



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

*Your file    Votre référence*

*Our file    Notre référence*

## **NOTICE**

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

## **AVIS**

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

**Canada**

**Homosexual Offenses in Ottawa  
1950 To 1967  
The Medicalization of the Legal Process**

**Alec Fadel**

**A Thesis  
in  
The Department  
of  
History**

**Presented in Partial Fulfilment of the Requirements  
for the Degree of Master of Arts at  
Concordia University  
Montréal, Québec, Canada**

**September 1994**

**©Alec Fadel, 1994**



National Library  
of Canada

Acquisitions and  
Bibliographic Services Branch

395 Wellington Street  
Ottawa, Ontario  
K1A 0N4

Bibliothèque nationale  
du Canada

Direction des acquisitions et  
des services bibliographiques

395, rue Wellington  
Ottawa (Ontario)  
K1A 0N4

Your file    Votre référence

Our file    Notre référence

**THE AUTHOR HAS GRANTED AN  
IRREVOCABLE NON-EXCLUSIVE  
LICENCE ALLOWING THE NATIONAL  
LIBRARY OF CANADA TO  
REPRODUCE, LOAN, DISTRIBUTE OR  
SELL COPIES OF HIS/HER THESIS BY  
ANY MEANS AND IN ANY FORM OR  
FORMAT, MAKING THIS THESIS  
AVAILABLE TO INTERESTED  
PERSONS.**

**L'AUTEUR A ACCORDE UNE LICENCE  
IRREVOCABLE ET NON EXCLUSIVE  
PERMETTANT A LA BIBLIOTHEQUE  
NATIONALE DU CANADA DE  
REPRODUIRE, PRETER, DISTRIBUER  
OU VENDRE DES COPIES DE SA  
THESE DE QUELQUE MANIERE ET  
SOUS QUELQUE FORME QUE CE SOIT  
POUR METTRE DES EXEMPLAIRES DE  
CETTE THESE A LA DISPOSITION DES  
PERSONNE INTERESSEES.**

**THE AUTHOR RETAINS OWNERSHIP  
OF THE COPYRIGHT IN HIS/HER  
THESIS. NEITHER THE THESIS NOR  
SUBSTANTIAL EXTRACTS FROM IT  
MAY BE PRINTED OR OTHERWISE  
REPRODUCED WITHOUT HIS/HER  
PERMISSION.**

**L'AUTEUR CONSERVE LA PROPRIETE  
DU DROIT D'AUTEUR QUI PROTEGE  
SA THESE. NI LA THESE NI DES  
EXTRAITS SUBSTANTIELS DE CELLE-  
CI NE DOIVENT ETRE IMPRIMES OU  
AUTREMENT REPRODUITS SANS SON  
AUTORISATION.**

ISBN 0-315-97640-3

**Canada**

## **ABSTRACT**

### **HOMOSEXUAL OFFENSES IN OTTAWA 1950 TO 1967: THE MEDICALIZATION OF THE LEGAL PROCESS**

**ALEC FADEL**

Since 1892 the Criminal Code of Canada has outlawed homosexual sex by defining it as buggery and gross indecency and prescribing strict penalties. This thesis will analyze how these legal codes were created and how they were used by Ottawa courts between 1950 and 1967.

This thesis will also examine the rise of a medical model of homosexuality in Canada, by tracing the medical writings on the topic. The influence that this medical model had on the Ottawa court's treatment of the offender will be analyzed.

## TABLE OF CONTENTS

INTRODUCTION . . . . .	1
Chapter 1. HISTORIOGRAPHY OF HOMOSEXUALITY . . . . .	6
Chapter 2. CANADIAN LAW AND MEDICINE ON HOMOSEXUALITY . .	26
Chapter 3. OTTAWA COURTS AND THE GAY CRIMINAL 1950-67 . .	58
Chapter 4. MEDICAL OPINION AND THE SEX OFFENDER IN THE 1960S . . . . .	76
CONCLUSION . . . . .	95

## INTRODUCTION

Throughout the twentieth century homosexuals have confronted many restrictive barriers.<sup>1</sup> The law was a major factor in the oppression of gays, since it made sexual contact between them illegal. The law affirmed society's belief that homosexuality was perverse and intolerable. Another influential factor in gay oppression was the medicalization of homosexuality: the attempt by medical professionals to bring the issue of homosexuality into the medical domain. By describing homosexuality as a medical condition that could be treated, the medical profession questioned the legal process of sentencing the gay offender, but it nevertheless perpetuated the assumption that homosexuality was "wrong."

Canadian law from 1890 to 1969 affirmed the belief that homosexuality was deviant behaviour that could not be tolerated. The Criminal Code of Canada stated that homosexual behaviour was illegal, implying that it was contrary to societal mores. The desire to prevent the spread of homosexuality resulted in harsh penalties for the

---

<sup>1</sup>This paper deals with the gay male as a sex offender. Lesbians were not mentioned in the legislation dealing with homosexuality and subsequently were not charged with gross indecency throughout the period.

individual caught having gay sex. Urban police forces became concerned with the gay element and formed special morality divisions partially designed to apprehend gay offenders. However, despite the law and the police, men continued to meet each other and practice gay sex. The fact that their actions were criminalized, however, affected their relations with the rest of society and their own opportunities to develop their gay identities.

Criminal court records are rich sources for gay history; criminal cases are substantial in number for most cities in Canada throughout the twentieth century. For the gay historian, these records are evidence of how repressive laws were implemented in a community; they show how a hostile court system dealt with homosexuality; and, most importantly for the gay historian, they sometimes show how a gay individual reacted against the system. Police reports, included in the court files, illustrate how homosexuals were considered a dangerous element on the streets who must be monitored and punished. This type of surveillance suggests that gay men were not able to participate freely in society; if actively trying to pursue a gay lifestyle, they must always be aware of the police.

Criminal Court cases from the larger cities in Canada show that a great number of men were arrested for performing homosexual sex. A search of the Crown Attorney Prosecution Files for the city of Ottawa shows that gay men met with

each other for sexual purposes throughout the century. Practically every year from 1910 to 1967<sup>2</sup>, several men were brought to court to answer charges relating to a homosexual offense.

These cases from Ottawa are a good example of what the homosexual faced if he pursued sexual relations. I do not suggest that all gay men were subject to this type of surveillance, but it is evident that the visible gay population was continually kept in check by the policing force. I will show a number of assorted cases which will examine the meeting places for gay men and in some cases will reveal the cruising technique which almost seemed ritual for many of these gay men. These cases will also be used to help understand how society tried to keep the "deviant" element in check.

This study will focus on the cases that occurred in Ottawa, after 1950 and up until 1967. Pre-1950 cases, although great in number, do not supply sufficient information for a detailed analysis and are not examined. Between 1950 and 1967 the cases are more intact, containing police reports, and in some cases full records of court proceedings. An examination of these cases shows how the prosecution of these men changed during the period.

---

<sup>2</sup>This study ends at 1967 as this was the last year available to the researcher under the Freedom of Information agreement. Pre-1910 Criminal Court Files were not steadily kept and are not held by the Archives of Ontario (AO).



Another important aspect of this study is the development of a medical discourse on homosexuality. After generations of near-silence on the subject, in 1950 two medical articles dealing with homosexuality were published in professional medical journals in Canada. From then until 1967 numerous articles appeared in the Canadian medical literature. In most of these, the authors classified homosexuality as a mental disorder and advocated medical treatment as the cure. By 1960 it was evident that medical opinion was beginning to affect the court's treatment of homosexual offenders. Unlike the earlier period, the majority of cases in the decade of the 1960s reveal that doctors were consulted for their opinion regarding the offender's mental condition. This study will show how doctors influenced the treatment of the gay criminal.

The first chapter of this study will analyze the main debates about the history of homosexuality. British and American historiography comprises the bulk of this chapter, but the few works from Canada will also be discussed. Chapter Two will trace the evolution of the laws which regulated homosexual behaviour in Canada. This will require examination of laws as early as 1869 and the relevant political debates that took place mainly before the twentieth century. This chapter will also detail the medical discourse at the time of the formation of the legal codes and throughout the twentieth century.

The criminal cases from the city of Ottawa in the period from 1950 to 1967 will be examined in the third and fourth chapters. Various elements from these cases will be considered, including police procedure, defence of the accused and court decisions. These two chapters are divided by two criteria: by decade and the use of medical opinion. Chapter Three examines cases from the 1950s and the 1960s in to which doctors were not connected; Chapter Four includes only the cases where doctors were called in for a medical opinion which in Ottawa occurred only after 1960. Although in 1969 homosexual acts between consenting adults in private were decriminalized, the offenses discussed in this thesis, occurring as they did in public places, remain part of the Criminal Code and homosexuals continue to be prosecuted for them.

## CHAPTER ONE: HISTORIOGRAPHY OF HOMOSEXUALITY

The American and European historiography of homosexuality has developed rapidly in the last thirty years. Only recently have Canadian historians begun to examine the subject of homosexuality. This chapter will concentrate on the main works which have most influenced the field and which help define the main theory in the history of homosexuality, including the few works that have appeared in Canada.

The works to be discussed generally centre around two positions: Essentialists see homosexuality as trans-historical, something "real" which has existed in virtually every society; Social Constructionists, on the other hand, view homosexuality as a concept or a construct, as something created by social experiences. Social constructionists argue mainly that homosexual "identity" is a product-of-the-times, originating at some point in the eighteenth or nineteenth centuries and existing therefore only in the modern period. According to this argument, a number of factors, including legal and medical influences, contributed to the formation of present-day gay identity. Most essentialists do not argue against the idea that present-day

gay identity can be traced back only to the eighteenth century. However they also argue that homosexuality existed before this period and, in fact, in every period of history as it is a biological aspect of the individual.

