

# Welcome

**LGBTTIQQ2SAA+**  
**Being LGBT in North America**

# LGBT

# Me Hélène Montreuil

# Summary of subjects

**LGBT community  
In North America  
Historic**

**Who is she?**

**Where is she from?**

**Where is she going?**

**LGBT rights**



**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](http://www.helenemontreuil.ca)
- [www.maitremontreuil.ca](http://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 Hélène Montreuil I

- Me Hélène 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 - Panthéon-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 Hélène 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](http://www.micheline.ca)



**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<sup>e</sup> édition**
- 2012 - Les affaires et le droit**
- 1999 - Le droit, la personne et les affaires, 2<sup>e</sup> édition**
- 1994 - Le droit, la personne et les affaires**
- 1993 - Organisation et dynamique de l'entreprise - Approche systémique, 2<sup>e</sup> éd**
- 1991 - Initiation au droit commercial**
- 1990 - Organisation et dynamique de l'entreprise - Approche systémique**
- 1988 - Droit des affaires, 2<sup>e</sup> 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://www.michelemorgan.ca)**

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

# Summary of presentation

- The evolution of the rights of the LGBTTIQQ2SAA + community in North America, Canada and Quebec.
- How have rights evolved over time when you are not a "normal heterosexual" woman or man?
- What is the situation in Quebec compared to the rest of Canada and the United States?
- What are the differences between theory and practice?
- How could we improve the legal and lived situation of LGBT people?

# Comments

- The more letters you add as in LGBTTIQQ2SAA and the more you want to stand out, the more it makes life more complicated for everyone, at home and abroad.
- Could I plead the violation of my rights in Court?
- What rights are we talking about?
- If I am arrested in Quebec, in Canada or in the United States, being a LGBT person, is my situation an issue ?
- Would I be accused of a serious crime? Which one?
- Can I defend myself easily?
- Will the tribunal be sensitive to my LGBT reality ?

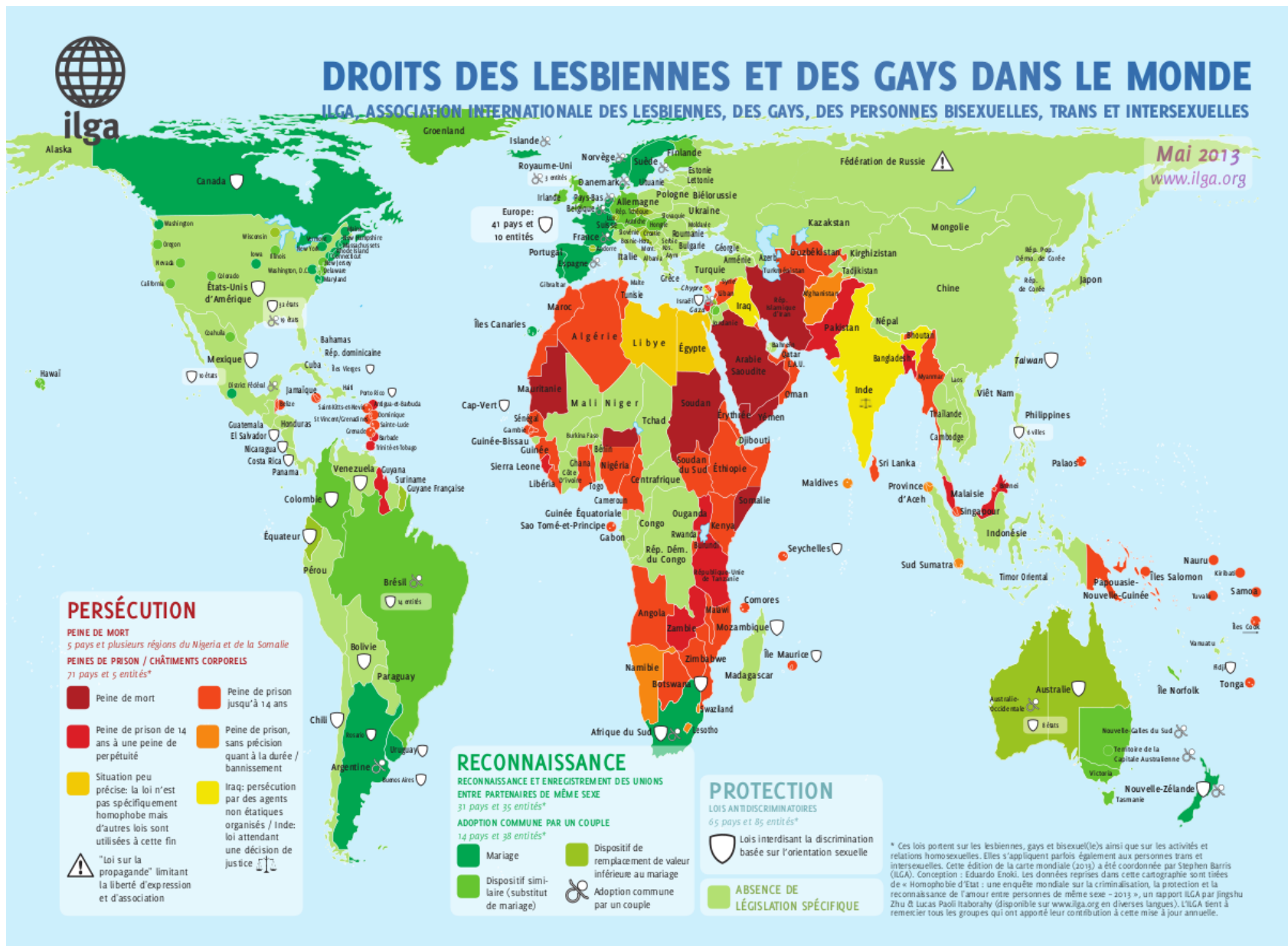
# Who are you LGBTTIQQ2SAA ? Do you see yourself?



