

# Welcome

## A very long story

# LGBT

## Me Hélène Montreuil

# Summary of subjects

**LGBT people in the World**

**LGBT people in Canada**

**Transgender people**

**Non binary people**

**Other LGBT people**



**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.
- See: <http://www.maitremontreuil.ca/conference.html>
- 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**

**Voir : <http://recif.litterature.org/recherche/ecrivains/montreuil-helene-1985/>**

# **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 ????**  
**Is it so important to know it ?**



# **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/>**

# Abstract of the presentation

- **LGBT people in the world.**
- **LGBT people in Canada.**
- **Transgender, non binary, agender, intersexual, asexual, pansexual and other people.**
- **The right to work for these people**
- **The right for social services for these people**
- **The right for governmental services for these 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 :
  - To yourselves
  - To your government
  - To your stakeholders in health services
  - To police officers
  - To border guards
  - To your employer
- Do you have the right to be an LGBT+ person?
- YES
- However, it is a daily challenge.
- So what am I going to do?

# Who are you LGBTTIQQ2SAA? I

## ➤ **L – Lesbian**

- A woman who is physically and emotionally attracted to other women.

## ➤ **G – Gai**

- A man who is physically and emotionally attracted to other men. This word is preferred to the term "homosexual," which has had a negative connotation for a long time.

## ➤ **B - Bisexual/Bi**

- A person who is physically and emotionally attracted to people of any sex/gender and defines himself or herself as bisexual.



# Who are you LGBTTIQQ2SAA? II

## ➤ T - Transgender/Trans

- A person who identifies with a different gender than the one assigned at birth. However, this does not necessarily mean that this person feels that they were born in the wrong body.
  - People who do not define themselves as male or female can also define themselves as trans.
- ## ➤ T - Transsexual/Trans
- This is not sexual orientation, but gender identity. It is a person who has had a sex change that may or may not include genital surgery.

# Who are you LGBTQ2SAA? III

- **T –Tranvestite/Cross-Gender/Trans**
- The cross-gender wears clothing and accessories that are, in a given society, generally associated with the opposite gender of his or her own in order to voluntarily resemble the opposite sex.
- The cross-gender may adopt behaviours associated with a gender different from the sex assigned at birth.
- Cross-dressing is distinct from transidentity, although it is often associated with it.
- Cross-dressing is about appearance, unlike transidentity, which is about the person's identity.

# Who are you LGBTTIQQ2SAA? IV

## ➤ I – Intersexual

- Intersexuality is when a person is born with sexual characteristics that do not fit the typical definitions of "male" or "female".
- Some intersexual individuals are assigned a sex at birth and are raised accordingly.
- This gender may not match the way they view their gender identity, just as it could.

# Who are you LGBTTIQQ2SAA? V

## ➤ Q – Queer

- It is a general term that encompasses all sexual and gender minorities, including those who do not identify with any other identity in the acronym LGBTQ. Historically, the word has been used as an insult, but it has subsequently been claimed as a positive and open way to identify. To say queer is to deny both the conformity and limitations of heterosexuality and the LGBT letters.

## ➤ Q - (in) Questioning

- Some people who are unsure of their sexual orientation or gender identity sometimes describe themselves as questioning. They may remain questioning until they identify with a particular identity or they may remain questioning throughout their lives.

# Who are you LGBTTIQQ2SAA? VI

- **2S – Bispirituel Two-spirit/ 2S**
- The "2S" comes from the English "two-spirit".
- It is a person with a female spirit and a male spirit living in the same body.
- It is an important term in some Indigenous cultures, and some Indigenous people use it to describe their sexual orientation, gender identity and/or spiritual identity.
- Berdache is considered by North Americans to be an individual of both sexes and is also called "two-spirits".

# Who are you LGBTTIQQ2SAA? VII

- **A – Asexual**
- A person who does not feel sexual or physical attraction to other people, but who may feel a romantic or emotional attraction to some people.
- **A – Ally**
- An ally is a person who does not identify as LGBTQ, but who supports the rights and security of those who do.
- There is so much to say about sexual orientation and gender identity. There is even more to say about the issues, the difficulties, the victories experienced by all those involved. The most important thing is to be open, respectful and inclusive. **We must all be allies!**

# Who are you LGBTTIQQ2SAA? VIII

## ➤ Drag Queen

- A drag queen is a man who plays the role of an overly feminine person, in a sophisticated costume often consisting of very showy dresses, super tall boots, loads of makeup, and a long wig. A drag queen can imitate roles of famous women, pop stars, or, like RuPaul, play her own role of excessive woman.

