

## Historical Background of Homosexuality

Homosexual people have always existed. But the emergence and acknowledgement of this reality is still very recent. In Canada, one could say that 1969 was Year One for homosexual communities.

Here are some major moments in homosexual history:

<p>Before the 13<sup>th</sup> Century</p>	<p>The Roman Catholic Church consecrates and celebrates same-sex marriages in Europe. Priests can marry a spouse of the same sex without creating a scandal. With the plagues that scourged Europe throughout the 13<sup>th</sup> century, the Catholic Church and the merchant class advocate the repopulation of Europe. This event coincides with the birth of Protestantism, threatening the power of the Church, which results in a transformation of Catholic doctrine with respect to sexuality. From that moment on, the Roman Catholic Church considers all sexual practices which do not lead to procreation or are extra-marital to be mortal sins. Contraception, masturbation and homosexuality are just a few of the practices which are still, to this day, considered to be mortal sins<sup>1</sup>.</p>	<p>age) in privacy and not restricted to homosexual people. Prior to this date, homosexual relations contravened the Criminal Code and were punishable with imprisonment. With a new law known as the <i>Omnibus Bill</i>, the State confirms that it has no business in the bedrooms of the nation.</p>
<p>19<sup>th</sup> Century</p>	<p>The Canadian government criminalizes sexual relations between people of the same sex, even if they are consensual and occur in the privacy of a home. In 1841, the <i>Criminal Code</i> imposes the death penalty for this crime, which is followed by life imprisonment up until 1954<sup>2</sup>. When Canada is founded in 1867, sodomy is against the law, and in 1890, influenced by British legislation, the Canadian <i>Criminal Code</i> prohibits acts of « gross indecency » between male individuals (it wasn't until 1953 that the same prohibition was extended to lesbians)<sup>3</sup>.</p>	<p>1973 Up until 1973, homosexuality is considered to be a mental illness. Many treatments are used to cure people of their homosexual orientation: electroshock therapy, lobotomies, aversion therapies, etc. In 1973, the American Psychiatric Association decides that homosexuality is no longer a mental illness. As a result, homosexuality is withdrawn from the Diagnostic Statistical Manual (DSM), which is the diagnostic reference guide used by all health and social services professionals in North America.</p>
<p>20<sup>th</sup> Century</p>	<p>Up until 1969 in Canada, homosexual relations are criminalized and people found guilty can receive the death penalty or life imprisonment. In 1969 the State ceases to legislate sexual acts committed between consenting adults in privacy, and establishes the age of consent at twenty-one (21).</p>	<p>1975 Quebec's National Assembly adopts the <i>Quebec Charter of Human Rights and Freedoms</i>, with no mention of sexual orientation as an illegal motive for discrimination.</p> <p>1977 Quebec's National Assembly modifies article 10 of the <i>Quebec Charter of Human Rights and Freedoms</i> to include sexual orientation as an illegal motive for discrimination. Quebec becomes the first jurisdiction in North America and only the second in the world, after Denmark, to prohibit discrimination based on sexual orientation.</p>
<p>1953</p>	<p>The Canadian government adopts an amendment to the <i>Canadian Immigration Act</i> which prohibits foreign homosexuals from entering Canada. The Canadian Parliament only removes this prohibition in 1977.</p>	<p>1982 The Canadian House of Commons attaches a charter of rights to the Canadian Constitution, but Canadian members of parliament refuse to prohibit sexual orientation as a motive for discrimination.</p>
<p>1969</p>	<p>Canadian Prime Minister Pierre Elliott Trudeau adopts a government bill removing some provisions of the Criminal Code, effectively decriminalizing certain sexual practices (gross indecency, sodomy) committed between consenting adults (21 years of</p>	<p>1986 The other provinces<sup>4</sup> add a prohibition of discrimination based on sexual orientation to their codes within human rights provisions in the following order:</p> <ul style="list-style-type: none"> <li>1986 Ontario</li> <li>1987 Manitoba and the Yukon</li> <li>1991 Nova Scotia</li> <li>1992 New Brunswick</li> <li>1993 Saskatchewan</li> <li>1995 Newfoundland</li> <li>1998 Alberta and Prince Edward Island, only after a Supreme Court of Canada ruling.</li> </ul>



