

# Censorship, Sexuality, and the Or, Can We "Queer"?

BY JANET E. GWILLIAM

*Cet article explore les ramifications socio-politiques des luttes pour les droits des "queer" face à la loi. L'auteure relate la décision dans le cas de "Little Sister's" en 1994 pour montrer la position souvent périlleuse des "homo-sexuels" comme sujet légal.*

How can we affirm a relational and transformational politics of self that takes as its process and its goal the interruption of those practices of differentiation that (re) produce historically specific patterns of privilege and oppression?

—Ed Cohen

We must be aware of ... the tendency to reduce being gay to the questions: "Who am I?" and "What is the secret of my desire?" Might it not be better if we asked ourselves what sort of relationships we can set up, invent, multiply or modify through our homosexuality? The problem is not trying to find out the truth of one's sexuality within oneself, but rather, nowadays, trying to use our sexuality to achieve a variety of different types of relationships. And this is why homosexuality is probably not a form of desire, but something to be desired. We must therefore insist on becoming gay, rather than persist in defining ourselves as such.

—Michel Foucault (1985)

In the last 30 years, the discourse around rights and the politicization of identity have had a truly remarkable impact upon the Canadian political and legal landscapes. The mo-

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bilization of feminists, First Nations peoples, ethnic minorities, and other groups who presented coherently articulated political strategies vis-à-vis democratic rights resulted in policy reevaluations such as the negotiation of First Nations land claims and the move towards self-government, and the inclusion of various enumerated grounds within the equality clause, section 15 (1), of the *Canadian Charter of Rights and Freedoms (Charter)*. These measures, with many others, illustrate the Canadian government's at least symbolic attempt at formalizing the rights and privileges of citizens who were once totally marginalized and invisible. Michael Mandel has termed this trend, "the legalization of politics," and the drafting of the *Charter* was not only a battle ground over who would fall under the protection of this human rights discourse but was also a political vehicle used to solidify a hegemonic view of Canadian national identity (32). Throughout the late

1960s and '70s, Canadian minority groups began organizing on the basis of that which oppressed them and utilized the discourse of civil rights so prevalent in the United States at the time in order to make their claims heard by law makers. In their introduction to *Painting the Maple*, Veronica Strong-Boag *et al.* argue that throughout the constitutional process, the construction of "special interest groups" was a means by which the ruling elite in Canada could solidify a distinctly white, middle-class, and anglophone Canadian nationalist identity. They write,

the practice of identity politics in Canada has resulted in a struggle by the dominant group, no less than by the marginalized ones, to strengthen, protect, and advance its identity. (12)

Within the context of sexual minority rights it is crucial to note that Canada's queers were noticeably absent from the nation-making agenda as the *Charter* did not, and does not, explicitly include sexuality as a protected ground under section 15. As Becki Ross argues,

If ... in the mid-1980s, "the family" is the definitive Canadian institution and homosexuality is anti-family, then, by extension, lesbians and gay men are not fully Canadian and can never be accepted as healthy, productive contributors to Canadian society. Beneath this century-old heterosexist nationalism lies the figure of the repellent queer whose claims to dignity, security, and equality must

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be understood as dangerous, illegitimate, and liable to precipitate Canada's complete undoing." (203)

Indeed, just as the *Charter* was held up by politicians and others as the ultimate example of Canadian liberal democratic principles, it has the effect of masking the deeply colonialist, masculinist, and heterosexist underpinnings of the Canadian nationalist sentiments enshrined in its pages.

Concomitant to this shift towards rights discourse however was the rise in the critical feminist literature around the efficacy of engaging with law<sup>2</sup> which was viewed as a privileged discourse of a patriarchal, racist, and capitalist state. It is clear that legal reforms have not produced substantive equality for women or other marginalized groups (see Chunn and Lacombe; Snider; Cossman *et al.*; Smart). The feminist "porn wars" are particularly illustrative of this critique wherein many feminists argued that state censorship through obscenity laws did nothing for women, gays, and lesbians except further repress our already marginalized sexual expression (see Burstyn; Cossman *et al.*).

