change, dated September 12, 2000, the appellant relies on proof of use of the first name Micheline, already submitted to the courts for assessment. She attached photocopies of her passport, social insurance card, voters list, hypothecary deed, employment contract, credit cards, municipal and school property tax accounts, telephone, electricity and insurance accounts to her request. She also added the list of television or radio interviews given under Micheline's name as well as newspaper articles and conferences proving a constant and recognized public use of the first name Micheline since her last application.
- [16] At the hearing before this Court, she was allowed to file her employment contract as a tax collection agent for the Ministère du Revenu du Québec signed on May 5, 2002, under the first name of Micheline. The authorized new evidence also included a document reporting the deletion of her name from the electoral list because the name Micheline Montreuil did not appear on her birth certificate. The appellant alleged that this decision infringed on the exercise of her civil rights under article 5 CCQ and section 22 of Quebec's *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.

Salami v. Registrar of Civil Status XII

- [17] By requiring that the use of the name be generally known and widespread for at least five years, this Court has established a rule of sound judicial policy. However, this rule leaves the Registrar of Civil Status a discretion to judge, in each case, the merit of the evidence relating to the general use of the name that a person wishes to have entered on their birth certificate.
- [18] In light of the new evidence presented, also in light of the admission by the Registrar of Civil Status that the authorization of the change of name required by the appellant no longer depends solely on the mere passage of the five-year period, it seems to me that it would be unreasonable to compel the appellant to make a fourth application in 2003.
- [19] In fact, the specific circumstances of the case and more specifically all of the documents produced in evidence since the first application in 1997, as well as the widespread media coverage that the appellant's claim has had in recent years in print and television media, in my opinion justify allowing her appeal today and ordering the Registrar of Civil Status to add, between the first names Pierre and Yves, that of Micheline in her birth certificate.

Salami v. Registrar of Civil Status XIII

- In this same judgment, Justice Jacques Delisle added important details concerning the sex of the first name in these terms:

[TRANSLATION]

- [30] The appeal therefore raises the following question: can a man, who presents himself for all appearances as a woman, use a first name traditionally attributed to the female sex?
- [32] The question is serious. It pits the individual's right to a first name against the right of other people to know with whom they are dealing. Just think, for a given example, of requests that would come from people working in the field of health: gynecologists, nurses, etc.
- [32] It is merely custom that first names such as *Francoise*, *Lucie*, *Huguette*, etc. are associated with women. They are not, however, the prerogative of the female sex, any more than pants are exclusive to men or skirts, to women.

Salami v. Registrar of Civil Status XIV

- [33] From this perspective, the appellant's parents could have, if they had so desired, given him the first name of *Micheline*. Except for a hitch regarding custom, there is nothing, in principle, that prevents first names customarily associated with women from being given to males, or vice versa.
- [34] The argument that the first name should indicate the person's sex does not hold up against the widespread use of neutral first names such as *Claude, France, Chantal, Dominique*, etc., which only allow the sex of the people who bear them to be known by sight, on the basis of specific physical attributes and clothing.
- [35] In short, a first name is not misleading as long as the appearances of the person using it allow their sex to be identified.

Salami v. Registrar of Civil Status XV

- Finally, with this last judgment of the Court of Appeal, all the contentious issues were decided.
- **Montreuil c. Directeur de l'état civil, CA 200-09-003658-017 of November 7, 2002**
- In short, first names have no sex.
- A first name must be used for at least five years to achieve the change on the basis of use.
- I could have obtained a change of first name more quickly by pleading insanity, deep personality disorder and gender dysphoria, but the Bar could have expelled me by saying that I am "crazy" and therefore incapable of adequately representing my clients.
- So usage was the only smart solution.

Salami v. Registrar of Civil Status XVI

- In 2008, the Registrar of Civil Status added the first name Anne to my birth certificate on the basis of prolonged use.
- In 2011, the Registrar of Civil Status added the first name H el ene to my birth certificate on the basis of prolonged use.
- In 2016, the Government of Quebec adopted the *Regulation respecting change of name and of other particulars of civil status*, which responded to the conclusions of this judgment.
- In 2016, the Registrar of Civil Status amended the gender on my birth certificate from male to female.
- I am now a woman, believe it or not!
- **Patience and the fullness of time do more than force or fury.**
- **Jean de La Fontaine**
- **Fables (1668 to 1694), Book II, XI, The Lion and the Rat**

Hélène Montreuil's claims I

- On December 14, 1999, Hélène Montreuil appeared before the Canadian Human Rights Act Review Panel in Ottawa.
- She submitted a brief on [TRANSLATION] "The recognition of gender identity as a prohibited ground of discrimination within the meaning of *Canadian Human Rights Act*."
- In June 2000, the Committee produced a report entitled "Promoting Equality: A New Vision".
- Recommendation 123 of this report reads as follows: "We recommend that gender identity be added to the list of prohibited grounds of discrimination in the Act."
- The Act was amended in 2017.
- <http://publications.gc.ca/site/eng/412031/publication.html>

Hélène Montreuil's claims II

- On April 28, 2003, Hélène Montreuil appeared before the Standing Committee on Justice and Human Rights of the House of Commons of Canada.
- She submitted a brief on [TRANSLATION] "Marriage and the legal recognition of same-sex unions."
- On July 20, 2005, the Civil Marriage Act received Royal Assent; it provided, in section 2:
 - **2 Marriage, for civil purposes, is the lawful union of two persons to the exclusion of all others.**
- It is therefore no longer a question of a union between a man and a woman only, but between two persons.

