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GRADE / DEGREE:	ANNÉE D'OBTENTION / YEAR GRANTED
M.A. (History)	2003
TITRE DE LA THÈSE / TITLE OF THESIS:	PIERRE ELLIOTT TRUDEAU AND BILL C-150. A RATIONAL APPROACH TO HOMOSEXUAL ACTS, 1967-1969

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History

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TITRE DE LA THÈSE - TITLE OF THE THESIS

Pierre Elliott Trudeau and Bill C-150:
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0-612-79331-1

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Acknowledgements

I would like to thank the following people for their gracious support during the writing, research, and editing of this paper: Thesis Supervisor Ruby Heap, Professors Chad Gaffield, Donald Davis, and Toby Gelfand, Senator Laurier Lapierre, former Prime Minister (Hons.) John Napier Turner, Dr. J. Brian Scott, Danielle Charette, and finally, all library personnel at the University of Ottawa, the National Library of Canada, and the Library of Parliament. Special thanks for my wife, Lynn, for always being there when it counted.

Abstract

Pierre Elliott Trudeau and Bill C-150: A Rational Approach to Homosexual Acts, 1967-1969

Stuart Chambers, University of Ottawa, 2002. Thesis Supervisor: R. Heap

The following thesis outlines the historical significance of Bill C-150, the Omnibus Criminal Code Reform Bill. From 1967-69, Canadian law was forever changed when the "omnibus bill," formerly known as Bill C-195, was introduced in December of 1967. The Justice Minister at the time, Pierre Elliott Trudeau, was attempting to modernize the Criminal Code of Canada, but his first attempt—Bill C-195—died on the Order Paper during the 1967-68 Session (the 2nd Session of the 27th Parliament). Reintroduced in December of 1968 (the 1st session of the 28th Parliament), the newly revamped Bill C-150 contained many of the same traits as its predecessor. This time, however, Trudeau had taken over as Prime Minister from Lester B. Pearson and was confident in the new mandate given to him by the Canadian electorate. As a result, he appointed John Napier Turner as his new Justice Minister.

Therefore, what Trudeau and the Liberals were proposing was the modernization of the country's family law. For the purposes of this thesis, the focus will deal strictly with the controversy surrounding the Canadian Criminal Code's liberalization of homosexual acts between consenting adults in private. What was the nature of this controversy? It could have been political suicide when one considers that at the time homosexuality was still considered a disease, that the gay rights movement in Canada was still in its infancy, and that many Canadians still found homosexuality repulsive and

immoral. The main question then arises: How did Bill C-150 become an act of law in such a context? Was Pierre Elliott Trudeau really swimming with or against the current? Was there one particular motive above all others that led to the liberalization of the Criminal Code of Canada, or did several factors lead to the bill's eventual adaptation?

This thesis contends that Trudeau was actually swimming largely with the current, that being the rise of more liberal attitudes toward sexuality. In fact, four sections--the law, psychology, politics, and the media—played a crucial role by adopting a more scientific approach towards homosexuality. “Reason before passion” emerged as a higher truth in all four sections by 1969. The evidence will show that these areas were moving toward democratic rationalism as it applied to sexuality in the 1960s. The judgment of homosexual acts would rely more on bottom up, patient-oriented observations of natural sexuality. Therefore, measurable evidence of deviancy had to exist without hypothetical or emotional conclusions. When it came to political decision-making, the growth and momentum of democratic rationalism allowed Trudeau’s government to pass Bill C-150 by 1969. Trudeau would rely on this tenet of pragmatic functionalism throughout the debate on Bill C-150. However, Trudeau was able to achieve his goal only because a new generation of Canadians followed him with regards to the State’s position on sexual matters. This would lead to the decriminalization of homosexual acts between consenting adults in private.

Introduction

From 1967-69, Canadian law was forever changed when the "omnibus bill," formerly known as Bill C-195, was introduced in December of 1967. The Justice Minister at the time, Pierre Elliott Trudeau, was attempting to modernize the Criminal Code of Canada, but his first attempt—Bill C-195—died on the Order Paper during the 1967-68 Session (the 2nd Session of the 27th Parliament). It had been an assertive move to enter politics on such a controversial note. Trudeau risked his own party's chances at re-election that same year.¹ Reintroduced in December of 1968, the newly revamped Bill C-150 contained many of the same traits as its predecessor. This time, however, Trudeau had taken over as Prime Minister from Lester B. Pearson and was confident in the new mandate given to him by the Canadian electorate. Trudeau was adamant that his vision for legal change would become a reality. To help accomplish this goal, he appointed John Napier Turner as his new Justice Minister.

Therefore, what Trudeau and the Liberals were proposing was the modernization of the country's family laws concerning divorce, abortion, and homosexuality. This thesis will focus on the Canadian Criminal Code's liberalization of homosexual acts between consenting adults in private.

Indeed, the context of the period did not seem very conducive to such a move. The American Psychiatric Association did not strike homosexuality from its Diagnostic and Statistical Manual (DSM) as a pathological disease until 1973.² The United States still criminalized sodomy in most state laws.³ The Stonewall Riots did not occur until the summer of 1969. American gay liberation--namely, the formation of the Gay

Liberation Front (GLF) and the Gay Activists Alliance (GAA)—post-dated Bill C-150.⁴ Canadian organizations such as the Canadian Lesbian and Gay Rights Coalition (CLGRC), Equality for Gays and Lesbians Everywhere (EGALE), and Gays of Ottawa (GO) did not become major forces themselves until the '70s and '80s.⁵ Lastly, a large majority of Canadians still found homosexual behaviour to be repulsive and immoral.

Under these conditions, how was Bill C-150 able to become an act of law? Was Trudeau swimming with or against the current? Was there one particular motive above all others that led to the liberalization of homosexual acts in the Criminal Code of Canada, or did several factors permit the bill's eventual acceptance?

This thesis contends that Trudeau was actually swimming largely with the current, that being the rise of liberal attitudes toward sexuality. In fact, four sections—the law, psychology, politics, and media—played a crucial role in adopting a more scientific approach towards homosexuality. “Reason before passion” truly emerged as a higher truth for all four sections by 1969. The evidence will show that these areas were moving toward democratic rationalism as it applied to sexuality in the 1960s. The judgment of homosexual acts would rely more on bottom up, patient-oriented observations of natural sexuality. Therefore, measurable evidence of deviancy had to exist without hypothetical or emotional conclusions. It is not that rationalism did not exist previously or that the society suddenly rejected morality. The secular and the sacred can exist simultaneously; however, when it came to political decision-making, the growth and momentum of democratic rationalism allowed Trudeau’s government to pass Bill C-150 by 1969. Trudeau would rely on this tenet of pragmatic functionalism throughout the debate on Bill C-150. However, Trudeau was able to achieve his goal only because a new

generation of Canadians followed him with regards to the State's position on sexual matters. This would lead to the decriminalization of homosexual acts between consenting adults in private because large segments of society were also heading in that direction.

The thesis provides a qualitative analysis of the factors that lead to the passage of Bill C-150 and is divided into parts. We will begin with the historiography on homosexuality and how major works influenced the thesis. The British, American, and Canadian social contexts will be examined next. This will be followed by a discussion of Trudeau's views on social justice. We will then examine the House of Commons debates over Bill C-150's merits from 1968-69 as well as the controversy surrounding the bill's passage. Finally, we will discuss the views of major newspapers in both English and French Canada to see how the media shaped the debate.

The primary research consists of five main sources: Debates of the House of Commons, newspaper editorials, periodicals, in particular *Macleans*, *Saturday Night*, and *Canadian Forum*, the important legal case of *Klippert v. The Queen*, and government reports from committees, cabinet meetings, and minutes of proceedings.

Historiography

The field of social history pertaining to homosexuality and gay and lesbian movements is a recent one. Gay Studies is an emerging field, but some important work has already been published. For the purposes of this thesis, it was important first to examine the regulation of homosexuality in order to understand how criminalization of same-sex acts was mostly gendered. In other words, punitive measures against homosexuals were male oriented. In the late 1880s, historian Gary Kinsman noted that Canadian statutes borrowed largely from British law, and categories such as “indecent assault” and “gross indecency” were restricted to men.⁶ Between 1880 and 1930 in Ontario, Canadian historian Steven Maynard reported that 313 cases of sexual “offences” between men; none were found between women.⁷ Attitudes in Germany indicate a similar distaste for male homosexuality. In 1871, the notorious Paragraph 175 stipulated that “a male who indulges in criminally indecent activities with another male or who allows himself to participate in such activities will be punished with jail.”⁸ Sodomy statutes were specifically targeting anal intercourse, and few documented cases of lesbian incarceration exist.⁹ In 1937, attempts were made to include women, but this failed for several reasons. Since women were not in positions of power, they were not seen as a threat, grand lesbian theories were not exalting same-sex acceptance and reform, and women could be more affectionate in public without raising social concerns.¹⁰

The study of homosexuality and class is also imperative in order to gain a historical sense of the treatment of gays as second-class citizens. Jeffrey Weeks’ *Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present* (1977) shows how in late nineteenth-century English working-class youths were featured

predominantly in all the major sexual scandals.¹¹ More recently, in 1994, George Chauncey's *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940*¹² discovered that at least forty percent of all "homosexual" crimes involved boys and that class played a major role in the erotic pecking order among seamen, prisoners, hoboes, and fairies. In 1997, Canadian scholar Steven Maynard argued in "'Horrible Temptations': Sex, Men and Working-Class Male Youth in Urban Ontario, 1890-1935"¹³ that sexual relations for young males were rooted in a distinct moral economy in which working-class boys exchanged sex for basic necessities—food, shelter, money, and companionship. In these often-reciprocal sexual relationships, several youths were given stiff prison sentences for being involved in sexual crimes, such as buggery and gross indecency. Also in 1997, another Canadian historian, Angus McLaren, in *The Trials of Masculinity: Policing Sexual Boundaries, 1870-1930*,¹⁴ depicted the relationship between crime and class in England and North America. Working-class men whose masculinity was challenged resorted to violence against gay males. The defence's strategy was often to invoke the fear of "homosexual advances" as a means of securing an acquittal.

Meanwhile, religious studies aids in the depiction of homosexuality as immoral. Historian John Boswell's seminal work *Christianity, Social Tolerance, and Homosexuality (1980)*¹⁵ challenged the concept of homosexuality as "unnatural" and questioned preconceived biblical notions of sodomy. His later work, *Same-Sex Unions In Pre-Modern Europe (1994)*,¹⁶ contends that same-sex unions may have been accepted as a valid "marriage" in the early Christian era. Edited by historian Arlene Swidler, the collection of *Homosexuality and World Religions (1993)* shows that depending on the

context, world religions initially condemned same-sex behaviour; however, their stances softened due to the influence of gay rights movements in the 1960s and '70s. In modern, secular society, previous assumptions of “unnatural” sexuality were increasingly questioned.

Furthermore, Michel Foucault has played a key role in explaining homosexuality as a social construction and in questioning the effectiveness psychiatry has played in curing “false illnesses.”¹⁷ Foucault used “depsychiatrization” to restore power to the patient.¹⁸ He later debunked the “gay lifestyle” and the concept of deviancy. For him, freedom of sexual choice was paramount to a free society.¹⁹ Vern and Bonnie Bullough, in *Sin, Sickness, and Sanity: A History of Sexual Attitudes, (1977)*,²⁰ condemn past religious scholars for unscientific definitions of natural law and for depicting homosexuality as a sin. They argue that the rational basis for acceptable sexual behaviour should be its direct harm to others, something for which nonprocreative sex had previously been stigmatized. Jeffrey Weeks’ *Sex, Politics, and Society: The Regulation of Sexuality since 1800 (1981)*²¹ best summarizes why homosexuality was viewed negatively: social reactions not only defined, but also progressively constructed the negative connotation of deviance, something that changed with the growth of liberalism.

In the same vein, Jonathan Ned Katz’s *The Invention of Heterosexuality (1995)*²² argues that society could “uninvent” socially constructed myths pertaining to homosexuals just as they had once invented them. Canadian historian Mary Louise Adams also uses a constructivist approach in *The Trouble With Normal: Postwar Youth and the Making of Heterosexuality (1999)*.²³ Her study on Canadian sexuality in the

1940s and '50s concludes that the emphasis on the term “normal sexuality” limited the forms of sexual expression and identity in people’s lives. Sexual regulations for postwar youth then became self-regulating. In a study by Valerie J. Korinek,²⁴ she contends that the heterosexual norm was not “natural” to thousands of Canadian women. Her exploration of *Chatelaine* magazine from the 1950s to the 1970s reveals that heterosexuality was actually repulsive to many women and that the causes of lesbianism were as poorly founded as the cures. Articles on lesbianism were almost non-existent in from the 1920s to the 1940s—largely due to the growth of psychological and medical literature on deviance—but they became widely read by the mid-1960s onward, a sign of lesbianism’s deconstruction as a perverse, hidden sexuality. Lastly, Canadian historians Gary Kinsman and Patrizia Gentile show how the government itself is instrumental in promoting widespread homophobia. Their study, “In the Interests of the State: The Anti-gay, Anti-lesbian National Security Campaign in Canada” (1998), highlights the pre-Trudeau hysteria pertaining to homosexuality and the difficulty of dislodging heterosexual hegemony.

A large contingent of historians has produced important studies in gay and lesbian rights movements. These include Toby Marotta’s *The Politics of Homosexuality* (1981),²⁵ that depicts the first American gay rights groups from the 1950s to the 1970s—Mattachine Society (MS), Gay Liberation Front (GLF), and Gay Activists Alliance (GAA). Of import was also John D’Emilio’s *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970* (1983),²⁶ he and Estelle Freedman’s *Intimate Matters* (1988),²⁷ and Barry D. Adam’s *The Rise of a Gay and Lesbian Movement* (1987).²⁸ More recently, Clendinen and Nagourney’s *Out For*

Good: The Struggle To Build A Gay Rights Movement In America (1999) ²⁹ expands the history of gay rights activism to include those groups who lobbied for AIDS research, most importantly ACT UP and Gay Men's Health Crisis (GMHC). For her part, Miriam Smith's *Lesbian and Gay Rights and Canada: Social Movements and Equality-Seeking, 1971-1995* ³⁰ acknowledges those groups which challenged federal laws in order to obtain legal parity between gays and straights, in particular Gays of Ottawa (GO) and Equality for Gays and Lesbians Everywhere (EGALE), two groups that were formed after the passing of Bill C-150. One group which predated the passing of Bill C-150, The Association for Social Knowledge (ASK), was formed in Vancouver in 1964; however, their legal advisor, Doug Sanders, admitted that (ASK) had little impact on general public opinion because they lacked media coverage and were too modest in their approach. Their mandate, passing on a "gay consciousness," was a prerequisite to gay liberation. ³¹

Evidently, sexologists, biologists, and psychiatrists have also contributed to studies of homosexuality. In 1915, Freud's *On Sexuality: Three Essays on the Theory of Sexuality and other works (1915)* ³² questioned concepts of degeneracy. Although he perceived heterosexuality as the preferred norm, Freud recognized that absolute inverts were unlikely to change their sexual orientation. Likewise, in 1948, Kinsey's *Sexual Behavior in the Human Male* ³³ proposed that sexual behaviour was a continuum that ran from 0-6. One's sexual experiences were in degree (i.e. exclusively heterosexual=0, or exclusively homosexual=6). In the 1950s, Evelyn Hooker equated the psychological health of gay men with that of straight men. ³⁴

The 1950s-1960s saw a polarization within psychiatry with respect to the use of psychology for "curing" homosexuals. There were psychiatrists who supported

reparative therapy and those who attacked their own profession's credibility. Aversion therapy, the ability to change homosexual preferences to heterosexual, was largely embraced by several advocates. Edmund Bergler's *One Thousand Homosexuals: Conspiracy of Silence, or Curing and Deglamorizing Homosexuals? (1959)*³⁵ was typical of the medical literature published during the less paranoid post-McCarthy era. According to Bergler, "curing" homosexuality was achievable with eight months of psychiatric treatment, yet he never distinguished between sexual orientation (based on cognitive preference) and sexual behaviour (based on specific sex acts). Furthermore, any failure to respond to treatment was based on the patient's lack of will. Irving Bieber's *Homosexuality: A Psychoanalytic Study of Male Homosexuals (1962)*³⁶ continued to highlight arrested development in gay males and the dominant mother/absent father cause and effect scenario. R.E.L. Masters' rather sympathetic text, *The Homosexual Revolution (1962)*,³⁷ helped shift attention away from jailing homosexuals to curing them; however, emphasis was still placed on solving the "problem of homosexuality." Heterosexual hegemony was never questioned but assumed. Perhaps no one defended the conversion theory with more conviction than Charles Socarides did. In 1968, in *The Overt Homosexual*,³⁸ he argued that homosexuality was a learned behaviour and that patients could be taught how to overcome their fear of women.