Understanding the trajectory of feminist engagements with law, our victories and losses, permits a reflexive and critical evaluation of the increasing legalization of queer rights struggles in Canada. My hesitation stems from heeding Carol Smart's important reminder that,

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ipation of women.... or the extent to which law reflects the interest of patriarchy or even men. These are necessary debates but they have the overwhelming disadvantage of ceding to law the very power that law may then deploy against women's claims. (5)

Indeed, in our recourse to rights, Canadian queers must remember that the law is a site of contestation and as such, the fight for rights is often more about liberation and containment than an out-and-out victory (Eaton). On March 16, 2000 the case of *Little Sister's Art Emporium and Bookstore et al. v. Ministry of Justice* (B.C.) (Little Sister's) went before our nation's highest court. The appellants Little Sister's, Vancouver's gay and lesbian bookstore, have spent hundreds of thousands of dollars and countless hours attempting to make Canada Customs accountable for their censor-

ship practices, practices which target and marginalize materials produced for gays and lesbians. This case challenges the federal government's ability to regulate those materials which are deemed "obscene" under s. 163 (8) of the *Canadian Criminal Code* and threatens Custom's authority in the area of censorship. This truly is *Little Sister's v. Big Brother* (*Globe and Mail*). The significance of this case is certainly not lost on me. As a queer woman myself and a proud Vancouverite, my right to materials which validate my sexuality is challenged and undermined every time the sensibilities of a Custom's officer or Ontario Provincial Division judge are offended by the contents of a lesbian pornography magazine,<sup>3</sup> Moreover, the Little Sister's case calls into question the boundaries between those who do and do not "count" as Canadian citizens with rights as such. "Bad queers" (and representations thereof) are constructed as "un-Canadian" (Ross 204) and therefore undeserving of governmental protection.<sup>4</sup>

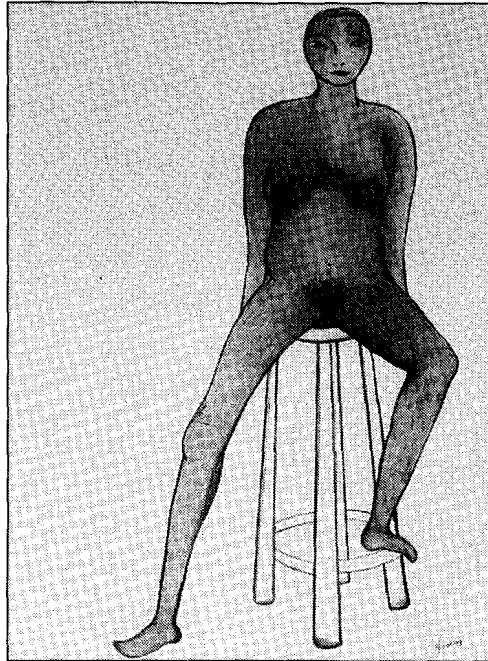
Thus, the purpose of this article is to explore the socio-political ramifications for "queer" rights struggles vis-à-vis law. I will use the decision in the 1994 Little Sister's case in order to show the often perilous position of the "homosexual" as a legal subject. I argue that the deployment of the category "sexual orientation" is problematic within a juridico-discursive context as it necessitates the construction of the equation of sexuality with homosexuality, and leaves unchallenged and unproblematized heterosexuality as the hegemonic expression of sexuality. Moreover, utilizing a section 15 (1) *Charter*

challenge necessitates that claims must fit into the a priori categories of legal discourse which erases the ambiguity and complexity of human identity. These erasures effectively reinscribe the heterosexual/homosexual binary system wherein the "Truth" of one's identity is constructed by the judiciary as based on one's homosexuality. Not only does such a construction leave many "queers outside the *Charter*" (Lahey 92), it effectively proscribes the conditions under which "sexual deviants" may engage with a heterosexist and homophobic state. Thus, the need for Canadian queers to reevaluate our recourse to law in such instances is, in my opinion, of particular importance.