# 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



# LGBT Rights in the United States of America I

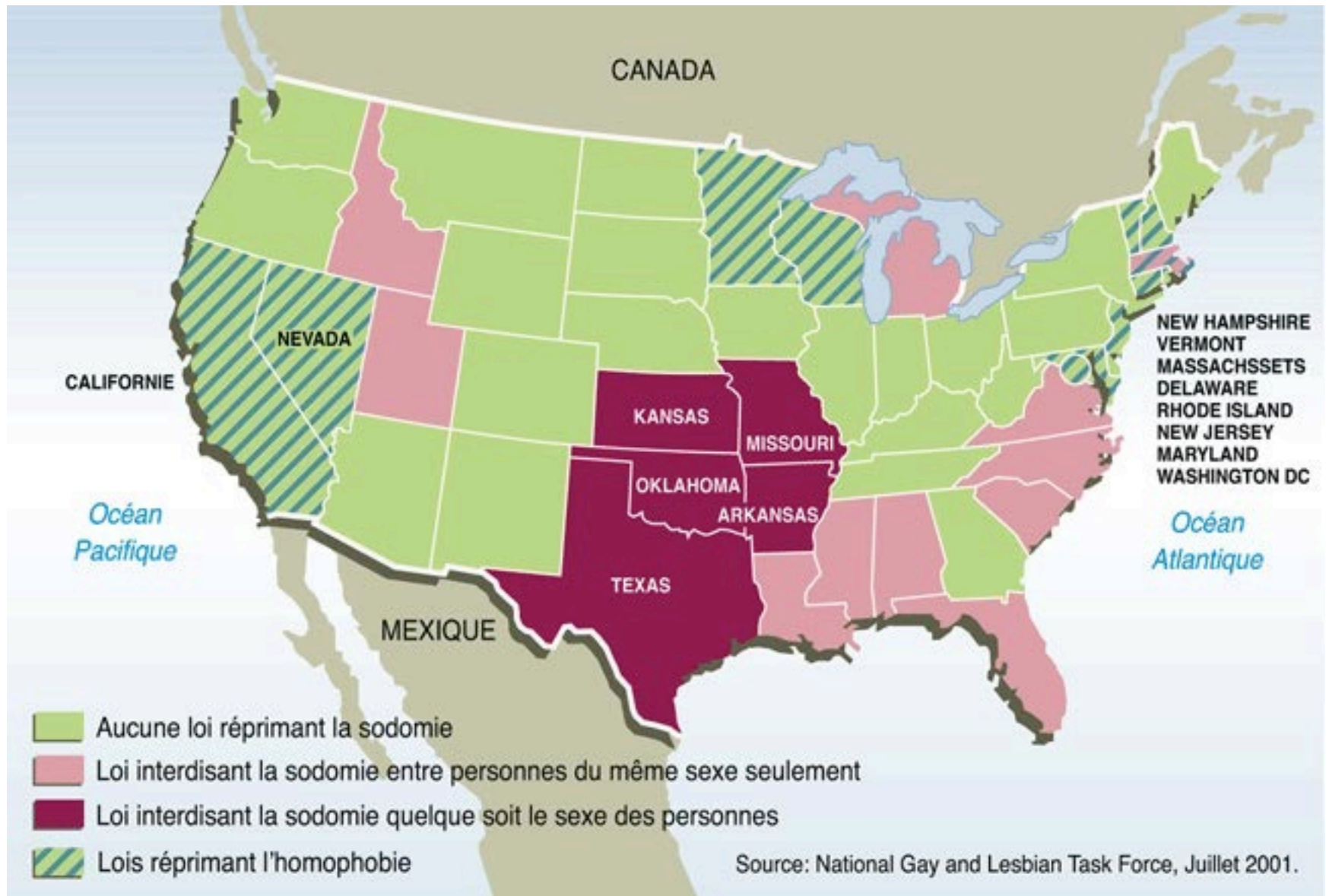
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# **LGBT Rights in the United States of America II**

- Under the federal system in the United States, each of the 50 states promulgates its own Penal Code. "Sodomy" was an offense across the United States.
- In 1962, Illinois became the first state to decriminalize consensual sex between adults of the same sex.
- In 1969, after the rebellion by patrons of the Stonewall Inn in New York City that began on June 28, 1969 against a brutal raid and the five nights of riots that followed, the United States became the flagship country of homosexual liberation: San Francisco or New York make you forget the fifteen states which, from Florida to Idaho via Texas, continue to ban sodomy.
- In 2000, the Executive Order 13160 of June 23rd 2000 prohibited discrimination on the basis of, among other things, sexual orientation in federal education and training programs and activities.

# Sodomy in the United States before 2003



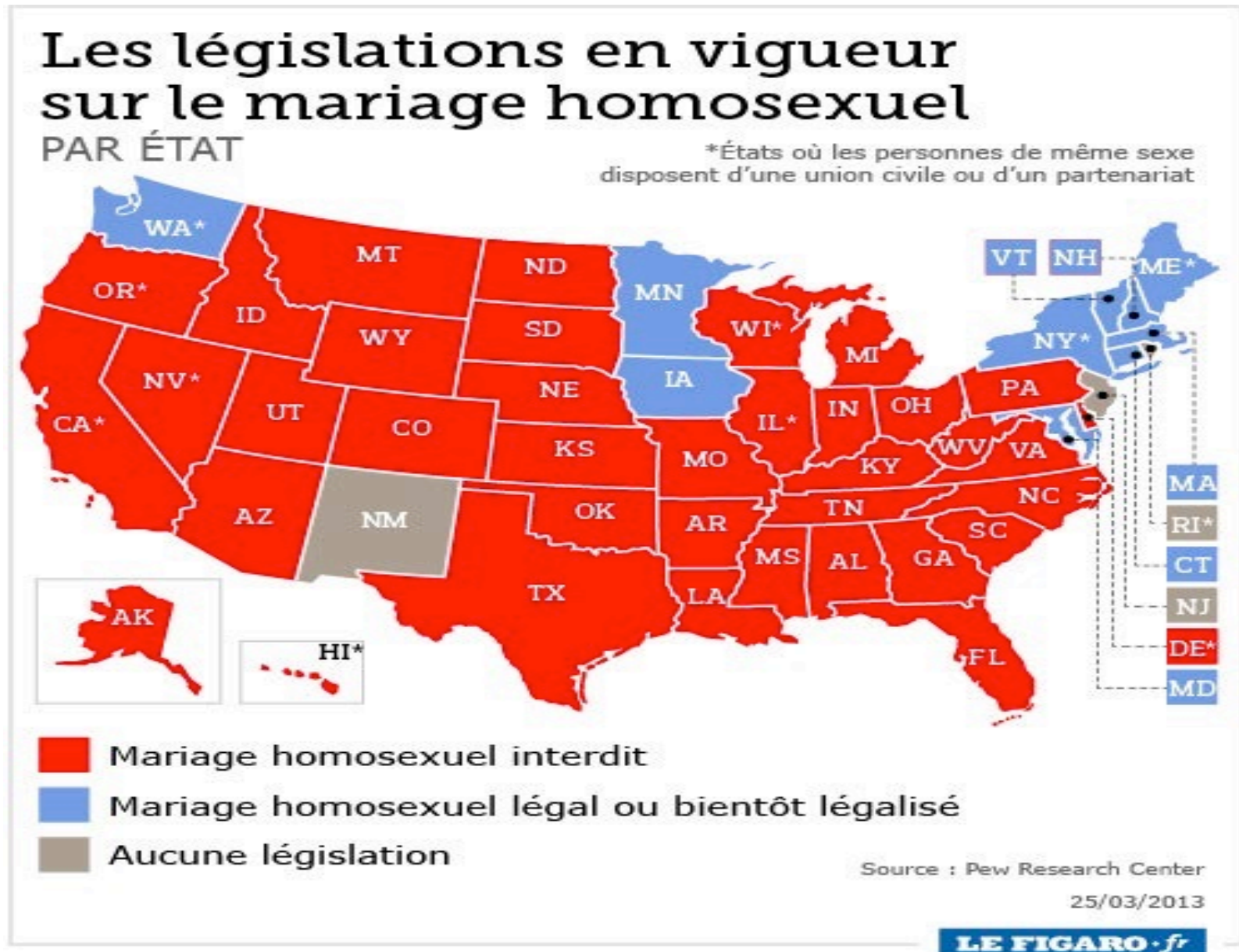
# LGBT Rights in the United States of America III

- In 2003, all remaining sodomy laws, still in force in 14 states, were overturned by a Supreme Court ruling in *Lawrence v. Texas* (2003). The laws on the age of consent also differ by state. Only three states maintain laws in place that set a different age of consent: Alabama, Kansas and Texas. In early 2017, John Kerry, the outgoing US Secretary of State, issued a formal apology to employees and their families who had been discriminated against because of their perceived sexual orientation.
- In 2009, Section 249 (a) (2) of the United States Code provides for increased penalties for crimes motivated by the victim's actual or perceived sexual orientation. This article is also known as the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act. Many states have enacted hate crime laws that include sexual orientation.

# LGBT Rights in the United States of America IV

- In 2012, the Department of Housing and Urban Development issued an Equal Access Rule to ensure equal access to housing in programs offered by the Department, regardless of sexual orientation. Several states have enacted legislation prohibiting discrimination on the basis of sexual orientation in housing.
- In 2015, the United States Supreme Court ruled that same-sex couples had a constitutional right to marry in *Obergefell v. Hodges*, making same-sex marriage accessible in all 50 states. Prior to this ruling, only 13 of the 50 states prohibited same-sex marriage. Same-sex marriage is also legal in the following US territories: Guam (2015), Puerto Rico (2015), Northern Mariana Islands (2015), US Virgin Islands (2015), except American Samoa.