Hélène Montreuil's claims III

- On May 13, 2015, Hélène Montreuil submitted to the Committee on Institutions of the National Assembly of Quebec a brief, [TRANSLATION] "Concerning the draft regulation relating to the Regulation respecting change of name and other particulars of civil status for transsexual or transgender persons," in response to an unsatisfactory draft regulation.
- In 2016, the Government of Quebec adopted the *Regulation respecting change of name and other particulars of civil status*.
- To view this brief, go to:
- <http://www.maitremontreuil.ca/conferences/2015-05-13-changement-nom.pdf>

Hélène Montreuil's claims IV

- Regarding the change of sex, the Regulation provides:
- 23.1. If an applicant's affidavit required under section 1 is in support of an application made by a person 14 years of age or over for a change of the designation of sex that appears in the person's act of birth, the affidavit must also attest that:
 1. the designation of sex requested is the designation that best corresponds to the applicant's on gender identity;
 2. the applicant assumes and intends to continue to assume that gender identity;
 3. the applicant understands the seriousness of the undertaking; and
 4. the applicant's undertaking is voluntary and his or her consent is given in a free and enlightened manner.

Hélène Montreuil's claims V

- **Regarding the change of sex, this Regulation also includes an interesting provision:**
- **23.2. An application for a change of the designation of sex that appears in an act of birth of a person of full age must be accompanied by, in addition to the documents referred to in section 4, an affidavit of a person of full age who attests to having known the applicant for at least one year and who confirms that the applicant is fully aware of the seriousness of the application.**
- **It is no longer necessary to undergo a sex reassignment operation, and marital status is left to the individual's choice.**
- **In my case, I did not have to provide this sworn statement, given the extensive documentation provided, specifically two judgments from the Quebec Court of Appeal confirming my intention to be designated as a woman.**

Hélène Montreuil's claims VI

- **On the website of the Registrar of Civil Status, here are the conditions for obtaining a change of name:**
 - The use, for five years or more, of a surname or given name not entered on the act of birth
 - A name of foreign origin, too difficult to pronounce or write in its original form
 - Serious prejudice or psychological suffering caused by the use of the name
 - A name that invites ridicule or that is infamous (marked by disgrace, shame or humiliation)
 - The intention to add to the surname of a child under 18 the surname of the father or mother, or a part of it if it is a compound surname

- **<http://www.etatcivil.gouv.qc.ca/en/change-name.html>**

Hélène Montreuil's fights

- Hélène Montreuil's battles concerning employment discrimination against transgender people and name changes have set legal precedents.
- Employment discrimination is difficult to prove, but Hélène Montreuil was able to develop the "**subtle scent of discrimination**" test in the following two cases:
- **Montreuil v. National Bank of Canada** in:
 - <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/6521/index.do>
- **Montreuil v. Canadian Forces Grievance Board**
 - <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/7139/index.do>
- These judgments have been cited many times.

Montreuil v. National Bank of Canada I

- The particular difficulty of the judgment in *Hélène Montreuil v. National Bank* arises from the application of the "subtle scent of discrimination" test.

[39] In *Basi*, the Canadian Human Rights Tribunal stated that discrimination is not a practice that one would expect to see displayed overtly. The Tribunal went on to say that in fact, rarely are there cases where one can show by direct evidence that discrimination is purposely practiced. A tribunal should therefore consider all circumstances to determine if there exists a "subtle scent of discrimination".

- It is interesting to note the procedural battle that took place before the case could be heard on the merits:
- <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/42564/index.do>
- <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/39379/index.do>
- <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/6798/index.do>

Montreuil v. National Bank of Canada II

- In this procedural judgment:
<https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/39379/index.do>
- The Human Rights Commission is even blamed for its excessive formalism in these terms:
- [8] Although the Act gives the Commission substantial discretion in determining whether a complaint is filed in an acceptable form, in my opinion this provision cannot allow the Commission to arbitrarily exclude a complaint that is prima facie within its jurisdiction solely because the signature on the complaint form, albeit the applicant's usual signature, is inconsistent with his or her birth certificate. The complaint is only the first step in the Commission's investigation process. It is not a legal proceeding per se, so the formal requirements under article 5 of the C.C.Q. are unnecessary in such a case.
- [9] Furthermore, I find it surprising that the Commission, which demands flexibility and tolerance in human relations from everyone else, should become so formalistic in the particular circumstances of this case. This is perhaps the reason why the Commission chose not to intervene to explain to the Court how its jurisdiction could be affected by the mere fact that the complaint is signed with the applicant's usual signature.

