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Introduction of Ms. Line Chamberland, Ph. D.

Professor, Research Chair on homophobia

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Our second speaker is Ms. Line Chamberland, professor at the Université du Québec à Montréal. Her lecture is entitled "The Decriminalization of Homosexuality: Impacts for Women Who Love Women? "

Ms. Chamberland is a sociologist and has been teaching since 2009 at the Université du Québec à Montréal in the Department of Sexology. Since 2011, she has held the Research Chair on Homophobia, the creation of which is a flagship measure of the Government Action Plan Against Homophobia from 2011 to 2016, which was renewed as part of the Plan Against Homophobia and Transphobia from 2017 to 2022.

Ms. Chamberland's research focuses on the discrimination of sexual and gender minorities, whether in the workplace, at school or in health and social services. She is also interested in the aging of members of these communities, single-parent families and the contemporary history of sexual diversity and the LGBT movement in Quebec. Since 1997, Ms. Chamberland has been involved in the community by participating in the creation of exhibitions, conferences and collaborating with the *Archives gaies du Québec* to develop exhibitions and historical projects on the LGBT movement.

She has also written more than 100 articles on sexual and gender minorities that have been published in various media. Over the course of her career, Ms. Chamberland has received several honours, including the *Honoris du Conseil québécois LGBT* award in 2013 to eleven pioneers who have distinguished themselves in the community, and the *Les femmes changent le monde* award from Université Laval in 2015 for her outstanding contribution to the advancement of women and feminist studies.

DECRIMINALIZATION OF HOMOSEXUALITY: IMPACTS FOR WOMEN LOVING WOMEN?

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I would like to thank Mr. Doyon for his kind invitation. I am not a lawyer, but a sociologist. You will therefore find that a sociological reading differs from a legal reading. I am very pleased that Mr. Leckey preceded me because, indeed, there are some nuances I will make about the expression of decriminalization of homosexuality. Before examining the impact of the decriminalization of homosexuality on women who love women, I would like to provide some clarification on the legislative change brought about by the adoption of the omnibus bill. I will use "omnibus bill" as a symbol, because we know all the other aspects covered by this bill and I will give some details about the legislative change as well as the context in which this change took place.

It had been said, the law did not criminalize homosexuality as such, but sodomy and gross indecency. The crime of gross indecency was introduced in 1890 in the Canadian *Criminal Code*, which was officially enacted in 1892. Inspired by the Labouchère amendment, adopted in England in 1885. This ill-defined charge, - undefined - and therefore applicable to a wide range of homoerotic behaviour, was the main tool for police and judicial repression of homosexual practices throughout the 20th century, as shown by the pioneering work of Pierre Hurteau and Ross Higgins for Quebec.

In fact, it was the sodomy offence that was not enforced, but the gross indecency was. If women could not originally commit such crimes, it should not be concluded too quickly that they were forgotten in the *Criminal Code*. First of all, the whole legal discourse deals with women's sexuality from the traditional Judeo-Christian classification, classifies them

into pure, those who need to be protected from sexual crimes committed by men, and includes what is reflected in the laws in notions such as immorality or any form of vice. This includes, of course, lesbian conduct. For example, a woman I had met had been placed because her mother was a lesbian. We didn't tell her that, but she reunited with her mother later. In the name of morality, she couldn't be in such a family.