# Same-sex marriage in the United States in 2013



# LGBT Rights in the United States of America V

- In 2015, following the Supreme Court decision in *Obergefell v. Hodges*, joint adoption is now open to same-sex married couples in all 50 states. However, some states have laws allowing licensed child welfare agencies to discriminate against LGBT people, including married couples. Mississippi was the last US state to remove legal barriers to co-adoption.
- In 2016, Rule §752.7038 of USAID, the United States Agency for International Development, on non-discrimination against users of products or services requires that USAID suppliers not discriminate against any user or beneficiary of such products. and services during implementation because of, among other things, their sexual orientation.

# **LGBT Movement in the United States of America I**

- **The New York neighborhoods of Greenwich Village and Harlem were home to a large gay population when, after World War I, many men who served in the military took advantage of the opportunity to settle in major cities. Gay and lesbian neighborhoods developed an alternative culture over the next two decades.**
- **The prohibition of the 1920s unintentionally benefited gay establishments as alcohol consumption was marginalized along with other behaviors deemed immoral.**
- **New York City had passed laws against homosexuality in public and private businesses, but authorities could not control all establishments, due to the surge in demand for alcohol and the proliferation of illegal drinking establishments.**
- **Nevertheless, the New York police or NYPD carried out numerous raids, leading to the closure of places as emblematic as Eve's Hangout in 1926, for "obscenity". Eve's Hangout was a famous New York teahouse opened in 1925 by Polish feminist Eva Kotchever and Swedish painter Ruth Norlander in Greenwich Village.**

# **LGBT Movement in the United States of America II**

- **In 1950, Harry Hay founded the Mattachine Society, the primary purpose of which was to achieve public recognition of homosexuality.**
- **In 1955, in San Francisco, Del Martin, Phyllis Lyon and six other women founded the Daughters of Bilitis or DOB, meaning The Daughters of Bilitis. They are considered the first historic lesbian organization in the United States.**
- **The association was conceived as an explicitly lesbian alternative to other homophile groups of the time such as the Mattachine Society.**
- **The Mattachine Society and the Daughters of Bilitis are at the origin of the liberation movement for gay rights in the United States which really took off after 1945.**

# **LGBT Movement in the United States of America III**

- In the 1950s and 1960s, American homosexuals faced a very homophobic legal system. Earlier, already, American groups supporting the community sought to prove that homosexual people could be assimilated into society and they favored cohabitation between homosexuals and heterosexuals (Mattachine Society and Daughters of Bilitis).
- However, the end of the 1960s was very confrontational: many social movements were active, including the African-American civil rights movement against racial segregation in the United States, the Black Panther Party.
- It is also the time of the emergence and wide diffusion of the counterculture of the 1960s, as well as the peaceful protests against the Vietnam War. These influences combined with the liberal environment of Greenwich Village were the catalyst for the Stonewall riots.

# **LGBT Movement in the United States of America IV**

- In the 1960s, when Western societies experienced a sexual revolution, the homosexual community organized itself politically to defend itself against homophobia and the persecutions it suffered, like other movements that developed at the same time, notably the women's liberation movement and the Black Power movement in the United States, and is imbued with the revolutionary discourse which then characterized the youth protests.
- In New York in the 1960s, it was forbidden to serve alcoholic drinks to homosexuals, to dance with men or to cross-dress. Police raids on bars suspected of being frequented by gay men were common in the United States.
- It was commonplace for the police, before 1965, to note the identities of the people present in these bars. The police justified these measures by indecent assault in the event of kissing, wearing clothing traditionally reserved for the opposite sex, or simply the prohibited sale of alcohol to homosexuals.

# **LGBT Movement in the United States of America V**

- **In the early 1960s, a campaign to rid the city of gay bars resulted in an order from Mayor Robert F. Wagner Jr. who was concerned about the city's image in the run-up to the New York International Fair. 1964-1965.**
- **The city has banned alcohol in all bars, and plainclothes police have been working to entrap as many gay men as possible.**
- **The police inducement was for an undercover agent to strike up a conversation with a man in a bar or a public park: if it emerged from the conversation that the two men could have dated or that the police officer could have been paid a drink, the man was arrested for solicitation.**
- **A story in the New York Post tells of an agent who, in a gym locker room, touched his crotch while moaning and stopped a man for asking if everything was okay.**
- **Few lawyers were willing to defend such undesirable cases.**

# LGBT Movement in the United States of America VI

- At 53 Christopher Street in the heart of Greenwich Village, the Stonewall Inn is one of the only bars where gays can hang out, despite frequent raids.
- The Stonewall Inn was owned by the Mafia. It appealed to all types of customers but was famous for its popularity with the most marginalized in the LGBT community: transgender people, crossdressers, effeminate young men, prostitutes and homeless youth for example.
- The bar, which welcomes several hundred people every weekend, is nonetheless unlicensed and the boss is obliged to give “incentives” to the police officers of the 6th district so as not to see his establishment close.
- So, although several raids have taken place before, the bar still welcomed LGBT people on the night of the riots.
- The LGBT movement really made its appearance in June 1969, during the riots that broke out in New York around the Stonewall Inn bar. On the evening of June 28, 1969, this establishment in the Greenwich Village area was the object of a police raid which was perceived by customers as "one raid too many".

# **LGBT Movement in the United States of America VII**

- **The Stonewall Riots are a series of spontaneous and violent protests against a police raid that took place on the night of June 28, 1969 in New York City at the Stonewall Inn in the Greenwich Village neighborhood. These events are often seen as the first example of lesbian, gay, bisexual and transgender people struggling against a system supported by the authorities and persecuting homosexuals.**
- **These riots represent the symbolic moment marking the real outbreak of LGBT activism, in the United States and around the world.**
- **Police raids were common at the time, but on June 28, 1969, police quickly lost control of the situation at the Stonewall Inn due to an outrageous crowd. Tensions between New York Police and the gays in Greenwich Village escalated the following evening and again several days later. Within weeks, residents of the neighborhood organized themselves into militant groups, setting up places where gays, lesbians and transgender people could meet without fear of arrest.**

# LGBT Movement in the United States of America VIII

- The raid that took place on June 28, 1969 was different from previous interventions. Usually, the owners of the "Stonewall Inn" were warned by a mole of the arrival of the police, and these raids often took place early enough in the evening to allow the bar to reopen quickly.
- At around 1:30 a.m., later than usual, eight plainclothes policemen entered the bar. Most of the customers were able to leave without being worried, as the only people arrested were those without an identity card or wearing clothes usually reserved for protected persons of the sex, as well as the bar workers.

# LGBT Movement in the United States of America IX

- The riot begins after Stormé DeLarverie got into a fight with a police officer who was trying to stop him. This lesbian drag king had a head injury, and as she struggled against the policeman, she yelled at the crowd, "Why aren't you doing anything? "
- Stormé DeLarverie, a lesbian, is said to have delivered the first punch that starts the riot.
- Sylvia Rivera, a trans woman throws the first bottle at the police. Astonished and understaffed, they took refuge in the bar.
- Marsha P. Johnson, a black trans woman, throws bricks at the windshields of police cars.
- Crowds continue their attacks as people grab a parking meter and block police inside. Neighborhood residents and patrons of nearby bars began to pour in.