Montreuil v. Canadian Forces Grievance Committee I

- The judgment in **Montreuil v. Canadian Forces Grievance Board** is cited below and affirmed on appeal
- <https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/7139/index.do>
- <https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/56291/index.do>
- The **"subtle scent of discrimination"** test is described in the following terms:

[24] The case law recognizes the difficulty by allegations of discrimination by way of direct evidence. Discrimination is frequently practised in a very subtle manner. Overt discrimination on these grounds is not present in every discriminatory situation or occurrence. (See *Basi, supra*, at para. D/5038.) It is consequently the Tribunal's task to consider all of the circumstances to determine if there is what has been described as the **"subtle scent of discrimination"** (Premakumar, paragraph 79).

Montreuil c. Canadian Forces Grievance Committee II

[67] Therefore, it is not necessary to demonstrate that the Board members intended to discriminate against Ms. Montreuil. Indeed, discrimination is often invisible. Individuals who discriminate often are not aware of what they are doing. This does not mean, however, that others are not aware of it. Hence, taking into account all of the circumstances, is it possible that there is a "**subtle scent of discrimination**" in this case, as described in *Basi, supra*?

[68] To arrive at my finding, I reviewed the entire situation by proceeding with a careful, in-depth review of the evidence filed by both parties. I objectively considered Ms. Montreuil's arguments and those of the Board. The evidence and the arguments submitted to me by the Board did not persuade me that there was not a "**subtle scent of discrimination**" in the decision not to offer a grievance officer position to Ms. Montreuil.

Montreuil v. Canadian Forces Grievance Committee III

[72] The Board was not able to provide a reasonable explanation justifying its decision not to hire Ms. Montreuil for a grievance officer position and for these reasons, I find that there is a "**subtle scent of discrimination**". I therefore find that the Board discriminated against Ms. Montreuil on the basis of sex (transgender) contrary to sections 3 and 7 of the *CHRA*.

- So, even if the discrimination cannot be proved directly, it is possible to demonstrate discrimination by highlighting the "**subtle scent of discrimination**".

Same-sex marriage I

- Same-sex marriage, commonly referred to as gay marriage, is the possibility for a couple, two women or two men, to enter into a marriage, civil or religious, formerly reserved for a man and a woman.
- While examples of such marriages are found in some civilizations in antiquity, from the 19th century until the end of the 20th century, homosexuality was considered a mental disorder until 1990 by the World Health Organization and often criminalized. But by the early 21st century, the evolution of societies and the demands made by gay rights movements led some states, after authorizing civil unions, to extend the legal recognition of civil marriage to all couples, different-sex or same-sex, without distinction.
- In 2001, the Netherlands became the first country to institute marriage for all. As of May 2020, it is legal in 29 countries. Almost all of them also recognize same-sex parenting and adoption. In contrast, only the Church of Sweden, since 2009, and a few other religious movements celebrate same-sex religious marriage or its religious blessing.

Same-sex marriage II

- **Argentina (since July 2010)**
- **Australia (since December 2017)**
- **Austria (since January 2019)**
- **Belgium (since June 2003)**
- **Brazil (since May 2013)**
- **Canada (since July 2005)**
- **Colombia (since April 2016)**
- **Costa Rica (since May 2020)**
- **Denmark (since June 2012)**
- **Ecuador (since July 2019)**
- **Finland (since March 2017)**
- **France (since May 2013)**
- **Germany (since October 2017)**
- **Iceland (since June 2010)**

Same-sex marriage III

- Ireland (since November 2015)
- Lithuania (since June 2015)
- Malta (since September 2017)
- Mexico (in 18 states and the federal capital but not at the federal level)
- Netherlands (since April 2001)
- New Zealand (since August 2013)
- Norway (since January 2009)
- Portugal (since May 2010)
- South Africa (since November 2006)
- Spain (since July 2005)
- Sweden (since April 2009)
- Taiwan (since May 2019)
- United Kingdom (gradually from 2014)
- Uruguay (since August 2013)
- United States (since June 2015)

Same-sex marriage IV

- **Organization of American States**
- **On January 9, 2018, the Inter-American Court of Human Rights ruled on a resolution filed by Costa Rica in 2016 and found in favour of the recognition of the right to marriage in several American countries.**
- **The Court determined that the Inter-American Commission on Human Rights demands and requires the legalization of same-sex marriage. Because of this legal decision, Costa Rica must legalize same-sex marriage and give same-sex couples all the rights that deriving from it.**
- **This decision also facilitated the legalization of gay marriage in the following countries: Barbados, Bolivia, Chile, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, El Salvador and Suriname.**
- **All these countries are bound to comply with this decision in the near future, although no precise date for doing so has been set yet.**

Same-sex marriage V

- **Several resolutions by the European Parliament call on European Union states to put in place legislation to end discrimination against homosexual couples in terms of unions, civil marriages or access to adoption and parenthood.**
- **Through the Resolution of 8 February 1994, the European Parliament clearly called on the Member States to:**
 - **End the prohibition on homosexual couples to marry or to benefit from equivalent legal provisions**
 - **Guarantee them all the rights and benefits of marriage**
 - **Authorize the registration of partnerships**
 - **Remove all restrictions on the right of lesbians and gay men to be parents or to adopt or raise children.**
- **In the resolution voted on July 5, 2001, the European Parliament recommended to the Member States of the European Union to "amend their legislation in order to recognise non-marital relationships between persons of the same or the opposite sex and assign them equal rights" as well as "put the issue of mutual recognition of legally recognised non-marital relationships on the EU agenda".**

Same-sex marriage VI

- In a report adopted at the end of 2002, the European Parliament recommended "to recognise unmarried partnerships - between both couples of different sexes and same-sex couples - and to link them to the same rights as apply to marriage . . . [and] to put the mutual recognition of unmarried partnerships and the issue of marriage between persons of the same sex on the political agenda".
- In a 2003 resolution, the European Parliament reiterated its demand to "abolish all forms of discrimination - whether legislative or de facto - which are still suffered by homosexuals, in particular as regards the right to marry and adopt children".
- These various resolutions, however, have no binding effect on Member States.