## ➤ Drag King

- A drag king is a woman who plays an overly masculine role, or who imitates an actor or singer. Some *FtMs* may also refer to themselves as a Drag King, although this usage is considered imprecise by some.
- Some women, such as **Amantine Aurore Lucile Dupin, baronne Dudevant**, French novelist, playwright, letter writer, literary critic and journalist have left their mark on history; she is better known as **George Sand**.



# Who are you LGBTTIQQ2SAA? IX

## ➤ **Fetichist**

- A transvestite fetishist is a person (most often a straight man) who dresses in the clothing of the opposite sex as a sexual fetish.
- The term underdressing is used by male crossdressers to describe the act of wearing female underwear under male clothing.
- Sometimes, one of the two members of a heterosexual couple can wear the other's clothes to turn them on.
- For example, the man can wear the woman's skirts and lingerie, and the woman can wear the man's underpants or various other clothes.

# So, are you LGBTTIQQ2SAA?

- **L = Lesbian**
- **G = Gay**
- **B = Bisexual**
- **T = Transgender**
- **T = Transsexual**
- **T = Tranvestite**
- **DQ = Drag Queen**
- **DK = Drag King**
- **F = Fetichist**
- **I = Intersexed**
- **Q = Queer**
- **Q = Questionning**
- **2S = Two spirited**
- **A = Asexual**
- **A = Ally**

# Do you want other terms? I

- **Agender:** A person who does not identify with any gender identity.
- « **Allosexuel** » or « **Altersexuel** »: is the translation for Queer.
- **Androgynous:** A person whose physical appearance may have characteristics that are not associated with a gender and therefore are somewhere between feminine and masculine.
- **Asexual:** A person who develops minimal or no sexual attraction to another person.
- **Cisgender:** A person whose gender identity corresponds to his or her biological sex; in other words, a "normal" person.
- **Aromantic:** A person who feels no romantic attraction to anyone.
- **Demisexual:** A person who feels sexual attraction only in the presence of a strong emotional connection.

# Do you want other terms? II

- **Gender fluid**: A person whose gender identity can vary and who can sometimes feel more of a man, sometimes a woman, and sometimes neither.
- **they** : A non-gendered pronoun to avoid using he or she when talking about a non-binary person
- **Intersex** : This biological term refers to people who are born with sexual characteristics that vary from typical definitions. These variations, which can be found at the chromosomal, anatomical or hormonal level, are manifested to varying degrees on the physical level, for example in the appearance of the external or internal genitalia. It is neither a sexual orientation nor a gender identity.
- **Misgendering** : Misgendering is the act of labeling others with a gender that does not match their gender identity. Sir instead of Madam.
- **Dead Name** : The name given at birth that a trans person no longer uses.

# Do you want other terms? III

- **MTF or FTM** : Sometimes we see acronyms «Male to Female» or «Female to Male». They indicate a "male" person (thus born with male genitals) who makes a transition to the female gender, and vice versa.
- **Non-binary** : is said of a person who does not identify with the gender assigned to them at birth, but not entirely the opposite gender. She is a person who is outside the norms of the feminine and the masculine.
- **Gender non-conforming**: A person who does not conform to the typical roles that society assigns to binary genres. For example, someone who wears clothes usually associated with another gender.
- **Pansexual** : A person who is attracted to people, regardless of their gender identity or sex.
- **Transidentity** : refers to a person whose gender identity does not agree with the biological sex assigned at birth.