# LGBT Movement in the United States of America X

- Riots took place in the Stonewall Inn bar and in the surrounding streets: police were taken hostage, and for several days around 2,000 rioters clashed with law enforcement in the neighborhood.
- During the night, many transgender women and men deemed too “effeminate” were taken to task by the police and beaten. The first night thirteen people were arrested. Four police officers and an unknown number of protesters are injured. The crowd, estimated at 2,000 people, threw bottles and stones at the 400 police officers who arrived on the scene.
- The police eventually sent in the **Tactical Patrol Force**, a riot police unit then used to fighting opponents of the **Vietnam War**. However, these men did not manage to **disperse the crowd which continued to throw stones and all kinds of projectiles at them**.
- Craig Rodwell, who in 1967 established the world's first gay authors' bookstore, the Oscar Wilde Memorial Bookshop, on Christopher Street, stirred up the press. Journalists witness several days of fighting, which continues in the streets. Indeed, on June 28 the riot died down, but the crowd returned the following days. **The scuffles lasted five days, with all the bullying previously suffered by homosexuals resurfacing.**

# **LGBT Movement in the United States of America XI**

- **After the Stonewall Riots, New York's gays and lesbians crossed gender, generation and class divides to form a unified community.**
- **Within six months, two gay support organizations were formed in New York to organize activism and three newspapers were founded to promote gay and lesbian rights.**
- **Within a few years, gay rights organizations have sprung up in the United States and around the world.**
- **On June 28, 1970, the first gay pride parades were held in Los Angeles and New York City to mark the anniversary of the Stonewall riots.**
- **Similar marches have been held in other cities and today Pride Marches are held globally every year during the month of June to commemorate the riots.**

# **LGBT Movement in the United States of America XII**

- On July 4, after a very restless night, Craig Rodwell participated in front of the Capitol in Washington in the traditional Independence Day parade organized for several years by the Mattachine Society. Noting that during this demonstration the leaders of Mattachine separate the couples of women or homosexuals too "sighted", Craig Rodwell decides that he will organize the following year a demonstration in honor of the events on Christopher Street .
- He participated with Brenda Howard in New York in the creation of the Gay Liberation Front (GLF), then in December 1969 of the Gay Activist Alliance (GAA), and founded the organizing committee of the Christopher Street Liberation Day.
- After a legal battle to obtain the right to demonstrate, the first demonstration of a few hundred gays and lesbians takes place under the slogans "Come Out", "Gay Pride", "Gay is Good" and singing "Gay Power" .

# **LGBT Movement in the United States of America XIII**

- **The Stonewall riots and the demonstration triggered by Craig Rodwell mark a milestone in the emancipation of homosexuals. They are the precursors of what will become gay pride.**
- **It is in tribute to this Stonewall riot that many Pride Marches around the world are held on the last weekend of June.**
- **Roland Emmerich's Stonewall (2015) is set during the riots, as does Nigel Finch's Stonewall (1995).**

# Three LGBT people to remember I

- **Sylvia Ray Rivera** (July 2, 1951 - February 19, 2002) is a transgender activist and sex worker. She participated in particular in the outbreak of the Stonewall riots and in the movement for the rights of LGBT people with Stormé DeLarverie and Marsha P. Johnson.
- She is a founding member of the Gay Liberation Front and the Gay Activists Alliance. With her friend **Marsha P. Johnson**, she co-founded the **Street Transvestite Action Revolutionaries (STAR)**, a support group for drag queens and homeless non-white trans women.
- Sylvia Rivera was born on July 2, 1951 in New York City, where she has lived much of her life. She was of Puerto Rican and Venezuelan descent. She was abandoned very early on by her father, José Rivera, and was orphaned at the age of three following the suicide of her mother.
- She was raised by her Venezuelan grandmother who disapproved of behavior identified as female, such as to the use of cosmetics and makeup. So, she found herself on the streets at the age of 11 where she worked as a prostitute. She was taken in by a local community of drag queens who named her Sylvia.

# Three LGBT people to remember II

- Sylvia Rivera became an activist during the African American Civil Rights Movement and continued to be during the anti-Vietnam War movement in the mid-1960s. She was a regular guest of the **Stonewall Inn** and was on the front lines with **Marsha P. Johnson** from the start of the Stonewall Riots in 1969, which they were the first to spark with lesbian activist Stormé DeLarverie, when drag queens, Lesbian, trans, gay, bisexual and street people protested against a routine police raid.
- The intersection of Christopher Street and Hudson Street in New York City is also named after Sylvia Rivera Way.
- After the murder of **Marsha P. Johnson**, whose body was found in the Hudson River, **Sylvia Rivera** lived on the banks of the river in a makeshift shelter. She died on February 19, 2002 of cancer at the age of 50.
- The **STAR** documentary **People Are Beautiful People** (2009), co-produced by Sasha Wortzel and Tourmaline, documents the life and work of Sylvia Rivera and **STAR** (**Street Transvestite Action Revolutionaries**).

## Three LGBT people to remember III



# Three LGBT people to remember IV

- **Marsha P. Johnson**, born August 24, 1945 in Elizabeth (New Jersey), and died July 6, 1992 in New York (New York State).
- Martha is a **transgender woman** and American drag queen, sex worker and activist in the LGBT movement.
- She participated in the Stonewall riots, of which she is recognized as one of the initiators along with **Stormé DeLarverie** and **Sylvia Rivera**.
- She was a popular figure on the New York LGBT and arts scene from the 1960s to the 1990s, as well as an activist for the rights of people living with HIV through her involvement with ACT UP.

# Three LGBT people to remember V

- **Stormé DeLarverie** (December 24, 1920 - May 24, 2014) is a butch lesbian whose scuffle with the police in Stonewall was the trigger for the riots of the same name. For Stormé the term Stonewall riot is inappropriate: "It was a rebellion, an uprising, an act of civil disobedience, not a bloody riot."
- The events begin after the brutal evacuation of handcuffed Stormé whom the police try to get out of the bar in Stonewall and take her to a van. For about ten minutes she struggles against at least four policemen, screaming and cursing.
- A policeman batons her and wounds her in the head after she protests that her handcuffs are too tight. Her wound is bleeding as she continues to fight.
- Stormé encourages the crowd to fight back to shouts of "Why don't you guys do something," after a police officer picked her up and threw her in the back of a van. At that moment, the crowd sets in motion with a sort of fury: "This is when the scene became explosive."
- All accounts report that several butch lesbians fought against the police during the clash.



## The Stonewall Inn

The events that began at the Stonewall Inn in 1969 marked a monumental change for lesbian, gay, bisexual, transgender and queer (LGBTQ) Americans. Stonewall, which occupied 51-53 Christopher Street, was a gay bar that was raided on June 28, 1969. Patrons and a crowd outside resisted, and confrontations continued over the next few nights in nearby Christopher Park and on adjacent streets. This uprising catalyzed the LGBTQ civil rights movement, resulting in increased visibility for the community that continues to resonate in the struggle for equality.

New York State Historic Site

2016

4<sup>e</sup> Arr<sup>t</sup>

**PLACE  
DES  
ÉMEUTES DE STONEWALL**

**DÉBUTANT DANS LA NUIT DU 27 AU 28 JUIN 1969  
À NEW YORK, ELLES SYMBOLISENT LA LUTTE  
POUR L'ÉGALITÉ DES DROITS LGBT  
À TRAVERS LE MONDE**

# Same-sex marriage in the United States I

- Marriage law is a state jurisdiction.
- At the federal level, the Defense of Marriage Act of 1996, or DOMA, or the “Law for the Defense of Marriage”, defined marriage as the union of a man and a woman and limited marital rights and recognition to marital union at national between two people level to heterosexual couples only.
- On June 26, 2013 the Supreme Court partially invalidated the DOMA.
- On June 26, 2015, the Supreme Court decided in the Obergefell v. Hodges that same-sex couples can marry across the country, and that states that have so far not recognized same-sex marriage will not only have to agree to marry same-sex couples, but also recognize a same-sex union if it has been celebrated in another state.

# Same-sex marriage in the United States II

- The following is an example that illustrates a dilemma between the conscience and duty of a state 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 woman from Rowan County, Kentucky, was sentenced to prison for systematically refusing to issue marriage certificates to same-sex couples because she believed **it would "violate" her religious beliefs.**
- **"The court cannot turn a blind eye to wilful disobedience. People do not have the power to choose from who they follow the law from,"** said Judge David L. Bunning who made it clear that the clerk would be released when she agreed to fulfill her obligations as a public servant.