One of the first articles to propose a social constructionist view of homosexuality was published in the United States in 1968. Mary McIntosh in "The Homosexual Role" challenged the characterization of homosexuality as a biological condition.<sup>3</sup> She argued that this assumption raised the wrong types of questions; we should not be concerned whether the condition of homosexuality is innate or acquired. Instead, McIntosh suggested that the actual "conception of homosexuality as a condition is, in itself, a possible object of study."<sup>4</sup> Homosexuals should be viewed as playing a social role, which is not defined solely by sexual behaviour. For McIntosh, the term social role referred

not only to a cultural conception or set of ideas but also to a complex of institutional arrangements which depend upon and reinforce these ideas. These arrangements include all the forms of heterosexual activity, courtship and marriage as well as the labelling processes - gossip, ridicule, psychiatric

---

<sup>3</sup>Mary McIntosh, "The Homosexual Role," Social Problems 16 (Fall, 1968); reprinted in Kenneth Plummer, ed., The Making of the Modern Homosexual (Totowa, New Jersey: Barnes and Noble Books, 1981). Although a British scholar, McIntosh published her article in an American periodical, since she did not want to alienate the gay community in England which had built its case for the decriminalization of homosexuality on the basis of its biological nature.

<sup>4</sup>Ibid., 31.

diagnosis, criminal conviction - and the groups and networks of the homosexual subculture.<sup>5</sup>

She believed that the conceptualization of homosexuality as a social category would lead future studies to "the right questions about the specific content of the homosexual role and about the organizations and functions of the homosexual group." She indicated that the "homosexual role" did not exist in many societies, but it had emerged and developed in England within the last three centuries.

In 1971, Jeffrey Weeks suggested in his monograph Coming Out that the current notion of homosexuality originated near the end of the nineteenth century.<sup>6</sup> Weeks argued that the label homosexual, coined as late as 1869, was not a new term for an old reality; it "points to a changing reality, both in the ways a hostile society labelled homosexuality, and in the way those stigmatized saw themselves."<sup>7</sup> The major impetus for this change stemmed

---

<sup>5</sup>Ibid., 38.

<sup>6</sup>Michel Foucault's notorious The History of Sexuality also argued this theory, but his work appeared after that of Weeks and his colleagues who were constructing and employing the interactionist and labelling theories. Weeks states that "the fundamental question, as posed by Foucault, is how it is that in our society sex is not seen just as a means of biological reproduction nor a source of harmless pleasure, but, on the contrary, has come to be seen as the central part of our being, the privileged site in which the truth to ourselves is to be found." Jeffrey Weeks, Sex, Politics and Society (London: Longman Group, 1981), 6.

<sup>7</sup>Weeks claimed that the term was invented by the Swiss doctor Karoly Maria Benkert in 1869 and was not fully known in England until Havelock Ellis used it in the 1890s. Jeffrey Weeks, Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to

from the reorganization of the family as a consequence of industrial capitalism. Weeks stressed the importance of focusing on social attitudes as an essential element in the history of homosexuality; he saw a definite distinction between behaviour and identity. Weeks was influenced by McIntosh, but located the beginnings of the social structures that defined homosexuality as late as the nineteenth century.

Coming Out also traced the beginnings of the gay reform movement, suggesting that its inception was a response to increased hostility toward homosexuals. Weeks successfully showed how the reformers pieced together an identity and attempted to change legal codes. However, he did not address the reform movement era in general; this might have added to his analysis, especially if he had examined possible links with the women's movement and the abolition movement. For example, the main reformers involved in the early gay movement, including Havelock Ellis and Edward Carpenter, were also involved in the women's rights movement.

Jeffrey Weeks further developed the social construction theory with respect to gay history in "Discourse, Desire and Sexual Deviance," published in 1976. Here he examined the difference "between homosexual desire and 'homosexuality' as

---

the Present (London: Quartet Books, 1977), 3.

a social and psychological category." He rejected the notion that one can study the history of homosexuality as "our" history, as if homosexuals existed throughout time as a fixed minority. While the physical acts may be similar, it is the "social construction of meanings around them that are profoundly different." Weeks suggested that the "crucial question must be: what are the conditions for the emergence of this particular form of regulation of sexual behaviour in this particular society?"<sup>8</sup> This is the central theme in the social constructionists' theory: that nothing is fixed or absolute, and only in a consideration of the "complex interaction of power and domination on the one hand, and resistance on the other" can any sense be made of the history of sexuality.<sup>9</sup>

Jeffrey Weeks' essay "Against Nature" is a commentary on the work that has been done in the field. Despite the disagreement within the field regarding interpretations of time frames, or evidence of subcultures, or even the continuity of sexual identities, Weeks feels that legitimate questions are being asked. In the article Weeks restates his social constructionist stance and comments how this theory is affecting the whole of historical inquiry. Weeks

---

<sup>8</sup>Weeks, J, "Discourse, desire and sexual deviance: Some Problems in the History of Homosexuality" in Kenneth Plummer ed., The Making of the Modern Homosexual, p.81.

<sup>9</sup>See Introduction to Jeffrey Weeks, Against Nature: Essays on History, Sexuality and Identity (London: Rivers Oram Press, 1991).

pays particular attention to Michel Foucault's The History of Sexuality, which questioned studying the history of sexuality as a history of progress and suggested instead "a history of invention of categories of the sexual in order to regulate and discipline the population."<sup>10</sup> Weeks suggests that the importance of Foucault is that "he encapsulates so many currents in our attempts to come to grips with the present, a present where so many of the old truths no longer seem to hold." For Weeks, the true value of "new social history" is that it helps us "see the present not as the culmination of the past but as itself historical: a complex series of interlocking histories whose interactions have to be reconstructed, not assumed."<sup>11</sup>

The idea that the medical profession influenced the creation of a gay identity is generally accepted by most social constructionists. The late-nineteenth-century medical discourse on homosexuality has been evaluated and utilized by many gay historians. Weeks, for example, was one of the first to argue that the medicalization of homosexuality contributed to the development of modern-day gay identity, soon after to be expanded upon by French theorist Michel Foucault.

---

<sup>10</sup>Jeffrey Weeks, "Against Nature," in Homosexuality Which Homosexuality (London, GMP, 1989), 203.

<sup>11</sup>Ibid.



American historian Robert Nye, in Crime, Madness, and Politics in Modern France, published in 1984, examined how the medical community influenced legal and social thinking on deviance and the treatment of the offender. Nye traced the construction of the theory of "deviance as degeneration" and how this scientific knowledge became indispensable to public health officials and the courts. By the end of the nineteenth century the growing influence of medical science enabled these nineteenth-century medical professionals to define, for the general public, the causes and cures of deviance in their society. This power had "profound consequences not only for the 'pathological' part of the population, but also, as with any binary relation, for the 'normal' one as well."<sup>12</sup>

Nye examined the political and social atmosphere of mid-nineteenth century France to explain the rise of the "medical model of deviance" and its acceptance by the majority of society. Unlike Foucault, who mocked social historians for their attempt to link changes in medical ideology to social events, Nye argued that one can trace the historical reasons for the rise of the medical model of deviance after the defeat of France in 1871. The change in the geopolitical stature of the divided nation and the constant and growing threat to its Great Power status prior

---

<sup>12</sup>Robert A. Nye, Crime, Madness, and Politics in Modern France: The Medical Concept of National Decline (Princeton: Princeton University Press, 1984), 48.

to 1914 created a political urgency that gave medical authority its central position.

The significance of the medical influence on the creation of gay identity, however, is not accepted by all historians and, in fact, is disputed by many. One of those who disagree is George Chauncey Jr. whose study investigated homosexuality at the Newport, Rhode Island Naval Training Station after the First World War. Chauncey analyzed the naval investigation of homosexual "doings," and found evidence of a "highly developed and varied gay subculture . . . and a strong sense of collective identity."<sup>13</sup> Yet he concluded that "the Newport evidence indicates that medical discourse still played little or no role in the shaping of the working-class homosexual identities and categories by World War I, more than thirty years after the discourse had begun."<sup>14</sup>

The most specific examination of the medical influence on homosexuality in North America from 1950 to 1970 appears in Roy Cain's article "Disclosure and Secrecy Among Gay

---

<sup>13</sup>George Chauncey Jr., "Christian Brotherhood or Sexual Perversion? Homosexual Identities and the Construction of Sexual Boundaries in the World War I Era," first published in Journal of Social History 19 (1985): 189-212, but cited from Martin Duberman et al., Hidden From History: Reclaiming the Gay and Lesbian Past (New York: Meridian, 1990), 296.

<sup>14</sup>Ibid., 313.

Men."<sup>15</sup> Cain shows how prevailing medical opinion, throughout the fifties, saw homosexuality as pathological. Although Alfred Kinsey's 1948 study had provided evidence that the percentage of individuals practicing homosexual behaviour was much higher than believed and introduced the idea that homosexuality was "a natural and nonpathological condition," the medical community throughout the 1950s and 1960s continued to confirm the idea that homosexuality was a psychopathological condition.<sup>16</sup> Gay men therefore still had to keep their "secret"; it was not, according to Cain, until the 1970s and 1980s that they became more willing to disclose their sexual orientation.

Another work in the social construction school is Sexual Politics, Sexual Communities by John D'Emilio which examined the American gay rights movement which predated the more visible movement of the 1970s. The two main organizations, the Mattachine Society and the Daughters of Bilitis, are credited with opening the public debate over homosexuality as early as the 1940s. D'Emilio discussed why the movement did not begin earlier, considering the trend of reform regarding "blacks, women, and workers." Like the

---

<sup>15</sup>Roy Cain, "Disclosure and Secrecy among Gay Men in the United States and Canada: A Shift in Views," Journal of the History of Sexuality 2 (Chicago: University of Chicago Press, 1991). Cain, a sociologist at McMaster University, claimed that his study included Canada but he did not examine any primary sources from the country.