#### Legal in(queer)y: the *Charter* meets queer theory

Over the last 30 years, gay and lesbian activists have fought long and hard in the courts and human rights tribunals to secure legitimization for the existence of the homosexual in the Canadian social milieu. With the introduction of the *Charter* in 1982, the possibility for successful litigation under the equality clause, section 15, seemed far greater for many gays and lesbians. "*Charter* talk," as a discursive strategy, became heavily embedded in the national psyche and as such, gays and lesbians increasingly turned to the *Charter's* promise of full legal protection as a new avenue to pursue civil rights claims. In his book *Charter of Rights and the Legalization of Politics in Canada*, Michael Mandel discusses the rise of this "*Charter* talk" as connected to sweeping socio-economic changes which began in the late 19th century and grew considerably in the post-war period. Mandel argues that the political impetus and popular support for the *Charter's* creation was largely due to: the large influence of the United States on Canadian life; a federalist strategy to combat Quebec separat-

ism (via institutionalized bilingualism); and, a way of discursively masking the growing socio-economic disparities in Canada. In fact, it is this last trend that Mandel argues is of the most significance. He writes,



Meera Sethi, "Wanting, wanting," pencil on paper, 1999.

One cannot fail to have noticed how in Canada the constitution itself, patriation, the *Charter of Rights*, and the plea for "national" unity all had a part to play in taking our minds off our drastic economic decline and in unifying a country riven by enormous disparities in material well-being and life chances. (74)

Indeed, the entire constitutional process began shortly after Canada's centennial year, the year we got a new flag and a new anthem. As Mandel notes, the *Charter* as "legalized" or "simulated" politics is better suited to the solution of the problems facing the ruling elite in Canada than a real redistribution of material wealth and power.

Furthermore as Didi Herman suggests, this is part of the deeply entrenched "truths" about legal liberal-

ism: there are majorities and minorities and it is the duty of the majority in a democratic society to be tolerant and exhibit compassion by extending formal rights to the afflicted minorities. Thus, those groups whose interests are purportedly reflected in the *Charter* are constructed as lesser people, lesser citizens, lesser Canadians. Section 15 of the *Charter* states,

every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental and physical disability. (qtd. in Mandel 315)

The aforementioned protected categories are known as "enumerated grounds," and any group or individual who can prove that they have suffered some form of discrimination as a result of membership in an enumerated group may seek legal redress and compensation under section 15 (1). As is apparent, sexual minorities such as gays and lesbians are not explicitly covered under section 15 (1). However, through extensive litigation, sexual orientation has been established<sup>5</sup> as an "analogous" ground and is protected as such. The subsequent section 15 (1) *Charter* jurisprudence<sup>6</sup> regarding gay and lesbian rights was one premise of the Little Sister's challenge in 1994.

Herman argues that *Charter* legislation is based on the tenets of equality discourse whose modus operandi is often one of social control. She writes,

modern antidiscriminatory law ... functions this way by constructing a "classification of identities"—categories of persons who are, in some way, 'lesser than', an unstated norm. (45)

In this way, it becomes apparent that equality discourse constructs the terms under which various “minorities” may present their claims and thus, existing power relations are not substantially challenged. Herman concludes that,

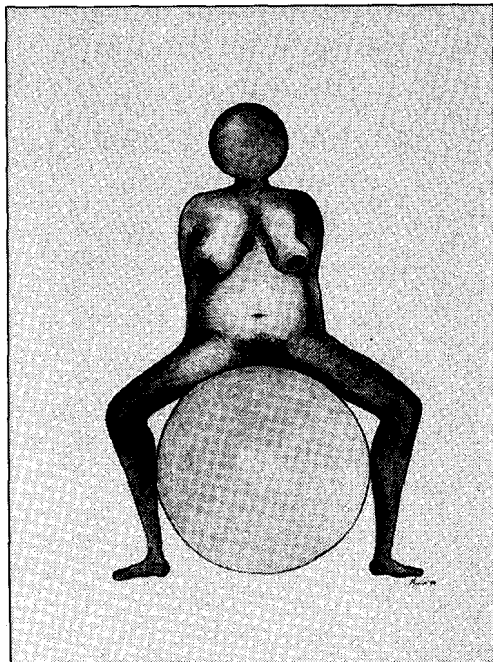
If, as many feminists and others contend, sexuality is socially constructed, and there is no necessary or natural link between reproductive capacities, gender categories, and sexual desire, then representing lesbians and gay men as an immutable category may restrict rather than broaden social understandings of sexuality. Lesbians and gay men are granted legitimacy, not on the basis that there might be something problematic with gender roles and sexual hierarchies, but on the basis that they constitute a fixed group of “others” who need and deserve protection. (43)