# Same-sex marriage in the United States III

- During the hearing, Kim Davis was asked whether she believed that a marriage could be anything other than the union of a man and a woman. "No," she replied simply. "She is not physically incapable of issuing these certificates, Bunning J. said, she chooses not to do so."
- Admitting to having "given her life in the hands of Jesus Christ," Davis says she is not prejudiced against homosexuals and has garnered widespread support across the conservative American religious groups. "I have no animosity toward anyone and I don't have any malicious intent, she said. For me, this is not a gay or lesbian issue. It is about marriage and the word of God. It is a matter of freedom of worship, protected by the First Amendment" of the Constitution.
- Successively, a federal district court and a court of appeals have ruled against Kim Davis. Davis then took her case to the Supreme Court, which also dismissed it on Monday, August 31, 2015. On Tuesday, September 1, 2015, the clerk again refused to issue the documents.

# Same-sex marriage in the United States IV

- In the core of the media storm are also two men, David Moore and David Ermold, who showed up this summer at the Rowan County Registry Office ready to get married.
- The couple took care to record a video of the rejection they received from Kim Davis. See the video:
- [https://www.youtube.com/watch?v=\\_Xg1Dh2xhXg](https://www.youtube.com/watch?v=_Xg1Dh2xhXg)
- Several other couples have taken the same approach, this time surrounded by a cloud of reporters, receiving the same rejection from Ms. Davis.
- **"We don't provide marriage certificates today,"** stated the clerk, in a statement that can be viewed on the Internet. **"On behalf of what authority?"** someone asked her. **"In the name of God's authority,"** she answers calmly.
- **Misters Moore and Ermold, along with another homosexual couple and two heterosexual couples, took the case to court.**

# Same-sex marriage in the United States V

- In 2014, Kimberly Davis, a Republican, was elected clerk of Rowan County, Kentucky. She caught international attention in August 2015 when she challenged the United States by refusing to issue marriage licenses to same-sex couples.
- In 2015, the Supreme Court ruled in Obergefell v. Hodges and all Kentucky county clerks were ordered to issue marriage licenses to same-sex couples.
- Quoting personal religious objections to same-sex marriage, Davis began denying marriage licenses to all couples to avoid issuing them to same-sex couples.
- In 2015, Miller, a homosexual, sued Davis and the judgment ordered Davis to issue marriage licenses. Davis appealed to the Supreme Court, but his request for an appeal was denied. Subsequently, Davis was jailed for contempt of court for refusing to issue marriage licenses while at the same time refusing to allow his deputy clerks to issue marriage licenses.
- Davis was released after five days in jail on the conditions that she not interfere with the work of her deputy clerks, who had begun issuing marriage licenses to all couples in her absence. Davis then amended the Kentucky marriage licenses used in his office so that they no longer mention her name.
- On November 6, 2018, Kimberly Davis was defeated in the election by Democratic candidate Elwood Caudill Jr. and resigned from office on January 7, 2019.

# Same-sex marriage in the United States VI

- Successively, a federal court and a court of appeal have ruled against Kim Davis. On Monday, August 31, 2015, she was dismissed by the Supreme Court. She was imprisoned on Thursday, September 3, and will remain in prison until she agrees to comply with the law.
- Among its supporters and detractors, the heated debate sometimes flies low. The invectives were heard in the Kentucky court, which condemned her.
- "Do your job," her enemies said. "Hang in there," urged her supporters, who ran from afar to her Appalachian homeland where she is a pillar of the Apostolic Church, a local Protestant Church.
- The public servant has been criticized for her "bigotry" and "hypocrisy" by people who have dissected her turbulent married life, which has been marked by three divorces and four marriages.

# Same-sex marriage in the United States VII

- However, all this was before she discovered "grace" four years ago and joined the converted Evangelical Christians, here called "**born again**".
- On that same Thursday, September 3, 2015, Kim Davis received the support of several prominent members of the conservative Christian right.
- Davis' fate "sweeps away the last remaining doubts about the criminalization of Christianity in this country," said Mike Huckabee, a Republican contender for the White House in 2016.
- "**Today, for the first time in history, the government has detained a Christian woman for her faith. This is a wrong. This is not America,**" said Texas Senator Ted Cruz, who is also a candidate for the Republican nomination in 2016.

# Same-sex marriage in the United States VIII

- On the morning of Friday, September 4, 2015, at the opening of the Rowan County Registry Office, James Yates and William Smith, a couple who had received five prior refusals, once again presented themselves at the Registry Office and this time received their marriage certificate.
- The reversal came after the clerk of the registry office, Kim Davis, was imprisoned the previous day, Thursday, September 3, 2015, by a judge for her persistence in overriding her religious beliefs over her duties as a public servant.
- By sending Kim Davis behind bars, Judge David Bunning had also ordered his six assistants 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.

# Don't ask, don't tell I

- **Don't ask, don't tell," is a discriminatory policy and legislation in effect from 1994 to 2011 in the U.S. Armed Forces regarding homosexuals or bisexuals. It was abolished by a vote of the U.S. Senate on December 18, 2010, and is in effect until September 20, 2011.**
- **The policy, adopted in 1993, eased the prohibition against non-heterosexuals joining the military by requiring the military not to inquire about the sexual orientation of recruits, with the counterpart of discretion: do not ask, do not tell.**
- **The law continued to prohibit anyone who "demonstrates a propensity or intent to engage in homosexual acts" from serving in the U.S. military because it would "create an unacceptable risk to the high moral standards, order, discipline, and cohesion that form the essence of military capabilities."**

# Don't ask, don't tell II

- Therefore, the legislation prevents any homosexual or bisexual person from disclosing their sexual orientation and talking about same-sex relationships, including marriage and same-sex parenting while serving in the U.S. Forces.
- The "don't ask" section specifies that superiors should not begin an investigation until there was no prohibited conduct, although there are many cases where suspicions about a person's homosexuality or bisexuality have led to an investigation.
- In the course of the enforcement of this legislation, at least 14,000 U.S. military personnel were forced to resign from the military for this reason.
- The policy was conceived in 1993 as a compromise between what already existed, the complete banning of homosexuals and bisexuals from the military, and Bill Clinton's campaign promise that all citizens, regardless of sexual orientation, could serve in the military. This policy was initiated by Colin Powell and maintained by George W. Bush.

# Don't ask, don't tell III

- On October 10, 2009, Barack Obama said that he will end the 1993 "Don't ask, don't tell" law that silenced homosexuals and bisexuals in the U.S. military.
- He goes on to say that "we should not punish American Patriots who have volunteered to serve this country. We should praise their willingness to show so much courage and selflessness on behalf of their fellow citizens, especially when they fight in two wars. »
- On December 15, 2010, the House of Representatives passed a congressional bill to abolish the doctrine by a vote of 250 to 175. President Barack Obama's administration was clearly in favour of this repeal.
- On December 18, 2010, the Senate voted 65 to 31 in favour of the final abolition of Bill Clinton's 1993 law. Eight Republican senators joined the Democrats in voting for abolition.
- The end to the "Don't ask, don't tell" directive allows gays and lesbians to openly serve in the military while confirming the fundamental principle of equality on which the United States was founded.
- See: <https://www.youtube.com/watch?v=Xk6YJiVsxUE>
- See also: <https://www.youtube.com/watch?v=cS26CciE0VQ>

# Don't ask, don't tell IV



**US Navy LT Gary C. Ross marries Dan Swezy, becoming the first active member of the U.S. military to legally marry a same-sex partner on September 19, 2011.**



**Petty Officer 2nd Class Marissa Gaeta of the USS Oak Hill (LSD-51) shares the traditional "first kiss" with her fiancée, Petty Officer 3rd Class Citlalic Snell, December 23, 2011.**

# LGBT Rights in Canada I



# LGBT Rights in Canada I

- The history of LGBT rights in Canada is a effervescent one from the 1960s to the 2000s.
- Before the 1960s, homosexuality in Canada was an indictable offence punishable by imprisonment and remained underground.
- In 1841, Canada passed the first law condemning this crime. It punished homosexuals with the death penalty.
- In 1885, Canada passed the Criminal Law Amendment Act, whose purpose was to define homosexuality as an act of gross indecency, subject to prosecution and criminal conviction.
- Homosexuals were then victims of police, church and popular repression. **The church considers homosexuals as sinners, medicine as mentally ill, and the law as criminals.**
- On a daily basis, the police present a case of homosexuality before the courts. Those convicted may be imprisoned for up to five years. This repression forced homosexual Canadians to live in hiding.