<sup>16</sup>Ibid., 28.

more radical social constructionist view supported by Weeks and Foucault, D'Emilio asserted that it was only near the end of the nineteenth century that any gay identity began to exist; therefore "before a movement could take shape, that process had to be far enough along so that at least some gay women and men could perceive themselves as members of an oppressed minority, sharing an identity that subjected them to systematic injustice."<sup>17</sup> He credited the early movement with laying the groundwork for the radical gay elements that emerged in the early 1960s and especially in the 1970s after Stonewall.<sup>18</sup>

Gary Kinsman's monograph The Regulation of Desire was the first in Canada to examine the history of homosexuality. Kinsman, a sociologist, labelled his work as an example of the "historical materialist" method, "a perspective that views history as central to understanding our lives and which sees social relations, rather than ideas or discourse separate from these, as the primary element in social

---

<sup>17</sup>D'Emilio, John Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970 (Chicago: University of Chicago Press, 1983), 4.

<sup>18</sup>Ibid., 231-233. The famous Stonewall riot started on Friday 27 June 1969 when a few officers raided the Stonewall Inn on Christopher street in the heart of Greenwich Village. What was expected to be a routine raid became an out-of-control riot as gay men and women opposed the police attempts. The riots proceeded for two nights with the phrase "Gay Power" spray-painted on the walls and yelled on the streets. To many gays this was the spark for a nationwide gay rights movement.

change."<sup>19</sup> Relying heavily on social construction theory, Kinsman attempts to develop historically rooted categories in order to explore "sexual rule and resistance" in regards to gay oppression. An analysis of official discourse traced the emergence and subordination of homosexuality to the creation of "a particular form of heterosexuality as the social norm."<sup>20</sup> For Kinsman sexuality is not biological but "socially created, building on biological potentialities." Forms of heterosexuality and homosexuality have existed throughout time "but they have differed radically in their social organization." Kinsman thus rejects a trans-historical notion of homosexuality.<sup>21</sup> Unlike Weeks' claim that identity was a contemporary creation while behaviour was trans-historical, Kinsman argues that the two cannot be separated, for this "denies the different forms of social organization of same-gender sex throughout history."<sup>22</sup>

In order to understand the gay/lesbian experience, Kinsman uses a Marxist analysis to trace the growth of the capitalist class and the establishment of the "contemporary

---

<sup>19</sup>Gary Kinsman, The Regulation of Desire: Sexuality in Canada (Montreal: Black Rose Books, 1987), 23.

<sup>20</sup>Ibid.

<sup>21</sup>Ibid., 24.

<sup>22</sup>Gary Kinsman, "'Homosexuality' Historically Reconsidered Challenges Heterosexual Hegemony," Journal of Historical Sociology Vol. 4 No. 2 (June, 1991), 107.

State apparatus." The creation of this apparatus involved the attempt to remake society and create "approved or respectable social identities, which necessarily meant the denial of alternatives."<sup>23</sup> Kinsman suggests that "a crucial aspect of this State formation and cultural revolution has been the establishment of social and cultural forms of hegemony." This hegemony theory is taken from the Italian Marxist Antonio Gramsci's writings from the 1920s and 1930s. To Kinsman, this theory dealt with uniting the "process of coercion and consent, seeing the two as often taking place through the same practices. Hegemony . . . is achieved when one class can exert social authority and leadership over others."<sup>24</sup> However, this hegemony is not static; it must constantly be re-established, resulting in the incorporation of the needs of its subordinate groups. The last two centuries saw the establishment of "heterosexual hegemony" and simultaneously the "emergence of distinct heterosexual and homosexual/lesbian identities and cultures."<sup>25</sup> Kinsman's study therefore involves an investigation of the rise of heterosexual hegemony and the subsequent subordination of homosexuality.

Kinsman examines the English and U.S. models of heterosexual hegemony as an illustration of his theory and

---

<sup>23</sup>Kinsman, Regulation, 31.

<sup>24</sup>Ibid., 32.

<sup>25</sup>Ibid., 33.

as background to the Canadian situation. He sees three major elements in the creation of the homosexual,

first, the emergence and development of capitalist relations which created the social spaces for homosexual and lesbian cultures . . .; second, the regime of sexual norms itself, which policed these social spaces; third, it is important to include resistance, and the accommodation of those engaged in same-gender sex as an integral feature of the formation of lesbian and gay identities.<sup>26</sup>

These "processes" did not begin simultaneously, but separately over several centuries. Kinsman notes that one of these processes alone would not have created a gay experience; it was the intersection of the three elements which led to the contemporary gay identity.

Kinsman's study represents a major work on the history of homosexuality in Canadian society. He is successful in tracing many of the important primary sources concerning "heterosexual hegemony" in Canada. His examination of the elements that come into play under this model of hegemony will surely influence further Canadian studies on the topic.

John Boswell's Christianity, Social Tolerance and Homosexuality, published in 1980, is considered an important Essentialist study of homosexuality. This work, spanning 1400 years of Western history, refuted the "common idea that religious belief - Christian or other - has been the cause

---

<sup>26</sup>Ibid., 38.

of intolerance in regards to gay people."<sup>27</sup> Instead, Boswell traced periods of toleration when gay subcultures were able to flourish, thus proving that the repression of homosexuality started within the Christian Era and not as a result of it. Boswell saw a trans-historical gay identity and argued that gay people "were dispersed throughout the general population everywhere in Europe; they constituted a substantial minority in every age."<sup>28</sup>

An important aspect of Boswell's work is his careful exploration of the concept of "gay." He pointed out how modern scientific literature "increasingly assumed that what was at issue was not 'homosexuality' but 'homosexualities.'" In Christianity he defined "gay persons" as being "conscious of erotic inclination toward their own gender as a distinguishing characteristic."<sup>29</sup> It was this

---

<sup>27</sup>John Boswell, Christianity, Social Tolerance and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century (Chicago: University of Chicago Press, 1980), p.6.

<sup>28</sup>Ibid., 5.

<sup>29</sup>Ibid., 44. Boswell's influence does not go unnoticed. Michel Foucault, often considered the founder of modern social construction theory, says of Boswell's Christianity: "Methodologically speaking, the rejection by Boswell of the categorical opposition between homosexual and heterosexual, which plays such a significant role in the way our culture conceives of homosexuality, represents an advance not only in scholarship but in cultural criticism as well. His introduction of the concept of 'gay' (in the way he defines it) provides us both with a useful instrument of research and at the same time a better comprehension of how people actually conceive of themselves and their sexual behaviour." Lawrence Kritzman, ed., Michel Foucault: Politics Philosophy Culture: Interviews and other Writings 1977 - 1984 (New York: Routledge, 1988), 237.



understanding that has led social constructionists to label Boswell an essentialist. Boswell defended his position by concluding that the whole debate was a "revisionist (and largely one-sided) critique of assumptions believed to underlie traditional historiography."<sup>30</sup>

In "Revolutions, Universals and Sexual Categories," Boswell examined the debate between social construction theory and essentialism by comparing it to the ancient controversy "the problem of universals." Boswell summed up the issue: "Do categories exist because humans recognize real distinctions in the world around them, or are categories arbitrary conventions, simply names for things that have categorical force because humans agree to use them in certain ways?"<sup>31</sup> The two opposing sides are labelled the "realists" and the "nominalists." The nominalists represent the social constructionists who hold that humans create the categories of sexual preference and behaviour, whereas the realists, or essentialists, believe that humans differentiate sexually, that the "heterosexual/homosexual dichotomy exists in speech and thought because it exists in reality."<sup>32</sup> Boswell argued that a middle ground can

---

<sup>30</sup>Martin Duberman, Martha Vicinus, and George Chauncey Jr. eds., Hidden From History: Reclaiming the Gay and Lesbian Past (New York: Meridian, 1989), 35.

<sup>31</sup>John Boswell, "Revolutions, Universals, and Sexual Categories," Salmagundi No.58-59, Fall 1982-Winter 1983, 89-113. cited in Duberman ed., Hidden 18.

<sup>32</sup>*Ibid.*, 19.

effectively be found, as some nominalists would admit that "some aspects of sexuality are present, and might be distinguished, without direction from society," while most realists agree that "the same real phenomenon might be described by various systems of categorization."<sup>33</sup>

Jonathan Katz in his ground-breaking 1976 study Gay American History published a series of primary sources discovered in archives and libraries of the United States. The title of this work and the dates that the sources cover (1566-1976), suggest an essentialist stance because he examined the homosexual throughout American history. Katz stated that this book focused on "ordinary Gay people" and aspects of the "Gay American experience" including "homosexual oppression, resistance, and love."<sup>34</sup>

Later in his 1991 edition, Katz addressed the issue of social construction, accepting the idea that "'homosexuality' and 'heterosexuality' are categories and concepts just about one hundred years old." He rejected the essentialist tone of Gay American History on the grounds that it did not go far enough to historicize homosexuality.

---

<sup>33</sup>Ibid. Boswell argued that this middle ground was hard to come by since it is hindered by political ramifications. "Realism has historically been viewed by the nominalist camp as conservative, if not reactionary, in its implicit recognition of the value and/or immutability of the status quo; and nominalism has generally been regarded by realists as an obscurantist radical ideology designed more to undercut and subvert human values than to clarify them."

<sup>34</sup>Jonathan Katz, Gay American History: Lesbians and Gay Men in the U.S.A. (New York: Meridian Group, 1992), 3.