Therefore, reliance on equality discourse which is the basis of *Charter* challenges, has reconstituted the jurisprudential space occupied by “the homosexual” as predicated on the category “sexual orientation” (Herman; Lahey). Again, I must return to the rather prophetic warning of Carol Smart who, in her book *Feminism and the Power of the Law*, wrote that feminists must work toward deconstructing and decentering law as a political strategy which could potentially avoid “fetishizing” the law. Smart argues,

it is a dilemma that all radical political movements face, namely, the problem of challenging the form of power without accepting its own terms of reference and hence losing the battle before it has begun. Put simply, in accepting law’s terms in order to challenge law, feminism always concedes too much. (5)

It is with this in mind that I turn to

a discussion of queer theory which challenges the very institutional knowledges, such as that used within law, which reduce a potentially subversive queer subjectivity to one of homosexual/heterosexual binary



Meera Sethi, “The Shape of this,” pencil on paper, 1999.

identities.

Queer theorists, drawing on the work of postmodern and post-structuralist writers on identity, pose a challenge to the unproblematic construction of the unitary, essentialized homosexual subject. Queer theorists shift their focus from a concentration on the oppression of gays and lesbians and instead look at the discursive production of sexual knowledges, knowledges and categories which reaffirm and reinscribe the homosexual/heterosexual binary as natural, normal, and foundational to western, industrialized society. Many queer theorists take as their focus heterosexuality as a construction and thus, problematize the purported universality and “naturalness” of heterosexuality as that which is “taken-for-granted.” In much of contemporary queer theorizing, identity is open and a site of contestation, fluid, malleable, and often encom-

passing multiple axes such as race, ethnicity, class, gender, and sexuality. Steven Seidman writes,

Modern Western affirmative homosexual theory may naturalize or normalize the gay subject: This project reproduces the hetero/homosexual binary, a code that perpetuates the heterosexualization of society ... it reinforces the modern regime of sexuality. Queer theory wishes to challenge the regime of sexuality itself, that is, the knowledges that construct the self as sexual and that assume heterosexuality and homosexuality as categories marking the truth of sexual selves. (12)

Indeed, as the following discussion of the decision in the Little Sister’s case will hopefully illuminate, the legal production of the homosexual within *Charter* jurisprudence requires the equation of sexuality, or more importantly homosexuality, with the core “Truth” of one’s identity.

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### My desire as my destiny? The discursive production of the homosexual

In *The History of Sexuality: An Introduction*, Michel Foucault outlines the discursive production of a new genesis of personae: the homosexual. This production began in the late 19th century with the medico-moral apparatus launching into full gear vis-à-vis deviant sexualities. In fact, as Foucault discusses at length in his work, there was a virtual explosion of discourses about sex; this “incitement to discourse” marked a very different way of thinking about the connections between the sex act performed, the person performing the act, and the labeling of his/her sexuality. Foucault argues that the medico-scientific practice of naming, categorizing, and subordinating

deviant sexualities, in its articulation, created a new type of species. Foucault writes,

We must not forget that the psychological, psychiatric, medical category of homosexuality was constituted from the moment it was characterized ... less by a type of sexual relations than by a certain quality of sexual sensibility, a certain way of inverting the masculinity and femininity in oneself. Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species. (43)