# LGBT Rights in Canada II

- In 1968, George Klippert, a Yellowknife mechanic, was jailed for four years for telling police officers that he had had relations with other men. His case went all the way to the Supreme Court of Canada and it was his story that prompted Justice Minister Pierre Elliott Trudeau to review the Criminal Code with respect to homosexuality. George Klippert is the last person in Canada to be arrested, charged, prosecuted, convicted and imprisoned for his homosexuality.
- On May 14, 1969, Trudeau government reformed the Criminal Code of Canada and decriminalized homosexual acts by introducing the Omnibus Bill: **"All we are proposing as an amendment to the penal code is what is done between two consenting adults; it is not a matter for the police. We don't allow homosexuality, but we're not going to punish it, we're not going to send police officers to see what happens between consenting adults of full age, in private."**
- **In brief, the government has no business in the bedrooms.**

# LGBT Rights in Canada III

- Nevertheless, the daily life of homosexuals remains difficult in Quebec and Canada because until the mid-1970s, homosexuality was considered a mental illness within the medical community. Until that time, electroshock therapy, insulin and lobotomy were advocated by psychiatrists.
- In 1971, the document "We demand" was published. It proclaimed the defense and equality of homosexuals and also led to the emergence of the gay movement. It was essential, since it helped to make the state react and encouraged the struggle of the homosexual community.
- We Demand is a 13-page document calling for changes to discriminatory federal laws and policies regarding the rights of gay, bisexual and lesbian Canadians. The 10 point brief was submitted to the federal government in 1971. It set out a national strategy that was pursued for decades until all requests were met.

# LGBT Rights in Canada IV

- **We Demand is sponsored by 12 of Canada's first LGBTQ groups that helped launch Canada's gay liberation and lesbian feminist movement. These organizations were formed in the wake of the 1969 amendments to the sodomy and gross indecency provisions used to prosecute gay men, bisexuals and lesbians.**
- **Since the beginning of Canadian colonization, sexual acts between men (and later between women) have been illegal. As a result of the 1969 amendments, sexual acts between two men or two women became legal in certain circumstances. Nevertheless, many sections of the Criminal Code continue to discriminate against people who identify as LGBTQ.**
- **A letter attached to We Demand states: "In our daily lives, we still face discrimination, police harassment, exploitation and pressure to conform by denying our sexuality. This prejudice against homosexuals permeates our society and is very much due to the practices of the federal government." The letter also highlights the threat to all members of society who tolerate this discrimination, concluding: "In a democratic society, if a minority is denied freedom, all citizens are violated."**

# LGBT Rights in Canada V

➤ The ten requests are :

1. The removal of the terms "**gross indecency**" and "**indecent acts**" from the Criminal Code and replacing them with specific offences that apply equally to homosexual and heterosexual acts.
2. The removal of "**gross indecency**" and "**sodomy**" as grounds for indictment as a "dangerous sexual offender."
3. The requirement of a uniform age of consent for homosexual and heterosexual acts.
4. The 1952 amendments to the *Immigration Act*, which prohibits homosexual persons from entering or applying for immigration or permanent residence in Canada. Individuals who have a "**constitutional psychopathic personality**" are also refused, this category including "homosexuals".

# **LGBT Rights in Canada VI**

- 5. The right to equal employment and promotion at all levels of government.**
- 6. The 1968 amendments to the Divorce Act, which included sodomy and homosexual acts in the same category as physical and mental cruelty, bestiality, and rape as grounds for divorce.**
- 7. The decision of custody of a child based on the merits of each parent, regardless of their sexuality. In practice, the courts often deny custody of children to gay men and lesbians.**
- 8. The right to know whether the RCMP has a practice of spying on or identifying gay men and lesbians to the federal government in order to expel them from their jobs, and if so, to stop this practice and destroy all records. (This was indeed RCMP policy at the time. See *Purges in the Canadian Public Service during the Cold War: The Case of LGBTQ People*).**

# LGBT Rights in Canada VII

9. The right of gays, lesbians and bisexuals to serve in the Armed Forces. (see also Purges in the Canadian Armed Forces during the Cold War: the case of LGBTQ people).
  10. Amendments to human rights laws to extend their reach so that gays, lesbians and bisexuals enjoy the same privileges and freedoms as the rest of society. (We Demand did not address the issue of gender identity, and thus the rights of the trans community).
- These requests are considered so radical for their time that they are seen as the equivalent of a call for social revolution.
  - On August 28, 1971, activists and their supporters gathered on Parliament Hill in Ottawa, accompanied by a smaller group of protesters in Vancouver. Their goal was to promote the We Demand issue. These rallies were the first large-scale public LGBTQ demonstrations in Canada, with approximately 100 to 200 people in total.

# LGBT Rights in Canada VIII

- There is slow progress. In 1973, Toronto became the first municipality to ban sexual orientation discrimination in the municipal workplace, followed by Ottawa and Windsor in 1976. We Demand's first and only victory in the 1970s was the passage of the 1976 Immigration Act, which came into effect in 1978 and ended the ban on gay and lesbian immigrants and visitors. In 1977, Quebec became the first province to ban discrimination based on sexual orientation. As the 1970s came to an end, most of We Demand's goals were not met.
- However, in the early 1980s, a new era of political organization emerged, breathing new life into the cause. This happened literally overnight. On the evening of February 5, 1981, Toronto police conducted a series of violent raids on Toronto's saunas, resulting in hundreds of arrests. These raids triggered large and furious demonstrations the following evening by the LGBTQ community that drew national attention and sympathy. More demonstrations followed.
- For the first time, a large cross-section of the LGBTQ community was ready to stand up and fight for their rights. This response creates a new and sustainable environment of activism, public protest and legal challenges that eventually lead to the repeal of all laws and policies targeted by We Demand.

# LGBT Rights in Canada IX

- In 1971, the Homosexual Liberation Front (FLH) was the first gay group in Canada, but it lasted only one year, victim of police repression. The first gay demonstration in Canada took place in front of the Parliament of Canada in the fall of 1971. The homosexual magazine The Body Politic is created in 1971.
- Until 1977, Immigration and Citizenship Canada still refuses access to Canadian territory to anyone who is a registered homosexual.
- In December 1977, for the first time in America, Quebec Justice Minister Marc-André Bédard had an amendment to the Charter of Rights and Freedoms adopted, prohibiting all forms of discrimination on the basis of sexual orientation.
- In 1979, the Montreal Catholic School Board refused to rent premises to a gay association. After a court ruling, gays won their case for the first time thanks to the Charter of Rights.
- In 1988, Svend Robinson was the first Canadian MP to publicly declare himself gay.