Katz believed that the "concept of homosexuality must be historicized" and viewed "Ancient Greek pederasty, contemporary homosexual 'marriages' and Lesbian-feminist partnerships" as all differing radically. He suggested that his earlier work be viewed as a historical document, "as a product with characteristics particular to the moment of its original production."<sup>35</sup> Katz was referring mainly to the way he had presented his sources and to the time frame of his study; this book merely documents moments in American history by compiling primary sources that dealt with same-sex issues and is an excellent starting point for the researcher of gay history.

A scholar who has more consistently challenged social construction theory is Randolph Trumbach. In his article "Gender and the Homosexual Role" he rejects the position that a major transformation took place at the end of the nineteenth century. Trumbach examines how three disciplines within the social sciences have contributed to the historical investigation of the fragmented documents still surviving on homosexuality. The first, a purely Essentialist view, originates from psychology and distinguished between "the homosexual" and "the heterosexual." The second analysis stems from sociology where homosexuality was studied in terms of subculture, role and identity. The third example is taken from anthropology

---

<sup>35</sup>Ibid., xvii.

and "distinguishes between societies that organize homosexual behaviour around differences in age and those that have an adult male transvestite role."<sup>36</sup> Although less frequently used, Trumbach believes the anthropological analysis to hold the greatest promise, as it did not restrict the historian to an analysis of homosexuality only after the beginnings of the modern Western world around 1700.

Trumbach argues that same-sex desire and behaviour can be traced throughout time, but in each society it has existed in varying forms. The beginning of the eighteenth century saw the creation of a "new style sodomy," and by 1780 larger numbers of men declared that they were attracted only to men and were born that way. Trumbach rejects the idea that the medical profession helped in creating the homosexual role. He states that the doctors were merely describing a condition that they observed, a "behaviour that was the consequence of a social role that modern society had created two hundred years before the doctors attempted to describe it."<sup>37</sup>

Some scholars have utilized Criminal Court cases to illustrate how an oppressive system controlled the gay

---

<sup>36</sup>Trumbach, Randolph, "Gender and the Homosexual Role in Modern Western Culture: The 18th and 19th Centuries Compared," in Dennis Altman ed., Homosexuality, Which Homosexuality, 1989. p.149.

<sup>37</sup>Ibid., 160.

element in society. There have been a few Canadian studies which include court records. For example, Terry Chapman's article "Male Homosexuality: Legal Restraints and Social Attitudes in Western Canada," uses gross indecency records to "provide further insight into Canadian social and legal attitudes towards homosexuality."<sup>38</sup> Chapman argues that Canadian legal codes were attempts to ensure that "all sexual activity was confined to the marriage bed solely for the purpose of procreation."<sup>39</sup> This was apparent not only in laws regarding homosexuals but in those created to "keep women chaste," for example laws against "abortions and the advertising, use sale and supply of birth control devices." Chapman argues that the written law attempted to keep "traditional sexual morality" intact.<sup>40</sup>

While Social Construction theory has provided a model for research and analysis for examining the homosexual in the modern period and while I cannot deny the idea that society contributed greatly to the shaping of a gay identity, the ways that this identity manifests itself suggest that the biological aspect of homosexuality is just as important. The Essentialist historian furthers the idea

---

<sup>38</sup>Terry L. Chapman, "Male Homosexuality: Legal Restraints and Social Attitudes in Western Canada, 1890-1920," Law and Justice in a New Land: Essays in Western Canadian Legal History, ed..Louis A. Knafla, (Vancouver: Carswell Co. Ltd., 1986), 278.

<sup>39</sup>Ibid., 277.

<sup>40</sup>Ibid.

that homosexuals made up a distinct minority in every society as a consequence of their biological nature; if the common thread is apparent then it helps explain the reasons for present-day gay identity. Social Constructionist historians supply rich theory for analyzing official discourses and how they contributed to the formation of the modern-day gay identity. Both theories are relevant; they do not cancel out but rather complement one another. It is with this assumption in mind that I will tackle my sources and draw my conclusions. What my sources mainly provide is a look at how the social and legal systems oppressed homosexuals. They also offer a few glimpses of the process of liberation. The cases that I have discovered are a good example of what the homosexual faced if he pursued sexual relations. I do not suggest that all gay men were subject to this type of surveillance but it is evident that the visible gay population was continually kept in check by the policing force. These cases also help us understand how society tried to keep this "deviant" element in check. While the actions of these gay men may have had biological origins, there is no doubt that the social and legal response to these actions influenced their behaviour and self-image in both negative and positive ways.

## **CHAPTER TWO: CANADIAN LAW AND MEDICINE ON HOMOSEXUALITY**

This chapter will analyze the legal and medical aspects of homosexuality in Canada from the late nineteenth century to 1967. The legal and medical models are important for understanding the restrictive and discriminatory climate that the homosexual faced because they both derived from and in turn helped form society's view of homosexuality. Ideas concerning homosexuality were consistently influenced by the negative information supplied by the law and medicine; this inevitably hindered the development of positive attitudes regarding homosexuality.

As early as 1890 the federal legislature in Canada became concerned with identifying homosexual activity. By enacting tough laws, imported from Britain, Parliament attempted to eradicate this threatening practice. This chapter will supply an overview of the evolution of the laws dealing with homosexuality. If laws are seen as representing the moral fabric of society, then an examination of these laws will show the general attitude toward homosexuality. It is apparent from the debates in the House of Commons that Canadian officials viewed

homosexuality as a foreign problem and employed measures to prevent its spread into Canadian society.

An examination of the medical discourse in Canada will help us understand the prevailing attitudes toward homosexuality. Medical discourse outside Canada developed rapidly in the nineteenth century and changed considerably during the period under investigation. Beginning at the end of the nineteenth century homosexuality came to be viewed in some medical circles as a form of sickness. Over the first couple of decades in the twentieth century this idea continued until new theories, specifically Kinsey's study of human sexuality, became relevant in the late 1940's. Many social constructionists have argued that these medical theories contributed to the formation of the legal codes and the way in which they were implemented by the courts. The Canadian medical literature will be reviewed in this chapter in order to get a sense of the medical opinion regarding homosexuality and its influence on the law.

The Criminal Code of Canada was the main guide for the legal system in prosecuting and convicting many homosexuals. To better understand the criminal cases which will be the subjects of Chapters Three and Four it is important to trace the sections of the Code which dealt with same-sex sex practices. The Criminal Code was enacted in 1892 but even before this date legislation on buggery and gross indecency existed. Most early Canadian criminal laws were adopted



from the English Draft Code (EDC), a document that was never ratified by the English Parliament but was exported for the colonies to use. As early as 1869 the Canadian Parliament borrowed from the EDC in order to enact its criminal legislation. Buggery and attempted buggery were the earliest clauses borrowed which dealt with homosexual sex. The ideas in the EDC, based mainly on religious belief, interpreted sin as crime and emphasized the indecency to morality in cases such as these.<sup>41</sup>

The early Canadian law on the topic of buggery stated that "Every one is guilty of an indictable offense and liable to imprisonment for life who commits buggery, either with a human being or with any other living creature." This successfully categorized one form of homosexual sex with the crime of bestiality, making the charge and the penalty the same. It was understood that the individual or individuals involved were to be caught in the act. Another clause dealt with the individual "who attempts to commit the offense" of buggery and made him liable to a sentence of up to ten years imprisonment.

In these two clauses, the Canadian Parliament criminalized intercourse between men. By not differentiating between buggery and bestiality they identified one abhorrent sin with the other; therefore it

---

<sup>41</sup>Alek Gigeroff, Sexual Deviations in the Criminal Law (Toronto: University of Toronto Press, 1968), viii.

was the same crime to have anal intercourse with your male lover as it was to commit bestiality with a sow. For mainstream society the difference was irrelevant, both crimes were detestable and criminal. Indeed, there was no attempt to clarify the difference in the various revisions of the Criminal Code, until 1953-54 when the Criminal Code defined bestiality as a separate offense. In this same revision the punishment for buggery was lowered from life to fourteen years and attempted buggery was lowered to seven years.<sup>42</sup>

Although a life penalty was harsh it was considerably lighter than the death penalty which was the British law prior to 1861, when the Offenses Against the Person Act reduced the sentence to life. Jeffrey Weeks attributed this modification to the changing legal and medical attitudes of the time. In fact, Weeks suggested that over the next twenty years, the English legislature attempted to differentiate between different types of buggery; this led to the Labouchere Amendment to the Criminal Law Amendment Act of 1885. The Labouchere Amendment introduced a sentence of two years for "acts of gross indecency" between males. This was evidence of the first legal attempt to loosely define and control male homosexual activity specifically.<sup>43</sup>

---

<sup>42</sup>Ibid., 43.

<sup>43</sup>Jeffrey Weeks, Sex, Politics and Society (London: Longman, 1981), 103.

In 1890 the Canadian Parliament borrowed the terminology from the Labouchere amendment for its own criminal law. The Canadian law stated that

Every male person is guilty of an indictable offense and liable to five years' imprisonment and to be whipped who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure, the commission by any male person of, an act of gross indecency with another male person.<sup>44</sup>

This section therefore broadened the crimes under which homosexuals could be charged. Now all homosexual activity was identified as criminal instead of only the act of genital (anal) intercourse. To identify same-sex sex as acts of "gross indecency" marked the homosexual a perverted outcast. These laws did not prevent homosexual activity from occurring but the effect they had on the homosexual's psyche must have been drastic. To know that they were breaking the law every time they had sex, with the risk of a stiff jail sentence if caught, must have weighed heavily on the minds of homosexuals. The law may have successfully prevented some homosexuals from fulfilling their sexual desires but the large number of cases found in Ottawa show that the law was not successful in preventing homosexuality from appearing in Canada.