# Who are you LGBTTIQQ2SAA ? Do you see yourself?





# Am I not the same one ?





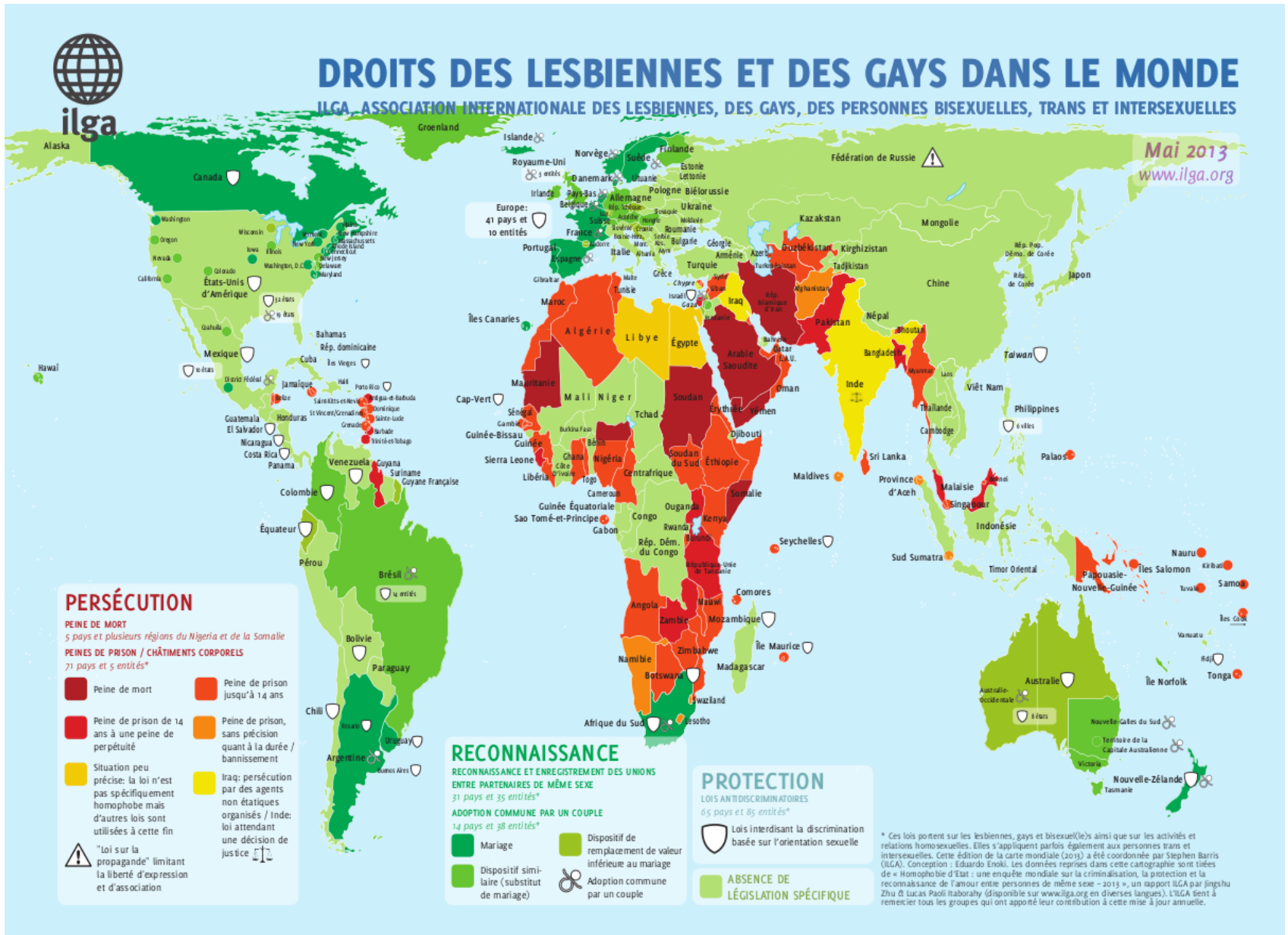
# History of the LGBT movement

- The lesbian, gay, bisexual and transgender or LGBT movement refers to all individual or movements and actions that seek to change the social perception of sexual minorities, homosexuality, bisexuality and transidentity.
- A goal often claimed by these movements is equal civil and social rights for LGBT people and sometimes the development of LGBT communities or the liberation of society from biphobia, homophobia and transphobia.
- There is no organization that brings together the entire LGBT community and many structures exist in different countries around the world. The movement takes shape notably through militant, cultural and artistic actions or street demonstrations such as the Pride March.
- However, there is the International Lesbian, Gay, Bisexual, Trans and Intersex Association or ILGA.