# LGBT Rights in Canada X

- On May 25, 1995, the Supreme Court of Canada, in a five-to-four decision in *Egan v. Canada*, refused to award an allowance to a same-sex partner, but found discrimination against homosexuals.
- For that matter, the Court ruled that the definition of "spouse" in the Old Age Security Act was constitutional (majority by Lamer C.J. and La Forest, Sopinka, Gonthier and Major JJ. in favour; L'Heureux-Dubé, Cory, McLachlin and Iacobucci JJ. dissenting).
- However, the Supreme Court recognized that although "sexual orientation" is not listed as a prohibited ground of discrimination in section 15(1) of the Charter, it is an analogous ground on which a claim of discrimination can be based.
- On June 20, 1996, Bill C-33 added sexual orientation to the Canadian Human Rights Act as a prohibited ground of discrimination.

# LGBT Rights in Canada XI

- On May 20, 1999, the Supreme Court of Canada, in *M v. H*, ruled that same-sex couples are included in common-law relationships with respect to the definition of spouse.
- In June 2002, the National Assembly passed the law on civil unions, a substitute for marriage for which homosexuals are admitted, three months after the first Quebec court decision in favour of same-sex marriage.
- Same-sex marriage was legalized in several Canadian provinces following court cases in which judges determined that the marriage law limiting it to heterosexual couples was unconstitutional.
- On July 20, 2005, Canada legalized same-sex marriage by passing the Civil Marriage Act or Bill C-38, changing the situation in 4 of 13 Canadian jurisdictions, the other 9 having already accepted it through court decisions.
- On Saturday, September 9, 2006, Micheline Montreuil and Svend Robinson were elected to the positions of National Co-Chairs of the LGBT Committee and the Federal Council of the NDP Canada.

# LGBT Rights in Canada XII

- **The possibility for a same-sex couple to adopt children has been legalized by most provinces before marriage:**
  - in 1996 for British Columbia
  - in 1999 for Ontario
  - in 2001 for Saskatchewan
  - in 2001 Nova Scotia
  - in 2002 for Newfoundland and Labrador
  - in 2002 for Quebec
  - in 2002 for Manitoba
  - in 2002 for the North West Territories
  - in 2003 for Yukon

# LGBT Rights in Canada XIII

- In Alberta, the adoption by a couple of the child of one spouse was legalized in 1999 and joint adoption in 2007.
- New Brunswick legalized joint adoption in 2008.
- Prince Edward Island legalized joint adoption in 2009.
- Nunavut legalized joint adoption in 2011.
  
- Following the passage of the Civil Marriage Act, Citizenship and Immigration Canada took an interim position that did not recognize same-sex marriages performed outside Canada. This policy was changed in 2007 and an individual can now sponsor a same-sex spouse for immigration purposes "**provided the marriage is legally recognized both by the law of the place where the marriage ceremony took place and under Canadian law**".
  
- **As you can see, the rights of LGBT people in Canada are generally and widely protected.**

# LGBT Rights in Canada XIV

- In 1969, the enactment of An Act to Amend the Criminal Code (Bill C-150) introduced an exception that decriminalized "bingeing" between spouses or between two persons over the age of 21 years who consent.
- In 1988, section 159(2)(b) of the Criminal Code replaced this law on anal intercourse, while maintaining a different age of consent: 18 years for "anal intercourse" and 16 years for non-anal intercourse. This provision was declared unconstitutional by five provincial courts.
- In 1995, protection from discrimination on the basis of sexual orientation was introduced into section 2 of the Canadian Human Rights Act following the 1995 Supreme Court decision in Egan v. Canada.
- See ILGA's official reports at:
- <https://ilga.org/trans-legal-mapping-report>

# **LGBT Rights in Canada XV**

- **In 1996, section 7 of the Canadian Human Rights Act prohibits discrimination in employment and establishes various prohibited grounds of discrimination. Section 3(1) includes sexual orientation among these grounds.**
- **In 1996, section 718.2(a)(i) of the Canadian Criminal Code states that a sentence must be increased if there is evidence that the crime was motivated by, among other things, bias, prejudice or hate based on sexual orientation.**
- **In 1996, sections 2 and 3(1) of the Canadian Human Rights Act (R.S.C., 1985, Chapter H-6) prohibit discrimination on the basis of sexual orientation. The Act was amended in 1996 to explicitly include sexual orientation.**

# LGBT Rights in Canada XVI

- In 1996, section 318(4) of the Criminal Code included "sexual orientation" in the definition of "identifiable group" that could be a victim of genocide. Section 319(7) applies the same definition of "identifiable group" to the crime of public incitement of hatred. Under section 320, publications that may be hate propaganda may be seized.
- In 1999, section 44(1)(b) of the Extradition Act (S.C. 1999, Chapter 18) provides that the Minister of Justice may refuse extradition if he is satisfied that "the request is made for the purpose of prosecuting or punishing the person concerned on grounds of ... sexual orientation".
- In 2004, section 2(e) of the Assisted Human Reproduction Act (S.C. 2004, Chapter 2) prohibits discrimination on the basis of sexual orientation against a person seeking to use assisted human reproduction procedures.

# **LGBT Rights in Canada XVII**

- **In 2005, the Civil Marriage Act recognized same-sex marriage across the country. Starting with Ontario in 2003, most provinces and territories allowed same-sex marriage before the federal law was passed. The provinces of Alberta and Prince Edward Island, as well as the territories of Nunavut and the Northwest Territories were the only jurisdictions that did not have such legislation before 2005.**
- **In addition to marriage, civil unions, conjugal partnerships and other forms of unions are open to same-sex couples in many jurisdictions across Canada:**
  - **Alberta in 2002**
  - **Manitoba in 2001/2002**
  - **Nova Scotia in 2001**
  - **Quebec in 2002**

# **LGBT Rights in Canada XVIII**

- **In 2011, joint adoption by same-sex couples is legal in all Canadian provinces and territories. Each jurisdiction has its own laws and regulations in this area. Alberta (2007), British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland and Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut (2011), Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001).**
- **In 2011, adoption by the second parent is permitted in several provinces and territories, including Alberta (1999), British Columbia (1996), Manitoba (2002), New Brunswick (2008), Newfoundland and Labrador (2003), Northwest Territories (2002), Nova Scotia (2001), Nunavut (2011), Ontario (2000), Prince Edward Island (2009), Quebec (2002), Saskatchewan (2001).**

# **LGBT Rights in Canada XIX**

- **In 2016, Toronto's police chief apologized for the 1981 raids on gay saunas.**
- **Since August 15, 2016, men who have had sex with another man are allowed to donate blood if they have not had sexual contact with a man for at least one year.**
- **In 2017, the Canadian government announced its intention to review several landmark gay conviction cases.**

# The transsexualism in Quebec

- The most important judgment in the field of transsexualism in Quebec is that of *Maison des jeunes* identified as:
- *Commission des droits de la personne et des droits de la jeunesse c. Maison des jeunes*, Human Rights Tribunal, file number 500-53-000078-970, judgment of July 2, 1998.
- In this 40-page judgment, the Honourable Michèle Rivest gives a complete overview of the rules of law, case law and doctrine concerning sex reassignment.
- At the end of this 40-page judgment, we find 7 additional pages of jurisprudence and doctrine.
- This judgment is regularly cited in any case involving a transsexual, transgender or person in transition.

# Kimberly Nixon c. 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 c. 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 Honourable Madam Justice Saunders stated "In my view, the behaviour 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 Honourable Madam Justice Saunders to determine that the Society had a defense to Ms. Nixon's claim.

# Kimberly Nixon c. Vancouver Rape Relief Society III

- 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).
- 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.

# Synthia Kavanagh v. 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 reassignment 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 v. 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.
- [8] Ms. Kavanagh's individual complaints against CSC have been resolved. As a result of the settlement, Ms. Kavanagh underwent sex reassignment surgery. She is currently incarcerated at Joliette Institution for Women, a medium security penitentiary.
- [9] Currently, CSC health services policy permits the administration of hormones to transsexuals on the recommendation of a recognized gender identity disorder clinic. Access to hormone therapy is not a contentious issue in this case for the court to decide. The remaining litigation relates to CSC policy regarding the placement of transsexual inmates in the pre-operative stage, as well as policy restricting inmates' access to sex reassignment surgery.