Same-sex marriage VII

- **European Union**
- **In the resolution voted on July 5, 2001, the European Parliament recommended that the Member States of the European Union:**
 - **Amend their legislation in order to recognize non-marital relationships between persons of the same or the opposite sex**
 - **Assign them equal rights**
 - **Put the issue of mutual recognition of legally recognized non-marital relationships on the EU agenda**
- **In a report adopted at the end of 2002, Parliament recommended:**
 - **Recognizing unmarried partnerships - between both couples of different sexes and same-sex couples**
 - **Linking these partnerships to the same rights as apply to marriage, while putting the mutual recognition of unmarried partnerships and the issue of marriage between persons of the same sex on the political agenda.**
- **In a 2003 resolution, the European Parliament reiterated its demand to abolish all forms of discrimination - whether legislative or de facto - which are still suffered by homosexuals, in particular as regards the right to marry and adopt children. These various resolutions, however, have no binding effect on Member States.**

Same-sex marriage is allowed

- **Argentina**
- **Australia**
- **Austria**
- **Belgium**
- **Brazil**
- **Canada**
- **Columbia**
- **Costa Rica**
- **Denmark**
- **Ecuador**
- **Finland**
- **France**
- **Germany**
- **Iceland**
- **Ireland**
- **Luxemburg**
- **Malta**
- **Netherlands**
- **New Zealand**
- **Norway**
- **Portugal**
- **Spain**
- **Sweden**
- **Taiwan**
- **United Kingdom**
- **United States**
- **Uruguay**

Same-sex marriage in United States I

- **Marriage law falls within the jurisdiction of the states.**
- **At the federal level, the Defense of Marriage Act of 1996, or DOMA, defined marriage as the legal union between one man and one woman and limited marital rights and recognition from marital union between two people at the national level to heterosexual couples only.**
- **On June 26, 2013 the Supreme Court partially invalidated DOMA.**
- **June 26, 2015, the Supreme Court decided in Obergefell v. Hodges that same-sex couples across the country could marry, and that states that had not yet recognized same-sex marriage would not only have to agree to marry same-sex couples, but also recognize a same-sex union if it had been solemnized in another state.**

Same-sex marriage in United States II

- Here is an example that illustrates a dilemma between the conscience and duty of a public servant.
- In June 2015, the United States Supreme Court legalized same-sex marriage throughout the United States.
- On Thursday, September 3, 2015, Kim Davis, an evangelical Christian from Rowan County, Kentucky, was sentenced to jail for consistently refusing to issue same-sex marriage certificates, claiming that this *"violated"* her religious beliefs.
- "The court cannot condone the willful disobedience of its lawfully issued order. If you give people the opportunity to choose which orders they follow, that's what potentially causes problems", stated Judge David L. Bunning, who said the clerk would be released when she agreed to fulfill her duties as a civil servant.

Same-sex marriage in United States III

- During the hearing, Kim Davis was asked if she believed that a marriage could be anything other than the union between a man and a woman. She simply replied, “No”. Bunning said that she was not physically incapable of issuing the certificates; she simply chose not to do so.
- Confessing to have “surrendered [her] life to Jesus Christ”, Kim Davis claimed to have no prejudice against homosexuals a priori and has rallied many supporters in the galaxy of conservative American religious groups. “I have no animosity towards anyone and harbor no ill will. To me this has never been a gay or lesbian issue. It is about marriage and God’s word. It is a matter of religious liberty, which is protected under the First Amendment” of the Constitution.
- In turn, a federal district court and an appeals court ruled against Kim Davis. She then appealed to the Supreme Court, which also ruled against her, on Monday August 31, 2015. On Tuesday, September 1, 2015, the clerk again persisted in not issuing the documents.

Same-sex marriage in United States IV

- At the heart of the media storm were also two men, David Moore and David Ermold, who showed up that summer at the Rowan County Vital Statistics office, ready to marry.
- The couple took care to videotape the refusal they were confronted with by Kim Davis. See:
- https://www.youtube.com/watch?v=_Xg1Dh2xhXg
- Other couples took the same steps, this time surrounded by a swarm of journalists, receiving the same rejection from Ms. Davis.
- "I just want you all to know that we are not issuing marriage licences today", stated the clerk calmly, in a sequence available on the internet. "Under whose authority?" someone asked her. "Under God's authority", she answered calmly.
- Mr. Moore and Mrs. Ermold, along with another gay couple and two straight couples, took the case to court.

