

It's never been easy being a porn fan in a land where the spectre of state censorship has always loomed so large. Now, thanks to a recent Supreme Court decision, I have to be careful that depictions of my sexual fantasies do not cross the Criminal Code's line between smut that predisposes "persons to act in an anti-social manner, a manner which society recognizes as incompatible with its proper functioning," and smut that doesn't.

My erotica "habit" began when I was coming out in a small Canadian city in the late sixties. It was hard admitting that I was sexually attracted to other women, but it got a lot easier when I saw pictures of women having sex. I squirreled away copies of soft-core men's magazines and eventually coffee-table books with "lesbian spreads" in them. I was vaguely disappointed by the lack of authenticity in much of what I saw, and by the meagreness of my collection, but I never gave up hope of finding more and better (juicier) images.

Eventually, I moved to the big city - Toronto - and grew from a baby dyke into a gay activist and journalist. And from a closet collector into an aspiring porn-maker. Then, what seemed to be a miracle happened. Largely fuelled by the feminist sex debates, lesbians began to make and distribute sexual imagery of our own. My mood went from barely hopeful to downright enthusiastic. But I learned, early in my career as a smut fiend, that both the collection and the production of interesting erotic material in Canada were fraught with peril.

In 1983, the entire editorial collective of the gay magazine I worked on, *The Body Politic* (TBP), was charged with, and eventually acquitted of, obscenity for publishing an article about sexual health and safety called "Lust with a very proper stranger." (I had gotten involved with TBP in 1978 as a result of another charge - for which the magazine was acquitted *twice*, and which kept us in court for most of TBP's 15-year history, until shortly before it ceased publication in 1986.)

That same month, a clerk at Glad Day, a lesbian and gay book store in Toronto, was also charged with obscenity for selling two soft-core, gay-male magazines that were on sale in other stores throughout the city.

Last summer, two of my Friday evenings were taken up by loud, angry, rude anti-censorship demonstrations - dykes and fags and their friends blocking downtown streets, raging against attacks on queer porn. We were protesting, among other things, the recent Supreme Court of Canada decision that although the obscenity law infringes on the freedom of expression provision in Canada's *Charter of Rights and Freedoms*, this is justifiable. The judgement is known as the Butler decision; Donald Butler is a Winnipeg video-store owner who appealed his case to the Supreme Court after he was acquitted on a number of obscenity charges and a crown appeal succeeded in overturning his acquittal. It said: "There has a been a growing recognition in recent cases that material which may be said to exploit sex in a 'degrading or dehumanizing' manner will necessarily fail the community standards test, not because it offends against morals but because it is perceived by public opinion to be harmful to society, particularly women."

In the past, judges had to decide if a depiction qualified as "the undue exploitation of sex" or "sex and crime horror, cruelty or violence" based on their own understanding of what the contemporary Canadian community, taken as a whole, would allow others to consume. Since the Butler decision, "The courts must determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure. Harm in this context means that it predisposes persons to act in an anti-social manner, in other words, a manner which society formally recognizes as incompatible with its proper functioning."

One of the first obscenity charges laid after the Butler case was against Glad Day staff over one issue of the lesbian porn magazine *Bad Attitude*. The first obscenity ruling in the wake of the Butler decision was delivered by Judge Frank

GENDER BENDER



CHRIS BEARCHELL

Cut that Out!



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Hays in Glad Day's latest appeal of customs seizures.