Indeed one's "essence" or core "truth" was seen as constituted by the sexual acts one performed. The "homosexual," now defined, could be regulated, surveyed, and persecuted as deviant by the very nature of his/her existence. The polarization of homosexual and heterosexual became entrenched as foundational within the western medico-scientific discourse of sexuality; and authors such as Foucault, drawing on the poststructuralist linguistic tradition, have clearly shown that the stability and thus coherence of a heterosexual identity relies primarily on the stability/coherence of a marginalized and subordinated homosexual identity (Foucault 1978; Terry). This is clearly evidenced in the Little Sister's case which was heard in the British Columbia Supreme Court in 1994. Counsel for Little Sister's argued that the materials being censored by Canada Customs were crucial to the gay and lesbian communities' sense of self and the fight against homophobic and heterosexist oppression. This is a singularly important argument, one that must be repeated over and over again until the bias and oppressive nature of Custom's policies are

thoroughly exposed. Indeed, as Dr. Becki Ross testified in the Little Sister's case,

I would say that lesbian made sexual materials validate lesbian sexuality as healthy, as meaningful and as empowering. They contribute to the positive for-

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mation of lesbians' consciousness, community, and culture; they combat the historical legacy of invisibility.<sup>7</sup>

Pursuant to the discussion of the construction of "the homosexual" as sexual species, my argument in this paper is not that the Little Sister's case is in vain or that those experts who testified did so in error. As was recently pointed out to me, a legal defeat does not necessarily mean a real one, in that the mobilization and public exposure of the cause is a victory in itself.<sup>8</sup> However, the testimony and materials presented in the case were ultimately construed as not pertaining to a discussion of same sex desire or the problematization of heterosexual hegemony vis-à-vis the discourse of sexuality, but around sexuality as core "Truth," or essence, to the homosexual. This construction by the judiciary ultimately led to Little Sister's defeat in the 1996 ruling wherein the impugned legis-

lation, Customs Tariff Code 9956 (a) of Schedule VII and s. 114 of the Customs Tariff, were not deemed unconstitutional under section 2(b) and 15 (1) of the *Charter*.

In his article on "The Relevance of Stereotypes to s. 15 Analyses," Christopher Nowlin asks the question,

Is it not preferable for the gay and lesbian and heterosexual community to accept some limited restrictions on their freedoms of expression (that is, as long as anti-obscenity law remains in effect in Canada), so that in the long term gay and lesbian persons will not be legally constrained by an identity that portrays them as primarily, if not categorically, occupied with their sexuality? (347)

This question stems from his analysis of Justice Smith's ruling in the Little Sister's case wherein Smith concluded that because sexual expression purportedly plays a greater role in the lives of gays and lesbians, it follows that censorship would apply to these materials more often and that this legislation is therefore not unconstitutional. This decision is largely based on the third branch of section 15(1) analyses established by Justice Gonthier in *Miron v. Trundel* (1995) wherein the "personal characteristic" shared by the group trying to prove discrimination must be established. Secondly, Justice Smith had to determine the relevancy of this "personal characteristic" having "regard to the functional values underlying the impugned law" (Nowlin 340). Unlike the decision in *Miron v. Trundel*, Justice Smith determined that the personal characteristic of the group in question, the sexual orientation of homosexuals, is relevant to the objectives of the impugned legislation, and as such, the differential impact of censorship legislation is justifiable. In his decision Justice Smith concludes,

Sexuality is relevant because

obscenity is defined in terms of sexual practices. Since homosexuals are defined by their homosexuality and their art and literature is permeated with representations of their sexual practices, it is inevitable that they will be disproportionately affected by a law proscribing the proliferation of obscene sexual representations. (qtd. in Nowlin 343)

Am I defined by my sexual practices? Is my desire my destiny? Will I forever be seen in the eyes of the law as a sexual "other" because my status is defined by my homosexuality? What about the fact that I am a white, middle-class, educated woman? Does this have any bearing on the designation of identity vis-à-vis sexual representations? Is homosexuality my master status? Will this designation always keep me on the margins of Canadian society? Is this not simply another juridico-discursive strategy which reinforces heterosexual hegemony, entrenching heterosexuality once again as norm? Indeed, it was this reasoning that infuriated author Jane Rule on the stand in this trial. In her testimony she stated,