Same-sex marriage in United States V

- In 2014, Kimberly Davis, a Republican, was elected clerk of Rowan County in Kentucky. She gained international attention in August 2015, when she challenged the United States by refusing to issue marriage licences to same-sex couples.
- In 2015, the Supreme Court rendered a judgment in Obergefell v. Hodges, and all Kentucky County clerks were ordered to issue marriage licences to same-sex couples.
- Citing personal religious objections to same-sex marriage, Davis began denying marriage licences to all couples to avoid issuing them to same-sex couples.

Same-sex marriage in United States VI

- In 2015, Miller, a homosexual sued Davis, and the judgment ordered Davis to issue marriage licences. Davis appealed to the Supreme Court, but her appeal was dismissed. Davis was subsequently jailed for contempt of court after refusing to issue marriage licences while also refusing to allow her deputy clerks to issue marriage licences.
- Davis was released after five days in jail on the condition that she not interfere with the efforts of her deputy clerks, who had begun issuing marriage licences to all couples in her absence. Davis then changed the Kentucky marriage licences used in her office so that they no longer mentioned her name.
- On November 6, 2018, Kimberly Davis was defeated in the election by Democratic candidate Elwood Caudill Jr., and she stepped down on January 7, 2019.

Same-sex marriage in United States VII

- In turn, a federal court and an appeals court ruled against Kim Davis. On Monday August 31, 2015, the Supreme Court ruled against her. Jailed on Thursday, September 3, she remained in prison until she agreed to comply with the law.
- Between her supporters and her detractors, the heated debate sometimes took the low road. The invective flared in front of the court of Kentucky which convicted her.
- "Do your job," her enemies told her. "Hold on!" her supporters pleaded, who have flocked from afar to her region of the Appalachians where she is a pillar of the Apostolic Church, a local Protestant church.
- The official was criticized for her "bigotry" and "hypocrisy" by people who dissected her turbulent married life, marked by three divorces and four marriages.

Same-sex marriage in United States VIII

- But this was all before she discovered "grace" four years ago and joined the ranks of evangelical Christian converts called "born again".
- That same Thursday, September 3, 2015, Kim Davis received the support of several figures of the conservative Christian right.
- The fate of Ms. Davis "removes all doubt about the criminalization of Christianity in our country," said Mike Huckabee, a Republican contender for the White House in 2016.
- "Today, for the first time, the government arrested a Christian woman for living according to her faith. This is wrong. This is not America", for his part commented Texas Senator Ted Cruz, also aspiring to the Republican nomination for 2016.

Same-sex marriage in United States IX

- On the morning of Friday September 4, 2015, when the Rowan County Clerk's Office opened for business, James Yates and William Smith, a couple who had been refused five prior times, again went to the Vital Statistics office, and this time they received their marriage certificate.
- The turnabout came after the clerk of that office, Kim Davis, was jailed the day before, Thursday, September 3, 2015, by a judge, because of her stubbornness in upholding her religious beliefs over her duties as a civil servant.
- In sending Kim Davis behind bars, Judge David Bunning also ordered her six deputies to resume issuing marriage certificates, even without the approval of their supervisor.
- Five agreed and one refused; the latter happens to be a son of Kim Davis.

Same-sex marriage in France I

- Since 1999, homosexual or heterosexual couples have had the option of entering into a civil partnership, called a civil solidarity pact (PACS), or of co-habitation. However, neither offers the same legal guarantees as civil marriage.
- Marriage between people of the same sex in France, or "marriage for all" has been authorized by law since May 17, 2013. It consists of the possibility for a couple, two women or two men, to enter into a civil marriage, previously reserved for only a man and a woman.
- The bill has been the subject of considerable debate and has met with stronger opposition in France than in other European countries.
- The first French same-sex marriage was celebrated on May 29, 2013, in Montpellier.

Same-sex marriage in France II

- On Tuesday, September 29, 2015, a court in southern France sentenced Sabrina Hout, a left-wing elected official from Marseille, to five months in prison, for refusing to celebrate a marriage between two women, raising her religious convictions.
- According to the Marseille prosecutor's office, this is the first case of the type since the coming into force in May 2013 of the so-called "marriage for all" law, the main social reform of the socialist President François Hollande, following which 17,500 same-sex marriages were celebrated in the country.
- Sabrina Hout, former deputy to socialist Senator Samia Ghali, mayor of the 15th and 16th *arrondissements* of Marseille, was found guilty of discrimination by a public servant because of the victims' sexual orientation.
- The facts dated back to August 6, 2014. That day, Sabrina Hout had entrusted an unauthorized assistant with marrying Claude Génart and Hélène Burucoa, two women who had living together for 12 years.

Same-sex marriage in France III

- The two spouses saw their union annulled a few months later, before being remarried on February 14, 2015, by Samia Ghali herself.
- The court justified the sanction imposed on Sabrina Hout, which was more severe than what the prosecution requested, by underscoring the **damning** statements against her by the three officials who witnessed the facts alleged against her.
- All have made it clear that Sabrina Hout [TRANSLATION] "**Did not want to solemnize this marriage, because it was contrary to her religious convictions, and that she would go to Hell**". According to a civil status officer, the elected official was even "very excited and stamped her feet".
- At the hearing, Sabrina Hout oscillated between excuses and justifications, while rejecting the slightest homophobic feeling.
- The same day of the wedding ceremony she had refused to perform, Ms. Hout had presided over four other unions, all between heterosexual couples.