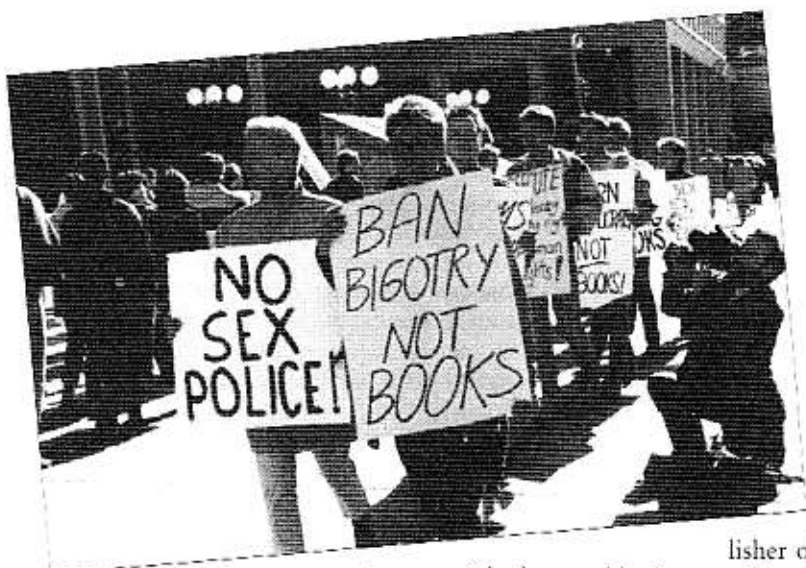
Canada Customs has long paid special attention to shipments to Canada's three gay book stores. One of the first titles seized, on its way to Glad Day in 1977, was Down There Press's sex manual *What Lesbians Do*. Over the years, a ridiculous array of things (which other book stores seemed to have no problem importing) have been added to the list of seized material: issues of the magazines *On Our Backs*, *Bad Attitude* and *The Advocate*; works by Canadian lesbian novelists Jane Rule and Anne Cameron; greeting cards; books by Gide, Proust, Cocteau, Genet, Beaudelaire, Tournier, Apollinaire and Yourcenar.

After the stores struggle through bureaucratic (and sometimes legal) procedures, which are both lengthy and costly, much of this material is eventually released to them (although, by then, it is seldom in saleable condition). Most of the sexually explicit titles, mind you, are not released. They are added to the banned book list.

Until 1985, the existence of this list was a well-kept customs secret. That year, as a result of a fuss made by determined anti-censorship journalist Max Allen, three years' worth of the list was made public. It was several inches thick and contained the titles of 317,641 magazines, books, comic books, photographs, films, video tapes, newspapers and playing cards. Since customs has computerized the list, it is no longer available to the public, Allen says. All they do now is tell you whether or not a particular title is on it.

The Joy of Gay Sex and *The Joy of Lesbian Sex* were both on the banned book list in 1985. In 1986, the Canadian Committee Against Customs Censorship (CCACC), decided to organize a legal challenge to

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these bans. When a shipment containing both titles was stopped, customs seized *The Joy of Gay Sex*, but not the lesbian volume, so only the gay men's book went to court.

On March 20, 1987, the court ruled that *The Joy of Gay Sex* was not obscene and was therefore permissible to import. The impact of this decision on customs was nil. A month after it was handed down, 50 lesbians and gay men could be found marching in the streets to protest the ongoing harassment of Glad Day Bookshop by Canada Customs.

The customs bureaucracy has also long had a particular fetish for anal sex. Anal sex *per se* is "degrading," according to a customs regulation called Ministerial Memorandum D9-1-1. For several years, they routinely censored American magazines for gay men that advised how to avoid transmitting HIV during anal sex. The only moderately positive outcome of *The Joy of Gay Sex* case was that customs revised D9-1-1 to permit the entry into Canada of "clinical descriptions of anal sex only." Anti-censorship activists hoped that the one thing the *Joy of Gay Sex* case had accomplished was stopping the censorship of safe-sex advice. Then, last summer, customs "advised" the pub-

lisher of *Blueboy* to blank out a list of dangerous activities in an article in their June issue giving safe-sex advice.

Judge Hays described the material before him in Glad Day's appeal as "gross, grotesque and disgusting." He concluded that since even the most "vanilla" (non-violent) material "contains extensive excessive description of the acts [consensual oral and anal sex] and professed pleasures and the appreciation of the physical activity...the description in the magazine of this sexual activity is degrading." (And is thus intolerable to the community, and therefore obscene.)

