

THE ONTARIO COURT (PROVINCIAL DIVISION)

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HER MAJESTY THE QUEEN

against

JOHN BRUCE SCYTHES, THOMAS FRANK IVISON, and
ONTARIO CORPORATION #620704 OPERATING AS GLAD DAY BOOKSHOP INC.

J U D G M E N T

BEFORE HIS HONOUR JUDGE C.H. PARIS
On February 16, 1993, at Toronto.

A P P E A R A N C E S :

Counsel for the Crown

Counsel for the Accused

C. Granek, Esq.

C. Barclay (Ms).

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THE COURT: Ontario Corporation Number 620704 operating as Glad Day Bookshop Inc. and John Bruce Scythes are charged with having possession and are jointly charged with Thomas Frank Ivison with selling obscene material to wit: a magazine entitled Bad Attitude. The possession and sale of the magazine are acknowledged but its characterization as obscene material is disputed.

Bad Attitude consists of a series of articles where the writers fantasize about lesbian sexual encounters with a sadomasochistic theme. Photographs loosely complement some of the articles.

Although the Crown has highlighted certain parts of the magazine in its effort to prove obscenity I am of the view that the prosecution must stand or fall on the basis of one article entitled "Wunna My Fantasies" found at page 25. The writer, a self-styled trash bar dyke, describes how she stalks an unknown woman in a locker room of a school, tiptoes to her shower stall where she blindfolds and handcuffs the unsuspecting woman. She pulls her by the hair to the floor, screws clamps to her nipples and proceeds to a series of sexual acts. The woman is immediately aroused by the acts of the writer, becomes an eager participant and eventually has an orgasm.

In Regina v. Butler 70 C.C.C. 3rd 129 the Supreme Court of Canada held that while section 163

of the Criminal Code violates the guarantee to freedom of expression, it is a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society. The Court arrived at this conclusion following a detailed analysis of section 163 (8) which provides the test of obscenity.

The Court stated, and I quote from the headnote: "Section 163 (8) provides that "any publication a dominant characteristic of which is the undue exploitation of sex, or sex and any one of the following subjects, namely crime, horror, cruelty and violence shall be deemed to be obscene". In applying this statutory definition, it is helpful to divide pornography into three categories: (1) explicit sex with violence, (2) explicit sex without violence but which subjects people to treatment that is degrading and dehumanizing, and (3) explicit sex without violence that is neither degrading or dehumanizing. Violence in this context includes both actual physical violence and threats of physical violence. Whether material falls within the definition depends on a determination of what the community would tolerate, others being exposed to on the basis of the harm that would flow from such exposure. Harm in this context means that it predisposes persons to act in an antisocial manner as, for example, the physical or mental mistreatment of women by men. Antisocial conduct for this purpose is conduct which society formally

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recognizes as incompatible with its proper functioning."

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I have detected during this trial a concern that the Court will find relevant the sexual orientation of Bad Attitude. In recent years, many courts and tribunals have struck down laws and practices held to discriminate against gays. This is an indication that our society has moved beyond tolerance to the actual recognition that homosexuals form an integral part of our community. It follows then that as members of a sexual minority they have the right to communicate publicly on the subject that binds them together. That right however, will on occasion be curtailed in the public interest. The community tolerance test is blind to sexual orientation or practices. Its only focus is the potential harm to the public. Any consideration given to the sexual orientation of the material would constitute an unwarranted application of the test.

The article I have referred to depicts bondage in various forms, the pulling of hair, a hard slap and explicit sex. Because of this combination of sex and violence the story falls within the definition of section 163 (8). The consent in this case, far from redeeming the material makes it degrading and dehumanizing.

In Butler the Court said at page 146:
"Among other things

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degrading or dehumanizing materials place women (and sometimes men) in positions of subordination, servile submission or humiliation. They run against the principles of equality and dignity of all human beings. In the appreciation of whether material is degrading and dehumanizing, the appearance of consent is not necessarily determinative. Consent cannot save materials that otherwise contain degrading and dehumanizing scenes. Sometimes the very appearance of consent makes the depicted acts even more degrading and dehumanizing. This type of material would apparently fail the community's standards test not because it offends against morals but because it is perceived by public opinion to be harmful to society particularly to women."

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 replaced 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

the aggressor is a female is irrelevant because the potential for harm remains.

Madonna's book called "Sex" was offered to show the public tolerance to this type of material. One photograph of particular relevance shows a so called playful rape scene in a school gymnasium. I received very little information on the distribution of this book. I am told however that few examples were available and were sold immediately. I find the sample too small to be a reliable indication of the public's reaction to its distribution.

For these reasons I find all accused guilty.

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This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my skill and ability.



Isabelle Morin
Official Bilingual Court Reporter

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