Your Canadian Passport I

- <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/change-sex.html#update-gender-f-m>
- There are 3 options for the **Sex** field on passports for Canadians and travel documents for non-Canadians:
 - **F** – female;
 - **M** – male;
 - **X** – another gender.
- How you choose your gender identifier depends on:
 - the type of travel document;
 - if you're applying for a new travel document or updating the one you already have.

Your Canadian Passport II

- **Before you travel**
- **The Government of Canada can't guarantee that other countries you visit or travel through will accept the sex or gender identifier on your passport or travel document. Check with your local Canadian embassy, high commission or consulate in the countries you plan to visit or travel through to make sure you understand their entry requirements.**
- **You should also be aware that current systems used by some countries and travel companies may not recognize the X gender identifier. You may still be asked to provide information regarding your sex/gender as either male or female when travelling.**

Your Canadian Passport III

- <https://travel.gc.ca/travelling/health-safety/lgbt-travel>
- **Most lesbian, gay, bisexual, transgender, queer and two-spirit (LGBTQ2) Canadians experience no problems at all when they travel abroad. However, foreign laws and customs can be very different from those of Canada, which can result in increased risks. Researching and preparing for your trip in advance will help your travels go smoothly.**
- **Before you go**
- **Check out a good travel guide. Most have sections that provide advice for LGBTQ2 people travelling to your destination.**
- **Visit online forums and blogs for information on your destination's LGBTQ2 events, culture, safety and laws.**

Your Canadian Passport IV

- **Consult our Travel Advice and Advisories for destination-specific information on laws that may affect LGBTQ2 people.**
- **If you identify your gender as "X" in your passport, or if your Canadian passport has an observation indicating "the sex of the bearer should read as X, indicating that it is unspecified," check with the Embassy, High Commission or consulate of all of the countries you intend to visit or transit through to enquire about their entry requirements.**
- **Research your destination's LGBTQ2 press and organizations, as they will be able to provide information on the local situation**
- **Speak with your travel agent or tour operator about information on your destination that is specifically related to your sexual orientation or gender identity.**

Your Canadian Passport V

- While you are travelling outside Canada, you are subject to, and must follow, local laws, even if they are different from Canadian laws. Not all countries have the same values and legal system as Canada, so it is important to research laws relating to LGBTQ2 people in your destination country. For more information, see the [State Sponsored Homophobia Report](#) and related links under [Other resources](#).
- When you are choosing a travel destination, you should consider that same-sex marriages and relationships are not legal in many countries. You should carefully consider whether you are comfortable visiting a country where LGBTQ2 rights are not recognized, or where LGBTQ2 people are not socially accepted, as you may face discriminatory laws or practices that may be applied arbitrarily or inconsistently.

Your Canadian Passport VI

- **When you are planning to travel outside Canada, consider that:**
 - **Legislation on same-sex relationships may change from one region to another, even within the same country.**
 - **There may be no laws prohibiting same-sex relationships, but they may be considered socially unacceptable.**
 - **Your destination may have laws that protect LGBTQ2 people but they are not followed or enforced.**
 - **Depending on your destination, you may not have access to certain services and rights. Health care institutions may refuse to treat you, hotels may not accept your booking, or your same-sex partner may be denied power of attorney or next-of-kin rights because of your sexual orientation.**

Your Canadian Passport VII

- **The Government of Canada cannot guarantee your entry into or transit through another country, regardless of whether your passport or other Canadian travel document includes the "X" designation. When you travel abroad, you should be aware of all of the entry requirements of the countries you visit or transit through, as not all countries have the same values and legal systems as Canada. Current systems used by some countries and travel companies may not recognize the X gender identifier and you may still be asked to provide your sex/gender information as either Male or Female when travelling.**
- **You should be aware that you may face discrimination because of your gender identity or expression, and you may not have access to services in your preferred gender while you are travelling abroad.**
 - **Some border authorities may question or refuse to recognize your gender as indicated on your passport or supporting identification.**
 - **Health services specific to transgender persons could be limited or non-existent in your destination country.**
 - **You could face a discriminatory justice system if you get into trouble with local authorities.**

Your Canadian Passport VIII

- **LGBTQ2 people who would like to adopt or become parents through surrogacy while abroad should be aware that:**
- **Some countries may prevent LGBTQ2 people from adopting a child because it is against their laws, culture or beliefs. You could face discrimination from national authorities responsible for adoption. You should carefully research which countries have laws in place to allow LGBTQ2 people to adopt and work closely with your provincial or territorial adoption central authority to ensure the adoption process complies with both Canada's and the other country's legislation and procedures.**
- **Border officials may question a same-sex couple travelling with a small child and may request supporting documentation to explain why there is no biological other-gendered parent. Carrying certified copies of adoption orders and birth certificates that list the custodial parents may help you and your family pass through border control. We strongly recommend that Canadian children carry a consent letter if they are travelling abroad alone, with only one parent/guardian, with friends or relatives or with a group.**
- **If you are considering becoming a parent through a surrogacy contract, you should be aware that more and more countries consider surrogacy contracts illegal. LGBTQ2 couples may face difficulties because of discrimination from national authorities responsible for child welfare. There may also be legal difficulties transferring custody after the child is born. If you are considering a surrogacy arrangement, do your research and get legal advice.**