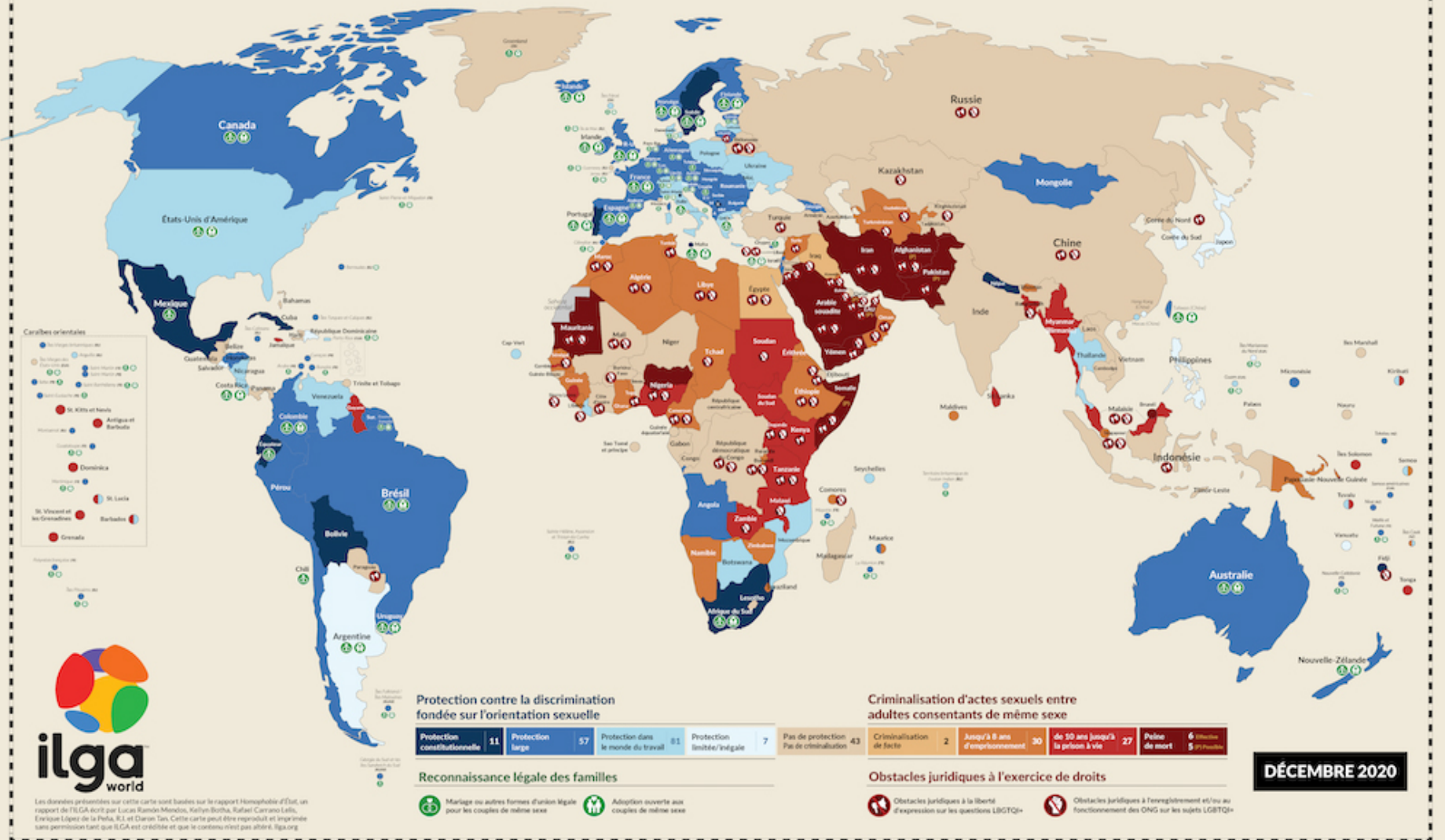
# The LGBT movement in the world

- **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>

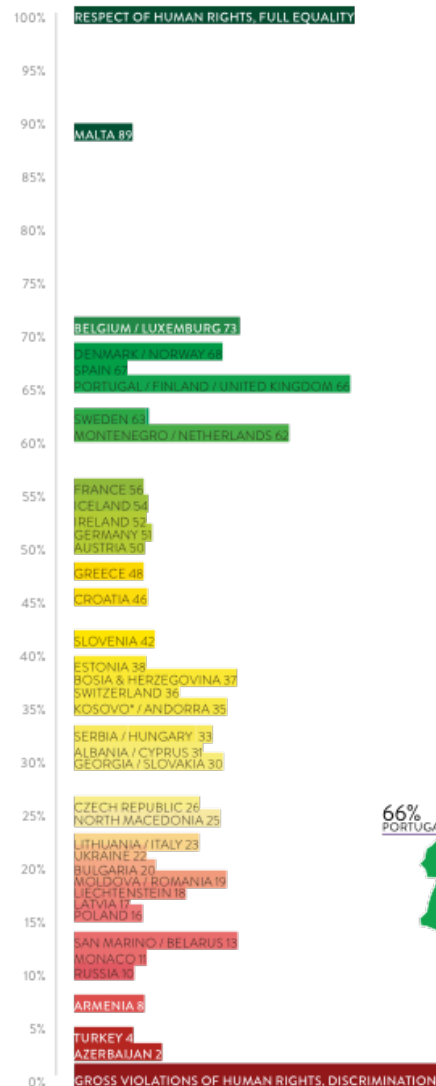
# LGBT World Map – Search LGBT World Map on Google