The sections on buggery (Section 174) and gross indecency (Section 178) were transferred unchanged to the Criminal Code in 1892, setting the stage for the criminal

---

<sup>44</sup>Gigeroff, Sexual Deviations, 39.

proceedings in the first half of the twentieth century. Certainly in Ottawa these sections were used to arrest and convict "sexual offenders" as defined by the Criminal Code into the 1960s.

Homosexual activity was regulated in other sections of the Criminal Code as well, specifically in section 177 on indecent acts whose broad wording left it open to both men and women. It stated that anyone was guilty who

in the presence of one or more does any indecent act in any place to which the public have or are permitted to have access or does any indecent act in any place intending thereby to insult or offend any person.<sup>45</sup>

While seemingly not an offense aimed at the homosexual the indecent act section was used to charge many men when the offense was more serious than gross indecency; the maximum sentence for an indecent act was ten years. Usually the indecent act involved cases where there was not consensual contact between both parties; in many cases the individual charged was in contact with a male under the age of eighteen years.

These criminal laws were not adopted without debate in the House of Commons but the sections affecting homosexuals were not debated extensively. The debate in 1890 shows a lack of understanding of either homosexuality or its presence in Canadian society. Sir John Thompson, the Minister of Justice, commented that since there was no law

---

<sup>45</sup>The Criminal Code, 1892, 55-56 Victoria, Chapter 29, part xiii, section 177.

dealing with this issue of "gross immorality" in Canada that it was necessary to enact a "remedy for offenses."<sup>46</sup>

Thompson acknowledged the growth of such offenses in England and suggested that a clause similar to that in the English Act be adopted. His lack of understanding of the nature of homosexuality was revealed by his suggestion that the problem was only then starting to appear in Canada. His views on the topic were clear when he stated, "In this class of offenses which, as I have said, have obtained some notoriety in the mother country, and which have made their appearance here in one or two places, the maximum penalty of two years imprisonment, I think, is entirely inadequate."<sup>47</sup> Indeed later that day the sentence was lengthened from two to five years. It seems that the members of Parliament saw this "gross immorality" as a threat to society which could possibly be prevented if a stiffer sentence were adopted.

The debate regarding the issue of gross indecency was continued by Liberal M.P. Sir Richard Cartwright who raised a question on the vagueness of the term as stated by Thompson.<sup>48</sup> He "entirely approve[d] of the purport of this

---

<sup>46</sup>Canada. House of Commons, Debates. 10 April 1890, 3162. The term "gross immorality" was used by Thompson but its equivalent, "gross indecency," was the official term used in the Criminal legislation.

<sup>47</sup>Ibid.

<sup>48</sup>J.A. Gemmil, ed., Canadian Parliamentary Companion (Ottawa: J. Durie, 1889), 109. The Honourable Sir Richard Cartwright was the Liberal MP from South Oxford.

Act" but wondered if the term was "not sufficiently precise,"

and might lead to consequences that he does not intend? Of course, I am quite aware that the particular crime which he has in mind is one which, I very much fear, has been on the increase in certain sections of society, and can hardly be punished too severely. In my opinion the words are not legal words, and it strikes me that consequences might flow from this phraseology which the honourable gentleman did not contemplate.<sup>49</sup>

Thompson responded that it was "impossible to define the offenses any better," and that this was the same wording used in the English provision. He claimed that "the offenses which are aimed at are so various" that there could not be a more concise phrase.<sup>50</sup>

The debate went on to discuss punishment for this offense; Edward Blake<sup>51</sup> indicated his contempt for these offenders by suggesting "that the penalty of whipping be added."<sup>52</sup> This led to further discussion regarding a definition of the term. Peter Mitchell<sup>53</sup> argued that he "did not think there should be any uncertainty" about this

---

<sup>49</sup>Canada. House of Commons. Debates. 10 April 1890, 3170.

<sup>50</sup>Ibid.

<sup>51</sup>Gemmil, Canadian Parliamentary Companion, 101. The Honourable Edward Blake was listed as a private member of the House of Commons representing West Durham; he is described as an "Independent Liberal."

<sup>52</sup>Canada. House of Commons, Debates. 10 April 1890, 3171.

<sup>53</sup>Gemmil, Canadian Parliamentary, 160. The Honourable Peter Mitchell was described as an "Independent Liberal" representing Northumberland, New Brunswick.

serious offense, especially when it carried such a harsh penalty. He suggested that there could be fifty types of gross indecency, and that the section might be misused within the court system. He continued,

I hold, the Minister ought to put the exact name of the crime in the statute, so that there may be no mistake about it. No false modesty should restrain us from protecting the liberty of a subject in a case like this.<sup>54</sup>

This issue was not taken any further in this session and was ended by Thompson who added that the "compulsion to whip" be left to the discretion of the court.<sup>55</sup>

In 1892, when the criminal legislation was consolidated under the Criminal Code of Canada, further debate on these sections occurred. An attempt to clarify the meaning of gross indecency was put forward by Louis Davies<sup>56</sup> who stated,

If the case were tried before a judge of the Supreme Court, who is trained in such cases, one would not have any objection; but many justices of the peace are not trained men, and are not capable of appreciating the niceties of the English language, nor would they have any standard to guide them. One justice might hold that to be indecent which another would perhaps laugh at.<sup>57</sup>

---

<sup>54</sup>Canada. House of Commons. Debates. 10 April 1890, 3171.

<sup>55</sup>Ibid., 3172.

<sup>56</sup>Gemmil, Canadian Parliamentary Companion, 122. Louis Henry Davies was a Liberal MP from Queen's, P.E.I..

<sup>57</sup>Canada. House of Commons. Debates. 25 May 1892, 2968.

David Mills<sup>58</sup> argued that all of the "offenses against morality" were taken from ecclesiastical law, where they were "sins [rather] than crimes, not being attacks upon property or life, or upon any other members of the community." He did not believe they should be included in the Criminal Code or punished with long periods of prison time. Instead he advocated punishment such as flogging and the release of the prisoner as "a far better deterrent than anything else." Thompson responded that "we only punish them as crimes where they are offensive to the people, or set a bad example,"<sup>59</sup> but he did not have an objection to decreasing the prison sentence providing whipping accompany the sentence. The debate on this issue was then postponed and, in fact, never again brought up by this Government.

In the text of the Criminal Code of 1892 both parties caught having sex were subject to criminal action; it is only later that we see only one being charged with the other acting as a witness for the prosecution. In Crankshaw's edition of the Criminal Code of 1915 an English case is cited which helps to explain the reason for this change.<sup>60</sup> In the case of *The Queen v. Jones and Bowerbank* who were

---

<sup>58</sup>Gemmil, ed., Canadian Parliamentary Companion, 159. The Honourable David Bothwell Mills was described as an "advanced Liberal."

<sup>59</sup>Canada, House of Commons. Debates. 10 April 1890, 3172.

<sup>60</sup>James Crankshaw, ed., The Criminal Code and the Canada Evidence Act (Toronto: Carswell Co., 1915), 190.



arrested and charged with gross indecency, the defence counsel for Jones argued that since Bowerbank was found not guilty as charged that there could be no case against Jones. However, Lord Russell's decision was against this argument and his ruling was that Jones' conviction stand. He stated that "there is [not] anything in the Act which requires that both offenders should be before the Court before there can be a conviction for this offense."<sup>61</sup> Crankshaw's citation of this case suggests that it became understood that both men did not have to be charged with gross indecency even when arrested together.

In effect the law was successful in not only prohibiting sexual contact between two men but it also was able to pit one man against the other if they happened to be caught. This leads one to question how this would affect any type of subculture that might have existed at the time. A subculture in the strongest sense might include the development of strong love relationships intertwined with strong friendships with others of the same kind. Yet the law attempted to use one homosexual in order to convict another with a guarantee of indemnity. This probably affected the relationships between men as the lack of trust was initially always present. The idea that a potential

---

<sup>61</sup>Sir Frederick Pollock, ed., Law Reports: Queen's Bench Division, Court of Appeal 1 (London: William Clowes, 1896), 6.

mate might end up testifying against one in a court of law may have hovered over any initial encounter.

The inclusion of gross indecency in the criminal law supplied the police forces of every city in Canada with the power to control the visible gay element. Now suspicious-looking characters could be followed and watched until enough evidence was supplied for a charge. Indeed the Ottawa police force utilized this section of the code to arrest many men and by 1916, when Ottawa's morality squad was formed, gay men were specific targets for the police. Certainly the homosexual was seen as a dangerous element in society who could be checked with the power of the Criminal Code and the police to enforce it. This system remained in place throughout the first half of the twentieth century with no further reference to it in the House of Commons.

The next instance where gross indecency or homosexuality was referred to by the government of Canada was the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths (1958). This commission was set up to evaluate the section of the Criminal Code enacted in 1948, relating to Criminal Sexual Psychopaths (CSP) and to recommend how it should be amended in order to make it more effective. In section 659 of the Criminal Code a CSP was defined as "a person who, by a course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who as a result is likely to attack or

otherwise inflict injury."<sup>62</sup> This section affected homosexuals as it included gross indecency offenders as one of the types of criminals who could be found to be a CSP. The Commission considered excluding gross indecency offenders but agreed that the courts should be responsible for determining if the homosexual be certified a CSP.

In its discussion the Royal Commission referred to the differing opinions regarding homosexuality. One view was that homosexuality was not a crime at all; "this was the conclusion of the majority of the Committee of Homosexual offenses and Prostitution in Great Britain."<sup>63</sup> The Commission pointed out that homosexual sex was "no more criminal in nature than is heterosexual intercourse between two consenting adults." However they rejected a change in the law by concluding "that a homosexual act between adult males is an offense against sensibilities and customs." The Commission saw great problems with the rise of homosexuality and illustrated them with evidence given by John Chisholm, Chief Constable of Metropolitan Toronto. He stated that

if the police adopt a laissez faire attitude toward such individuals, City parks, intended for the relaxation of women and children and youth recreation purposes, will become rendezvous for homosexuals. In addition to his immoral conduct, the homosexual

---

<sup>62</sup>The Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths (Ottawa: Queen's Printer, 1958), 8.