Your Canadian Passport IX

- **My comments.**
- **I have an F on my birth certificate.**
- **I have a F on my passport.**
- **So my passport matches my birth certificate.**
- **I don't want complications abroad.**

- **You want an X.**
- **It's your choice, but accept the consequences.**

Your Canadian Passport X

- **If I am arrested in certain countries, will I end up in a prison for women or in a prison for men?**
- **What could the Government of Canada do?**
- **It will send the nearest Canadian consul to visit me in prison, and the consul will tell me:**
 - **My dear H el ene, you shouldn't have come to this country, or**
 - **You shouldn't have broken such and such a law, or**
 - **You shouldn't have dressed that way, or**
 - **You shouldn't have held your girlfriend's hand, or**
 - **You shouldn't have been drinking alcohol in public, or**
 - **You shouldn't have sunbathed naked on the beach, or**
 - **You shouldn't have criticized the government in public, or**
 - **You shouldn't have been in a bikini in the hotel pool, or**
 - **You shouldn't have been photographed naked on Mount Kinabalu in Malaysia, etc.**

Your Canadian Passport XI

- The Canadian consul will add that the Government of Canada will exert diplomatic pressure to get me out of the unfortunate situation in which I have put myself, **maybe in a few years.**
- Think of Raouf Badawi, accused of apostasy and insulting Islam!
- He has been imprisoned at Dahaban Central Prison in Saudi Arabia since June 2012. It's a maximum security prison,
- He was sentenced to 1,000 lashes and 10 years in prison.
- His lawyer Waleed Abu al-Khair is also in jail.
- **SO . . . I don't want an X on my passport.**
- **I don't want to break foreign laws!**
- **I do not want to end up in jail!**
- **I have an advantage over the majority of other women: I can dress up as a man and it won't be too obvious.**

Your Canadian Passport XII

- Another example of foreign laws, in Cuba.
- In December 2018, the Cuban provincial court in Ciego de Avila confirmed a four-year custodial sentence for reckless homicide for a Quebecer implicated in a boating accident that occurred in July 2017.
- While on vacation in Cuba with his family, the man piloted a boat and collided with another boat, killing a tourist from Ontario.
- The federal government stated that consular assistance is offered to Quebecers and that they cannot intervene in the legal process of another country. He must remain in prison in Cuba.
- Does that appeal to you?
- Not to me.

Your Canadian Passport XIII

- **A last example, to finish, taken from the website of Le Parisien on June 11, 2015**
- **Malaysia: tourists detained for posing nude on sacred mountain**
- **A Malaysian tribe accuses Western tourists of having triggered the wrath of spirits by posing naked in a sacred place and causing a violent earthquake in the region.**
- **Three Canadian tourists, one Briton and one Dutchman are in police custody in Malaysia after posing nude on May 30, 2015, in front of Mount Kinabalu, a sacred place, police said on Wednesday.**
- **Photos of 10 naked tourists have been distributed on social media, angering locals.**
- **According to a local tribe, the act allegedly angered the spirits and caused a deadly earthquake that killed 18 people in the region on June 5, 2015.**

Your Canadian Passport XIV

- Mount Kinabalu, a Unesco World Heritage Site and highly prized by trekking enthusiasts, is sacred to the Kadazan Dusun tribe who live there and believe it is a place of rest for the spirits.
- The five Western tourists in custody were arrested on Tuesday, and police are still looking for five more. The suspects could be charged with public nuisance, according to Jalaluddin Abdul Rahman, police commissioner for the state of Sabah, on the island of Borneo, where the mountain is located.
- According to several media outlets, such as "The Independent" and "The Telegraph", based on the Malaysian penal code, **they face three months in prison.**
- Do you want to experience the comforts of a prison in Malaysia?

In Rome, do as the Romans do

- In medieval Latin, the maxim "**Si fueris Rōmae, Rōmānō vīvitō mōre; si fueris alibī, vīvitō sicut ibi**" means : "If you are in Rome, live like the Romans; if you are somewhere else, live like they do."
- This quotation refers to St. Augustine's journey to Rome, where, as he describes in letter 54 to Januarius, he became accustomed to the customs. This maxim is repeated in several languages:
- German: Wenn du in Rom bist, verhalte dich wie die Römer - In Rome, act like the Romans
- English: When in Rome, do as the Romans do - In Rome, do as the Romans do
- Arabic: **عندما تكون في روما تصرف كما يتصرف الروم** - In Rome, act like the Romans
- Chinese: **入乡随俗** - **Faites comme les locaux** ou **入鄉隨俗** - Follow local customs
- Spanish: **a donde fueres haz lo que vieres** - Where you go, do what you see
- Esperanto: **alia lando, aliaj moroj** - Another country, other customs
- French: **In Rome, do as the Romans do**
- Japanese: **郷に入れば郷に従え** - In Rome, do as the Romans do
- Portuguese: **em Roma, sê romano** - In Rome, be Roman
- Turkish: **Roma'dayken Romalılar gibi davran** - When in Rome, act like the Romans

- Therefore, when an LGBT person is abroad,
- Act like the locals!