The assumption is that there must be something pornographic (in my writing) because of my sexual orientation is a shocking way to deal with my community. Of course we have writers who are writing erotica and so we should. I celebrate that. We are not a community churning out sex tracts. We are a community speaking with our passion and our humanity in a world that is so homophobic that it sees us as nothing but sexual creatures instead of good Canadian citizens, fine artists, and brave people trying to make Canada a better place for everybody to speak freely and honestly about who they are (qtd. in Fuller and Blackley 78).

The juridico-discursive production of homosexuality as "core truth" is also evidenced in an analysis of the testimony of one of the key witnesses for Little Sister's. Dr. Becki Ross, a professor in the Departments of Anthropology and Sociology and Women's Studies at the University of British Columbia, was called as an

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expert witness on the subjects of lesbians sexuality and lesbian sexual representations including lesbian s&M. This was the second of such cases for Dr. Ross. In 1993 she was called as an expert witness in the *R. v. Scythes* case, commonly referred to as the Bad Attitude trial (see Ross). In the Little Sister's case, the Crown counsel immediately worked to discredit Dr. Ross's sociological expertise by characterizing her as a "lesbian feminist." Indeed, Ross was asked to recount in vivid detail a particular sexual practice called "fisting," representations of which were deemed obscene by the court in *R. v. Scythes*. Not only was her testimony discredited as "biased" because of her open lesbianism and political stance, she was constructed by the Crown as someone whose knowledge did not come from a PhD in sociology, but rather from her status as a lesbian. Fuller and Blackley write,

"Can you imagine the Crown's

expert, William Marshall, having to explain some intimate sexual activity under cross-examination?" said (Jim) Deva."<sup>10</sup> But the moment had another dimension as well. Ross had made herself vulnerable by having the courage and willingness to deal with these questions, not simply in her role as a social scientist, but as a lesbian committed to her community. Ross' forthright answers, dismissed as advocacy of an admitted "lesbian feminist" by the Crown, were in fact, tremendously uplifting to many spectators in the public gallery. (100)

Unfortunately, the usefulness of Ross's sociological expertise may have been lost on the judiciary because of this construction. Her testimony, although included in Smith's ruling, was used in such a way that reinscribed the stereotype that sexual orientation is the group characteristic of homosexuals which I am quite sure was not Dr. Ross' intention.

Despite the presentation of the best expert evidence available and the dedication and conviction of the Little Sister's team, the necessity for establishing a stereotypical view of homosexuals in this case ultimately led to the split decision. I can only reiterate Ed Cohen's question,

how can we affirm a relational and transformational politics of the self that takes as its process and its goal the interruption of those practices of differentiation that (re) produce historically specific patterns of privilege and oppression? (89)

Indeed, if a section 15 (1) *Charter* challenge is predicated on the claimant's ability to present a categorical identity and furthermore, one which is predicated on the reinscription of the homosexual/heterosexual binary, how much closer are we to sexual liberation in Canada? I can only conclude that the split

decision in the Little Sister's case represents short-term gain for long-term pain. If the same arguments are used in the Supreme Court hearing, I fear a similar outcome will be the result which would possibly close the matter indefinitely. The argument of sexual orientation as "core Truth" of the homosexual certainly does not problematize issues around heterosexual power and privilege. Moreover, any conflation of homosexuality with "obscene" sexual representations merely entrenches negative and demeaning stereotypes about gays, lesbians, bisexuals, and transgendered persons as deviant sexual "others" whose perversity needs to be controlled and contained by a righteous *Criminal Code* and Customs bureaucracy. The "community standards" test by which sexually explicit materials are judged and legal precedents set, certainly does not include the community to which I belong. Unfortunately, despite the rhetoric around section 15 and formal legal equality, the injustices of the law reflect and in turn reinscribe the injustices within society. It will take a very courageous group of Supreme Court justices to rock the heterosexist and homophobic basis upon which anti-obscenity legislation and Canada Customs' policies are built.