<sup>63</sup>Ibid., 27.

requires further police attention, as he is often the victim of gang beatings, or robbery with violence . . . The saddest feature of all, however, is that homosexuals corrupt others and are constantly recruiting youths of previous good character into their fraternity.<sup>64</sup>

While confirming the definition of homosexual offenders as possible CSP's, the Commission also stimulated discussion on homosexuality.

A central idea in the social constructionist theory is that the medical discourse beginning in the nineteenth century contributed largely to the drafting of the legal codes and influenced court decisions. The rest of this chapter will supply an overview of the medical discourse which developed in Canada in order to examine any links between evolving medical opinion on homosexuality and the drafting of legal codes or magistrates' decisions in Ottawa.

The medical information concerning homosexuality developed rapidly by the end of the nineteenth century in Europe. European doctors became interested in identifying homosexuality and describing it as a medical problem. Jeffrey Weeks traced the evolution of the medical opinion on homosexuality and credited Dr. Tardieu of France and Dr. Casper of Germany as the two main "medico-legal" experts most widely quoted in the mid-nineteenth century. As laws developed regarding sexual offenses it became increasingly

---

<sup>64</sup>Ibid.

important for medical discourse to discuss the phenomenon. These doctors theorized on the possibility of identifying sexual perverts and whether they should be held accountable for their acts. In the early discourse, doctors questioned the responsibility of the sex criminals and suggested medical treatment as a possible cure.

The main medical figure to contribute to the beginnings of an understanding of homosexuality was Dr. Krafft-Ebing, whose work Psychopathia Sexualis, was first published in Latin in 1886. This work was intended as a medical professionals' reference guide, but its set-up, discussing actual case studies, appealed to the masses and resulted in repeated printings and translations into various languages. Krafft-Ebing believed homosexuality to be manifested in the individual as a form of degeneration; the homosexual was a diseased person. Indeed, early on, Krafft-Ebing advocated medical treatment for sex criminals as opposed to incarceration. He saw normal sexual activity as relations between a man and his wife and defined various processes that could lead to abnormal sexual inclinations.

Krafft-Ebing's work retained a conservative ideology throughout because it declared its object to be "merely to record the various psychopathological manifestations of sexual life in man and reduce them to their lawful conditions."<sup>65</sup> Later works went beyond this approach; for

---

<sup>65</sup>Weeks, Sex, Politics and Society, 140.

example Havelock Ellis in his seven-volume Studies in the Psychology of Sex (1897) attempted to describe "the roots of sexual behaviour and to detail the enormous varieties of its manifestations."<sup>66</sup> Ellis was not repulsed by other forms of sex besides heterosexual, instead he saw sex as a "powerful force which suffused and enhanced the whole of life."<sup>67</sup> Both Ellis and Freud discussed the sexual origins of non-reproductive sex but did not condemn or condone them. This was a major shift in the study of homosexuality as these "liberal writers" claimed the "right to investigate the human sexual life impartially," therefore breaking the "conspiracy of silence" that had stifled discussion in the nineteenth century.<sup>68</sup>

As for Canada, a search of Index Medicus from 1890 to 1970 produced several articles discussing the phenomenon of homosexuality. While the Canadian medical community was addressed on the issue as early as 1898, there are a limited number of articles before 1950. A noticeable increase occurs after that date. Interestingly, it is not until after 1950 that we see medical discourse being utilized by the Ottawa courts. Although the following discussion is not an exhaustive list of articles, it does supply a good

---

<sup>66</sup>Ibid., 149.

<sup>67</sup>Ibid.

<sup>68</sup>Ibid., 140.

overview of the questions being examined by the Canadian medical community.

In 1898 The Canadian Journal of Medicine and Surgery published an article by Dr. Ezra Stafford, the First Assistant Physician at the asylum for the insane in Toronto. In his article "Perversion," Stafford examined whether two perversions, or changes from the norm, could be considered as a result of disease or merely a progression of the law of evolution; "to what extent, in fact, they are purely morbid, and to what extent not."<sup>69</sup> The two perversions which Stafford described were prostitution and homosexuality, marking this as one of the first pieces on homosexuality written by a Canadian doctor and published in a Canadian journal.

Stafford began with a condemnation of these perversions by referring to Krafft-Ebing's Psychopathia Sexualis, which he credited as a work that will remain "for a long time the recognized classic in that extremely odious department of human knowledge." The extent of Stafford's hostility towards these perversions can be seen in his explanation of why, unlike Krafft-Ebing, he felt it was not necessary to comment on actual incidents to be able to discuss the phenomenon. He stated,

I shall have nothing to say myself explicitly upon the subject, holding the belief that we may discuss pus in

---

<sup>69</sup>Ezra Hurlburt Stafford, "Perversion," The Canadian Journal of Medicine and Surgery 3, no.4 (Toronto: 1898), 4.

a general way and by the use of generalities (even laudable pus) without passing a phial of it around for everyone to examine. We all know what putrilege is without looking at it repeatedly.<sup>70</sup>

Stafford saw a danger in recording these examples of the human condition as this risked rendering "permanent that which was at first transient and accidental"; he saw the homosexual as an "isolated incident." Stafford believed that works like Krafft-Ebing's went beyond recording the condition for scientific prosperity but provided the degenerate "with a system of philosophy."<sup>71</sup>

Stafford suggested that even though "forms of sexual perversion" could be dated back to Ancient Greece this was merely an indication of "how widely racial instincts alter in the course of time and under the influence of changed ideals of morality." Yet although homosexuality seemed to be tolerated at different times Stafford believed that "even in Corinth a thoughtful man would have surely been forced to admit that these usages constituted a wilful and a mischievous trifling with the laws of nature."<sup>72</sup> While the recognition of Ancient Greek same-sex sex might lead one to see the enduring character of homosexuality, instead

---

<sup>70</sup>Ibid., 182.

<sup>71</sup>Ibid., 182. This reasoning is similar to that of the modern social constructionists writing on the same period; that the homosexual did not have an identity until it was created by the medical doctors. For example see Michel Foucault's The History of Sexuality, Volume One, An Introduction (London: Allen Lane, 1979).

<sup>72</sup>Ibid., 183.



Stafford claimed that this "abnormal" condition had only existed for "but a short period in the life-history of our race." Stafford did not see homosexuality as innate or congenital but viewed it as acquired in "isolated cases of perversion."<sup>73</sup> He related these transgressions to times when society encountered periods of racial degeneration and believed that works such as Krafft-Ebing's suggested a "clear hint that the race has reached an abnormal condition." He concluded that "the social has been confused with the physiological. That is bad. The religious has been confused with the physiological. That is worse. These things may lead to the tragedy of our species."<sup>74</sup>

This article is an example of what people in the profession of medicine in Canada were learning regarding homosexuality at the turn of the century. The idea of medical treatment for the homosexual was considered "preposterous," as the "majority of cases can only be regarded as personal idiosyncracies and isolated indications of the insidious process of degeneration."<sup>75</sup> Like the Canadian legislatures which criminalized homosexuality but did not attempt to define or understand it, Stafford also

---

<sup>73</sup>Ibid., 184. In Regulation of Desire Gary Kinsman points out that in 1901 Stafford altered his stance to admit that some forms of these perversions were innate; however the source is not cited in Kinsman or the Index Medicus.

<sup>74</sup>Ibid.

<sup>75</sup>Ibid., 185.

refused to even utter the word homosexual. His disdain for these sexual acts is apparent in his claim that this "perversion is found among the most degenerate."

It was not until 1950 that the Index Medicus cited another Canadian source, an article by Edward L. Margetts entitled "Sex Deviations." This article dealt with the same matter as Stafford, but without the condemning tone. The titles of the two works suggest a shift in thinking; "perversion" refers to an abnormal sex condition, something that has strayed from the good, whereas "sex deviation" merely suggests a different form of sex and dismisses the moral judgement.

Margetts began his paper by referring to the vast amount of writing on homosexuality; unlike Stafford he did not regret their necessity. Instead, he saw this substantive number as an indication of "how the minds of men of all ages have been centred on this basic aspect of life."<sup>76</sup> He referred to Havelock Ellis's seven-volume Studies in the Psychology of Sex as a monumental work covering every important aspect of sex and acknowledged most of the important contributors including Bloch, Hirschfield and Freud. Kinsey's study was also cited as the "most

---

<sup>76</sup>Edward Margetts, "Sex Deviations," McGill Medical Journal 19 (February, 1950), 49.

comprehensive recent work on the subject of male sex behaviour."<sup>77</sup>

Margetts' analysis showed a general understanding of homosexuality in society. He claimed that what is "normal" and "abnormal" in sex cannot be defined unless "we bring cultural, religious, moral and legal limits into the definition." He compared this line of questioning to the tendency of the "either-or" misconception in our language, "for instance, in our misunderstanding of 'good' and 'bad'." "Normal" sex is hard to define as it must differ from one individual to the other, but Margetts settled on the definition of "an activity more or less acceptable both to the individuals entering into it and to society in general."<sup>78</sup> Margetts questioned which part of society was responsible for deciding what was acceptable sexual behaviour. He pointed out that various opinions existed, including a facet of society that might condemn certain sexual acts such as oral-genital sex between a man and a woman. He stated,

Those members of society who would condemn oral-genital relationships might be very rigid, inhibited, moralistic people who, as far as medical orientation is concerned, would not be considered appropriate judges. Then we get into another dichotomous see-saw with biology on one end and religion and morality on the other. Let us temper our definitions with flexibility and exception.