The 1960s also experienced a counter-force within the field of psychiatry, the anti-psychiatry movement, and it was significant in one sense: moral arguments met head on with rational approaches to the "homosexual problem." Judd Marmor's *Sexual Inversion*³⁹ in 1965 examined both Hooker's and Bieber's findings, but he was already beginning to reject the assumption that homosexuality was less natural. In 1968, Karl

Menninger's *The Crime of Punishment*⁴⁰ began a trend toward greater compassion for sexual crimes. In many instances, the author describes how those behind bars for various offences were actually being victimized by society, not the other way around. A more militant stance, however, was taken by Thomas Szasz. His influential work *The Manufacture of Madness (1970)*⁴¹ compared psychiatry to religion. In Szasz's view, sin had simply become disease; psychiatrists were the new priests who medicalized morality. This discovery was emotionally depicted in the autobiographical account by Martin Duberman in *Cures: A Gay Man's Odyssey (1991)*.⁴² By the late 1960s, at the height of the anti-psychiatry movement, Duberman realized that all of his psychiatrists' diagnoses were highly subjective, moralistic, and invalid. His homosexuality was innate, immutable, and "natural" to him.

Other psychiatrists, such as Ronald Bayer, depicted the division in the medical field, particularly between conservatives attempting aversion therapy in the 1960s and liberals rejecting the concept of homosexuality as a disease by the 1970s. In *Homosexuality and American Psychiatry: The Politics of Diagnosis (1987)*,⁴³ Bayer describes the history of the American Psychiatric Association (APA) and the deletion of homosexuality from its diagnostic and statistical manual (DSM) as pathological. In addition, Richard A. Isay's *Being Homosexual: Gay Men and Their Development (1989)*⁴⁴ uncovered the inner feelings of gay males. Homoerotic fantasies, something relatively unnatural to heterosexuals, was natural and normal for gays. Prior to gay liberation, homosexual men were expected to feel ashamed of such a condition. Isay's follow-up, *Becoming Gay: The Journey To Self-Acceptance (1996)*,⁴⁵ recognized the inaccuracy of the disease model of the 1960s as socially constructed through cultural prejudice,

something that had shaped the diagnosis of his own conservative colleagues in the field of psychiatry.

Sexual Politics and Homosexuality in the United States and Britain (1940s-1960s)

Leading up to the 1940s, American sexual politics was dominated by one researcher, Alfred Kinsey. He was in sync with growing liberal attitudes towards sexuality and had a deep impact on the nature of the debate; as a result, Pandora's Box would finally be opened for public view. His book *Sexual Behavior in the Human Male*, published in 1948, overturned centuries of religious taboos and Victorian morality, bringing sex into the forefront of public debate, and Kinsey himself became an overnight sensation. While his book sold 200,000 copies in the first two months, Kinsey was hailed by the New York Times, he became the theme of hit songs, and his name was integrated into popular culture.⁴⁶ Intimate matters were now a literary spectacle, and the sin that "dare not speak its name" was given its due. Kinsey showed that Americans as a whole participated in "unnatural" sexual acts. Almost universal in nature, he found that 92% of the total American population engaged in masturbation.⁴⁷ What made his book controversial, however, was the emphasis on homosexual acts between men. Even more worrisome for middle-class America was the fact that at least 37% of the male population had some homosexual experience between the beginning of adolescence and old age.⁴⁸ Varying demographics did not decrease the incidence. Urban or rural, town or city, state school or private institution—the incidence data was more or less consistent.⁴⁹ Kinsey's 10% figure was more commonly coined for homosexual exclusivity (rating of 5-6 on the continuum) because he was referring to the white male population, something that was abrasive to WASP values.⁵⁰ More precisely, 8% were exclusive (rated 6) for three years between ages 16-55, and 4% were exclusive for life (rating 6).⁵¹

Kinsey's scientific data was then examined for its social implications. What is most interesting is how laws were ineffective as a deterrent. Despite the severity of the potential penalties, homosexuality existed on a large scale.⁵² More shocking was the projected cost of future arrests. If Kinsey's statistics were to be taken at face value, almost 40% of the male population would have to be incarcerated.⁵³ Lastly, Kinsey dismissed any suggestion that mass "isolation" of the problem could work, either through the help of psychiatric institutions or through imprisonment. He cleverly separated church and state in his response, strongly hinting that the cost of mass incarceration for sex crimes was measurable. "Whether such a program is morally desirable is a matter on which a scientist is not qualified to pass judgment; but whether such a program is physically feasible is a matter for scientific determination."⁵⁴

Kinsey's work was significant for various reasons. He used science to vie with religion over intimate matters. Second, his results supported secularism, a progressively rational philosophy that struck at the heart of community morality. Third, he suggested that laws could be reshaped according to scientific data. Fourth, and most importantly, Kinsey differentiated between proscribed sexual behaviour—a form of Victorian morality—and actual behaviour.⁵⁵ He was rejecting ideal nature—a social construct—for real nature, positive law over natural law. His secular stance in such matters as same-sex behaviour truly earned him contempt in religious circles. In fact, American evangelist Billy Graham would accuse Kinsey "of doing more to undermine morality than any other American..."⁵⁶ His observation techniques and personal interviews provided a marked transition away from the Victorian morality of the early twentieth century toward a more measurable, empathetic approach to homosexual acts between

consenting adults. As we shall see, Kinsey's liberal defense of homosexuality would have a strong influence on Canadian sexual politics by the 1960s.

During the 1950s and 1960s, American society was very polarized with regards to sexual politics. The Second World War was a time of suspicion, particularly against fascism, dictatorship, and communism. During the Cold War, the federal government sought to end Communism, track down subversives, and identify scapegoats.⁵⁷ The paranoia of Republican leaders reached an all-time high when Joseph McCarthy charged that the Department of State was riddled with Communists. The goal of McCarthyism and the House of Un-American Activities Committee was to rid every government agency of all left-wing threats and those lacking moral fiber, in particular sex perverts.⁵⁸ Both President Eisenhower and FBI director J. Edgar Hoover also played the subversive card.⁵⁹ Prejudice was no more apparent than in the 1950s-1960s during the Korean and Vietnam Wars. Homosexual expulsions declined in times of need. Once conflicts diminished, discharges rose dramatically.⁶⁰ Soldiers, then, were deemed unfit if suspected of homosexual tendencies, a trait that would lower the morale of troops. Psychiatrists were used to identify such anomalies before a possible subversive entered the rank and file of the U.S. army.⁶¹ During the 1950s and 1960s, homosexual "purges" escalated. Yearly discharges doubled in the 1950s and rose another fifty percent in the early 1960s. Even homosexual "tendencies" became grounds for separation from service.

⁶²

To counter such extreme homophobia, several significant social changes occurred that contributed to a more liberal American society. Demographic change was rapid. The number of births jumped nineteen percent from 1945-46.⁶³ Between 1946-1947, it

jumped another twelve percent.⁶⁴ In fact, more babies were born between 1948-1953 than in the previous thirty years.⁶⁵ Likewise, the country sustained a period of growth between 1945-1973 that made the United States richer than any country had ever been previously.⁶⁶

Therefore, affluence plus demographics meant a myriad of possibilities, and credentialism became the surest method of avoiding one's parents' experiences of the Depression. Russian's surprise entry into the space race with Sputnik in 1957 meant more public funds for higher education. Spending skyrocketed from \$742.1 million in 1945 to \$6.9 billion by 1965.⁶⁷ By 1960, America was the first society in history to have more college students than farmers.⁶⁸ Between 1956 and 1967, undergraduate and graduate degrees doubled.⁶⁹ Most importantly, the gender gap was falling, and women were the rising gender. For example, those between eighteen and twenty-four enrolling in college increased by forty-seven percent between 1950 and 1960 and then by a staggering 168 percent from 1960 to 1970⁷⁰; in contrast, the number of men enrolled at the same age rose by only twenty-one percent from 1950 to 1960 and another 145 percent by 1970.⁷¹ Overall, American youth were not just a group indulging in the pursuit of leisure. The middle class was receiving increasing standards of higher education that would lead them down a more rational path.

Rationalism also took hold within various political arenas. As something that could be traced to the Enlightenment, reason was the new faith of the democrats. Todd Gitlin explains: “[Liberals] believed that society could be understood and, once understood, rationally steered through responsible action... Leaders were to embody reason by standing for moderation.”⁷² The citizens themselves began to acquire a certain

ethos that personified the '60s: "thinking without limits."⁷³ It was a time of disgust at the "perversion of reason" and the "flight from intellect."⁷⁴ Student revolutions began as a way to separate themselves from the older generation that had sold out. To them, outmoded political institutions had become inaccessible; in fact, they were acting against democratic interests. Many young Americans saw Vietnam as the ultimate in state savagery.⁷⁵ What changed by the late '60s was the idea that the source of political authority was not the state, the police, or even the Pope. The student movement was examining its personal conscience, allowing it to dictate moral and ethical decisions.⁷⁶ What revolt in America could not accomplish, an amalgam of rational reform efforts managed to recognize various injustices towards homosexuals. Those who believed in the dream of participatory democracy and criticized the "machine" within managerial liberalism soon realized that pragmatic functionalism within government would achieve the virtuous middle of two systems. However, it would take more than students to change the minds of those in the gradualist mode of management politics. Expert medical opinion in sexology would be required.

In the meantime, change was also in the air in Great Britain. In 1955, the British Medical Association (BMA) delivered an influential report on sexuality and law: *A Memorandum of Evidence prepared by a special committee of the Council of the British Medical Association (CBMA) for submission to the Departmental Committee on Homosexuality and Prostitution*. Instead of using the intimidation tactics of McCarthyism, the British had decided to take "a more realistic approach to the subject."

⁷⁷ Homosexuality was essentially perceived as a social rather than a theological discussion, and sympathy and understanding became the focus of the study.⁷⁸ The report

felt that the laws against homosexual acts needed to be reassessed for four reasons: 1) the present law was hypocritical, 2) increasing jail sentences was problematic, 3) innate homosexual preference was an increasing reality, and 4) same-sex behaviour did not detrimentally affect the public order.

The BMA began to realize that it had a duty to point out any flaws in the legal system pertaining to homosexuality. One of the association's contributing committees, the Church of England Moral Welfare Council (CEMWC), discussed the moral dilemma created by the hetero/homo sexual hierarchy. In its view:

it is hard to deny the logic of the practising invert that he should at least receive treatment commensurate with the *proportionate* gravity of his offence. He contends, with some reason, that his private practices with consenting adults are harmless compared with the activities of the adulterer and the fornicator... [W]e would at the same time suggest that a thoroughgoing review is demanded of the principles according to which certain sexual acts are singled out for definition as legal 'offences,' while others, equally harmful to society are ignored.⁷⁹

Furthermore, the issue contained an inherent gender bias, since homosexual practices between women were not illegal, "except of course when they occur[red] in public," and since "they have presented no social problem."⁸⁰ Other injustices were questioned. To try to secure convictions, the law was seen as counterproductive. Police would have to pursue sexual contacts that occur in private or rely on informers.⁸¹ Moreover, the law relied on homosexuals' fear of prison, making them easy targets for blackmail.⁸² Consequently, to avoid detection, the "criminal" activity would most likely be driven underground in places where police arrested such persons. Thus, the law could actually be contributing to the behaviours that it meant to prohibit.⁸³

Initially, punitive prison measures were seen as inconsistent or ineffective. The special committee of the CBMA felt that this was due to the bias of non-experts:

There is, of course, so much variety of public opinion on the subject of homosexuality that it is bound to be reflected in the attitude of those who deal with homosexual offenders, and this may account for the varying degrees of severity with which offenders are punished. The apparent disproportion of sentences is sometimes greatly disturbing, especially to the medical expert who has full knowledge of a given offender.⁸⁴

Prison life would also segregate the sexes en masse where “homosexuals often find considerable opportunity in prison to exercise their homosexual activity.”⁸⁵ The policy of prison segregation was also undesirable for psycho-social reasons: “It would place a stigma on homosexual offenders which might only confirm them in their resentment against society.”⁸⁶ This also proved to be unpractical in economic terms because “time and money required for segregation could more profitably be devoted to the treatment of other and more responsive groups of prisoners.”⁸⁷ In fact, the committee proposed a compromise that would alleviate prison overpopulation. For those who could respond to treatment, regional observation centres and special teams could be used for more useful treatment; for the incorrigible (those who threatened the public order), indefinite institutionalization was a better remedy.⁸⁸

In addition, the innateness of homosexuality began to be seen as natural to the individual. Doctors testified that their patients exhibited homosexual tendencies that “appear to be so fixed that they seem to be inborn.”⁸⁹ Stated the CEMWC: “The thought of physical intercourse with a member of the opposite sex may be repulsive to [homosexuals]... The essential homosexual person often argues that as he is ‘made that way,’ he is not responsible for his condition and should not be punished for his actions.”⁹⁰ Overall, the special committee of the CBMA went to great lengths to separate innate from acquired homosexuality in the hopes of curing the latter. This dichotomous etiology was poorly supported by the evidence. The report admitted that “it is difficult and often

impossible to diagnose to which of these categories [essential versus acquired] an individual belongs.”⁹¹

According to the special committee of the CBMA, any so-called threat to the public order was questionable in several circumstances. A balance needed to be found between individual and community rights to prevent further destabilization of the state. In other words, the committee was obligated to weigh interests and was quick to distinguish between the public and private spheres of morality. “Mutual masturbation in private would not be considered contrary to public order... but when it is carried on in public places it becomes offensive to social decency. Homosexual practices that are anti-social and impinge on public order include soliciting, importuning, and indecent behaviour generally. When such acts... take place in public laboratories or at badly lit street corners they must obviously merit public condemnation.”⁹² Although the community morale was thought to be jeopardized by increasing tolerance, intolerance was actually viewed as a direct threat to families. If a man was advised to marry in order to “cure” homosexual tendencies, such unethical treatment could lead a to future divorce with no thought given to the other marital partner.⁹³ Three final recommendations were made clear in order to resolve the dilemma between community and individual rights. Homosexual acts between consenting adults over the age of twenty-one would be made legal, the law would still protect against the seduction of boys under the age of twenty-one by adults, and homosexual activities offensive to the public order would remain intact.⁹⁴

In 1963, the Wolfenden Report, under the chairmanship of Sir John Wolfenden, went even further than the BMA’s report a decade earlier. According to the Trudeau Liberal government’s own admission within the House of Commons, it relied heavily on

the Wolfenden Report for its own sexual policies.⁹⁵ Under pressure once again from the Church of England and its Moral Welfare Council, the British government addressed once again the “homosexual problem.” By creating a panel of experts from hundreds of professional and public bodies, the information attained on homosexuality was extremely comprehensive. According to the Wolfenden Report’s own research, sexual behaviour within the British sphere of influence--England and Wales between 1931 and 1955--still had moral crusaders worried. Every category of homosexual offence—buggery (anal intercourse), indecent assaults, and gross indecency—had increased 1000 percent on average between 1931-1955 (see appendix 1).⁹⁶ In that same period, the total number of persons proceeded against for criminal charges increased 650 percent on average for the same crimes (see appendix 1).⁹⁷ Although these were believed to be signs of moral decline and a threat to post-war heterosexual family relations,⁹⁸ the ability to curb such behaviour would prove to be an impossible task.

There was simply no way to stop the sheer number of “illegal” acts that had been worrying English society. Using the figures for England and Wales, just the age bracket of 21-30 possessed a staggering ratio of criminal acts to known indictable homosexual crimes: 30,000 to 1.⁹⁹ A gender bias still existed well into the 1960s in the British Isles. Buggery (anal intercourse) itself received a maximum life sentence, an indication of the disgust by males for homosexual behaviour.¹⁰⁰ It was justified by judicial and police witnesses who claimed that these “types” had poorer personalities, tended to be more anti-social, and inflicted more physical harm.¹⁰¹ Indecent assaults on a male by a male came with a maximum ten-year sentence while females received but two year maximums.¹⁰² For the same offence in Scotland, it was a mere three months for females.

¹⁰³ In terms of efficacy, it was not possible to jail such people indefinitely. It resulted in the clogging up of court time, the squandering of enormous sums of tax dollars, and impractical use of police resources. Purely by extrapolation, England and Scotland would eventually run into a judicial crisis if matters were not resolved. Coupled with the reality that the Mattachine Society's militancy was on the rise in the United States, the "homosexual problem" was not going away.