Western Canada's largest retailer of lesbian and gay material, Little Sister's, is circulating a brochure that says the store has 25 reasons why they are going to court this spring, including: *Bad Attitude*, *The Advocate*, *Caught Looking*, *The Leading Image*, and 21 other books and magazines seized at the border. (Actually, they have had a lot more than 25 titles seized, but they picked a round number for the pamphlet.) As their court date has drawn nearer, they have experienced stepped-up customs harassment with extensive delays of shipments from all presses and distributors. As usual, the material seized on its way to Little Sister's is available

at other stores, and at the public library.

In light of Butler, the B.C. Civil Liberties Association (BCCLA), which is representing Little Sister's, has had to change its strategy. There's no point in arguing that the obscenity section violates freedom of expression when the court has made it clear that it finds such a violation acceptable. They will be arguing that customs has no business exercising prior restraint - that is, putting the onus on book sellers to prove that material is not obscene before it is allowed into Canada - and that Customs Memorandum D9-1-1 discriminates against lesbians and gay men.

Their struggle, like Glad Day's in Toronto, has gone on for years; the present case has been five years in preparation. They have been forced to spend a fortune in legal fees - even with the assistance of the BCCLA and the American Booksellers Association, which assisted in getting a McArthur Grant to help cover court costs. (Donations to the Little Sister's Defence Fund c/o the BCCLA, which has seriously depleted its cash reserves preparing this case for the past five years, may be sent to #518-119 West Pender Street, Vancouver, B.C. V6B 1S5.)

Little Sister's must be a little haunted by what happened last time they got all the way to court to defend material seized by customs five years ago. Their case was prepared, the money spent, when the crown attorney simply withdrew the ban against the issue of *The Advocate* in question. Months had passed since the magazines had been seized, so they were a bit out of date to try to sell. Besides, customs had already destroyed them.

Before Judge Hays's ruling, some people no doubt hoped that the Butler decision might bring more enlightened obscenity rulings, because of the court's declaration that its role

was to protect women and children from harm, rather than to protect the country's morals. Now they are probably wondering just what pictures and descriptions of consenting men having sex with each other have to do with violence against women and children.

The courts have not really abandoned their role as moral guardians, of course. They've merely updated their terminology. And they've done so with the help of conservative feminists like those from Canada's pre-eminent feminist law-reform organization, Legal Equality Action Fund (LEAF). Feminist-sounding terms like "degrading and dehumanizing" are no less vague than words like "immoral or indecent." (Even the Pope has gotten into the modern terminology act - declaring, in the revised Catholic catechism, that homosexuality itself is degrading.)

Michele Landsberg, in the May issue of *Ms.*, described Butler as a "landmark case," and said that it has the support of most women's groups in Canada, "where the free-speech tradition is not as dominant as it is in the U.S." But LEAF is not satisfied with winning at the Supreme Court; they seem determined to erode whatever is left of our new-found guarantee of free speech. In a recent *Toronto Star* article, Christie Jefferson, then executive director of LEAF, denounced the Canadian Civil Liberties Association (CCLA), an opponent of the Butler decision and the country's most vociferous defender of free speech. She described CCLA as "diametrically opposed to our rights and liberties as women." The article suggested that LEAF and the National Action Committee on the Status of Women wanted to replace the CCLA with an organization that is more acquiescent to the demands of their versions of feminism.

Landsberg quotes LEAF counsel Kathleen Mahoney

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bragging that LEAF won the judges over by describing gay male porn: "We made the point that the abused men in these films were being treated like women - and the judges got it."

"Anything that's violent or degrading is harmful," Mahoney explained to me, "including lesbian or gay material." I pointed out that "protection for women and children" was a familiar euphemism for guarding public morals. "The definition of degrading is very clear in Butler. It's not the fault of the law, it's the fault of people who give a homophobic interpretation of the law. The law is being misused," she continued. "Homophobia in the courts is equivalent to sexism and racism - it just shows that we have more work to do [educating judges]."