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<sup>1</sup>I have chosen to use the term "queer" to denote a greater diversity and political activism within what has been traditionally thought of as the "gay and lesbian community." Moreover, in using the term "queer" as a verb

and not a noun (thanks to Prof. Becki Ross for this), I suggest that we must re-strategize around using the law in ways that do not reinscribe the heterosexual/homosexual binary.

<sup>2</sup>I use the term "law" singularly throughout as a method of shorthand. I do not mean to reify law or make it appear as though the law, in legislation and practice, is not multifaceted and with multiple effects depending of which type of law (provincial, federal, civil, criminal etc.) is being challenged.

<sup>3</sup>I am specifically referring here to the *R. v. Scythes* case which involved the O.P.P.'s raid on Glad Day Bookstore, Toronto's gay and lesbian bookstore. The "obscene" item in question was a lesbian erotic fiction magazine entitled, *Bad Attitude*. In 1993, Paris J. ruled that, "this material flashes every light and blows every whistle of obscenity. Enjoyable sex after subordination by bondage and physical abuse at the hands of a total stranger. If I replace the aggressor in this article with a man there would be very few people in the community who would not recognize the potential for harm. The fact that this aggressor is a female is irrelevant because the potential for harm remains.... For these reasons I find all accused guilty." For a discussion of this case see Cossman *et al.*

<sup>4</sup>Becki Ross (1998) writes, "according to Crown Prosecutor Charles Granek in the obscenity case *R. v. Scythes* (1992), s&M lesbians belong to a community 'whose rights are, thankfully, not protected by the Canadian Charter of Rights and Freedoms'" (p. 204).

<sup>5</sup>In *Veysey v. Canada* (Correctional Services) (1989), prison authorities were ordered to grant Veysey and his partner visitation rights under the family visiting programme. In their decision, the Federal Court of Appeal ruled that the inclusion of "common law partner" in the Commissioner's Directive opened the door for the inclusion of same-sex partners. Mary Eaton writes, "the decision therefore, did not establish

that Veysey and his partner in particular or that same-sex couples in general are 'spouses' nor indeed that Veysey's *Charter* rights had been infringed. Instead, the court concluded that the Commissioner had wrongly refused to exercise his discretion in considering Veysey's application and ordered him to do so" (149). However, in their decision, the Federal Court of Appeal ruled that sexual orientation was an analogous ground to those already enumerated in section 15 (1) of the *Charter* (Lahey 47). <sup>6</sup>It is important to note that the legal cases won by gays and lesbians vis-à-vis equality rights thus far have almost solely concerned "private" rights such as in the recently decided *M. v. H.* case. Trends in neo-liberal economic policies, the results of which are evident in the continued dismantling of the welfare state, impact upon decisions regarding gay and lesbian "family" rights. The prioritization of the private "family" means the increasing dependence of individuals not on social welfare programs, but on the "family" structure. Susan Boyd writes, "it seems that whether the relationships of lesbian and gay couples will be recognized by law may depend less on societal acceptance of same-sex familial relations than on whether the public purse will be spared" (69). Indeed, this seems to be one reason why *Egan v. Canada* (1993), which was fought over the right of Egan's partner Nesbit to public CPP support, was subsequently lost.

<sup>7</sup>Testimony of Dr. B. Ross as cited in the Appellant's factum to the Supreme Court of Canada, p. 11.

<sup>8</sup>My own personal commitment to these issues has led to a proposed masters thesis on this case. It is important to note as well that despite the legal and extralegal gains made gay and lesbian activists, many of Canada's queers, including queers of colour and transgendered people, continue to be wholly disenfranchised and exist on the margins of Canada's "national" identity (see Ross).

<sup>9</sup>Fisting is a sexual practice where one woman inserts her entire hand into the vagina of another woman.

<sup>10</sup>Mr. Deva is one of the owners of the Little Sister's Art Emporium and Bookstore.

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