The report was clearly scientific in tone. Each concept pertaining to homosexuality was examined for its accuracy and meaning. A distinction between "homosexual offences" and "homosexuality" was made. Since homosexuality was defined as a "'sexual propensity [preference] for persons of one's own sex,' this orientation or condition cannot, in and of itself, be defined as a crime. Only the impact of the sexual behaviour on the community could come under the purview of the criminal code."¹⁰⁴ The committee also rejected the existence of only two sexualities, and it accepted Kinsey's idea of a continuum for two reasons. First, it prevented the assumption that one individual is somehow separate or different from the rest of mankind.¹⁰⁵ This prevented any sexual hierarchy as a point of origin. Consequently, "abnormal" sexualities could not be judged less valid than the heterosexual norm. With the committee's new rationale, all sexual variations were equal under the law. More importantly, a continuum of sexual propensity tends to bring into question the need to cure one's sexual tendencies. Both latent homosexual and heterosexual preferences can exist in degrees without any degenerative label; unnatural sexual acts were simply a misnomer.¹⁰⁶

The disease model was also attacked for its lack of consensus. The Wolfenden committee rejected the notion that homosexuality was a pathology. In fact, the committee had found no significant evidence to contradict Freud's conclusions fifty years previous: "homosexuality cannot legitimately be regarded as a disease, because in many cases it is the only symptom and is compatible with full mental health in other respects."¹⁰⁷ Their medical evidence did find, however, that male homosexuals formed a small fraction of doctor's patients, an equally small proportion of psychiatrists' patients, and rarely were doctors consulted about their condition.¹⁰⁸ It was the perception of disease that plagued gays, not any inherent pathology. Homosexuality then was not necessarily abnormal; in fact, social prejudice was a more likely root cause of any psychosis: "It has been suggested to us that associated psychiatric abnormalities are less prominent, or even absent, in countries where the homosexual is regarded with more tolerance."¹⁰⁹ Also, the existence of a demonstrable physical pathology was rejected since the evidence was inconclusive. The committee made a clear distinction between pathology and deviation in basic human traits: "[A] genetic predisposition would not necessarily amount to a pathological condition, since it may be no more than a natural biological variation comparable with variations in stature, hair pigmentation, handedness and so on."¹¹⁰ Finally, no single etiology explained homosexual relations. Even seduction was not accepted as a cause since it and other factors "have all been observed to occur in persons who become entirely heterosexual in their disposition."¹¹¹ Overall, expert witnesses could not come to any consensus. Psychiatrists saw homosexuality as arrested development, while essentialists felt it was a natural deviation. Still, others regarded it as a "universal potentiality which can develop in response to a variety of factors."¹¹²

At the end, the Report presented two recommendations similar to those of the BMA's. Homosexual behaviour between consenting adults in private should no longer be a criminal offense, and questions relating to "consent" and "private" should be decided by the same criteria which applied to heterosexual acts between adults. Witnesses had to present concrete evidence that same-sex behaviour would only be punishable by the state if they fell into three categories: 1) to preserve public order and decency, 2) to protect the citizen against what is offensive or injurious, and 3) to provide sufficient safeguards against exploitation and corruption of others, particularly the vulnerable, young, weak, inexperienced, or dependent.¹¹³ The fear that homosexual acts were a threat to society's moral health and that civilizations would be destroyed due to moral decay was rejected: "We have found no evidence to support this view, and we cannot feel it right to frame the laws which should govern this country in the present age by reference to hypothetical explanations of history of other peoples in ages distant in time and different in circumstances from our own."¹¹⁴ Secondly, that one group was disgusted by homosexual acts was of secondary importance compared to the issue of civil liberties. "Many people feel this revulsion... But moral conviction or instinctive feeling, however strong, is not a valid basis for overriding the individual's privacy and for bringing within the ambit of the criminal law private sexual behaviour of this kind."¹¹⁵ Adults simply had to monitor their own adult decisions. In the committee's words:

To say this is not to condone or encourage private immorality. On the contrary, to emphasize the personal and private nature of moral or immoral conduct is to emphasize the personal and private responsibility of the individual for his own actions, and that is a responsibility which a mature agent can properly be expected to carry for himself without the threat of punishment from the law.¹¹⁶

In fact, the committee went out of its way to ensure that any detrimental effects on families and youth be minimized. Although homosexual acts between consenting adults in private was to be decriminalized, “[r]ape, assault, seduction, and all other overt aggressions making use of homosexuality remaine[ed] crimes as before.”¹¹⁷ The Wolfenden committee wanted to retain the strong punitive measures for repeat offenders targeting youths or those causing serious harm to adults.¹¹⁸ Decriminalization would also discourage homosexuals from marrying out of conformity, which would result in an inevitable disaster for families in the form of marriage breakdown.¹¹⁹ The fear that the decriminalization of buggery would lead to increases in man-boy liaisons was also seen as groundless. Ironically, the present law was actually a contributing factor towards pedophilia:

[W]ith the law as it is, there may be some men who would prefer an adult partner but who at present turn their attention to boys because they consider that this course is less likely to lay them open to prosecution or to blackmail than if they sought other adults as partners. If the law were changed in the way we suggest, it is at least possible that such men would prefer to seek relations with older persons which would not render them liable to prosecution... [I]t would be more likely that such a change in the law would protect boys rather than endanger them.¹²⁰

To sum up, the present British law was unenforceable, unconstitutional, counterproductive to the common good, and failed to act as a deterrent. The Wolfenden Report, if received by the British government, could have one of two possible outcomes: the law may fortify public opinion, thus serving as a model for community standards, or the law could follow public opinion so that it can count on the support of the community as a whole.¹²¹ In view the Report’s evidence, it was presenting a secular approach to homosexuality and accepted these liberal findings as indicative of a more rational, modern society. In just four years, it would have a measurable impact on British law, as

it led to the passing of the *Sexual Offences Act* in 1967 and the decriminalization of same-sex acts between adults in private.¹²² The Wolfenden Report's rational, libertarian concepts would not be lost on Pierre Elliott Trudeau. As we shall see, Trudeau's government will consider carefully the Wolfenden Report's findings when dealing with the issue of homosexuality. In fact, Bill C-150 appears as a derivative of its British cousin. Therefore, the increased secularization within political, medical, social, educational, and legal discourses in both Britain and the United States were slowly steering Trudeau toward the rhetoric of a Just Society.

Canada's Socio-Sexual Revolution (1940s-1960s)

As in England and the United States, there were concerns about the growing “homosexual problem” in Canada. During the 1940s and 1950s, the Canadian government used American psychological tests to determine one’s potentiality for homosexual tendencies.¹²³ Furthermore, several events during the 1950s and 1960s sparked further debate pertaining to the “homosexual menace.” During the Korean War (1952), the *Immigration Act* prevented for the first time homosexuals from entering the country.¹²⁴ Fears rose over whether Canadians working in Russia could be blackmailed by the KGB for being homosexual.¹²⁵ This apprehension was compounded by the Leo Mantha case. As the last person hanged in British Columbia in 1959, Mantha had killed his estranged boyfriend, Aaron Jenkins, on the H.M.C.S. Naden naval base in Esquimalt, British Columbia. This murder sparked greater fears of homosexuals as security threats.¹²⁶ As the Cold War progressed, the federal civil service initiated homosexual screening programs. Monitored throughout the 1960s in the Ottawa area, the percentage of suspected and confirmed homosexuals rose by 900 percent.¹²⁷ By 1961, an RCMP paper recognized that the “homosexual community [was] much larger than had been anticipated.”¹²⁸ One thing was certain: Whoever threatened the stability of the State was to be kept in check.

The target of the federal government’s and RCMP’s “witch hunts” was almost exclusively men. Men held most of the security positions in the federal civil and public service, so emphasis on proper masculine behaviour was more pronounced.¹²⁹ The Royal Commission on the Civil Service in 1908 and the Civil Service Act of 1918 had restricted women to the lowest level of the service. Employment then and subsequent

security threats would be shaped along gender lines.¹³⁰ Gendered behaviour then would become more explicit. Women were expected to abide by dress codes and engaging in “feminized” working roles (i.e. typists, clerks, and secretaries), thus enforcing the code of heterosexual femininity.¹³¹ The gender lines were clear. Masculinity stood for power, professionalism, and bureaucratic rationality; in contrast, femininity and homosexuality threatened to subvert this hierarchical relationship with their inherent “subjective eroticism.”¹³²

Canada was also a nation heading toward liberalism and an altered sense of the word family. In 1941, the divorce rate tripled from 56.2 divorces per 100,000 married (fifteen years of age or older) to 131.9 in 1946. From 1951 to 1968, it continued to rise steadily from 88.9 to 124.3 per 100,000.¹³³ The status of working women also altered gender roles. In the early 1940s, only one in twenty women worked outside the home, but by 1951, the figure rose to one in ten; by 1961, to one in five.¹³⁴ If compared to all women of paid employment, the presence of married women rose from 12.7 percent in 1941, to 30 percent in 1951, to almost 50 percent by 1961.¹³⁵ Therefore, the concept of conformity--gender role or sexual--was slowly diminishing.

Socio-sexual changes were never more radical than in French Canada. Prior to 1960, a large section of Quebec culture shared a similar conservative credo with most maturing industrialized nations. During the reign of Duplessis from the 1930s to the 1950s in Quebec politics, religious, rural, conservative mores were safeguarded and valued. In the 1950s, virtually the entire French-speaking population of Montreal—700,000 of Montreal’s 1.4 million citizens attended mass along with 43,000 nuns and more clergymen per capita than any other areas on the planet.¹³⁶ Catholic schools were

tax-supported, and Catholic committees--run by the Catholic bishops-- controlled the curriculum. ¹³⁷ In other words, the Church and its priests were the centre of francophone life. As Conrad Black writes, "The Church was the supreme conservatory of the French language and the greatest guarantor of social order, the font of almost all social and medical services." ¹³⁸ Thus, the authority from community to the Church to the curé to politicians was crucial in maintaining a quasi-autocratic system. This worked under the tight control of one man: Maurice Duplessis, "the chief" (le chef). However, the province soon adopted a more secular position.

From 1941-1961, the rural population dropped in half (one million to half a million); whereas, the urban population doubled within the same time period. ¹³⁹ According to the Canadian census, by 1941, only 25.2% of les Québécois still lived on farms, and by 1949, the province was overwhelmingly urbanized and industrialized. ¹⁴⁰ By 1960, however, a marked transition occurred. As Trudeau emphatically states: "[E]verything became possible in Quebec, even revolution. A whole generation was free at last to apply all its creative energies to bringing this backward province into modern times. All it needed was daring, intelligence and hard work." ¹⁴¹ The desire for sexual freedom was most apparent between the post-war era of the 1940s to the Quiet Revolution of the 1960s. In this period, birth rates took a dramatic decline. Live births per 1 000 population were thirty-one in 1946. By 1956, the rate dropped to twenty-six, and by 1966, the rate fell to just nineteen per 1 000 live population. ¹⁴² Attention, therefore, was slowly turning away from sex for procreative purposes.

As a further development, Jean Lesage had taken over from Duplessis' "autocratic" rule, and the result catapulted Quebec into the modern era at an

unprecedented rate of social change. In 1960, fifty-seven percent of young Québécois between ages thirteen to sixteen were in school; this rose to eighty percent by 1966.¹⁴³ As another sign of modernity, Lesage implemented the Ministry of Education in 1964, and his reforms led to post-secondary institutions such as céjeps and the Université du Québec—the first real institution of higher learning not based on the Catholic Church. This democratization of the school system sent attendance rates soaring.¹⁴⁴ Taras Grescoe aptly describes the transition as if Quebec had “been hit by an unreported neutron bomb—one that acted on the soul rather than the flesh.”¹⁴⁵ The province’s leading demographer, Jacques Henepin, explains the cause of such a dramatic change in socio-cultural values. “I think it’s because we discovered what freedom was, especially in relation to the bishops and the clergy.”¹⁴⁶ Trudeau would make reference to this as a new clericalism. According to Trudeau, “For our mother the Holy church, we’re substituting our mother the Holy Nation.”¹⁴⁷ Observing this dichotomy, Trudeau biographer George Radwanski saw the Asbestos strike as a battle between blind deference versus secular defiance. He states: “The illusion, fostered by the provincial government and the hierarchy of the Catholic Church, was that Quebec remained a rural, agrarian society whose survival depended on inward-looking nationalism, and unquestioning deference to established authority...”¹⁴⁸

The Catholic Church, once the fabric that held together French society, was now tearing at the seams. Between 1951-1961, Quebec had barely 500 Catholics per priest, the lowest in the Western world.¹⁴⁹ Religious recruitment fell drastically in the period of the Trudeau era. The number of nuns, for instance, dropped from 46,933 in 1961 to 26,786 in 1979 while secular priests and male regular clergy declined 50 and 75 percent

respectively.¹⁵⁰ The Church, therefore, had no choice but to function in a more rational, pluralistic society. As *Saturday Night* magazine noted in 1968, “Secular institutes and spiritual elements [were] breathing new life into the institutions of the world... The Church will henceforth be fully mobile... It will be more and more open to change in its liturgy, its movements, its encounters, its dialogues... We must no longer look for an omnipresent institution, but for a spirit always present in all expressions of life.”¹⁵¹ Therefore, both social and sexual changes in Canada as a whole and particularly Quebec set the stage for increasingly liberal attitudes towards homosexuality within the law.

Decriminalizing Homosexuality: Klippert v. The Queen

Well documented in the Debates of the House of Commons from 1967-69, the Supreme Court Case of Klippert v. The Queen was significant for three reasons. It was an important demonstration of conservative social injustice, it changed forever politicians' views on homosexuality as unnatural, and it highlighted the heterosexism of Canadian society during the 1960s. The appellant in the case, Everett George Klippert, was appealing to the Supreme Court of Canada on the ground that he should not be held indefinitely as a dangerous sexual offender. No one in Canada had been convicted of an act of buggery between consenting adults since 1953.¹⁵² Residing in the North West Territories, Klippert was charged with eighteen counts of gross indecency in 1960 and sentenced to four years, the sentences to run concurrently. Again in 1965, Klippert was convicted of four counts of gross indecency and received a three year concurrent sentence. His troubles began when a notice of application was filed to have the appellant declared a "dangerous sexual offender," carrying with it an indefinite sentence.¹⁵³ Two psychiatrists testified on behalf of Klippert. The circumstances of the case appeared straightforward. Same-sex acts occurred between consenting adults in private, no one was injured, and no one was likely to suffer harm in the future.¹⁵⁴

How, then, could Klippert lose? Two questions were pertinent to the outcome: 1) whether there was evidence that he was a person who had shown a failure to control his sexual impulses, and 2) whether the evidence could support the conclusion that he had shown such a failure and was likely to cause injury, pain or other evil to any person, through failure in the future to control his sexual impulses or was likely to commit a

further sexual offence.¹⁵⁵ The last section, “was likely to commit a further sexual offence,” would be of particular importance in one of Canada’s most controversial cases surrounding dangerous sexual offenders. Brian Crane, Klippert’s counsel, claimed that his client was exercising his individual rights as a sexual human being, according to his own conscience, while harming no one else nor putting the community in any danger. This, however, would do Klippert little justice in the end. Similar to European investigations discovered in the Wolfenden Report, the R.C.M.P. was only asked to identify Klippert as a repeat offender, not to provide the Crown with any particular details as to the type of sexual acts performed. This included both the 1960 and 1965 cases.¹⁵⁶

The psychiatric testimony was more indicative of the anti-psychiatry movement at the time. Dr. Ronald Griffith McKerracher’s and Dr. Ian McLaren McDonald’s approach was not to interrogate the patient for his “abnormal” behaviour. They argued that Klippert’s homosexual preference was normal (to him). Dr. McKerracher described Klippert’s innate sexual preference, stating that he “found the thought of heterosexual conduct abhorrent” and had “never had heterosexual relations.”¹⁵⁷ The defendant’s sexual drive was not inhibited, and he would have difficulty repressing it in the future. The defense emphasized what was meant by “not inhibited.” Stated McKerracher: “A drive is a desire, to inhibit is to refuse to follow the desire. It is like a heterosexual drive—most people do not inhibit their heterosexual drives, they follow their drives, the impulse is a drive to seek heterosexual relief.”¹⁵⁸ McKerracher then clarified that it was analogous to heterosexual drives where some men sought outlets for that drive, some

behaving violently, and some not. McKerracher was adamant about one point: “I do not feel the accused showed any evidence that he would behave in a violent fashion.”¹⁵⁹

Dr. Ian McLaren McDonald followed with his testimony. His statements were in line with the findings of Kinsey in the 1940s, of sexual researcher Evelyn Hooker in the 1950s, and of the Wolfenden Report in the 1960s: the unnatural was becoming seemingly more natural. Stated Dr. McDonald: “[Klippert] said that he had no desire to partake in heterosexual activity. He said this filled him with revulsion, as I believe his words were ‘some people are revolted at the idea of having heterosexual relations.’”¹⁶⁰ Dr. McDonald clarified any misunderstanding that Klippert would change. He testified that Klippert was always careful to ascertain if the person he approached was gay, and if he was not, he did not pursue the subject.¹⁶¹ Therefore, he was primarily a homosexual, was unlikely to refrain from his past actions, but posed no threat to injure or coerce others. Klippert was not going to seek out youthful partners but would continue to seek out consenting adults.¹⁶²