1992	The World Health Organization (WHO) issues a statement that associating homosexuality with mental illness is a mistake.		homosexual spouses, effective as of January 2001. This omnibus act eliminates discrimination in 64 federal laws.
1993	The Commission des droits de la personne du Québec (CDPQ) organizes public hearings on discrimination and violence experienced by gays and lesbians in Quebec. The CDPQ submits a report to the National Assembly with 41 recommendations aimed at countering persistent discrimination against homosexual people <sup>5</sup> .	2002	The American Academy of Pediatrics clearly states in the February 2002 edition of its journal, that children raised in a homoparental environment develop just as well as those raised in a heteroparental environment. It also concludes that children would benefit from having both parents officially recognized, encouraging legislators to take the necessary action. The American Psychiatric Association takes the same position <sup>7</sup> . This action on the part of these two organizations removes all ambiguity about the supposed « risks » and inadequacies of same-sex couples and homoparental families. The two reports illustrate that the only harm these children suffer results from being exposed to the ignorance and prejudice of others.
1995	Homosexuality is included in Quebec policies with respect to conjugal violence.		
1995 - 1999	A Canadian Supreme Court ruling states that the <i>Canadian Charter of Human Rights</i> must be interpreted in favour of prohibiting discrimination based on sexual orientation <sup>6</sup> . The Egan decision effectively includes sexual orientation <sup>6</sup> as an illegal motive for discrimination.	2002	Quebec's National Assembly adopts <i>The Act Instituting Civil Unions and Establishing New Rules of Filiation</i> , known as Bill 84, giving same-sex couples access to an institution equivalent to marriage and recognizing their right to be parents. Bill 84 modifies the rules of filiation to grant the same legal recognition that heteroparental families enjoy to children and parents in homoparental families.
1996	The Canadian House of Commons modifies the <i>Canadian Charter of Human Rights</i> to include a prohibition of discrimination based on sexual orientation.		
1996	The Quebec government amends article 137 of the <i>Charter of Human Rights and Freedoms</i> to eliminate discrimination against same-sex couples with respect to group insurance plans, pensions and all other fringe benefit plans.	2003	Several Superior and Appeal Court rulings in British Columbia, Ontario and Quebec state that defining marriage as the union between a man and a woman contravenes the Canadian Charter of Rights and Freedoms.
1997	The Canadian government modifies the Criminal Code to include the sexual orientation of people as a possible motive for hate crimes.		
1997	Quebec's Ministry of Health and Social Services adopts ministerial directives which promote the adaptation of services to the realities and needs of homosexual people.	2003	The Canadian government asks the Supreme Court to rule on four questions: - Is the definition of marriage a federal government jurisdiction? - Does a law authorizing the marriage of same-sex couples conform to the Charter of Rights? - Does the Charter of Rights protect the right of religious institutions to refuse to celebrate marriages with which they do not agree? - Is the federal law which defines marriage as being between a man and a woman constitutional?
1999	CSQ public sector collective agreements recognize same-sex spouses. In other words, homosexuals are eligible for the same fringe benefits (social leaves, group insurance, pension plan, ...) as spouses of the opposite sex living in a common law relationship.		
1999	Quebec's National Assembly adopts Bill 32, <i>The Act to amend various legislative provisions concerning de facto spouses</i> , which grants equal rights to common law homosexual spouses. The Act eliminates discrimination in 28 Quebec laws.	2004	The fact that the Canadian government does not appeal rulings made by appeal courts in British Columbia, Ontario and Quebec results in same-sex marriages taking place in these provinces.
1999	The American Psychological Association acknowledges in its code of ethics that to treat homosexuality as a psychological problem, a sexual deviance or a form of psychopathology is unethical.	2004	The Canadian House of Commons adopts Bill C-250 modifying the chapter on hate propaganda in the <i>Criminal Code</i> to make discrimination based on sexual orientation illegal.
2000	The Canadian House of Commons adopts Bill C-23, <i>An Act to modernize the statutes of Canada in relation to benefits and obligations</i> , which grants equal rights and equal responsibilities to de facto	2004	The Table de concertation des lesbiennes et des gais du Québec (TCLGQ) organizes a convention dealing with <i>De l'égalité juridique à l'égalité sociale</i> .

- 2004 On December 9, 2004, the Supreme Court delivers a unanimous response to the questions and gives the green light to the government to legalize same-sex marriages. The nine (9) Supreme Court judges state that: “Our constitution is a living tree which, given a progressive interpretation, adapts and responds to the realities of modern life. Interpreted in a liberal way, *the word marriage does not exclude marriage between people of the same sex*”. The federal government has the power to revise the traditional definition of marriage in order to allow spouses of the same sex to marry. Neither Ottawa nor the provinces can force religious authorities to celebrate homosexual marriages against their will if this contravenes their beliefs or their traditions. The Court states that article 2 of the proposed law permitting religious authorities to refuse to marry homosexual couples is unconstitutional because the celebration and registration of marriage is a provincial jurisdiction. For the same reason, the Supreme Court refuses to respond to the fourth question, which asked whether the traditional definition of marriage is constitutional.
- 2004 Towards the end of 2004, eight provinces have ruled the traditional definition of marriage to be unconstitutional and legalized same-sex civil marriages: British Columbia, Ontario, Québec, the Yukon, Manitoba, Nova Scotia, Saskatchewan and Newfoundland and Labrador.
- 2005 Following the unanimous Supreme Court decision, in February 2005, Prime Minister Paul Martin presents a bill which would change the definition of marriage to the legitimate union of two people. The House of Commons adopts Bill C-38 on its third reading on June 28, 2005, by a majority vote (158 for, 133 against) recognizing civil marriage between people of the same sex. The Senate adopts Bill C-38 in July 2005.
- 1 Irène Demczuk and GRIS-Montréal, *Guide pédagogique: Démystifier l'homosexualité, ça commence à l'école*, Montréal, 2003, p. 99.
  - 2 Idem, p. 99.
  - 3 Edited by Didier Eribon and Arnaud Lerch, *Dictionnaire des cultures gays et lesbiennes*, Larousse, 2003, p. 95.
  - 4 Health and Social Services Québec, *Programme de formation, Pour une nouvelle vision de l'homosexualité, intervenir dans le respect de la diversité des orientations sexuelles*, January, 2001, Québec, p. 98-100.
  - 5 Irène Demczuk and GRIS-Montréal, *op. Cit.*, p. 101.
  - 6 Egan vs. Canada (1995) 2 R.C.S. 513, M c. H (1999) 2 R.C.S. Canada 2.
  - 7 Brief presented by Dominique Dubuc during hearings of the Canadian House of Commons Permanent Committee on the Rights of the Individual in the spring of 2003.