Judicial control of lesbianism can thus be based on a whole series of laws concerning the wearing of male clothing, wandering, juvenile delinquency and youth protection. In addition, the 1953-54 legislative reform desexed several sexual offences, including indecent assault on a woman and gross indecency. It is recalled in a 1957 judgment that this last offence, a gross indecency, may be committed by two men or two women who expose themselves to each other indecently or have homogenital contacts. We know from the evidence that the most common reason in the 1950s and 1960s to justify police surveillance and intimidation of lesbians who frequented bad bars in Montreal's Red-Light District was gross indecency. It justified their arrest and they remained in custody, even if these charges were not subsequently maintained or were replaced by less serious offences, such as disturbing the peace. As for the crime of indecent assault, University of Ottawa lawyer Constance Backhouse documented in detail the case of *The Queen v. Moore* in 1955, the first trial of a woman charged with such an offence, then punishable by two years' imprisonment. Williamae Moore, a recent resident of Yellowknife, Northwest Territories, was charged with daring to kiss another woman in an indecent manner, it should be noted. However, this moved followed a letter in which she informed her of her sexual attraction. Moore was first convicted and later acquitted by the Alberta Court of Appeal. It should be noted that Williamae Moore was a black woman. In short, even if the current state of research indicates that municipal laws were the most frequently used to suppress lesbianism and female transvestism, it would be wrong to think that women could not be charged under the *Criminal Code*.

Another myth to be debunked is that the omnibus bill legalized homosexuality. The legal scope of this legislative change is more limited than generally believed. It does not decriminalize but suspends the application of the provisions on gross indecency and sodomy when acts are committed between consenting adults, 21 years of age or older at the time, and in private. The key concept here, inspired by the Wolfenden report published in 1957 in England, is the distinction between the narrowly defined private sphere and the public sphere, which leads to a new delimitation of the field of action of the criminal route.

The role of the Criminal Code is to preserve public decency and not to uphold private morality, as Pierre Elliott Trudeau so clearly stated in his famous sentence: "The state has nothing to do with what happens in the bedroom." The State's removal from the private sphere of sexuality can also be analyzed as a modernization of the *Criminal Code* with the deletion of the section of the law that is not applied, not applicable, particularly with respect to sodomy, or whose application could lead to the punishment of victimless crimes, following the example of Everett Klippert's case, - and I am very pleased that there is a scholarship to his name, - a man sentenced in the Northwest Territories to indefinite pre-trial detention as a dangerous sex offender, although psychiatrists considered that he did not have a pedophile tendency. This decision, therefore, to lock him up for an indefinite period, was confirmed by the Supreme Court on 7 November 1967. The first version of the omnibus bill was tabled in the House of Commons on December 22, 1967, one month after Klippert's conviction

Finally, from a sociological point of view, the State's withdrawal from the private sexual sphere can be seen as a reorganization of the functions of social control and sexual regulation, a new division of territories between psycho-medical and religious institutions, responsible for regulating sexual conduct in the private sphere, and the judicial system, responsible for public order.

I do not want to dwell too much on the heated controversies surrounding the adoption of the omnibus bill. The justification publicly put forward by Mr. Trudeau, then Minister of Justice, when he introduced the bill, confirms that the purpose of the legislative change is not to support homosexual conduct. Another well-known quote from Mr. Trudeau is this: "What is done privately between two adults, whether it is between a man and a woman or not, is not a matter for the police. We do not allow homosexuality; we take the idea of sin out of the *Criminal Code*." He will later point out to the media that this bill did not eliminate the sexual crime from society. Homosexuality and pederasty, lesbianism and others would remain prohibited. His successor as Minister of Justice, John Turner, is even more reluctant and denigrates homosexual conduct that is repugnant to most people, which the proposed changes should not encourage.

Analysis of the reception of the bill in the newspapers, both on the side of supporters and opposition to the omnibus bill, shows that homosexuality continues to be condemned as pathological or deviant, as well as sinful. Thus, on the one hand, it may be considered that the treatment of homosexuality is more a matter of medical, psychological or psychiatric expertise than of judicial competence, and thus approve the legislative change or, on the contrary, deplore the fact that legislation that is too permissive, which does not lead to the detention and obligation to provide medical treatment, and thus could lead to a certain standardisation of homosexual practices and encourage their spread. On the side of the Catholic Church and its defenders, as well as the majority of conservatives, homosexuality continues to be condemned as a sin and a sign of moral decadence whose tolerance, however relative, will have a negative influence on youth. In short, while legislative reform partially legalizes homosexual practices, it is far from legitimizing them.

What do the twenty-four women I interviewed in the second half of the 1980s think about their experiences of love and sex with other women during the period 1950 to 1972?