In dissenting from the majority guilty verdict, Justice Cartwright and Hall supported the appellant’s lawyer, B.A. Crane, by staying with the evidence. There was nothing to suggest that the defendant would commit violence, seduce minors, or commit any other type of sexual “crime” except the *one* that came naturally to him. However, according to the law, the term “dangerous sexual offender” depended on a fixed desire and the likelihood of acting on it, not just its hypothetical future implications.¹⁶³ Cartwright argued that it came down to the literal intent of the law versus the context:

The intent and object of those sections in the *Criminal Code* which deal with dangerous sexual offenders is to protect persons from becoming the victims of those whose failure to control their sexual impulses renders them a source of danger. To construe the definition as compelling the

Court to impose a sentence led by the Crown not to be a source of danger would be to give it an effect inconsistent with the intent or object of the [law].¹⁶⁴

For Cartwright, the essence of the words was significant, not the literal interpretation. Context and meaning must be analyzed so that justice can prevail. In other words, the concept of “is likely to commit a further sexual offence” really meant “is likely to commit a further sexual offence *involving an element of danger to another person*” [emphasis mine].¹⁶⁵

Cartwright further argued that people's perceptions of natural law (moralism) should not interfere with the conscience of the individual. In his words: “However loathsome, conduct of the sort mentioned may appear to all *normal* persons [emphasis mine], I think it improbable that Parliament should have intended such a result.”¹⁶⁶ Furthermore, Cartwright understood the economic consequences of such a law for penitentiaries, something the Wolfenden Report had made all too clear. “[N]o one, I think, would quarrel with the suggestion that it would bring about serious overcrowding.”¹⁶⁷ Cartwright thus felt that the law was unconstitutional and should be repealed if it was going to be used inconsistently, ignored all reasonable doubt, and failed to confront the real issue of social justice for homosexuals.¹⁶⁸

However, the defendant's testimony plus Cartwright's and Hall's dissenting voices did not satisfy the court's literal interpretation of the law for “deviant” sexual offenders. Justices Fauteux, Judson, and Spence refused to rewrite the law; they were there to interpret and apply punitive measures. Speaking for the majority judgment, Fauteux gave the term “dangerous sexual offender” a sweeping interpretation. For the majority justices, Klippert did break specific provisions of the law: he failed to control

his sexual impulses and was likely to commit further sexual offences of the same kind.¹⁶⁹ The justices ignored the psychiatric testimony that Klippert's sexual impulses were as natural as heterosexual desires, and they even agreed that he was not violent or likely to be.¹⁷⁰ However, two points of contention remained. Firstly, violence is not always a criterion for dangerous sexual offenders. Listed were examples of non-violent crimes: intercourse under the age of consent with a female, buggery, gross indecency, or bestiality. Secondly, the initial tenets of the law were decided by what Parliament meant by "dangerous sexual offender." The majority did not feel that legislative power was in their jurisdiction; it was not their duty to override the function of Parliament.¹⁷¹ In Karl Menninger's critique of blind justice, "[a]ll principles but one are discarded; one asks only, "What is legal?"¹⁷² The heterosexism inherent in the law would need to be addressed, and an opportunity waited to correct a social injustice.

It was a picture perfect drama on which the Liberal government could capitalize. Both the *Toronto Star* and *Globe and Mail* were sympathetic to the case with such headlines as "Supreme Court Ruling Makes Homosexual Liable for Life" and "Gentle George Klippert—Must He Serve Life?"¹⁷³ Trudeau took advantage of the fallout when Klippert's appeal was dismissed on November 7th, 1967. That same day, the Liberals were put to the test. In the House of Commons, Justice Minister Trudeau was confronted by the New Democrats as to whether or not he would act swiftly and amend the sections of the Criminal Code dealing with consensual sex between adults.¹⁷⁴ On November 8th, it was none other than New Democrat Tommy Douglas who suggested that Trudeau set up a commission similar to Great Britain's Wolfenden Committee. Douglas was seeking the same enlightened recommendations found within the Wolfenden Report.¹⁷⁵ Trudeau

delivered Bill C-189 in December, complying with the minority view of the court in *the Klippert v. the Queen* decision.¹⁷⁶ Indeed, Justice Cartwright's advice--applying the law in a consistently constitutional manner--had not fallen on deaf ears.

Pierre Elliott Trudeau and Sexual Politics

During his formative years at Montreal's Collège Jean-de-Brébeuf, a French classical college run by Jesuit priests, Canada's future leader did not suffer fools gladly. He developed his trademark arrogance at a young age. In Trudeau's words: "We are too stupid to realize that our own judgements are dictated by and dependent on newspaper headlines, snippets of conversation, and hearsay. We see the whole of humanity adopt ridiculous lifestyles and thoughts, on the pretext that it is easier to do the wrong thing with a crowd, than to react alone."¹⁷⁷ His independent attitude was beginning to paint him as a radical: "No other constant in my thinking need be sought than opposition to accepted ideas."¹⁷⁸ After the Great Depression, his rationalism began to take over. He learned early on that "science eliminates prejudice, and [he] recognized that the teaching of Catholic social morality cannot dispense with intellectual integrity."¹⁷⁹ Trudeau would expand upon his knowledge through the classics and what the Jesuits referred to as "ordered reasoning."¹⁸⁰

By the end of the 1940s, his education at Harvard University, at L'École libre des sciences politiques in Paris, and at the London School of Economics trained him to apply the principles of rationalism within the pragmatic functions of government. The young Trudeau understood quickly that laws have both the power to oppress the vulnerable or protect their inherent human rights. He was not one to defer his freedoms to the whims of the majority. "I have always loved justice. I have always loved a sense of balance. I wanted to know my rights in order to push them to the limit. I didn't like authority. Consequently, I liked to be able to contradict people who said I didn't have the right to do

such and such a thing.”¹⁸¹ He learned that written constitutions were crucial to democracy as they guaranteed civil liberties and protected citizens from political extremism.¹⁸² He began to understand that even governments could abuse their positions of power; therefore, some individual rights were so sacrosanct that even the state should not be able to interfere.¹⁸³ Finally, Trudeau asked himself one of the most important questions of his career: What makes people obey?¹⁸⁴ He was attempting to understand the relationship between God and man, the influence of religion on society, and how hierarchies—both secular and religious—wielded intellectual control over the masses.¹⁸⁵ Trudeau was slowly moving away from autocratic elites toward democratic control of one’s life through rational thought.

In Canada, Trudeau’s rationalism formed the basis of his politics, and his desire was to see it established in Quebec. His colleague Gerard Pelletier clarified the difference between the former Prime Minister’s focussed mandate for Quebec and his own less rational brand of politics. “I can say that in 1950, I had what could be described as ‘emotions’ in politics. Trudeau had a cohesive system of thought.”¹⁸⁶ Trudeau began expressing his views in *Cité libre*, which he helped establish. Beginning from the first issue in June, 1950, he called for an end to the irrational fears of a previously “immature” society, that being premodern Quebec. “[T]he time has come to cast a thousand prejudices to the winds where the past is an encumbrance to the present—and to struggle for the New Man. Overturn the totems, cast out the taboos... frankly let us be intelligent.”¹⁸⁷ In a 1958 article, “Obstacles to Democracy in French Canada,” Trudeau rejected Quebec’s political connection to the theological construct of natural law. For Trudeau, this was anathema to classic liberalism. “French Canadians must begin to learn

democracy from scratch... [A]s Catholics they [had] believed authority descendeth from God in God's good time." ¹⁸⁸

By the end of the 1950s, Trudeau was more confident with the relationship between individualism and liberty. In his mind, there had to be a foundation for our rights and freedoms. Unlike the American constitution's emphasis on "natural law" as the ultimate authority over morality, ¹⁸⁹ Trudeau subscribed to a horizontal power relationship rather than a vertical one. With any pyramidal, top-down approach, rights can be restricted depending on the bias of the ultimate authority. In contrast, Trudeau emphasized that safeguarding one's rights was crucial in order to avoid Alexis de Toqueville's tyranny of the majority. In 1958, he declared: "But to be vigilant one must be aware of one's rights. It is important, then, to know what our freedom is founded on, and how far the state has authority to restrict it. In other words, strict limits must be placed on the right of one person to rule another." ¹⁹⁰ Tyranny could even resemble public opinion. Said Trudeau in 1968: "... public opinion seeks to impose its domination over everything. Its aim is to reduce all action, all thought, and all feeling to a common denominator. It forbids independence and kills inventiveness; condemns those who ignore it and banishes those who oppose it." ¹⁹¹

To avoid the extremism he had encountered in political, religious, or social arenas, Pierre Elliott Trudeau gravitated toward personalism, a radical Catholic doctrine that promoted the supremacy of persons. They alone were seen as the only moral entity, individuals who required the social, political, and economic means for them to exercise freedom of choice. ¹⁹² It was this philosophy that dictated his views on individual rights. It touched Trudeau in a profound manner since it helped him understand what was

retarding Quebec's road toward modernity. By 1968, Trudeau saw Quebec's future as backward if its citizens acted like rigid, sheep-like believers who continually deferred to an absolute authority.¹⁹³ However, personalism was not absolute individualism verging on hedonism. On the contrary, Trudeau was heavily influenced by French thinkers Jacques Maritain and Emmanuel Mounier, whose personalism called for reconciliation of the individual with society. Reflecting about the significance of personalism in his *Memoirs*, Trudeau elaborates: "The person is the individual enriched with a social conscience, integrated into the life of the communities around him and the economic context of his time both of which must in turn give persons the means to exercise their freedom of choice."¹⁹⁴ Trudeau himself explains the balanced approach of personalism: "[T]he focal point was not the state but the individual—the individual seen as a person integrated into society, which is to say endowed with fundamental human rights and essential liberties, but also with responsibilities."¹⁹⁵ Influenced by the philosophy of T. H. Green, Trudeau began to ask himself a crucial question: Does the ultimate authority lie in the state or in the human individual? To avoid conflicting forms of morality, "the individual... must be supreme, with basic rights and freedoms, because the individual is the only moral entity, the only one who has significance."¹⁹⁶ Jim Coutts, Trudeau's principal secretary for seven years, describes his former boss's ideology on individual rights as sacrosanct by 1968. For the former Prime Minister, "all government powers should be limited so that individual and minority rights [can] be enhanced."¹⁹⁷ This was seen as a counterweight to corrupt, autocratic leadership. As Trudeau admitted in 1958, "If the order is rotten and the authority vicious, the duty of the citizen is to obey his or her conscience in preference to that authority."¹⁹⁸ The ultimate authority, therefore, was not

God or the state. Therefore, in order for society and political opponents to accept the decriminalization of homosexual practices between consenting adults, the most rational approach to adopt was to make the individual conscience the ultimate court of appeal.

Consequently, what Trudeau deemed as a threat to personalism was moralism. One of his goals was to prevent the dominance of religious impulses over rational impulses.¹⁹⁹ At a young age, he already comprehended the importance of one's conscience being in charge of one's morality. "I don't think [the command aspect] is one that is necessarily part of Christianity. I don't like religions that make people do things because the Commandments say to do them. I would like religion to be the inner thing which commands you."²⁰⁰ Trudeau began to understand that sin was subjective and often used as an abuse of power. He could deal with a "civil religion" as long as it did not dominate secular logic. Thus, Trudeau was establishing his famous dictum early: "the state has no place in the bedrooms of the nation." His initiatives, therefore, "widened the separation between church and state, and they reflected his antipathy for state-imposed ideologies and moralities and their attendant behaviours."²⁰¹ As he himself admitted in 1969, "You may ask forgiveness of your sins from God, but not from the Minister of Justice."²⁰²

Realistically, then, a pluralistic society has to recognize differences in morality, value systems, and cultural traits. That was the true test of democracy Trudeau faced in the divisive late 1960s. If he was going to be consistent and logical about his brand of liberalism, he would have to balance interests and avoid the possibility that a single ideology could oppress any other. Emphasizing a pluralistic society's benefits would be his drawing card. Greatly admired by Trudeau, Lord Acton championed the benefits of

pluralism: “[I]t provides against the servility which flourishes under a single authority, by balancing interests, multiplying associations, and giving to the subject the restraint and support of a combined opinion... Liberty provokes diversity, and diversity preserves liberty by supplying the means of organization.”²⁰³ Acton was actually referring to the dangers of one “nationality” dominating all others, but the cross-reference to heterosexual hegemony would not elude Trudeau. In other words, one number on the Kinsey scale could not be used to exclude the needs of the other shades on the continuum. Trudeau realized that heterosexual hegemony had run its course. He would have to implement some sort of guarantees to prevent this kind of sexual monopoly from being legally binding to all.

Universal rights for Trudeau would be best represented under a federalist system of government. Trudeau’s hope was to establish a Canadian identity based on common rights. In order to achieve such a goal, federalism was Canada’s most efficient system. As Trudeau explained: “I believed federalism as a superior form of government; by definition, it is more pluralistic than monolithic and therefore respects diversity among people and groups. In general, freedom has a firmer foundation under federalism.”²⁰⁴ This would permit a Canadian citizen to have a direct allegiance to the federal government in areas concerning the universal rights of the individual and for the federal government to speak directly for that individual.²⁰⁵ If Trudeau could establish a common Canadian identity within a pluralistic society, the individual would be protected. In a sense, Bill C-150 was a test of this balancing act. At the national level, Trudeau would push for commonalities, not differences. His idea of a new Canadian identity would be based on one premise: “the importance of the individual, without regard to

ethnic, geographic or religious accidents....”²⁰⁶ The outcome of Bill C-150 was directly dependent on a society that, under a federalist banner, recognized pluralism within an interconnected global community of shared values. This, of course, would make amendments to the Criminal Code a federal jurisdiction and the laws pertaining to sexuality a constitutional matter. It would become crucial to Trudeau’s strategy by decade’s end.

Trudeau’s emphasis on individual rights was consistent with his call for a Just Society. In 1959, he established a link between such a society and liberal democracy. “The Just Society is the kind of society freedom would establish. Looking ahead, I don’t think the state can say, ‘Here’s a state, a package imposed on you.’ A Just Society is one toward which every citizen must work, and the first condition of such a society is that of respecting the liberty of individuals.”²⁰⁷ For Trudeau, the freedom to achieve one’s potential was the most important tenet of this vision. The implications for sexual politics were unmistakable: “In my thinking, the value with the highest priority in the pursuit of a Just Society had become equality... For where is the justice in a country in which an individual has the freedom to be totally fulfilled, but where inequality denies him the means? And how can we call a society just unless it is organized in such a way as to give each his due, regardless of his state of birth, his means or his health?”²⁰⁸ It was not equality in the pure socialist sense where everyone was reduced to the lowest common denominator but “equality of opportunity... [based] on direct action of the State to protect the weak against the strong, the needy against the wealthy.”²⁰⁹ To obtain these rights, however, Trudeau sought a more even playing field. “[E]very individual should receive what is due him or her. It’s simply a question of fairness... It means everyone

should have a chance to fulfil himself or herself according to his or her potential.”²¹⁰ For Trudeau, empathy was the key. The Liberals could not just claim to be sympathetic. They actually had to practise such ethical stances with tangible results. Yet even Trudeau was astute enough to realize that there was no such thing as a blanket rule that governs in all cases of social justice. A pragmatic liberal is someone who has to be flexible when the times change and be willing to adopt other methods that work for modern times. Although initially pegged as an extreme socialist by his political adversaries, Trudeau understood that solutions were more complicated than simply promoting a radical left-wing stance on every issue. What was both practical and just was recognized by Trudeau as a balancing act, one that required political fencing and legal jostling. It was possible to be just to the individual and to the common good as long as the citizen did not disrupt the community, and the community did not oppress the individual. “The ‘just society’ means... the creative use of the law. It means freeing the individual from outmoded shackles of the law in order that he be able as an individual to use his freedom to express himself as he sees fit within the broad definitions of public order and morality.”²¹¹

By 1967-68, Trudeau was seeking a more democratic, just society through a revised theory of constitutionalism. A constitutional Bill of Rights would protect the fundamental freedoms of citizens in all parts of the nation. This would establish the “one-ness of Canada.”²¹² In other words, a revised Bill of Rights could “strengthen the country’s unity by basing the sovereignty of the Canadian people on a set of values common to all, and in particular on the notion of equality among all Canadians.”²¹³ His initial mandate was a direct attempt to move away from the 1960 Canadian Bill of Rights, which was based largely on natural law, the supremacy of God, and founded on the larger

community's moral and spiritual values.²¹⁴ In order to ensure that the state does not subject the citizen to a moral hierarchy, claiming as they would in Aquinas' day that natural law supercedes even man-made laws,²¹⁵ the purpose of an entrenched Bill of Rights eliminates both God and the state's bias. In essence, the bill would "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."²¹⁶ Basically, Trudeau was asking Canadians to resolve a dilemma: "Would the people of Canada accept the proposition that omnipotent governments are best for them... or do we attempt to construct in Canada a Bill of Rights in which the prime strength is not in governments but in people?"²¹⁷ In point of fact, Trudeau was proposing that egalitarian rights be protected by an open-ended residual clause, which could eventually include sexual orientation. Under this assumption, race, sex, and nationality must include "other factors" which government action may unfairly distinguish.²¹⁸

What this meant was that "the rights of the citizen would then flow upwards from the individual who makes his appeal before the courts as the charter affects him, rather than downwards from the Crown where a charge is often made on the basis of precedent or custom against which the individual under present law has little recourse."²¹⁹ Trudeau understood the pitfalls of his proposal: the complexities behind increased judicial powers, their possible biased interpretations, or their invalidation of essential social legislation.²²⁰ He understood that new rights conferred to others was likely to clash with the already existing rights of some citizens. For example, freedom of speech was not a given if it was defamatory or dangerous. Likewise, freedom of religion was not always compatible

with secular views on Sunday shopping.²²¹ However, as long as the public order was not threatened by one's behaviour, the courts would support the libertarian point of view. Canadians had somewhere to turn if they needed to win constitutionally guaranteed rights and freedoms. This approach to human rights was going to have a marked impact on the tenets of Bill C-150. No matter how controversial the section, the same principles would have to apply to those whom conservatives loathed.