The Eiusdem Generis maxim

- You all know the Latin maxim "Eiusdem Generis" which is used in the legal field, in particular in Common Law to indicate that an open-ended list only applies to things of the same kind.
- For example, a list referring to "cars, motorcycles and other motor vehicles", although not limiting, could not apply to anything other than land motor vehicles, which therefore excludes airplanes and boats, even if they were equipped with motors.
- In bills of rights and in laws, the word "sex" appears everywhere as a ground of discrimination.
- Use it to cover all cases of LGBTTIQQ2SAA.
- Judges are generally open to this idea to protect a person from discrimination.

My personal comments and as counsel I

- Generally, in Western countries, human rights and freedoms have a similar meaning and application, but not the same as ours.
- In the former countries of Eastern Europe, the Middle East, Asia, Africa, South America and the Caribbean, human rights and freedoms have a meaning and application which can be very different from ours because the cultures of these countries, their history, their evolution, their society, their religion, their way of life, the color of their skin and their government are different.
- Being an LGBT person adds an extra element of difference and as in my case I am a very visible person and I talk to everyone I realize this difference very easily but people remain polite.
- However, as LGBT laws have greatly evolved over the past sixty years, I see that the problem is no longer so legal but rather social; **it's a mentality issue.**
- Mentalities are changing, but slowly; we will need at least two generations for an LGBT person to be no longer just tolerated, but accepted as a full person.
- The law can do little or nothing to change mentalities, but changes in the law can convince people to change their opinion. However, this change will take time, at least two generations.
- Case law can help resolve different issues one by one.
- **Do you want examples?**

My personal comments and as counsel II

- In one case that I pleaded, the judge kept calling me "Sir", not even "Master", while the lawyer representing the other party called me at least "chère consoeur" or "ma consoeur". What do you think?
- In a competition for a position in the public service, the manager who interviewed me told me that I was the best candidate but that he would not hire me because he feared the reaction of his employees to him if he hired me.
- In another competition for a public service position, the manager's administrative assistant called me privately to tell me that the manager had preferred to close the position rather than hire me because he did not want a transgender person on his team. The assistant added that I was the only qualified candidate and she thought it was unfair that I was not hired.
- I will not describe all the cases of discrimination I have faced, as there are hundreds of them, but you can well imagine.
- Being transgender is not politically correct; it's not preppy.

My personal comments and as counsel III

- When I began my transition in 1997, I received several hurtful comments from male lawyers, usually older, such as:
 - You are a disgrace to the Bar.
 - The Bar should disbar you.
 - You will never work for us as a lawyer, etc.
- Women lawyers have been kinder and more understanding towards me. To my recollection, none of them ever made a derogatory remark to me. A woman probably understands my situation better.
- As I said, there are attitudes that need to change, but it will take time.
- My motto is "Fluctuat nec mergitur" and it means:
 - **She is defeated by the waves, but does not sink.**
- To use a popular term, I am very **resilient**.

My personal comments and as counsel IV

- I have a general comment to make. Of all Western countries and having traveled extensively, I am convinced that Canada is the country where the rights of LGBT people are best guaranteed by law and the courts and where LGBT people are the best treated and have opportunities to develop in human and professional terms.
- The main problem arises from the presence in positions of authority of people who are prejudiced, who are homophones and transphobes or who are extremely religious and who, because of their religious beliefs, constitute a significant obstacle to the recognition of rights of a person who happens to be an LGBT person.
- A judge or a registrar of civil status or a director of human resources or a department head can put obstacles in the way of the recognition of a name, a change of the designation of sex, a marriage, a job, promotion, leave, etc. because of his prejudices.
- These people should be fired and that is why they need to be reported, privately to begin with, in public if necessary, and finally through court proceedings if it comes to this point.
- **Discrimination must stop here and now.**

Lyrics of the song La Vérité by Guy Béart I

- The first one that tells is always sacrificed
- First, they kill them
- Then, we get used to it
- We cut their tongue and call them crazy
- Then, without issues
- The second one talks
- The first one that tells the truth
- Must be executed.

- I say that I was offered a lot of money
- To sell my chances
- In the Tour de France
- The Tour is a show and a lot of people like it
- In the show
- There is no miracle
- The runner tells the truth
- They must be executed.

Lyrics of the song La Vérité by Guy Béart II

- In Chicago a journalist dies in the streets
- There will be silence
- On all that they think
- Poor President all the witnesses have disappeared
- In chorus, they stay silent
- The thirteen are dead
- The witness said the truth
- They must be executed.

- The world must get drunk on words, not on wine
- Stay in the line
- Follow the rules
- In Moscow a poet in the Writers Union
- Blows on their soup
- Where eats the group.
- The poet has told the truth
- They must be executed.

Lyrics of the song La Vérité by Guy Béart III

- A young man with long hair climbed Golgotha
- The crowd without a head
- Was partying
- Pilate is right to not target in the mass
- It is more fair
- To only target one man.
- This young man has told the truth
- He must be executed.

- Please bring me some joy and listen to this song on YouTube :
- <https://www.youtube.com/watch?v=jA3hNz5KQ34>

- Enjoy.

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Any questions?





THANK
YOU