Spontaneously, Expo 67 is more often mentioned by them as a sign of a new era than the omnibus bill. However, when specifically questioned on this point, the majority endorse the common interpretation that the bill is the first step in obtaining rights for homosexuals. For one of them, Régine, "the omnibus bill did a lot, because we had the right to live it, but at home. We had that right, no one could take it away from us." Diane, for her part, feels better protected against accidental intrusion by others into her room, saying that: "If someone comes along, they won't be able to do anything."

Various effects are attributed to the omnibus bill, including a decrease in police harassment. They could no longer bother them or take them away under any pretext, as Gaby, who used to frequent lesbian bars and who was herself arrested as she was leaving a bar frequented by lesbians, tells us. She lived with her girlfriend at the time. The bill did not change society but let us say that it made it freer. "We were going out more freely. We could walk around holding hands without being arrested, because before that, you were holding a woman by the hand, anything, the police could arrest you for vagrancy, make you spend the night in jail. "And, just to be clear, she did spend the night in prison with her girlfriend - the latter, who was a judge's daughter, had obtained a quick release - undergo gynaecological examinations, including being sentenced the next day to psychiatric treatment and not seeing her girlfriend again for a year. They have seen each other in secret sometimes, but it has cooled their relationship.

According to some narrators, lesbians would then have benefited more from the relaxation of police surveillance and intimidation. Indeed, in Montreal, at least, the adoption of the bill will be followed by a brief period characterized by a relative calm in relations with the police and a proliferation of businesses serving a gay clientele and magazines that advertise them.

Only one of my narrators deplores the restriction on the age of consent. Several narrators initially associate the bill with a tolerance in public opinion of homosexuality, without agreeing among themselves to separate the short and long term in this change in mentalities. There is Dédé, for example, who says, "In fact, I had the right to exist, maybe I would be judged by others, but I no longer had the police against me. Before the omnibus bill, we were nothing, we had the right to do nothing, we always had to hide." Diane, for her part, thinks it has had an effect, but in the longer term. "It's just that they recognized that there were gays. Basically, it was useful, but years later. This is a start, but it gave us a certain form of expression. We were less insulted than before, the impacts were not felt immediately, but we are feeling them today."

When asked about the impact of the bill on their own trajectory or their decision to hide or let their lesbianism appear, the narrators are divided. Just over half identify positive effects, mainly in terms of legitimizing their sexual preference in their own eyes. Their sexuality is no longer intrinsically criminalized.

Let's quote Diane again: "At the time, it relieved me. I thought to myself: I don't have a stigma on me, at least it's not as big. That I thought was fun. But it didn't change much in the short term." Some, especially among the youngest, go so far as to dare to defend the bill among their entourage or defend homosexuals by relying on the new law or by taking up the arguments put forward by the bill's supporters, without risking identifying themselves as lesbians. Thus, Carole says: "There were many people who did not really agree with the omnibus bill, they were saying: they will put the sick in the street, they encourage vice. Our answer was: a person's sexuality is private. We were told that our sexuality belonged to us." Fears of insults or arrests are lower, but for the most part the conduct remains unchanged.

As for the other narrators who consider that this has not had a concrete effect on them, it is a little less than half; they consider that the law does not protect them against social stigmatization. The older women, those who have always hidden their lesbianism from almost everyone around them, say they are not affected by the new law because they were not exposed to the eyes of others or police surveillance. At the other pole, a lesbian butch who was already living on the margins of organized crime says she is not affected by the law: "Ah! I was legalizing homosexuality before they legalized it, so it amounts to the same thing. We didn't deal with these things, we were thrown out of the world, out of the loop. It was already done in criminal activities, so it didn't change anything."