Trudeau adopted then what John Turner called the classic liberal stance: "to advocate the widest scope in personal choices subject to collective responsibilities to protect those who cannot protect themselves."²²² In Trudeau's words: "I believe in the necessity of state control to maximize the liberty and welfare of all, and to permit everyone to realize himself fully... For humanity, progress is a slow journey toward personal freedom."²²³ By the spring of 1968, Trudeau's stance with respect to sexual politics was clear. Speaking to separatist protesters, he declared: "Here's one that thanks me—he's a homosexual... You don't have to tell us you are a homosexual. That is your business and it doesn't interest me. What does interest me is that the citizens of this country should be ready to respect freedom and distinguish between sin and crime."²²⁴ In 1969, just prior to the passage of Bill C-150, he shared his views with Washington political elites. "We have amended our criminal laws to permit more freedom to individuals to engage in [sexual] acts which, sinful though they may be or appear to many, are not possessed of that injurious quality that we normally associate with criminal conduct."²²⁵ A year after the bill's passage, Trudeau justified his government's position as a defence of individual conscience over oppressive moralism by the majority. On New Zealand television, he declared:

There are standards of conduct obviously in societies, for instance in the area of homosexuality, ... But what happens in private, once again, is a matter of your relations with your own God and your own internal values. And I think it is more destructive of a society to force people to live as hypocrites and to respect a morality in which they don't believe... because the majority of the people say this is right and this is wrong in moral terms. I think a society can be just as badly maimed by hypocrisy as by these private codes of conduct which don't overflow.²²⁶

Trudeau also expressed his views on morality: "My whole position on morality versus criminality is that the criminal law should not be used to express the morality of any one group, religious or pressure groups, or others. The criminal law is not made to punish sin, it is meant to prevent or deter anti-social conduct. And this is a question not of religion; it is a question of public morality."²²⁷ As a "Citizen of the World," Trudeau's timing was impeccable; he recognized an opportunity to reverse a social injustice. Yet, as we shall see, even a rational defense of Bill C-150 was not going to be an easy sell in the House of Commons, particularly with respect to the decriminalization of homosexual acts between consenting adults in private.

Debate Over Bill C-150

Initially, the "omnibus bill," formerly known as Bill C-195, was introduced in the House of Commons in December of 1967. Then Justice Minister, Pierre Elliott Trudeau, had attempted to modernize the Criminal Code of Canada, but his first attempt—Bill C-195—died on the Order Paper during the 1967-68 Session. Trudeau possessed renewed vigor after receiving a new mandate from the people when he became Prime Minister in the election of 1968. Reintroduced in December of 1968, the newly revamped Bill C-150 contained many of the same traits as Bill C-195. Trudeau handed the Justice portfolio over to John Turner, and it was Turner's job to sell the clause containing "homosexual acts in private between consenting adults" to the House. Like Trudeau, John Turner believed strongly in the complete separation of church and state even though he personally felt that homosexual acts were immoral. For him, consensual sex between same-sex adults was strictly a legal matter.²²⁸ However, he wanted everyone to be clear who was the architect of Bill C-150's philosophical foundation. "The bill is identified and will be identified in the future, with the indelible imprint of the prime minister (Mr. Trudeau). It was he who had the courage to assemble it, to introduce it into Parliament and to defend it across the land under the scrutiny of a general election."²²⁹ Bill C-150 was introduced in the House of Commons on December 19th, 1968, and it divided the secular reformists from the conservative moralists immediately.

During cabinet meetings in late 1968, most discussions became polarized between the secular and the moral. John Turner maintained steadfast in his views and intentionally steered away from emotional arguments. On December 12th, 1968, the Liberals resolved the dilemma between church and state by creating a win-win scenario.

According to the Cabinet conclusions, “It was not possible to deny to Canadians the liberty of making their own choice in this matter [same-sex acts between consenting adults in private]. Those of the Roman Catholic faith were free to follow their own consciences.”²³⁰ Turner understood that there was no consensus on morality and resisted a free vote on the issue, observing that “one free vote would lead to another and that probably very few members agreed completely on every one of the provisions in the bill.”²³¹ To protect religious freedom within party ranks, the Liberal government allowed individual members who could not conscientiously support Bill C-150 to refrain from attending the House for a future vote.²³²

Between the fall of 1968 and the spring of 1969, the public was no doubt aware of the *Klippert* case, England’s *Sexual Offences Act*, and the Trudeau government’s planned attempt to decriminalize homosexuality. Some Canadian citizens attempted to sway the Liberal party to end the decriminalization procedures by writing letters directly to John Turner during the committee process. All available letters sent to the Justice committee shared the identical tone of the opposition parties’ views: either moral condemnation was used, or aversion therapy was emphasized to “cure” homosexuals. It was a fairly limited moral outcry against the issue, hoping against odds that the Liberals would drop the most controversial elements from the bill. One such letter from J. Bennett Macaulay of Sussex, New Brunswick, gave a warning of biblical proportions. He presumed to speak for all Canadians on the subject of natural law, assuming it was a homogenous viewpoint shared nationwide. “We do not want to see ‘The Sin of Sodomy’ (homosexuality) legalized in our Canada, for we know the consequences will be grievous [sic] for our country in the eyes of God. Such as Sodomy is against the Law of God, as laid down in

the bible. see Lev 22:18.”²³³ In addition, a student from the University of Alberta, Walter W. McNaughton, sent in a radio message from President L.E. Maxwell of the Prairie Bible Institute. Its title, “Lessons From the Days Of Lot,” spoke volumes for its fundamentalist tone. It too assumed that a pluralistic society was of secondary importance to the dictates of a monotheistic religion.

According to Romans 1:24-28 homosexuality is the full outcome of man’s self-will and self-indulgence wherein men give themselves up to uncleanness ‘to dishonour their bodies among themselves,’ thereby desecrating the Creator’s temples and perverting the purposes thereof. Do the perverted promoters of permissiveness and of lenience to homosexuals think to justify themselves and the government of Canada by saying that it is of no concern for prosecution by the government if the homosexual act is committed in private between mutually consenting adults? This is precisely the uncleanness to which God gives men over ‘to dishonour their own bodies among themselves,’ by mutual consent.²³⁴

Moreover, a Professor of English from Vancouver was more inclined to support the disease model. In his letter “The Legality of Homosexual Acts,” the academic had previously written in reply dated August 17th, 1968, explaining that he was in full support of the social control of homosexuality.”²³⁵ On October 21st, 1968, he opted for the curative approach. His tone implied a worldview of homosexuality as some sinister plot that psychiatry must expose and halt. “This factor, exposing people to the distorting, warped (in social matters) homosexuals mind, appears to be a major cause of practising homosexuality. Many people would never even consider the act if it were not constantly, unremittingly, and diabolically forced into their minds. This is one reason why homosexuals must be recognized and treated, and cannot be ignored.”²³⁶ The academic felt that homosexuality was “a form of mental sickness or insanity which is manifested in a desire to corrupt others... Homosexuality must [emphasis his] be recognized as a mental illness or handicap and treated as such. Free psychiatric care should be available.

It should be discussed and treated as any ailment.” The writer even suggested a moral (and perhaps literal) quarantine. “The malady is infectious and malignant, virulent. People have the right to freedom and isolation from contagious diseases.”²³⁷ Ironically, the Professor finally addressed John Turner directly, asking him to see the big picture: “In the long view, the solution involves structuring society and human attitudes to remove the reasons for irrational behaviour, and this, I presume, is the ultimate goal for which you and your colleagues are working. The Just Society.”²³⁸

Between second and third readings, February 26th and May 13th, 1969, Committee meetings dragged on into the spring in order to ensure that the wording of Bill C-150 had adequate safeguards. Regardless, by March, 1969, Turner would not budge from his position on decriminalizing same-sex acts; the Liberal party would not allow moralism to dictate its policy. In front of the Justice committee, Turner made a clear distinction between Liberals and Conservatives:

Briefly it is that we believe that the law and morals are two separate philosophical propositions. What is necessarily immoral is not necessarily illegal; and what is necessarily illegal is not necessarily immoral; and that there are aspects of human life and relationships between people, which, although on the basis of subjective judgement in a pluralistic society might well be considered to be immoral, ought better be left to private morality than subject to public order within the strictures of the criminal law.²³⁹

Decriminalization did not mean moral condonation. As Turner states: “I have to advise that I was using the word ‘legalize’ in the broad sense of recognizing the conduct referred to as being lawful and proper. In seeking enactment of the proposed amendment, the Government is not, of course, asking Parliament to place its stamp of approbation on the activity which will no longer be criminal if it takes place under the circumstances prescribed [consenting adults in private].”²⁴⁰

Trudeau knew he too had to tread carefully within religious circles. He did not want to offend widely held Christian beliefs while protecting minority behaviours deemed anti-Christian: “Criminal law therefore cannot be based on the notion of sin; it is crimes that it must define. But I also had to make it understood that in decriminalizing a given action, the law was in no way challenging the moral beliefs of any given religion.”

²⁴¹ Defending the bill in the House of Commons (October 24th, 1969), he emphasized the need for acknowledging the existence of the secular world.

[T]hese innovations and reforms in the area of criminal law are in some cases overdue. Many of them are in response to demands which have been voiced... by Canadians, young and old, in all walks of life. All of [the reforms] reflect governmental sensitivity to, and an attempt to understand and rectify, the underlying social causes of crime and disorder. Not surprisingly, their very novelty makes them offensive to some. But their existence on the statute books of Canada is proof that this country is responsive to the needs for social change and is committed to an atmosphere of freedom. ²⁴²

In his view, the law should be thoroughly divorced from any elite’s version of morality since the tyranny of the majority could apply cruel and oppressive punitive measures. Bob Rae nicely summarized Trudeau’s legacy after the passage of Bill C-150 in August, 1969. “The reforms... permitted Trudeau to express some fundamental thoughts on privacy and the distinction between moral judgment and criminal activity. They were humane and necessary.” ²⁴³

To ensure the bill’s passage after the third reading, all matters of conscience--specifically, homosexual acts between consenting adults in private--were to be included in an all encompassing bill. The Trudeau government would not separate private morality clauses from relatively inoffensive, secular matters, hoping to bury such issues as abortion, divorce, and homosexuality in a sea of banal subjects (i.e. taxation). During

the committee meetings in the winter/spring of 1969, opposition instantly smelled foul play and strongly requested that the bill be subdivided into separate entities. To conservatives, this would prevent Trudeau and Turner from forcing their liberal “morality” on the public. Put simply, opposition leaders would not accept immoral rider clauses attached to the main bill. ²⁴⁴

Back in the House of Commons after the second reading, Walter C. Carter (PC, St. John’s West) argued during the report stage in February, 1969, that the Liberals were using just such a ploy. “There is no doubt that the refusal [to remove the clauses] was deliberate and part of the Prime Minister’s (Mr. Trudeau) plan to force members to vote for those aspects of this Bill which are a direct attack on the conscience of members... It is an insult to the Canadian nation that a bill of this consequence, a bill that affects so much the consciences, the religious and maybe the non-religious beliefs of the Canadian people, should be presented as a package deal.” ²⁴⁵ Equally angered was Steven E. Paproski (PC, Edmonton Centre). He despised Trudeau’s modern tactics in the House of Commons, seeing as they went against traditional modes of conduct. Paproski felt that it was “in incredibly bad taste on the part of the government to force members on both sides to vote on these matters on a purely partisan basis. In so doing, they have reversed the trend in this chamber in recent years of members being allowed a free vote on matters of conscience... This is a rather regrettable and sad spectacle.” ²⁴⁶ Hugh John Fleming (PC, Carleton-Charlotte, New Brunswick) spoke against Trudeau’s all or nothing strategy, accusing him of a slight of hand. “Why should we wrap up all these measures together? I assume the government is trying to hide something. We are being asked to legalize homosexuality if we vote in favour of this bill. There is no question about that.” ²⁴⁷

Still, others viewed the bill as a smoke screen for its predecessor, Bill C-195. Charles-Arthur Gauthier (SC, Roberval, Quebec) saw the two bills as one in the same. “I personally have had the opportunity to speak on Bill C-195 sponsored by the then Minister of Justice, now the Prime Minister (Mr. Trudeau), which is a true copy of Bill C-150... [A]s homosexuality... involve[s] religious and social responsibilities, we shall require that [this] be treated separately, in order to allow separate and free votes on [it].”

²⁴⁸ For the Conservatives, the Social Credit, and les Cr ditistes (who eventually split with the Western Social Credit Party in the 1950s), the goal was to single out the “moral” sections of the bill and vote on them individually. Trudeau would have none of it. A free vote within his party or a separate vote on homosexual acts was deemed irresponsible to individual human rights. It was a “take it or leave it” package within liberal policies. From Trudeau’s point of view, there seemed to be a misunderstanding of his concept of “conscience.” Conservative politicians were not permitted to soothe their consciences at the expense of another’s, or Trudeau’s entire liberal experiment was a moot point. It was simply impossible for any individual to be truly free if their conscience was going to be dictated by the whims of others.