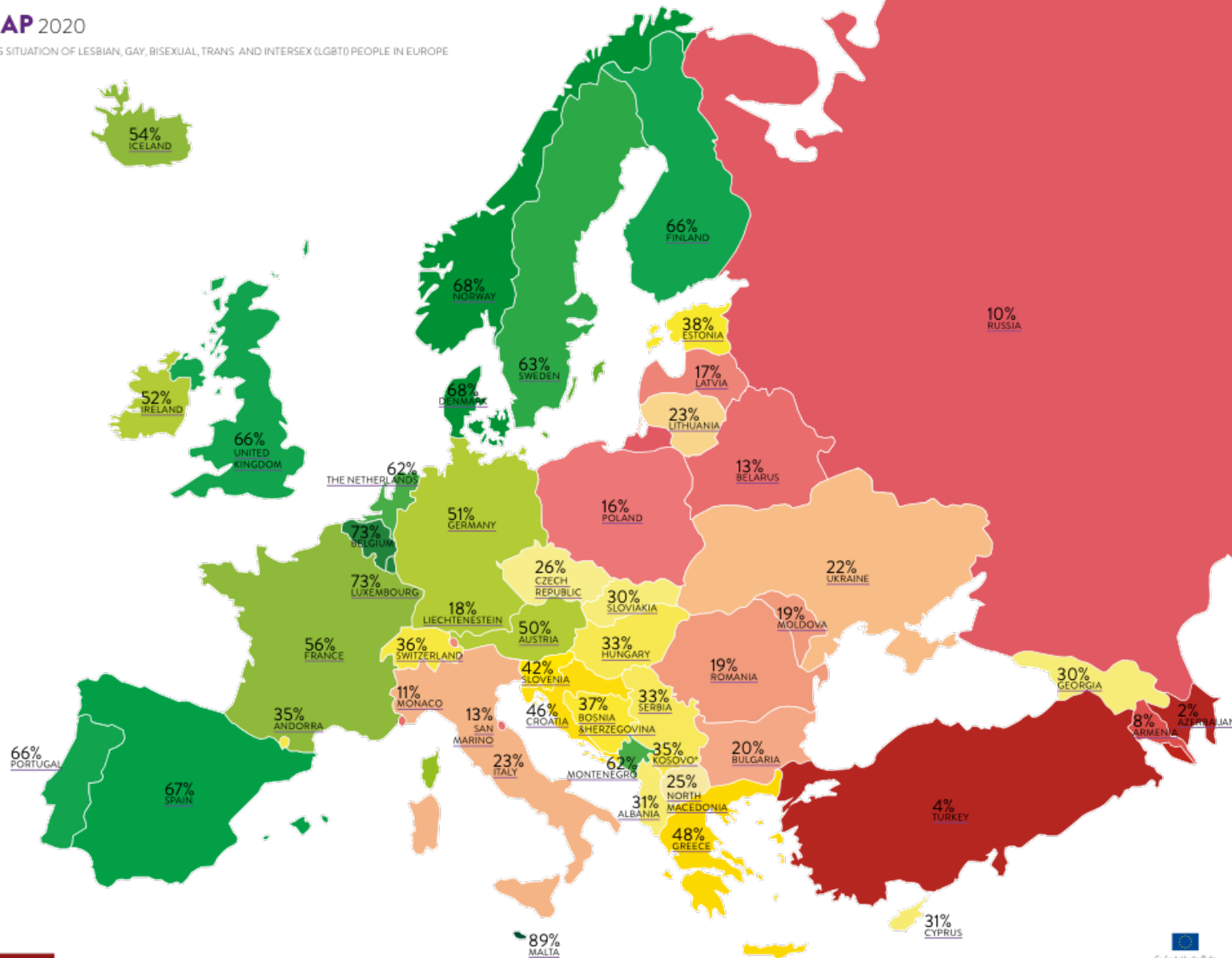
## World Laws on sexual orientations



## RESPECT OF HUMAN RIGHTS, FULL EQUALITY



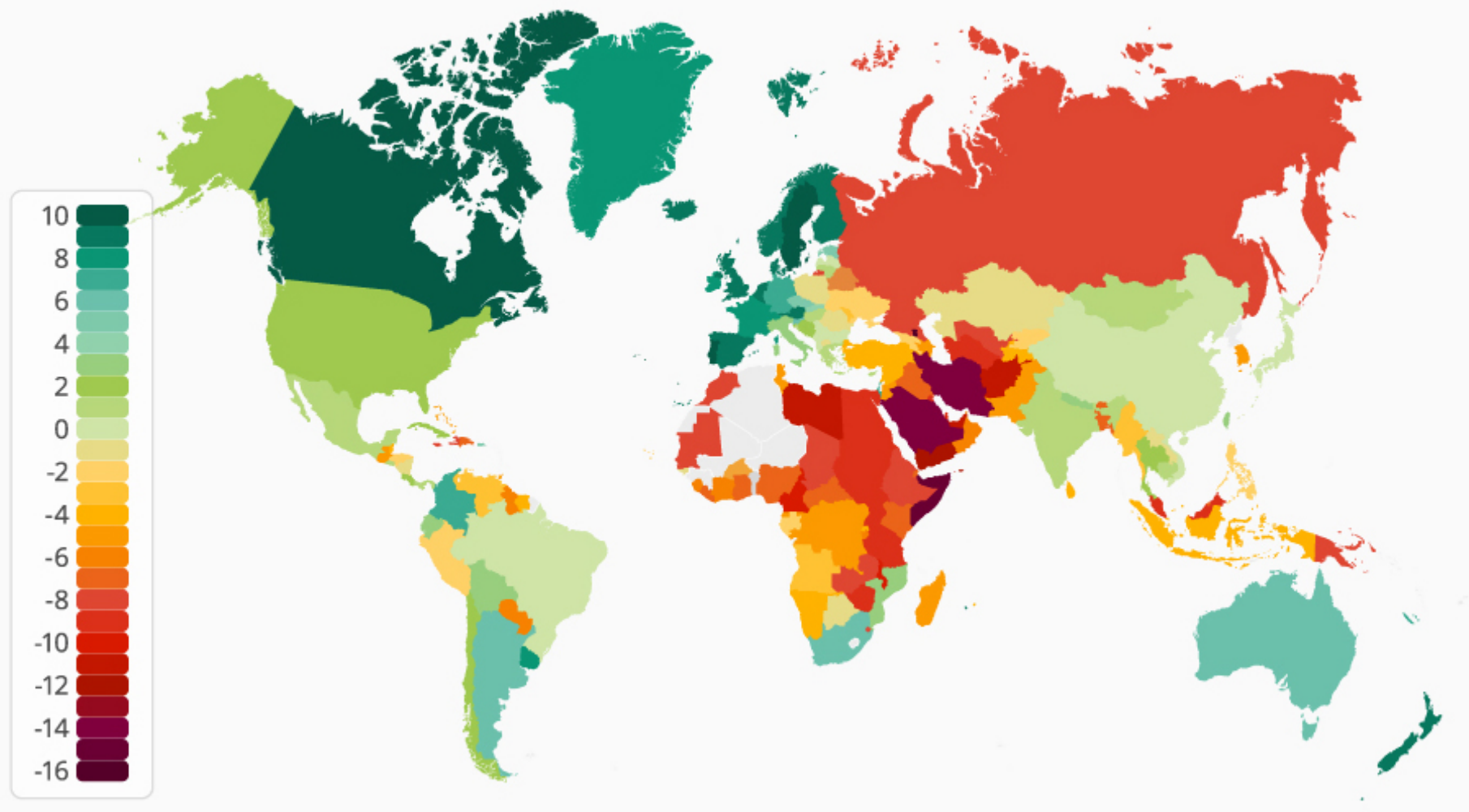
## GROSS VIOLATIONS OF HUMAN RIGHTS, DISCRIMINATION





# 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

- 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 comes last. The guide says the country is involved in "state-organized persecution and murder of gay men."