To better understand the reactions to the omnibus bill, it is necessary to adopt a perspective that goes beyond the wording of the legal standard and consider all the practices that contribute to making sexual relations between women illegal or illegitimate. In addition to police harassment and the risk of arrest, which is more notorious in the case of homosexuals, but very real for the minority of lesbians who frequented commercial spaces in the downtown area, a risk advertised in newspapers reporting police raids, judicial control is exercised in many ways. These include legislation on the wearing of male clothing, legislation allowing censorship of books and films, the *Law on the Protection of Minors and on Juvenile Delinquency*, to which must be added the image associating lesbians with criminals or the world of crime in the press, including small "yellow" newspapers. More precisely, there are lesbian characteristics whose image brings them closer to male predators and their victims, innocent, deceived, manipulated women.

Despite their imprecise and more often inaccurate knowledge of the law, almost all narrators were confronted with the illegitimacy of the lesbian relationships they lived or wished to live in various ways. It has often happened that the family, work or other environment has made them aware of this, sometimes for protective purposes, but often

to disapprove or threaten them. Thus, Marguerite said: "My mother was all about religion, sin and everything. My father was the law. He didn't condemn me, but he said: my poor little girl... "She was about 35 years old when she told her parents she was a lesbian," my poor little girl, it's outlawed. There's no one defending you for that." A few women have been arrested on the street or following a denunciation whose origin is not always easy to determine, but which aims to end the relationship between two women. For example, for the same Marguerite, the threat of denunciation came from a lover who, because of the pressure this lover was under, wanted to end the relationship and threatened Marguerite with legal action.

For almost one-third of the narrators, when they were minors, the family called the police or threatened to call the police to end the relationship between two women or force their daughter to return to the family home, or to stop going to bars in the downtown area, as in the case of Ginette. She says, "The police had often picked me up in the park. "It was his father who sent the police. "At one point, they got tired of seeing me, they decided I was crazy, they said to my father: if you don't succeed, we will. In fact, they locked me in a mental hospital for three weeks." This shows how the legal or psychiatric grounds were not specified in any detail. Several narrators, particularly among teachers, told us about their fears that they would be charged with incitement to debauchery or hijacking of minors if they had relationships with women under 21 years of age.

The illegitimacy of lesbianism is linked to a range of mechanisms of social exclusion: conviction under the Criminal Code, social representation associating lesbianism with crime, peer pressure based on legal norms and the possible use of the judiciary, police control in public places, various punitive measures and criminal sanctions. Depending on their experience with one or more of these mechanisms, narrators may feel concerned about the legislative change brought about by the omnibus bill. For most of them, however, this bill opens up a space of social tolerance whose positive effects will be felt over the years. By putting an end to the intrinsic criminalization of homosexual conduct, that is, anywhere, anytime, the bill opens a loophole in the unanimous condemnation of homosexuality.

The youngest narrators, those who tend to become more visible to others, are the ones who will most quickly seize this new social space of legitimacy to assert their right to exist, as expressed by Carole, who had to face long police interrogations following accusations from a classmate. According to the latter: "It was a big thing; they couldn't prove anything. You're in front of them and then they call you vicious to shock you. The interrogation methods are like those used if I would have killed someone, it's like I was a criminal from the start. In the old days, we were illegal. It's something you always had to hide. It was tiring. Now you're free compared to that time, you have no idea. It was very closed, very restricted."

While the omnibus bill may not have the legal scope that is sometimes attributed to it, it is not either the first step in a linear path towards social equality for people of all sexual orientations, but it breaks with the traditional system of sexual repression by reframing the criminal provisions regulating sexual relations between people of the same sex and reducing the degree of illegitimacy associated with homosexual conduct and those who engage in it.

For lesbians and gays, the process of gaining social legitimacy can begin. It will be long and arduous. Police and judicial repression will not stop overnight. On the contrary, in the years following the adoption of the omnibus bill, the notion of gross indecency and the narrow definition of privacy will become the issue of open tensions and conflicts between gay and lesbian people and the police. Gross indecency was not removed from the *Criminal Code* until 1987. To conclude, let us add, for lesbians, the articles of the omnibus bill dealing with contraception and abortion, even if they do not concern them directly, one might think, because of their sexual practices, are nevertheless of considerable symbolic importance in terms of recognizing women's physical and sexual autonomy.

Thank you.