The Debates became increasingly polarized between first and second readings. The pro-reform camp included the Liberals, the New Democratic Party, and some Conservatives whose rationale was based largely on the Wolfenden Report. The anti-reform camp was largely the Ralliement Cr ditistes, the Social Credit Party, and hard-core Conservatives. In the winter of 1969, moralism was being used as a method to stir up the population against Bill C-150. Conservative politicians used this strategy to separate their party’s platform from the ultra-liberal represented by Trudeau. Former

Prime Minister John Diefenbaker, who was increasingly being portrayed as yesterday's man, was solidifying both his party's and his own personal position as moral crusader. Diefenbaker challenged Trudeau's liberalism head on: "We live in an age that more and more is becoming a permissive age. Some say there is no God—that each man should be able to live his own life as he will as long as he does in private. I do not find any support for that philosophy in the scriptures."²⁴⁹ John Diefenbaker's remarks best describe the paranoia of the times. In his mind, the immorality of homosexual acts was a threat to national security. "I have read the entire Wolfenden commission report backward and forward. I know there is no individual more subject to intimidation and threat by the U.S.S.R. as it endeavours to obtain information detrimental to the security of Canada than those who are believed to be homosexuals."²⁵⁰ In retrospect, John Turner would call the Chief's remarks "pure drama."²⁵¹

By the spring, the pressure was intense. It was imperative for the Conservatives to separate themselves from liberal degeneracy and to act as the guardians of morality. Therefore, House of Commons debates became a forum for vast degrees of moral outrage. Marcel Lambert (PC, Edmonton West) wanted the House to understand the moral dilemma at hand. Quoted by the *Globe and Mail* during the Debates, Lambert asked: "Do we say that we are not concerned about morals and that we are going to remove legal sanctions against immoral conduct?... [D]o we cease to use the law to define standards of private behavior [sic] and to punish those who either can't or won't adhere to them?"²⁵² Likewise, Walter Dinsdale (PC, Brandon-Souris) described the decriminalization of homosexual acts as an affront to the history of Christianity: "We are reversing completely values and traditions which have been the foundation stone upon

which our western Christian civilization has been established... The Judeo-Christian ethic says nothing is right unless it helps somebody. Actually, what we are embracing is the Mohammedan philosophy of hedonism.”²⁵³ Robert McCleave (PC, Halifax-East Hants) felt that the existing law provided a direction for moral guidance that was sorely lacking in the late 1960s. His concerns were summarized by the *Toronto Telegram*: “People have to have a sense of what is right and proper in society and they must feel that there is an expression of this in the law.”²⁵⁴ Percy Verner Noble (PC, Grey-Simcoe) attacked Trudeau’s personal lack of understanding in terms of being a role model. Speaking in the House of Commons, he declared: “[Trudeau] is not a family man, and he does not seem to understand that children do look to their parents for leadership and direction... We cannot justify the repudiation of our responsibilities to our young people, to older people, too, and to generations which will follow.”²⁵⁵ Quoted by the *Telegram*, George Valade (PC, Saint-Marie) was vehement that the entire community’s morals were at a turning point. “The impact of this (measure) will result only in debasing our society which is going through a conscience crisis.”²⁵⁶

Progressive Conservatives received support from the Social Credit Party out West and les Ralliement des Créditistes in Quebec. Both parties shared features--rural roots, anti-socialist attitudes, and a distaste for liberal ideology.²⁵⁷ The moral stakes for both parties were very real. During debates in the House, politicians like Gilbert Rondeau (SC, Shefford) feared that homosexual unions would eventually be state-sanctioned: “Before long, like some other countries, that proceeded the way we doing tonight, we will have to legalize homosexuality, and soon afterwards, we will also have to pass a legislation in order to legalize marriage between homosexuals. (Laughs).”²⁵⁸

Trumpeting a consensus on moral conduct, René Matte (RC, Champlain) asserted in the *Globe and Mail* that “true [m]orality is for everybody. It is not merely a question of religion but a question of being a human person, of respecting the human person.”²⁵⁹ Matte’s refused to allow twenty-one year-old homosexual men to celebrate their birthday by “jumping into the arms of the blue-eyed boy of their dreams.”²⁶⁰ André Fortin (RC, Lotbiniere) proclaimed that, for his part, “the bill is criminal, stupid, and socialistic. It was another blow at the Canadian family.”²⁶¹

Some resorted to more provocative arguments. Eldon Wooliams (PC, Calgary North) compared a human sexual act with bestiality: “Do you want me to legalize sexual intercourse with the animals of Canada?”²⁶² Homosexuals were also labelled as pedophiles. Martial Asselin (PC, Charlevoix) described gays as stalkers of youth: “Homosexuals are most inclined to pervert youngsters and the Minister [Turner] opens the door even wider.”²⁶³ PC member Walter Dinsdale declared: “Anybody who has been engaged in social work knows that the homosexual is a predator in respect to matters of sex. It is something that spreads like a plague, and there is no more destructive drive than the sexual impulse running wild.”²⁶⁴ Walter C. Carter (PC, St. John’s West) believed that homosexuals would convert others to their ways: “[T]he real reason for its being anti-social is the compulsion to convert, to induce others into its practice. In those nations where homosexuality has raged unchecked, conversion has been a major characteristic, to the point where generations of those unable to make free choice have been compelled into unnatural practices.”²⁶⁵

Trudeau’s views on the role of the State were also challenged. Conservative members attacked his idea that the State had “no business in the bedrooms of the nation.”

Opposition leader, Robert Stanfield, clearly separated his conservative party from Trudeau's, declaring that privacy *was* the government's business: "Surely we recognize that the interests of society are involved with respect to what goes on in private and that the criminal law must regulate such conduct."²⁶⁶ Walter Dinsdale (PC, Brandon-Souris) felt that the government already interfered in personal matters: "It is nonsense for the Prime Minister to say [this]. If a man were to commit murder in a bedroom, the state would move in fast enough."²⁶⁷ Finally, René Matte compared homosexuals to thieves. "A kleptomaniac is a sick person. Why not issue them cards saying so and then anyone over 21 will carry a card permitting him to conduct holdups."²⁶⁸

The Liberals received much of their support from the federal New Democratic Party, in particular deputy leader David Lewis. Although he acknowledged John Diefenbaker's contributions to democracy, Lewis strongly believed that Diefenbaker was inconsistent with whom he included in the democratic ideal. Lewis felt that Diefenbaker's remarks were "a complete contradiction and negation of the great work he has done in the field of civil liberty and individual rights."²⁶⁹ He also depicted the Chief's philosophy as outmoded: "It simply has no relevance to modern society."²⁷⁰ However, Lewis himself was a product of his time. Although he saw a change in attitudes as empathetic and reasonable, he would not fully sanction homosexual acts even if the law decriminalized such behaviour. He was indeed engaging in the "art of the possible" with this ethical/moral compromise. For Lewis, even people with whom we disagree receive the same rights and freedoms as the majority.

What is proposed in this area is merely a sensible, modern version which recognizes the dignity and rights of people even though their acts may be regarded with some disgust... I hope the people of Canada understand and know that those of us who are supporting the amendment in respect of

homosexuality are just as repelled as they are by that act. We are just as anxious to make clear that it is an immoral and undesirable act, but we think the time has come to modernize the law.²⁷¹

During these debates, Turner resisted the moral arguments of the conservatives:

“The nub of the matter is: Who is to decide what moral behavior or conduct is to be reflected in the Code? That is the point. In a pluralistic society there may be different standards, differing attitudes and the law cannot reflect them all. Public order, in this situation of a pluralistic society, cannot substitute for private conduct. We believe that morality is a matter for private conscience. Criminal law should reflect the public order only.”²⁷² Even Turner, however, did not fully accept homosexual acts. His government was not promoting immorality; the Liberals were just recognizing the separation of church and state and the futility of criminalizing sin. He reiterated his previous stance during the committee process. “Parliament by not imposing the criminal law upon fornication or adultery is not thereby condoning fornication or adultery. By having broadened the laws affecting divorce during the last parliament, parliament did not by that promote or condone divorce as a remedy worthy of emulation. Individuals will continue to be responsible to themselves for their moral behaviour.”²⁷³ Quoting the Wolfenden Report, Turner wanted to separate secular codes of conduct from theological debate. “[T]here must remain a realm of private morality and immorality which is, in brief and crude terms, not the law’s business. To say this is not to condone or encourage private immorality. On the contrary, to emphasize the personal and private nature of moral conduct or immoral conduct is to emphasize the personal and private responsibility of the individual for his own actions...”²⁷⁴

Members of the Liberal party expressed concern for the survival of liberal democracy if Bill C-150 was not passed. The individual's rights within the larger community had to be addressed. Liberal Robert P. Kaplan understood the dilemma at stake. "We are a pluralistic society containing divergent groups, religious and secular, representing a wide variety of moral views and standards... We cannot in this house use our legislative authority to express the morality of one group and suppress the freedom of others to give expression to the things they believe are right."²⁷⁵ Even moderate Progressive Conservatives admitted that harsh sanctions against homosexuals were simply unjustified. R. Gordon L. Fairweather (PC, Fundy-Royal, New Brunswick) recognized that Bill C-150 was an act of kindness in a maturing liberal democracy. "I believe that homosexuality or homosexual acts between consenting males, unpleasant as that is to contemplate, are nevertheless a case for the most compassionate, sympathetic understanding on the part of civilized men and women. I think that the bill has that objective in mind."²⁷⁶ On March 4th, 1969, the Liberals made reference to the Wolfenden Report and its contributions to democratic legal debate.²⁷⁷

The constitutionality of the current law, however, came into disrepute by the Liberals and was perceived as a duty by Parliament to fix. The punitive inconsistency of both Canadian and American laws pertaining to homosexual acts was finally recognized as unjust by the Trudeau government. It was discovered that penalties for similar acts ranged from three years to sixty years.²⁷⁸ Moreover, under British law, women were not punished, while their incarceration was deemed negligible.²⁷⁹ There was doubt as to whether the legal system was completely ignoring a redundant law that no one took seriously for either opposite or same-sex behaviour. Douglas Hogarth (L, New

Westminster, British Columbia) admitted that in all of his experience as a lawyer, the sodomy statutes were ignored in areas of privacy. Ironically, his trials dealt with heterosexuals. Said Hogarth: "The only case of sodomy in which I was involved during my 20 years of practice concerned a relationship between a male and a female."²⁸⁰

For his part, John Turner argued that his party was eliminating unconstitutional practices within the legal system: "The bill aims only at correcting deficiencies in the law which, in some cases, could expose a homosexual to sentences of 10, 15 or 20 years of imprisonment, or preventing over-zealous policemen to raid private homes and bedrooms, something which is unacceptable under our democratic system."²⁸¹ For Turner, tolerance of homosexual acts was the more humane route, but equally important was the financial dimension of the issue. Realistically, Canada could not afford to jail homosexuals. On February 13, 1969, Turner addressed the House of Commons in a direct yet heartfelt manner.

Recently, Mr. Speaker, a book has been published which I recommend to hon. Members. It is called 'The Crime Of Punishment,' and it is by a physician and psychiatrist, Dr. Karl Menninger, who has described our system for controlling crime as ineffective, unjust and expensive. I think that somewhere else he uses an even stronger phrase about it. He says in effect that it is crime-breeding rather than crime-preventing. These are the words of a man who has studied the system that has existed in the United States, and I do not think the system here is very different.²⁸²

Turner realized the irony of conservative pressure for criminalization: The law was counter-productive to the common good. In Turner's view, psychiatric help provided a more compassionate alternative: "I want to say that the basic principle of this matter should be that private aberrations or illnesses should not become public crimes. If they are made into public crimes, they open the door to blackmail without providing a cure of the disease. They add to the human misery which can flow from this affliction."²⁸³

In both the Liberal and Conservative camps, members of the House of Commons saw the illegality of homosexual acts as futile and unenforceable. The cost of incarcerating, no doubt, worried politicians in 1969. Paraphrasing Kinsey's statistics in the House, John Turner understood that they would never be able to police widespread behaviour. In fact, "Kinsey's figures indicate[d] that homosexuality [was] not a problem confined to a tiny group of perverts but one of much wider social significance."²⁸⁴ One of the most outspoken MP's was Liberal Robert P. Kaplan; he could agree with pathological labels but not with indefinite prison sentences awarded to people like Everett George Klippert.

[Homosexuality] is a form of sexual perversion which arouses a sense of horror in most normal people. But many Canadians feel an equal sense of horror about the present treatment of homosexuals in this country. For example, our government has been holding in prison under an indeterminate or life sentence, confirmed by the Supreme Court of Canada, one Everett George Klippert... Mr. Klippert's only crime or criminal conduct was the commission of homosexual acts in private by consent and without violence with male adults. For this he may spend the rest of his life in prison.²⁸⁵

John Read (L, Kenora-Rainy River, On.) concurred. Only laws that are respected will the public obey. He explains his convictions toward decriminalization. "I believe the reason is simply that these laws are unenforceable. In other words, the legislation relating to homosexuals has not been enforced. The number of convictions is almost nil... In other words, you cannot have legislation that is not enforceable, because then the law becomes a laughing stock."²⁸⁶ Gordon Ritchie (PC, Dauphin, Manitoba) agreed with the inevitable. Prison would never solve the problem; the government was looking at a no-win situation with a toothless law: "I do not believe that homosexuality is deterred by

criminal proceedings, and I think that in practice homosexuality cannot be controlled in this manner.”²⁸⁷

The disease model for homosexuality also influenced the outcome of the Debates. That homosexuality could be pathological allowed politicians from all parties to be more empathetic and less likely to demand jail sentences. They were following the scientific train of thought of psychiatrists in unravelling the origins of this sexual orientation. The Liberal party did not fully understand the disease model, but it helped to present and defend homosexual acts in rational terms. Along with established psychiatrists, the Liberals presented a more compassionate approach. Like England’s Moral Welfare Council, the Liberals could initially recognize homosexuality as a “problem.” They then could remain open to the possibility of psychological help in order to decrease its incidence. Turner thus drew sympathy for Bill C-150 by maintaining references to the disease model while simultaneously eliminating the criminal connotation: “[W]hile removing from the category of crime what are considered abnormal sexual relations between consenting adults, to suggest at the same time that very serious consideration be given to the incidence of this problem and the ways in which it might be dealt with from a health point of view.”²⁸⁸

Members from the various federal parties shared Turner’s psychiatric assessment of homosexuality in varying degrees. Consistently compassionate, Liberal Douglas Hogarth viewed criminalization of an inherent trait as draconian: “Although the homosexual’s affliction is not the same as the alcoholic’s in kind, it is in substance. The homosexual has no control over his behaviour. He is either born that way or develops his sickness at an early age. He cannot change apparently; so why not put him in jail? If

anyone were to say about homosexuals, 'Put them in jail' they would be advocating taking a step back into the dark ages.”²⁸⁹ The NDP's David Lewis was first and foremost of the opinion that sympathy towards gays and lesbians should require government action. The disease model could facilitate such an approach. “[T]o make [homosexuality] a crime in all cases is to be insensitive and cruel because this deviationism [sic] obviously is due to certain psychological and other factors. This behaviour requires clarity and treatment rather than criminal prosecution.”²⁹⁰ Créditiste Gerard Laprise also attempted to explain an uneasy compromise. “Granted, (these) sick... are not all criminals, even if a great number of them should be behind bars because of the scandal they cause; but instead of trying to legalize an abnormal situation, we should adopt legal measures to reduce the number of those sick people through appropriate treatment.”²⁹¹

Support from the Conservatives was also based on the disease model. Even those who equated homosexuality as an addiction still dismissed incarceration. Robert McCleave (PC, Halifax-East Hants) felt that prison would not solve the growing homosexual problem. In his words: “I probably would not see it either in terms of crime or punishment but in terms of disease or pathological complaint.... I think [alcoholism and homosexuality] are very much the same type of problem. I think it is wrong to deal with them as crimes first, and then crimes deserving of the particular forms of punishment that we have because our forms of punishments are very limited.”²⁹² Roch La Salle (PC, Joliette) was persuaded to agree with the Trudeau government on condition that more resources be spent on helping homosexuals. The criminal dilemma could be resolved by a substitute: the medicalization of the homosexual problem. Addressing the

House, La Salle requested a more moderate approach. “It is recognized that homosexuals are probably sick people... Therefore, I would like to suggest the building of certain hospitals where the government would do its utmost to provide the services of certain specialists, who could take care of such people whose behaviour, to me, is completely abnormal.”²⁹³ Conservative Theogene Ricard related the notion of sin with the disease model. He felt that it was “not necessary to legalize homosexuality, but that it is imperative to cure those afflicted with such a *sinful disease*” [emphasis mine].²⁹⁴

By the summer, opposition parties made one final attempt to discredit the bill. Discussion within the House of Commons became fairly intermittent as the third reading, final vote, and signing of the bill came to fruition. The Ralliement Cr ditistes kept the moral debate alive. They provided an overview of why challenging Bill C-150 was important to the party. “During the debate on the omnibus bill, it was a matter of principle. We had the duty, as Christians, to oppose it.”²⁹⁵ The Cr ditistes made one last plea in exchange for their party’s support: “Remove from the bill the provisions on... homosexuality, and we shall immediately vote for this legislation, which, without being perfect, is nonetheless acceptable.”²⁹⁶ P.B. Rynard (PC, Simcoe North) also attacked John Turner for rushing a delicate process while simultaneously limiting democratic debate on Bill C-150:

It is very revealing that the Minister of Justice did not accept any amendments to the Criminal Code bill from the floor of the House. He said that it had been through the committee and we had to protect the committee system. He said that any bill that had gone through a committee should not have changes made to it in this house. How can this government function?... How can we ever assess how competent this government is because they cast doubt upon themselves.²⁹⁷

John Gilbert (PC, Broadview) agreed. He felt that the Liberals were pushing for an act of law before Bill C-150 had been thoroughly reviewed. “[W]hen you think of the many sections and subjects dealt with in the omnibus bill in respect of criminal law, you can appreciate the necessity of debating time. One should also appreciate the necessity of members reflecting the views of their constituents in respect of these subjects.”²⁹⁸ A filibuster by le Cr ditistes failed to generate the necessary public or political support and only made their anti-reform stance appear increasingly desperate.²⁹⁹ The successful passage of the bill occurred on May 14th, 1969, by a margin of 149 to 55, and became law in August of that year.³⁰⁰