# Synthia Kavanagh v. Attorney General of Canada III

- [195] Having concluded that CSC is responsible, it remains for us to determine the appropriate remedy.
- [196] CSC has demonstrated that it is justified not to place pre-operative transsexuals in institutions reserved for the target sex. However, we have concluded that the application of section 30 of CSC's health services policy places transsexual inmates at a disadvantage. By requiring that pre-operative transsexual inmates be incarcerated with other inmates with 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 the prison environment.
- [197] In our opinion, there is no need to order CSC to cease applying the provisions of s. 30 of its health services policy. Nevertheless, CSC must take steps, in conjunction with the Commission, to develop policy to identify and address the needs of transsexual inmates.
- [198] We have concluded that section 31 of CSC's health services policy discriminates on the basis of both sex and disability and that CSC has failed to justify its blanket prohibition on access to sex reassignment surgery. Therefore, we order that CSC cease to apply the provisions of section 31. CSC will be granted a six-month deferral 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 inmate access to sex reassignment surgery.

# Synthia Kavanagh v. Attorney General of Canada IV

- [199] The parties will file with the court, within six months of the date of this decision, copies of CSC's revised policies regarding the placement of and access to sex reassignment surgery for transsexual inmates. The court retains jurisdiction over any issue in dispute in the event that the parties cannot agree on any terms and conditions for the application of these policies.
- [200] For the foregoing reasons, we find that sections 30 and 31 of CSC's health services policy discriminate on the basis of sex and disability, and order:
  - that CSC take steps, in conjunction with the Canadian Human Rights Commission, to develop policy to identify and address the placement needs of transsexual inmates in accordance with this decision;
  - that CSC cease to apply the provisions of section 31 of its health services policy; (CSC will be granted a six-month deferral 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 inmate access to sex reassignment surgery).
  - that the parties file with the Tribunal copies of CSC's revised policies regarding the placement of and access to sex reassignment surgery for transsexual inmates within six months of the date of this decision. (The court retains jurisdiction over any issue relating to the manner in which these policies are applied).

# Synthia Kavanagh v. Attorney General of Canada V

- The most interesting part of the judgment is not in the conclusions drawn by the Canadian Human Rights Tribunal, but in the entire analysis that results from it:
  - Treatment of Transsexualism - 19 to 28
  - Surgical reassignment and Inmates - 48 to 91
  - Pre-operative placements for transsexual inmates - 92 to 133
  - Legal principles - 134 to 139
- 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 a justifiable reason. With this in mind, the respondent must now prove:
  - I. that it adopted the standard for a purpose or goal that is rationally connected to the function being performed;
  - II. that it adopted the standard in good faith, in the belief that it is necessary to achieve the purpose or goal in question;
  - III. that the standard is reasonably necessary to accomplish the purpose or goal in that the respondent cannot accommodate persons with the characteristics of the complainant without incurring undue hardship.

# Synthia Kavanagh v. Attorney General of Canada VI

- [139] The term "**undue hardship**" is not defined in the Act. However, the Meiorin and Grismer decisions are very helpful in determining whether a defence of undue hardship has been established.
- In Meiorin, the Supreme Court noted that the use of the word "undue" suggests that some degree of hardship is acceptable; to meet the standard, it is essential that the hardship imposed be "undue". 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 opportunity to accommodate without incurring undue hardship. The onus is on the defendant to establish that it has considered and reasonably rejected all viable forms of accommodation.
- **The defendant must show that it was impossible to incorporate positive aspects of individual accommodation into the standard without incurring undue hardship. In determining whether the defendant's efforts to accommodate have been sufficient, the prospect of actual infringement of the rights of others must be considered. The adoption of the defendant's standard must be supported by convincing evidence. Evidence, consisting of impressions, is generally not sufficient. Finally, the Supreme Court indicated that factors such as the cost of possible methods of accommodation should be applied in a flexible and common sense manner, based on the facts of each case.**

# Historic of the LGBT movement in Quebec

- The first homosexual association to emerge in Quebec was the Front de libération homosexuel (FLH) in March 1971, linked to the sovereignist movement.
- It was during an anti-Canada march on July 1, 1971, that the Front de libération homosexuelle made its first public appearance by forming a homosexual contingent. One of the members of the group, Denis Côté, declared that "the liberation of Quebec would be done with the collaboration of all and that it was necessary to liberate oneself before liberating Quebec".
- Composed of only about thirty members at the beginning, the political formation quickly grew to nearly 200 people, a progression which had repercussions on the ideological composition of the LFH. Those who cultivated a more global and political vision became a minority in the LFH and chose to leave its ranks. In August 1972, the young organization was dissolved, in part due to police harassment.

# Main LGBT groups in Quebec

- The **Conseil québécois LGBT** (CQ-LGBT) is the central reference point in Quebec for the defense of the rights of lesbian, gay, bisexual and trans people here. The **Conseil québécois LGBT** seeks to consolidate the rights of LGBT people in Quebec, in addition to militating for the rights to be acquired, so that no one is left behind in the recognition of sexual and gender diversity. <https://www.conseil-lgbt.ca/> (in French)
- The **Alliance Arc-en-ciel de Québec** aims to mobilize and sensitize the population to the issues and concerns of people of sexual diversity and gender plurality in addition to ensuring their inclusion and the defense of their rights.  
➤ <https://arcencielquebec.ca/> (in French)
- For the past 30 years, the **Montreal LGBTQ+ Community Centre** has been providing the services necessary for the start-up, development and smooth operation of Montreal LGBTQ+ organizations in order to improve the quality of life of community members. It also houses a library specializing in works related to sexual diversity and makes more than 20,000 documents of all kinds available to the public.  
➤ <https://ccglm.org/en/>
- See also the LGBT Resource Guide at:  
➤ <http://guide-lgbt.org/> (in French)

# State of law I

- Over the years, the federal and provincial governments have passed or amended legislation and regulations. Now, in 2020:
- Canadian Charter of Rights and Freedoms
- 15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.
- Human Rights Act
- 3 (1) For the purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, color, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, conviction for which a pardon has been granted or disability.

# State of law II

- Charter of Human Rights and Freedoms
- 10. Everyone has the right to the recognition and exercise, in full equality, of human rights and freedoms, without distinction, exclusion or preference based on race, color, **sex, gender identity or expression**, pregnancy, **sexual orientation**, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, disability or use of any means to palliate a disability.

# State of law III

- Professional Code
- 43. An order shall not refuse to issue a license or specialist certificate or to grant special permission on the basis of race, color, **sex**, religion, national ancestry or social origin.
- 57. No professional shall refuse to provide services to a person on the basis of race, color, **sex**, age, religion, national ancestry or social origin of that person.

# State of law IV

- **Code of Ethics for Nurses**
- **2. A nurse shall not refuse to provide professional services to a person because of race, color, sex, pregnancy, **sexual orientation**, marital status, age, religion, political belief, language, ethnic or national origin, social origin or condition, disability or the use of any means to palliate a disability.**
- **38. For the duration of the professional relationship, the nurse may not establish **friendly, intimate, loving or sexual ties** with the client.**
- **Code of ethics for sexologists**
- **10. During the professional relationship, the sex therapist does not establish ties that could compromise the quality of his or her professional services, does not establish **romantic or sexual ties** with a client, does not make abusive comments of a sexual nature and does not make abusive gestures of a sexual nature towards a client.**

# 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: عن دما تاكلون 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 Ejusdem Generis maxim

- You all know the Latin maxim "Ejusdem 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.**

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# Any questions?





THANK  
YOU