# 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.
- Today, the LGBT rainbow flag has gained worldwide fame. It is widely used by organizations of the LGBT movement as well as by businesses aimed at LGBT audiences. The Beaudry metro station in Montreal, located in the gay village, is decorated with the six LGBT colors.

# Rainbow or LGBT Flag II



# LGBT Rights in some Muslim countries

- Homosexuality, bisexuality and transidentity are considered taboo in Pakistan, and the rights of LGBT people are almost non-existent. According to law, homosexuality has been illegal in Pakistan since 1860. The law has not yet been abolished. Because of religious intolerance for some sexual practices, public opinion tended to focus on sexual minorities.
- The rights of LGBT persons are not recognized in Saudi Arabia. Homosexuality and cross-dressing were viewed as immoral acts and treated as serious crimes. Although the kingdom was criticized by human rights organizations, Saudi Arabia consistently defended itself as conforming to the morality of Islam.
- LGBT persons in Morocco may face specific legal challenges not faced by non-LGBT residents because homosexual relations between women and men are illegal. Recognition is therefore null and void, since same-sex sexual relations are very severely punished under Moroccan law under the provisions of section 489 of the Moroccan Code of Criminal Procedure.

# LGBT Rights in the Middle East I

- Lesbian, gay, bisexual and transgender citizens generally have limited or highly restricted rights in most Middle Eastern countries and may encounter hostility. Homosexuality is illegal in 10 of the 18 countries that make up the region and punishable by death in 6 of those 18 countries. The rights and freedoms of LGBT people are greatly affected by the region's culture and religious principles, in particular Islam.
- All sexual orientations are legal in Bahrain, Cyprus, Israel, Jordan, Palestine (West Bank) and Turkey. Female homosexuality is legal in Palestine (Gaza Strip) and Kuwait. However, the legal status of female homosexuality is unclear in Egypt.
- Although laws against female homosexuality are less strict, the rights of lesbians are generally not recognized or protected.
- Male homosexuality is illegal and punishable by imprisonment in Kuwait, Egypt, Oman, Qatar and Syria. It is punishable by death in Iran, Iraq, Saudi Arabia, Qatar and the United Arab Emirates. In Yemen and Palestine (Gaza Strip), the punishment may be death or imprisonment, depending on the act committed.
- Several Middle Eastern countries have received harsh international criticism for criminalizing homosexuality.

# LGBT Rights in the Middle East II

- In Iran, Saudi Arabia, Qatar, the United Arab Emirates and Yemen, the law states that if a person is found engaging in sexual activity with a person of the same sex, the death penalty will be applied. According to national reports from the US Department of State, there are no established LGBT organizations in Saudi Arabia. Furthermore, reports of official and social discrimination on the grounds of sexual orientation remain unclear because of considerable social pressure not to discuss LGBT matters.
- Jordan, Bahrain and Iraq are the only Arab countries where homosexuality is legal; however, there is some stigma in Iraqi society that sometimes leads to vigilante executions. The Islamic State does not tolerate homosexuality. Certain Middle Eastern countries have some degree of tolerance and legal protections for transgender people. For example, the Iranian government approved gender affirming surgery with medical approval. The Syrian government approved similar surgeries in 2011. There are LGBT rights movements in other Middle Eastern countries, including Turkey and Lebanon. However, in both countries, change has been slow, and the recent crackdown on LGBT-related events has raised concerns about the freedom of association and expression of LGBT people and organizations.
- Israel is a notable exception. It is the most progressive Middle Eastern country in terms of LGBT rights and the recognition of unregistered cohabitation. Same-sex marriage is not legal in the country, but there is public support for the idea. Trans people can legally change their gender without surgery and can openly serve in the Israel Defence Forces.



# LGBT Rights in the Middle East III

- In a few places, such as Egypt and Morocco, sexual orientation and gender identity issues have begun to enter the agendas of some human rights movements. Now, unlike in earlier years, there are lawyers to defend people when they are arrested and voices to speak up in the press. These vital developments were not won through identity politics.
- Identity politics have misfired disastrously as a way of claiming rights in much of the Middle East; the urge of some western LGBT activists to unearth and foster “gay” politics in the region is potentially deeply counterproductive. Rather, the mainstreaming was won largely by framing the situations of LGBT people in terms of the rights and protections violations that existing human rights movements understand.
- Although many Middle Eastern countries have penal codes that are against homosexual acts, these codes are rarely enforced because it is difficult to prove the crime unless the person is caught in the act. In the Middle East today, many countries still do not have codification of homosexuality or queerness as an identification of sexual orientation.
- In Saudi Arabia, gender segregation is practised to preserve women’s purity. As a result, some men and women will openly seek same-sex companionship in public spaces, such as coffee shops, public bathrooms, their cars and their homes. To navigate their own sexuality, many men who engage in same-sex acts in Saudi Arabia do not consider the acts to be homosexual unless they are on the bottom, a sexual position deemed to be more feminine, whereas being on top is considered to be more masculine.