Bill C-150 and The Press

Regardless of geography, media support certainly assisted Trudeau in his quest for the liberalization of homosexual acts. Bill C-195 was originally praised wholeheartedly, especially in Ontario. *The Ottawa Citizen* rejected indefinite sentences for homosexual acts between consenting adults in private, welcoming the modernization of social values. “[T]he government’s platform of action in the realm of social legislation is a proud one, and deserves to be welcomed by all forward-looking Canadians regardless of politics.”³⁰¹ Trudeau was also praised for a balanced approach in his anticipation of the standards of the times. He had both witnessed and anticipated the arrival of secular society. The editorial board of *The Ottawa Journal* felt that “Trudeau [had] recognized the mood of the country for improving the laws... and [had] put his own courage to the matter in many instances, not least in his own province. Liberty needs aids and restraints—but they need not be out of date.”³⁰² *The Ottawa Journal* also recognized Trudeau’s efforts at balancing individual rights with the common good. Thus, personalism was given credence. “[A]s [the codes] stand they would seem to remove more restrictions than they impose, while also adding needed protection for the public in certain respects. In general terms, that is a desirable direction in which to move.”³⁰³

In Quebec, media support was favourable, and it highlighted the motives behind such liberal measures. In the *Montreal Star*, Trudeau’s proposals—particularly for the decriminalization of homosexual acts—was deemed empathetic, something lacking under previous governments: “[I]t does seem evident that a contemporary compassion has been brought to areas of the law which had, with the passage of time, become cruel social

anachronisms.”³⁰⁴ The *Star* was indeed scathing of a Code that, in its mind, was outmoded and grossly inaccurate. “The Criminal Code is a mixed bag of Victorian morality, sloppy logic and legal temporizing that any reform is apt to be hailed as the dawn of the millennium.”³⁰⁵ In a classic compromise, the Liberals did not have to completely solve either side of the dilemma. By giving power to one’s individual conscience in balance with the public order, Trudeau could appease those whose value systems were liberal while assuring conservatives that decriminalization was not the same as condoning homosexual acts. One’s individual morality did not have to change; it just had to make room for the possibility of someone else’s. Trudeau’s legacy of “reason over passion” was summarized accurately by the *Montreal Star*: “But it is a curious fact that the last time the opposition [Ralliement Cr ditistes] exercised its power to hold up legislation by filibuster, it was trying its best to prevent an extension of freedom. The issue was the bill to amend the Criminal Code of Canada. By decreeing that it would no longer imprison homosexuals for acts committed in private... the government achieved a modest but genuine increase in human liberty.”³⁰⁶

By the winter/spring of 1969, Bill C-150 was already a hot ticket for press coverage. Support only strengthened for the secular values of Canadians. Toronto’s *Globe and Mail* felt that Trudeau had defended liberalism against moralism. “[Trudeau] was saying that there is a difference between public morality and private morality, and that the state has no business dictating the conduct of individuals when that conduct injures nobody else. He was saying that the moral or religious views of one group shall not be imposed on another.”³⁰⁷ By May, the *Toronto Telegram* agreed with Trudeau’s

liberal stance—specifically, his ideological stance on personalism—when it described the secular/religious dilemma within law.

But the Bill [C-150] constitutes a milestone in our change of philosophy on the relationship of law and morals... Parliament's decision was a victory for the principal that the state has no right to impose one moral view that cannot be reconciled with the needs and desires of a variety of citizens. The function of law is to provide limits within which an individual may express his personality without encroaching on the right to such expression of others; it is not to regulate the individual's behavior [sic] as it affects only himself.³⁰⁸

In addition, the *Telegram* nicely summed up a clear reality of the times: secular society had caught up with—and perhaps surpassed—legislation that still contained remnants of natural law. “Behind the majority decision was the demand for meaning to the oft-touted ideals of freedom and justice, which law, usually lagging behind social standards, does not always reflect.”³⁰⁹ That meaning was made clear when Bill C-150 received Royal Assent on June 27th, 1969, and the tenets on same-sex acts came into effect in August. As the *Toronto Star* proclaimed: “It [was] a sign of growing maturity in Canada that the distinction between law and morality [was] now becoming more clearly understood.”³¹⁰

In point of fact, the right-wing view received very little support from the press. The more conservative writer for the *Toronto Telegram*, Lubor Zink, was cautious. He summarized the legal dilemma faced by the Liberals in his article “Should our laws reflect morality?” At the heart of the matter was an inherent dilemma: Had our perceptions of perversion changed, making the law outmoded, or was the government forcing Canadians to accept a repugnant law?³¹¹ The *Montreal Gazette* pointed out the irony of Trudeau's emphasis on individual conscience and morality: “The debate on the Criminal Code has already gone on long enough to probe that this was a bill that could not be forced though as a unit by the exercise of party discipline without placing the

government in the invidious position of overruling the conscience of many members.”³¹²

Finally, George Bain of the *Globe and Mail* worried that hard cases make bad laws.

Belligerence is not necessarily a motive for changing the Criminal Code: “Do we cease to use the law to define standards of private behavior [sic] and to punish those who either can’t or won’t adhere to them?”³¹³ However, Bain’s conclusion asked more questions than it answered. He was unsure “if homosexuality was a disease, if a disease was a sin, or if sin was a crime.”³¹⁴

Conclusion

Conservative mastermind Dalton Camp once said of Trudeau: “When you are lucky in politics, even your enemies oblige you.”³¹⁵ This tells only half the story, for luck occurs when hard work meets opportunity. That was Trudeau’s gift when it came to sexual politics. He recognized that to seize the moment he needed to be in sync with the growing democratic rationalism of the times. Before mapping out his plan for such a mandate, Trudeau told *Maclean’s* in 1964, “one must have some idea of what kind of society it is intending to govern.”³¹⁶ Because he was well travelled, Trudeau recognized the need for increased democratic measures. From the 1930s to the 1960s, he had witnessed both autocratic and democratic scenarios. He had encountered human rights abuses in Quebec under Duplessis, in his European travels, and in China. He had lived through McCarthyism and realized that leaders such as John Diefenbaker based their political visions on natural law. In contrast, the Quiet Revolution in Quebec had opened the floodgates, bringing with it greater sexual freedom, a decline in the Catholic Church, and a platform for Trudeaumania. Alfred Kinsey’s studies, the Wolfenden Report, and *Klippert v. The Queen* had also been instrumental in shaping Canadian sexual politics. Of particular note was their depiction of homosexuality from a rational perspective. The psychiatric profession’s credibility had come under fire, but on the other hand, the disease model helped steer politicians away from the criminality of same-sex acts. Finally, the media generally supported the view that “the state has no business in the bedrooms of the nation,” giving further credence to the separation of church and State.

The decriminalization of homosexual acts between consenting adults is important to historians, not only because democracy had preserved itself, but because the man fit

the times. Canadian society was ready for changes that Trudeau could provide. In *Trudeau: A Man For Tomorrow*, Douglas Stuebing et. al. said it best when describing a politician made for the 1960s: “Canadians [had] begun to experience a new involvement in the style as well as the practice of government. Trudeau did not initiate this. But it exploded in his presence.”³¹⁷ In some ways, he personified secular humanism because he favoured pragmatism and rationalism as a political necessity over moralism. Canadians were ready for his vision, and he was prepared to work for change. Bill C-150 was the result of this chemistry. It was this bond between statesman and country that finally corrected a social injustice.

In Trudeau’s vision, every citizen possessed specific inalienable rights, a scenario that prevented oppression by the majority.³¹⁸ His ideological stance was in line with the social and political change of his time—change toward pluralism, tolerance, individualism, and objectivity. He understood this social transformation and applied it in the most democratic fashion possible. As Paul Fox stated about the Liberal government of the time:

Once again our political system has refreshed itself at the highest level of leadership... by the system opening up and elevating a relatively non-partisan outsider who seemed best-suited to new conditions... the country’s interests came to focus on Trudeau as the man who should be chosen to fulfil the ambitions of a burgeoning generation.³¹⁹

Trudeau sought what John Ralston Saul calls “*équilibre*” by balancing reason with empathy.³²⁰ Trudeau’s rationality and sense of social justice found the right balance with the passage of Bill C-150. What Trudeau had finally accomplished is what Antonio Lamar would later describe as a “culture of human rights.”³²¹

Trudeau's pragmatic functionalism (to do what is feasible) required counterweights in order to prevent the oppression of citizens.³²² Starting with the legal system, Trudeau would have to logically conclude that jailing homosexuals was completely against every democratic principle for which he stood. His government recognized an opportunity to be more compassionate for a victimless crime as well as alleviate the never-ending problem of an overcrowded prison system. Two rational factors led to the decriminalization of homosexual acts between consenting adults. Firstly, there was no factual basis to even remotely support the notion that the public order was in any clear and present danger from homosexuality nor any future danger. All of the evidence presented by the Church of England and the Wolfenden Report supported these conclusions. In fact, criminalizing homosexual acts was actually counter-productive to the common good. Secondly, the bulk of the evidence suggested that the existing law, which criminalized homosexual acts, was a gross violation of civil rights. According to Karl Menninger, an inherent bias within the Criminal Code of Canada created a paradox because justice was too vague a concept, too distorted in its applications, and too hypothetical to aid the less fortunate. Therefore, it often led to the opposite of its intent, that being injustice.³²³ The liberal government, therefore, took the time to understand a complicated issue--homosexual acts between consenting adults—and eliminate a victimless “crime.” It did not solve the dilemma of homophobia immediately; however, Bill C-150 helped erode homophobia by providing hope against oppression. In other words, it began a process of bringing down the barriers that made homosexuals second-class citizens.

This occurred simply because the nation and the man were ready for a path of pragmatic functionalism, a form of secularism within government policy. In the late 1960s, the relationship between heterosexuals and homosexuals became less subject-object; the two orientations gravitated toward subject-subject under the law. Past social historians have debated the true impetus for Trudeau's success and emphasized one of two variables: his practical nature or his rational persona. In fact, it is often said that the test of pragmatism is success, not logic.³²⁴ If this is true, then a black mark in Canadian history was reversed because Trudeau's rational persona matched secular society's need for change in the area of sexual mores. More than anything, Bill C-150 provided a neutral framework so that homosexuals could lead more productive lives, unburdened by the label of criminal. In this sense, Trudeau became the symbol for democratic rationalism—a bridge between the people and a new act of law. In 1969, Pierre Elliott Trudeau and his government had indeed created a progressive democratic measure with the passage of Bill C-150.

¹ Pierre Trudeau. Pierre E. *Memoirs*, 82-83.

² Richard Isay. Richard A. *Becoming Homosexual: The Journey To Self-Acceptance*, 162-163; also see Bayer, Ronald. *Homosexuality and American Psychiatry: The Politics of Diagnosis*, 60.

³ Randy Shilts. *The Mayor of Castro Street: The Life and Times of Harvey Milk*, 105-106, 155. In California, a precedent-setting legislative measure was passed in 1975 when Senate Majority Leader George Moscone pushed for a repeal of an 1872 statute that prescribed felony penalties for "crimes against nature." Moscone's efforts resulted in a 21-20 tie-breaking vote to repeal the felony law. California now legalized consensual sex between all adults, giving credence to the libertarian position on the issue. By the end of the year, fifteen more states struck down sodomy laws that had been on the books since the Colonial era. By 1977, Wyoming decriminalized gay sexual acts, making it the 19th state to pass such legislation.

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- ⁴ For a complete overview of the Stonewall Riots, the emergence of the Gay Liberation Front (GLF) in 1969, and the Gay Activists Alliance (GAA) in 1972, see the works of Barry D. Adam. *The Rise of a Gay and Lesbian Movement*. New York: Twayne Publishers, 1987; D. Clendinen and A. Nagourney. *Out For Good: The Struggle To Build A Gay Rights Movement In America*. New York: Simon and Shuster, 1999; John D'Emilio. *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970*. Chicago: University of Chicago Press, 1983; Martin Duberman. *Stonewall*. New York: Penguin Books, 1993; Toby Marotta. *The Politics of Homosexuality*. Boston: Houghton Mifflin, 198.
- ⁵ Miriam Smith. *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995*. Toronto: University of Toronto Press, 1999.
- ⁶ Gary Kinsman. *The Regulation of Desire: Homo and Hetero Sexualities*. Montreal: Black Rose Books Ltd, 1996: 129.
- ⁷ *Ibid*, 131.
- ⁸ Richard Plant. *The Pink Triangle: The Nazi War Against Homosexuals*. New York: Henry Holt and Company, Inc., 1986:30.
- ⁹ Heinz Heger. *The Men With The Pink Triangle*. New York: Alison Books, 1987: 9-11.
- ¹⁰ Richard Plant. *The Pink Triangle: The Nazi War Against Homosexuals*, 114.
- ¹¹ Jeffrey Weeks. *Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present*. London: Chichester, 1977: 39.
- ¹² George Chauncey. *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940*. New York: Basic Books, 1994.
- ¹³ Steven Maynard. "Horrible Temptations': Sex, Men and Working-Class Male Youth in Urban Ontario, 1890-1935." *Canadian Historical Review* vol. 78, no. 2: June: 1997, 191-235.
- ¹⁴ Angus McLaren. *The Trials of Masculinity: Policing Sexual Boundaries 1870-1930*. Chicago: The University of Chicago Press, 1997.
- ¹⁵ John Boswell. *Christianity, Social Tolerance, and Homosexuality*. Chicago: The University of Chicago Press, 1980.
- ¹⁶ John Boswell. *Same-Sex Marriage in Pre-Modern Europe*. New York: Vintage Books, 1994.

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- ¹⁷ Michel Foucault. *Madness and Civilization*, 276.
- ¹⁸ Michel Foucault. *Ethics, Subjectivity and Truth: The Essential Works of Foucault 1954-1984*. (ed.) Paul Rabinow. New York: The New York Press, 1997: pp. 39-50.
- ¹⁹ Ibid, 141- 156.
- ²⁰ Vern L. Bullough and Bonnie Bullough. *Sin, Sickness, and Sanity: A History of Sexual Attitudes*. New York: Garland Publishing, 1977.
- ²¹ Jeffrey Weeks. *Sex, Politics, and Society: The Regulation of Sexuality since 1800* New York: Longman, Inc., 1981.
- ²² Jonathan N. Katz. *The Invention of Heterosexuality*. Toronto: Penguin Books, 1995.
- ²³ Mary L. Adams. *The Trouble With Normal: Postwar Youth and the Making of Heterosexuality*. Toronto: University of Toronto Press, 1999.
- ²⁴ Valerie J. Korinek. "Don't Let Your Girlfriends Ruin Your Marriage': Lesbian Imagery in Chatelaine Magazine, 1950-1969." (Mona Gleason et. al. Eds.) Toronto: Oxford University Press, 2002: 335-352. Chatelaine editor Doris Anderson received memos from her managing editor and associate editor describing how lesbianism was not seen as an exciting story, largely due to the fact that mothers and working women would not be able to relate to it. It was presumed that the female readership was heterosexual even though 32 percent of total readers were composed of single women. They felt that mothers would be more worried about pregnancy, issues closer to the heterosexual ethic; see page 338-9.
- ²⁵ Toby Marotta. *The Politics of Homosexuality*. Boston: Houghton Mifflin, 1981.
- ²⁶ John D'Emilio. *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970*. Chicago: University of Chicago Press, 1983.
- ²⁷ John D'Emilio and Estelle B. Freedman. *Intimate Matters*. New York: Harper & Row, 1988.
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- ⁴⁶ James H. Jones. *Alfred C. Kinsey: A Public/Private Life*. New York: W. W. Norton & Company, Inc., 1997: 564-571. By the time *Sexuality and the Human Female* was published in 1953, Kinsey was almost as popular as President Eisenhower, appearing on the cover of *Time* magazine and drawing bigger headlines than the Soviet Union's explosion of its first H-bomb; see pages 701-2.
- ⁴⁷ Alfred C. Kinsey. *Sexual Behavior in the Human Male*. Philadelphia: W.B. Sanders Company, 1948: 499.
- ⁴⁸ *Ibid*, 623.
- ⁴⁹ *Ibid*, 625.
- ⁵⁰ *Ibid*, 651.
- ⁵¹ *Ibid*.
- ⁵² *Ibid*, 659-660.
- ⁵³ *Ibid*, 664.
- ⁵⁴ *Ibid*, 665.
- ⁵⁵ James H. Jones. *Alfred C. Kinsey: A Public/Private Life*. New York, 1997 (preface, xiii).
- ⁵⁶ *Ibid*, 13.
- ⁵⁷ *Ibid*, 292.
- ⁵⁸ *Ibid*, 292-293.
- ⁵⁹ Randy Shilts. *Conduct Unbecoming: Gays and Lesbians in the U.S. Military*, 107-111. President Eisenhower and J. Edgar Hoover continued to approve of surveillance campaigns against members of the Mattachine Society even though no evidence existed of illegal or subversive activities.
- ⁶⁰ Randy Shilts. "What's Fair in Love and War." *Newsweek* Feb. 1, 1993: 58-59.
- ⁶¹ Chandler Burr. *A Separate Creation: The Search For The Biological Origins Of Sexual Orientation*. New York: Hyperion, 1996: 84-85.
- ⁶² John D'Emilio and Estelle B. Freedman. *Intimate Matters*. New York: Harper & Row, 1988: 293.
- ⁶³ *Ibid*, 13.