The concept that porn causes harm is now entrenched in Canadian law, much to the delight of notorious right-wing anti-sex crusaders Andrea Dworkin and Catherine McKinnon, who helped LEAF develop their strategy. They are radical (sometimes called "cultural") feminists; McKinnon is a lawyer, Dworkin a writer and activist who believes that "the heart of sex oppression [is] the use of women as pornography." Both women have been working for more than a decade to ensure the passage of anti-pornography legislation. McKinnon was responsible for drafting the famous Minneapolis anti-pornography ordinance that was struck down by the U.S. Supreme Court. Recently, she authored the Pornography Victims Compensation Act, which was under consideration by the U.S. Senate Judiciary Committee.

Progressive feminists Adrienne Rich, Judy Blume, Betty Friedan, Nora Ephron and Ann Bernays have circulated a letter opposing the initiative. They've

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gathered 180 other prominent feminist signatories, and have constituted themselves as the Ad Hoc Committee of Feminists for Free Expression. The letter and its list of endorsers appear as a two-page spread in the July-August issue of *On Our Backs*.

McKinnon and Dworkin are also taking their cause to the United Nations, where McKinnon has recently been awarded a big consultancy grant. They are attempting to have a proposed UN Declaration on Violence Against Women specify that violence is a critical source of gender inequality and to define violence as including "degrading representation of women in the media." There is also some inclination expressed in the Report of the Expert Group Meeting on Violence Against Women - which is supported by several Canadian federal government departments and has produced the draft of the declaration - to define prostitution as inherently involuntary and thus a form of violence. (The LEAF factum also contains the often-repeated claim that women are coerced into pornography - an argument that is traditionally made in conjunction with a disregard for the testimony of women who work in the sex trade in this country about what they need to improve their working conditions.)

The Supreme Court of Canada was very clear that it arrived at its conclusions in the Butler case not because porn is proven to cause harm, but because it is *believed* by the Canadian public to cause harm (due partly to the effectiveness of the anti-porn propaganda campaign carried on by the likes of McKinnon, Dworkin and their right-wing Christian friends). The Supreme Court explicitly stated that such proof

is unnecessary - presumably because the Canadian government

spent a lot of money conducting a huge study of porn, the

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Fraser Report, which came to the accurate if unpopular conclusion that there is no conclusive evidence that porn causes harm. The submission by LEAF to the Supreme Court says that subsequent studies contradict the Fraser conclusions. But the studies they cite were done by the same small collection of Dworkin/McKinnon allies, whose work other researchers have been unable to duplicate.

Discussions about porn often degenerate into pointless haggles over whose experts have more credibility. But common sense tells us that violence against women and children existed long before the printing press and the camera. The painstaking research of Danish social scientists Ben-Veniste and Kutchinsky, in the wake of their country's legalization of pornography, remains the most thorough and controlled examination of the real, long-term effects of such a policy. As is well known, the rate of reported sex crimes decreased dramatically in the same time period that porn became widely available. Overall, Denmark's continuing low rate of coercive sex crimes, despite its long-standing liberal approach to pornography, speaks volumes.

The debate about the relation of porn to violence is

not really scientific; it's a political debate about the appropriateness of scapegoating pornography for deep-seated social problems. Porn is an easy target - it's visible, officially disapproved of and relatively controllable. The abusive situations faced by many women and young people, on the other hand, have tended to be invisible, condoned and very difficult to change.

LEAF is committed to its anti-porn agenda, regardless of its effect on marginalized women like lesbians and sex-industry workers, and regardless of its ineffectiveness in addressing the needs of victims of abuse. It is sad that a moral panic about sexual imagery is led by these feminists, and that their energy is channelled into an anti-sex backlash that hits queers and sex-workers first and hardest.

Yes, queer porn is under attack. But when Little Sister's goes to court in a couple of months, more than pornography will be on trial. There's one of those proverbial fuzzy lines where queer porn ends and discussion of queer sex and sexual politics begins. And in this game of "censorship by bankruptcy," where the bullies with the laws and regulations have always made up the rules as they went along, any queer book - or book store - is a fair target. ♡