# LGBT Rights in the Middle East IV

- In Iran, gender is strictly binary. The government enforces gender binary by eliminating information on homosexuality and by encouraging people questioning their sexuality to undergo gender affirming surgery.
- Since gender affirming surgery is approved by the government and religious institutions and since government funding is available for the surgery, many Iranians who are attracted to people of the same sex feel that it's a way for them to be open about their sexual orientation without being persecuted by the government.
- Since being homosexual is not an option for Iranians, a growing number of Iranians who are attracted to members of the same sex are having gender affirming surgery.
- Religious figures, psychologists and the government support the surgery because homosexuality is illegal and punishable by lashing or execution.
- This has boosted Iran's transsexual community. Since homosexuality has been removed from society as an identity, homosexuals and transsexuals all have to have gender affirming surgery.
- The people who undergo surgery are fully accepted by the government, but often their families still reject them. Family members are a key resource for getting jobs in Iran. Without a social network to call on for job leads, it is increasingly difficult for transsexuals to find work. Discrimination on the job market forces them into sex work.

# LGBT Rights in the Middle East V

- The following organizations have made a significant impact in the Middle East:
- **Rainbow Street** is a non-governmental organization (NGO) that is determined to help LGBT people in the Middle East and North Africa (MENA) in any way they need. This includes
  - working with local health care providers to promote the mental and physical health of members of the local LGBT community; and
  - providing regular cash stipends to especially vulnerable LGBT people to alleviate some of the challenges of homelessness, food insecurity and other barriers to dignity and self-determination.
- **Outright** is an NGO that promotes LGBT human rights around the world, including in the Middle East. The organization focuses more on Iraq, Iran and Turkey, but it also partners with other regional groups to listen to local LGBT activists and advocate on their behalf to the United Nations.
- **Helem** is an NGO based in Lebanon. Its main objective is to abolish section 534 of the Lebanese penal code, which punishes unnatural sexual intercourse and is most commonly used to target people who do not conform to society's binary gender system. Helem also aims to raise Lebanese society's awareness of the AIDS epidemic and of other sexually transmitted infections in the country and to advocate for the rights of Lebanese LGBT individuals. Helem allows allies to join the organization.

# Homosexuality is punishable by death

- **Afghanistan**
- **Saudi Arabi**
- **Bruni**
- **Iran**
- **Mauritania**
- **Nigeria**
- **Pakistan**
- **Qatar**
- **Somalia**
- **Yemen**

# 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.**

# 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.



# 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.

# The Stonewall Riots I

- 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 neighbourhood. 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 neighbourhood organized themselves into militant groups, setting up places where gays, lesbians and transgender people could meet without fear of arrest.

# The Stonewall Riots II

- 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 neighbourhood.
- 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.**
- The 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.**

# The Stonewall Riots III

- 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 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 for 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.

# 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 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.



# 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 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.**



## **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 Hélène 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 Hélène 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

- 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 permitted I

- 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 permitted II

- 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 in United States

- 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.

# 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.

# Your Canadian Passport I

- 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**
  - <https://www.canada.ca/en/immigration-refugees-citizenship/services/canadian-passports/change-sex.html#update-gender-f-m>
- 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 II

- 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

- 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.
- <https://travel.gc.ca/travelling/health-safety/lgbt-travel>

# Your Canadian Passport IV

- 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. See: [https://ilga.org/downloads/02\\_ILGA\\_State\\_Sponsored\\_Homophobia\\_2016\\_ENG\\_WEB\\_150516.pdf](https://ilga.org/downloads/02_ILGA_State_Sponsored_Homophobia_2016_ENG_WEB_150516.pdf)
- 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 V

- 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 VI

- 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 VII

- 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 Hélène**
  - 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, 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.**

# 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 دم تاكلون في روم تصرف لكم ايتصرف الرو - 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 tossed 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