⁶⁴ Ibid.

⁶⁵ Ibid,

⁶⁶ Todd Gitlin. *The Sixties: Years of Hope, Days of Rage*, 12-13.

⁶⁷ Ibid, 21.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid, 365-366.

⁷¹ Ibid.

⁷² Ibid, 58.

⁷³ Ibid, 7.

⁷⁴ Ibid, 341.

⁷⁵ John McMurtry. "1968: the year of the radical student." *Saturday Night* September, 1968, 83: 19-20.

⁷⁶ Ibid, 20.

⁷⁷ British Medical Association. Council. "Homosexuality and prostitution: a memorandum of evidence/prepared by a special committee of the Council of the British Medical Association for submission to the Departmental Committee on Homosexuality and Prostitution." London: British Medical Association, 1955: 5.

⁷⁸ Ibid, 8, 10.

⁷⁹ Ibid, 9.

⁸⁰ Ibid, 17, 19. The committee provided three reasons for such a gendered history. Firstly, women were chattel in historic terms and of lesser importance as a social danger. Secondly, few cases of seduction have involved women. Lastly, female homosexual practices are mostly between consenting adults carried out in private.

⁸¹ Ibid, 37.

⁸² Ibid, 37-38.

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- ⁸³ Ibid, 38.
- ⁸⁴ Ibid, 31.
- ⁸⁵ Ibid, 32.
- ⁸⁶ Ibid.
- ⁸⁷ Ibid.
- ⁸⁸ Ibid, 32-34.
- ⁸⁹ Ibid, 12. Theories of the innateness of homosexuality were diverse. The committee accepted etiological research on twin studies, hormonal factors, sex variants on siblings, and Kinsey's sexual continuum.
- ⁹⁰ Ibid, 13. The committee report was quick to add that although innate homosexuality should not be punished, it was also not an excuse to absolve them of responsibility for decent public behaviour.
- ⁹¹ Ibid, 11.
- ⁹² Ibid, 16.
- ⁹³ Ibid, 43.
- ⁹⁴ Ibid, 62.
- ⁹⁵ *Debates: House of Commons Canada* (2nd Session) 27th Parliament vol. VII, Apr. 17th, 1969: 7667.
- ⁹⁶ Great Britain. Committee on Homosexual Offences and Prostitution. "The Wolfenden Report," 210.
- ⁹⁷ Ibid, 211.
- ⁹⁸ Jeffrey Weeks. *Sex, Politics, and Society: The Regulation of Sexuality since 1800*, 240-241.
- ⁹⁹ Great Britain. Committee on Homosexual Offences and Prostitution. "The Wolfenden Report," 39.
- ¹⁰⁰ Ibid, 55.
- ¹⁰¹ Ibid, 58.

¹⁰² Ibid, 55.

¹⁰³ Ibid, 56.

¹⁰⁴ Ibid, 27, 29.

¹⁰⁵ Ibid, 29.

¹⁰⁶ Ibid, 30-31.

¹⁰⁷ Ibid, 32.

¹⁰⁸ Ibid, 41.

¹⁰⁹ Ibid, 32.

¹¹⁰ Ibid.

¹¹¹ Ibid, 33.

¹¹² Ibid.

¹¹³ Ibid, 23.

¹¹⁴ Ibid, 44.

¹¹⁵ Ibid.

¹¹⁶ Ibid, 48.

¹¹⁷ Ibid, 6.

¹¹⁸ Ibid, 61.

¹¹⁹ Ibid, 45.

¹²⁰ Ibid, 46.

¹²¹ Ibid, 24.

¹²² Gary Kinsman. *The Regulation of Desire: Homo and Hetero Sexualities*, 220, 262.

¹²³ Great Britain. Committee on Homosexual Offences and Prostitution. "The Wolfenden Report," 160-161.

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- ¹²⁴ Gary Kinsman and Patrizia Gentile. "In the Interests of the State: The Anti-gay, Anti-lesbian National Security Campaign in Canada," 33.
- ¹²⁵ Dean Beeby. *The Globe and Mail*, A1-A2. (cited in Gary Kinsman and Patrizia Gentile). "In the Interests of the State: The Anti-gay, Anti-lesbian National Security Campaign in Canada," 33.
- ¹²⁶ Gary Kinsman and Patrizia Gentile. "In the Interests of the State: The Anti-gay, Anti-lesbian National Security Campaign in Canada," 38.
- ¹²⁷ Ibid, 31.
- ¹²⁸ Ibid, 38.
- ¹²⁹ Gary Kinsman. *The Regulation of Desire: Homo and Hetero Sexualities*, 148-212.
- ¹³⁰ Alison Prentiss et. al. *Canadian Women, A History*, 224-225.
- ¹³¹ Dorothy E. Smith. "Femininity as Discourse." *Texts, Facts, and Femininity*, 159-206.
- ¹³² David F. Greenburg. *The Construction of Homosexuality*, 434-454.
- ¹³³ Mary L. Adams. *The Trouble With Normal: Postwar Youth and the Making of Heterosexuality*, 27.
- ¹³⁴ Ibid, 26.
- ¹³⁵ Ibid, 33.
- ¹³⁶ Taras Grescoe. *Sacré Blues: An Unsentimental Journey Through Quebec*. Toronto: Macfarlane Walter & Ross, 2001, 265-266.
- ¹³⁷ J.L. Granatstein. et. al. *Nation: Canada Since Confederation*, 519.
- ¹³⁸ Conrad Black. Duplessis, 58.
- ¹³⁹ J.L. Granatstein. et. al. *Nation: Canada Since Confederation*, 522.
- ¹⁴⁰ Kevin J. Christiano. *Pierre Elliott Trudeau: Reason Before Passion*, 68-69.
- ¹⁴¹ Blair Fraser. "The Sudden Rise of Pierre Elliott Trudeau," 62.
- ¹⁴² Molyneux, John and Marilyn Mackenzie. *Vistas Canada: Environmental and Economic Issues*, 44.
- ¹⁴³ John D. Harbron. *This is Trudeau*, 80.

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- ¹⁴⁴ Taras Grescoe. *Sacré Blues: An Unsentimental Journey Through Quebec*. Toronto: Macfarlane Walter & Ross, 2001, 275-276.
- ¹⁴⁵ Ibid, 266.
- ¹⁴⁶ Ibid, 269.
- ¹⁴⁷ Ibid, 270.
- ¹⁴⁸ George Radwanski. *Trudeau*, 67.
- ¹⁴⁹ Thomas S. Axworthy and Pierre Elliott Trudeau (eds.) *Towards a Just Society: The Trudeau Years*, 326.
- ¹⁵⁰ Ibid, 335.
- ¹⁵¹ Norbert Lacoste. "Quebec's church in a profane world?", 48.
- ¹⁵² *Debates: House of Commons Canada* (2nd Session) 27th Parliament vol. VII, Mar.20th-Apr. 25th, 1969: 7605. No one had been convicted in Canada for buggery between consenting adults in private since 1953. *Klippert v. The Queen* was the first charge in ten years.
- ¹⁵³ Francois des Rivieres and Mills Shipley. (eds.) *Canada Law Reports: The Supreme Court of Canada. Klippert v. The Queen*, pp. 822-836, 1967.
- ¹⁵⁴ Ibid, 822.
- ¹⁵⁵ Ibid, 832-833.
- ¹⁵⁶ Ibid, 826.
- ¹⁵⁷ Ibid, 827.
- ¹⁵⁸ Ibid.
- ¹⁵⁹ Ibid.
- ¹⁶⁰ Ibid, 828-829.
- ¹⁶¹ Ibid.
- ¹⁶² Ibid.
- ¹⁶³ Ibid, 829.

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- ¹⁶⁴ Ibid, 830.
- ¹⁶⁵ Ibid, 831.
- ¹⁶⁶ Ibid.
- ¹⁶⁷ Ibid.
- ¹⁶⁸ Ibid.
- ¹⁶⁹ Ibid, 835-837.
- ¹⁷⁰ Ibid, 832-33.
- ¹⁷¹ Ibid, 836.
- ¹⁷² Karl Menninger M.D. *The Crime of Punishment*, 16.
- ¹⁷³ *The Star* headlines appeared on Nov. 7, 8, 1967, and the *Globe and Mail* editorial is from Nov. 11th, 1967.
- ¹⁷⁴ *Debates: House of Commons Canada* (2nd Session) 27th Parliament vol. IV (Nov. 7th, 1967): 3972.
- ¹⁷⁵ Ibid: 4036.
- ¹⁷⁶ *Debates: House of Commons Canada* (2nd Session) 27th Parliament vol. V (Dec.21st, 1967): 5467.
- ¹⁷⁷ Michel Vastel. *The Outsider: The Life of Pierre Elliott Trudeau*, 17.
- ¹⁷⁸ Blair Fraser. "The Sudden Rise of Pierre Elliott Trudeau," 62.
- ¹⁷⁹ Michel Vastel. *The Outsider: The Life of Pierre Elliott Trudeau*, 25.
- ¹⁸⁰ Stephen Clarkson and Christiana McCall. *Trudeau and Our Times*, 38.
- ¹⁸¹ Ibid.
- ¹⁸² Ibid, 46.
- ¹⁸³ Ibid, 47.
- ¹⁸⁴ Ibid, 49.

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- ¹⁸⁵ Ibid, 50.
- ¹⁸⁶ Douglas Stuebing et al. *Trudeau: A Man For Tomorrow*, 30.
- ¹⁸⁷ Ibid, 90.
- ¹⁸⁸ Ibid, 64.
- ¹⁸⁹ Richard E. Lessner. *The Cornerstone of Liberty: Natural Law, America's Unwritten Constitution*. Family Research Council: Washington D.C., 2001.
- ¹⁹⁰ Ron Graham. (ed.) *The Essential Trudeau*. Chapter I.
- ¹⁹¹ Pierre Elliott Trudeau. *Federalism and the French Canadians*. Toronto: Macmillan of Canada, 1968: xxi.
- ¹⁹² Pierre Elliott Trudeau. *Memoirs*, 40
- ¹⁹³ Ron Graham. (ed.) *The Essential Trudeau*. Chapter II, The Gift of Liberty.
- ¹⁹⁴ Pierre Elliott Trudeau. *Memoirs*, 40.
- ¹⁹⁵ Ibid, 47.
- ¹⁹⁶ Ron Graham. (ed.) *The Essential Trudeau*. Chapter II. Trudeau elaborated on his respect for the ideology of personalism again at a Liberal Policy Conference in Ottawa on November 20th, 1970.
- ¹⁹⁷ Jim Coutts. *Trudeau's Shadow: The Life and Legacy of Pierre Elliott Trudeau*. (ed.) Andrew Coyne and J.L. Granastein, 160.
- ¹⁹⁸ Ron Graham. (ed.) *The Essential Trudeau*. Chapter III.
- ¹⁹⁹ Kevin, J. Christiano. *Pierre Elliott Trudeau: Reason Before Passion*, 22.
- ²⁰⁰ Douglas Stuebing. et al. *Trudeau: A Man For Tomorrow*, 28.
- ²⁰¹ Jim Coutts. *Trudeau's Shadow: The Life and Legacy of Pierre Elliott Trudeau*. (ed.) Andrew Coyne and J.L. Granastein, 264.
- ²⁰² Gordon Donaldson. *The Prime Ministers of Canada*, 246.
- ²⁰³ John Emerich Edward Dahlberg Acton. "Nationality." *Essays on Freedom and Power*, 141-170.

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- ²⁰⁵ Ibid.
- ²⁰⁶ Albert Breton et al. "An Appeal for Realism in Politics," 29-33.
- ²⁰⁷ Pierre Elliott Trudeau. *Conversations With Canadians*, 12. Interview with Edith Iglauer, *New Yorker*, 5 July 1959.
- ²⁰⁸ Thomas S. Axworthy and Pierre Elliott Trudeau. (eds.) *Towards a Just Society: The Trudeau Years*, 357-358.
- ²⁰⁹ Ibid, 358-359.
- ²¹⁰ Ron Graham. (ed.) *The Essential Trudeau*, Chapter IV.
- ²¹¹ John D. Harbron. *This is Trudeau*, 99.
- ²¹² Pierre Elliott Trudeau. "Toward a Constitutional Bill of Rights, 158.
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- ²¹⁴ Pierre Elliott Trudeau (Minister of Justice). *A Canadian Charter of Human Rights*, 83.
- ²¹⁵ Ibid, 9.
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- ²¹⁷ John D. Harbron. *This is Trudeau*, 93-94.
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- ²⁹⁶ *Ibid*: 11033.
- ²⁹⁷ *Ibid*, July 16th: 11298.
- ²⁹⁸ *Ibid*: 11304.
- ²⁹⁹ Lubor J. Zink. The Creditiste show is increasingly silly." *Toronto Telegram* May 8th, 1969; also see --"Filibuster by Creditistes looms in crime code debate." *Ottawa Citizen* Apr. 17th, 1969; also see --"Creditistes expected to force long debate over abortion clauses of Criminal Code." *Globe and Mail*. Apr. 24th, 1969.
- ³⁰⁰ *Debates: House of Commons Canada* (2nd Session) 27th Parliament vol. VI, Feb. 19th-Mar. 19th, 1969: 7759. Overall, eleven Conservatives votes for the bill, and forty-four voted against it.
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- ³¹⁴ Ibid.
- ³¹⁵ Gordon Donaldson. *The Prime Ministers of Canada*, 240.
- ³¹⁶ Pierre Elliott Trudeau. “We need a bill of rights, not a new version of the BNA act.” *Maclean’s* February, 1964, 77: 24.
- ³¹⁷ Douglas Stuebing et al. *Trudeau: A Man For Tomorrow*, 3.
- ³¹⁸ Ibid, 359.
- ³¹⁹ Ibid, 27.
- ³²⁰ John Ralston Saul. *On Equilibrium*. Toronto: Viking Press, 2001.
- ³²¹ Antonio Lamar. “The Charter’s agonizing day in court.” *Ottawa Citizen* April 17, 2002: A:17. Lamar was also indicating that Trudeau’s 1982 Charter of Rights and Freedoms was successful because Canadians had developed a “culture of human rights.” On sexual matters, the impetus for this begins with Bill C-150.
- ³²² Gad Horowitz. “Trudeau vs. Trudeauism,” 29.
- ³²³ Karl Menninger. M.D. *The Crime of Punishment*, 11.
- ³²⁴ Gad Horowitz. “Trudeau vs. Trudeauism,” 28.

STATISTICS RELATING TO HOMOSEXUAL OFFENSES

(a) England and Wales

TABLE I

HOMOSEXUAL OFFENSES KNOWN TO THE POLICE

Table showing the number of indictable homosexual offenses known to the police during the twenty-five years ended 31st December, 1955

Year	Number of offences known to the police			
	Buggery	Indecent assault, &c.	Gross indecency	Total
1931	73	371	178	622
1932	46	487	253	791
1933	82	554	210	846
1934	64	581	192	837
1935	78	535	227	840
1936	125	690	352	1,167
1937	102	703	316	1,121
1938	134	822	320	1,276
1939	146	766	280	1,192
1940	97	808	251	1,156
1941	177	757	390	1,324
1942	208	998	582	1,788
1943	245	1,208	623	2,076
1944	277	1,186	449	1,912
1945	223	1,318	459	2,000
1946	247	1,523	561	2,331
1947	255	1,839	690	2,784
1948	258	2,216	660	3,134
1949	562	2,409	852	3,823
1950	534	2,893	989	4,416
1951	452	3,272	1,152	4,876
1952	670	3,087	1,686	5,443
1953	700	3,305	1,675	5,680
1954	1,043	3,280	2,034	6,357
1955	766	3,556	2,322	6,644

TABLE II

PERSONS AGAINST WHOM PROCEEDINGS WERE TAKEN IN RESPECT OF HOMOSEXUAL OFFENSES

Table showing the number of persons against whom proceedings were taken in respect of indictable homosexual offenses during the twenty-five years ended 31st December, 1955

Year	Number of persons proceeded against			
	Buggery	Indecent assault, &c.	Gross indecency	Total
1931	57	212	121	390
1932	32	242	170	444
1933	72	257	127	456
1934	57	305	153	515
1935	49	255	149	453
1936	82	308	164	554
1937	77	292	221	590
1938	71	428	220	719
1939	63	361	171	595
1940	53	361	131	545
1941	67	361	188	616
1942	113	397	211	721
1943	106	509	271	886
1944	121	441	244	806
1945	112	469	201	782
1946	120	470	281	871
1947	130	585	302	1,017
1948	149	714	395	1,258
1949	239	754	499	1,492
1950	271	881	514	1,666
1951	242	990	746	1,978
1952	320	999	790	2,109
1953	393	997	877	2,267
1954	463	1,012	967	2,442
1955	428	1,081	995	2,504

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