---

<sup>77</sup>Ibid., 50.

<sup>78</sup>Ibid.

Margetts labelled factors that help define normality in sex and seemed to hold a more liberal attitude toward homosexuality. First he suggested that normality in sex differed in each culture and that laws were largely responsible in forming society's idea about what is right and wrong in sex. Here he questioned the fairness of the laws regarding homosexuality when he asked, "are we justified in legally charging two homosexuals who had the misfortune to be caught 'in flagrante delicto' in a hotel room? Providing they are not bothering anyone else, why should they be 'brought to justice'?" Margetts regarded moral regulations as a major factor for "damping down of an individual's sex behaviour." He saw a danger in suppressing the natural sexual urges as "the human being cannot be forced in this way"; if he is, it will lead to neurosis or guilt or shame.<sup>79</sup> Despite these "liberal" views, he nevertheless concluded that "normal sex behaviour should in most cases have the final aim of genital connection between two adult members of the opposite sex," which ends any idea that he was advocating a fundamental rethinking of society's view of homosexuality.<sup>80</sup>

The article concluded with suggestions for psychiatric treatment and commented on the difficulty of treating

---

<sup>79</sup>Ibid., 51.

<sup>80</sup>Ibid., 52.

criminal sex offenders.<sup>61</sup> Margetts claimed that the process of treating sex deviants was quite involved and difficult, and that most do not seek psychiatric treatment. He pointed out that "only if there is a conscious guilt, shame, anxiety or depression" does the person usually seek help; in fact "many sexually abnormal people are quite well adjusted to their eccentricities and lead useful and respectable lives."<sup>62</sup>

When referring to sex criminals Margetts rejected the idea that psychiatrists had the answer for treating such people. He quoted an article by a forensic psychiatrist, Dr. Henry A. Davidson, who commented on this point:

When we do discover an effective method for treating the aggressive sex offender, we should insist on his transfer from the prison to the hospital. Today we have nothing to offer but custody . . . Perhaps it is time to confess this is an area in which we may have been overselling psychiatry. It is, of course, a good thing that popular and legal thinking about sex offenders is veering away from the purely punitive. But it is not yet at the point where the psychiatrist can appear before the public as the man who has the answer.<sup>63</sup>

---

<sup>61</sup>On new forms of treatment, Margetts suggested "a new visual association technique" which was designed to help the psychiatrist learn the most about his patient's sex behaviour. This technique involved the patient's free association with various pictures that he is shown and was supposed to lead to uncovering various "bizarre sex interests" that the doctor would not usually uncover even after months of treatment.

<sup>62</sup>Ibid., 60.

<sup>63</sup>Ibid., 61. Cited from Henry Davidson, "Legislation dealing with sex offenders," American Journal of Psychiatry 106 (November, 1949), 390.

Margetts pointed out that the 1948 Criminal Code amendments enabled certain sex offenders to be labelled Criminal Sexual Psychopaths, resulting in their segregation from society to undergo treatment for as long as required.

Margetts advocated the necessary treatment of homosexuals in order possibly to bring them into the fold of mainstream society. The difference in his approach when compared to Stafford's is the less judgmental attitude that is conveyed. After the Second World War health professionals were starting to analyze homosexuality without allowing the prevailing moral opinion to affect the analysis. This article was far from advocating that "it's okay to be gay" but the attempt to describe the condition and acknowledge that some homosexuals have managed to live with their gayness was a huge step within medical discourse.

Another article published in a Canadian journal in 1950, "Homosexuality - A Mental Hygiene Problem," suggested a way to help the homosexual adjust to society and avoid deviant behaviour. Doctor S.R. Laycock addressed the "problem of homosexuality" by attempting to define it.<sup>84</sup> He rejected the identification of the homosexual as a sex pervert since, he argued, a large number of sex perverts were heterosexual and many homosexuals did not engage in

---

<sup>84</sup>S.R. Laycock, M.D., was dean of Education and Professor of Educational Psychology at the University of Saskatchewan. He was also director of the Division of Education and Mental Health of The Canadian Mental Hygiene Association.

overt sexual activity. Laycock believed that like heterosexuals, homosexuals "may be social or anti-social in their behaviour"; therefore it was important to promote the mental hygiene objective.<sup>85</sup> To Laycock, there were two definitions of mental hygiene, the first being an old definition of "helping individuals to give their best to the world and to know the deep satisfaction of a life richly and fully lived."<sup>86</sup> The second, more recent definition saw mental health as "the ability to live (a) within the limits of one's bodily and mental equipment; (b) with others; (c) happily; (d) productively; (e) without being a nuisance."<sup>87</sup>

Laycock devoted most of his paper to a discussion about how to help the homosexual, with the main emphasis on the objectivity of the treating doctor, who should not condemn or blame the person needing treatment. He advocated that the homosexual "must first of all be guided to understand and accept himself." This initial step would help the individual "progress to a higher level of emotional and sexual maturity" which is the "essence of the process" of psychoanalysis.<sup>88</sup>

---

<sup>85</sup>S.R. Laycock "Homosexuality - A Mental Hygiene Problem" Canadian Medical Association Journal 63 (September, 1950), 246.

<sup>86</sup>Ibid., 245.

<sup>87</sup>Ibid. This definition is taken from G.H. Preston, The Substance of Mental Health (New York: Farrar & Rinehart, 1943).

<sup>88</sup>Ibid., 248.

According to Laycock the homosexual's chances of having a successful relationship with someone of the same sex were extremely weak as there was an absence of safeguards which were present with heterosexual marriage. "Society's violent disapproval" was also a factor in any attempt at a successful homosexual marriage, and any hope of changing society's views would be futile; as Laycock put it "bumping one's head against a stone wall does not hurt the wall."<sup>89</sup> Instead, homosexuals should view their condition as a handicap and should realize that all humans have handicaps. If homosexuals were counselled to see life realistically then they would focus their energies and

need for independence, achievement, recognition and self-esteem, and to some degree emotional security, by giving themselves to almost any worthwhile area of human endeavour - to art, music, literature, various aspects of community welfare . . . Such satisfactions will help balance the blows to their security and self-esteem, which are apt to be the result of concealing their identity from others.<sup>90</sup>

By no means was Laycock encouraging a homosexual to discover his gay identity. This article sets the tone for the medical opinion of the time; it encouraged closeted behaviour and a sexless life.

In 1951 two doctors from British Columbia published an article that examined "Homosexuality as a Source of Venereal Disease." This article noted the decrease in early syphilis

---

<sup>89</sup>Ibid., 250.

<sup>90</sup>Ibid., 249.



cases and attributed it to the use of penicillin and not to "an improvement in the morality of society."<sup>91</sup> The article referred to the discovery that homosexual sex was contributing to the spread of venereal disease; approximately 17% of the cases of early infectious syphilis in males were among homosexuals. The article concluded that the amount of "homosexual activity" was "increasing to an alarming extent." The authors did not attempt to account for this spread but concluded that homosexuals were of two types; "those who are ashamed of their abnormal behaviour; and those who have adjusted themselves to it and have completely rationalized their feelings towards it."<sup>92</sup>

"The Venereal Esoteric" was an article that further explained how the homosexual "plays an important role in the epidemiology of venereal disease." Colin Jackson's main purpose in writing the article was to detail an increase in the percentage of early cases of syphilis. This article was not condemning homosexual sex; in fact it stated how common the practice had been "since the birth of mankind." Jackson did not stray from popular scientific theory that homosexuality resulted from "unsatisfactory personality development dating almost from birth." He did deal with the misconception that all homosexuals are noticeable because of

---

<sup>91</sup>Kanee, B and C.L. Hunt, "Homosexuality as a Source of Venereal Disease," Canadian Medical Association Journal 65 (August, 1951), 139.

<sup>92</sup>Ibid., 140.

the effeminate qualities; instead he pointed out how many "may be of the most masculine demeanour."<sup>83</sup>

Medical literature in the fifties seemed to understand homosexuality as a psychoanalytical condition which was affected by many factors. The general understanding was that homosexuality was not only caused by genetic conditions but was dependent on the relationship with the parents and on their societal conditions. Medical discourse continued to advocate treatment for homosexuals, suggesting various degrees of success. In 1956 the Canadian Medical Association Journal published an article by an American physician, Marvin Wellman. This article entitled "Overt Homosexuality with Spontaneous Remission," reinforced the idea that homosexuality could be a chosen or learned condition and could be "cured."

Wellman presented a case of a 22-year old man who came to see him regarding a sprained ankle. After a preliminary investigation Wellman concluded that this man was an "absolute homosexual," leading to an investigatory analysis into the man's upbringing and family life. After the patient told his parents of his homosexuality, he moved to a larger city to escape his family life. On his arrival in the new city the boy became depressed as he "developed some comprehension of the environmental problem which had

---

<sup>83</sup>C. Colin Jackson, "The Venereal Esoteric," Canadian Medical Association Journal 87 (September, 1962), 716.

resulted from his homosexual behaviour."<sup>94</sup> Wellman's analysis was based principally on the theories of Freud, as he associated the boy's remission back to heterosexuality with "the revival of the father's influence" which helped the patient realize the "importance of the standards of culture." For Wellman, homosexuality was a "neurotic symptom" which could occur along with other neurotic symptoms. In order for the homosexuality to dissipate, the mother had to retreat from her position of influence over her son's life.

The early 1960's medical discourse did not show a drastic difference from what was being written in the earlier decade. Yet, in 1962 the Canadian Medical Association Journal published a rather sympathetic article entitled "The Other Side: Living with Homosexuality." This article was written by an anonymous thirty-year-old university graduate who began by listing the various theories regarding the etiology of homosexuality. The first, which saw homosexuality as a "form of vice indulged by decadent rakes," was refuted by the author as it was a "view not supported by clinical evidence."<sup>95</sup> According to the author, a second group of theories that homosexuality

---

<sup>94</sup>Marvin Wellman, "Overt Homosexuality with Spontaneous Remission," Canadian Medical Association Journal 75 (August, 1956), 275.

<sup>95</sup>Anonymous, "The Other Side: Living with Homosexuality," Canadian Medical Association Journal 86 (May 12, 1962), 875.

was a genetic aberration resulting from inherited factors had been proven by studying twins, where 50% of binovular twins were both gay and 100% of identical twins were both gay. Homosexuality was also widely believed to have been a "glandular or endocrine disease"; however experiments with glandular extracts proved unsuccessful, therefore discrediting the theory. The most "reasonable" theory for the author was that it was "fundamentally an acquired psychological disorder." Yet the author found problems with this theory. He stated that,

It is proposed that the main psychological factors involved in the genesis of this disorder are: (a) hostility to the mother, (b) excessive affection for the mother, (c) hostility to the father, and (d) affection for the father. This proposal seems so broad as to be meaningless because if this hypothesis was valid, almost everyone would be a homosexual. At present all that can be said is that the cause of homosexuality is probably psychological, but the factors involved are extremely complex and may be different for each individual.<sup>96</sup>

The writer then described his personal history in regards to homosexuality. His feelings began at age five and continued throughout his life; it was not until university that he realized there were others like him. He began to involve himself in homosexual relationships, which resulted in a prompt discharge from the air force. At this point he believed that there were three options open to him. When he sought psychiatric help he was told by some psychiatrists to

---

<sup>96</sup>Ibid.

live with his homosexuality and by others that they could treat him; the problem with treatment was the high cost which made it impossible. The second approach was to abstain from homosexual sex indefinitely which the subject found too difficult to do; he queried, "if there are thousands of others like me why is this necessary? The only answer I ever get is because it's the law."<sup>97</sup>

The law seemed to be a major factor in this individual's thinking; his third option in fact was to "defy the law and live as a homosexual." Being identified as a homosexual and fired from his work led to a great sense of disgrace, and the thought of being caught living with another man with the possibility of ten years in jail and a whipping would only lead to further humiliation. The law, he stated, considered homosexuality as unnatural, but to him, heterosexuality was unnatural. He also argued that the law was biased because there was no law regarding female homosexuals. He believed that the Wolfendon Report from England, which advocated the decriminalization of gay sex, should be taken into consideration in Canada. He called for more enlightened legal codes in order to end the "modern version of witch-hunting carried on in both government and private business."

This article was an attempt to point out the hypocrisies that existed in the law and society with regard

---

<sup>97</sup>Ibid., 877.

to homosexuality. Published in the main medical journal of Canada, the article might signify a growing understanding and acceptance developing within the gay community. In fact, this was the first article to employ the word "gay" in referring to other homosexuals. The author's principal plea was that the laws in Canada must be re-evaluated. He called for more education for the mainstream public in order to change the existing laws and stop further human suffering.

Medical articles in the sixties advanced the psychoanalytical theory that homosexuality was a mental disorder. In 1965 the editorial section of the Canadian Medical Association Journal discussed the preoccupation in analyzing the mother's relationship with the homosexual. "Genesis of Homosexuality" referred to the ideas of the British doctor, Eva Bene. Dr. Bene devised a test technique that allowed for an accurate "recollection of early family relationships by adults." The main conclusion from the "Bene-Anthony Family Relations Test" was that the relationship with the father was the "most significant difference" in the homosexual group. These findings differed from the general belief that the homosexual's relationship with the mother was the central problem. The editorial concluded that

It really looks as if, psychiatrically if not somatically, the father is at last coming into his

own in what has been increasingly a matriarchal society.<sup>98</sup>

In 1967, Dr. Peter Roper published an article on "The Effects of Hypnotherapy on Homosexuality" in CMAJ. Roper discussed a study where hypnosis was used on fifteen homosexuals. Each individual was rated by the Kinsey scale.<sup>99</sup> The outcome of the study showed eight of the individuals with marked improvement, crediting the depth of the hypnosis as a "significant correlation." The study reported no correlation between the degree of the individual's homosexuality and the outcome.

Roper advocated the use of hypnosis on the homosexual, promising successful results with a "good hypnotic subject." He mentioned that hypnosis was used in the nineteenth century and was advocated by doctors like Krafft-Ebing. This led him to question "why the technique was not used more between 1900 -1960."<sup>100</sup>

The number of medical articles on homosexuality that appeared after 1950 suggest a growing interest on the part

---

<sup>98</sup>"Editorials and Annotations," Canadian Medical Association Journal 93 (6 November 1965), 1041.

<sup>99</sup>Peter Roper, "The effects of Hypnotherapy on Homosexuality," Canadian Medical Association Journal 96 (11 February 1967). The Kinsey scale rated human sexuality on a scale of 0 to 6, with 0 being completely heterosexual and 6 being completely homosexual.

<sup>100</sup>*Ibid.*, 327.

of Canadian medical professionals throughout the period. Legally, medical opinions became relevant in 1948 when the section dealing with Criminal Sexual Psychopaths was introduced into the Criminal Code. The actual legal cases between 1950 and 1967 reveal how medical opinion was increasingly relied upon in the courts by the sixties.

This supplies an overview of the medical and legal discourse produced in Canada from 1890 until 1967. While there seems to be an apparent change in the medical profession's ideas on homosexuality from 1890 to 1967, the same is not the case for the legal discourse. The law criminalized homosexual sex in 1890 without even defining it. The term gross indecency remained on the books for the entire period without change. It seems that the drafting of these sections was hardly affected by the European discourse which was already challenging the belief that homosexuality was abnormal. The idea of homosexuality being linked to the physiology of the individual is mentioned in James Crankshaw's annotated edition of the Criminal Code of Canada, published in 1919. An English case is cited from 1918, where there is mention of new thinking on these "sexual deviants."<sup>101</sup> In the case of Thompson v. Director of Public Prosecutions, Lord Sumner is quoted as saying that "experience tends to show that these offenses against nature

---

<sup>101</sup>James Crankshaw, ed., The Criminal Code of Canada and the Canada Evidence Act (Toronto: Carswell Co., 1919), 186.



connote an inversion of normal characteristics which, while demanding punishment as offending against social morality, also partake of the nature of an abnormal physical property."<sup>102</sup> This decision allowed for new admissible evidence which might show that the accused had the natural tendency to commit the act of gross indecency as a result of a mental or physical disorder. This might help form a new understanding of these individuals charged with gross indecency but in the Ottawa records there is not one case where the "inversion of normal characteristics" were mentioned before 1950. The intersection of medical opinion with the legal cases did not come into play until well into the 1950s.

---

<sup>102</sup>William Fieldman, ed., Thompson v. Director of Public Prosecutions, Archibald's Pleading Evidence and Practice in Criminal Cases (London: Stevens and Sons, 1918), 879.

### **CHAPTER THREE: OTTAWA COURTS AND THE GAY CRIMINAL**

**1950 - 1967**

Between the years 1910 and 1967, over two hundred criminal cases involving gay or bisexual men were brought before police magistrates in Ottawa. These cases constitute most of the evidence of gay activity in Ottawa society, and supply a glimpse of the homosexual underground. They suggest that the law and criminal proceedings helped define a gay man's identity. The following two chapters will examine the actual criminal cases dealing with homosexual offenders in the city of Ottawa. The focus will be on the cases tried between the years 1950 and 1967 since they supply the most detailed information. The cases to be analyzed are divided into two sections. An obvious dividing factor for these cases is the inclusion of a medical discourse, which becomes relevant mostly after 1960.

In this period men who were charged with homosexual offenses relied mainly on their defence counsel and the sympathy of the judge in order to avoid incarceration. This chapter will examine this type of case with its main focus on three factors: the incidents leading to the arrest, the defence given at the trial, and the final court decision. These cases rely mostly on witness testimony and police

reports for their information. The next chapter will analyze the cases where the medical opinion of psychiatrists was utilized and will enable us to see the influence of medical opinion on the sentencing or treatment of these offenders.

In most of these cases the homosexual was charged under the section concerning gross indecency. In the 1950s in Ottawa fifteen men were charged with gross indecency and in the 1960s there were sixteen. Only rarely was an individual convicted of the crime of buggery and in Ottawa only one was charged with the offense in the period under investigation; this may be a consequence of the extremely harsh penalty that accompanied it. The majority of these gross indecency cases are rather small files including only the general information sheet filled out by the arresting officer. Most of these files include a final decision, but the details of the incident are not always provided.

Most of the individuals charged with gross indecency were involved in mutual consenting sexual acts. While there exist other gross indecency offenders where consent is not obvious this study will analyze only those cases where consent between the two is present. Another aspect of these cases is the age factor. This study does not include analysis of paedophile cases but generally accepts the idea

that consensual sex could occur after the age of sixteen.<sup>103</sup> Individuals involved in non-consensual sex cases and sex with a minor were usually charged with indecent assault; men charged under this section will not be included in this study. After eliminating the cases that do not fit my criteria including the files that merely name the offender, my study includes five of the 1950s cases and twelve of the 1960s cases.

All of the cases presented were investigated by the Ottawa Police Department (OPD) and tried in the Police Magistrate Court. The morality branch of the OPD was created in 1912 by G. Alexander Ross. Its mandate was to be responsible for any infringement of moral standards of living. It was responsible for drug offenses, liquor laws, gambling, prostitution and other sex-related offenses.<sup>104</sup> In the bulk of the cases concerning homosexuals, the arresting officers belonged to this morality office.

On 25 October 1956 two men were charged with acts of gross indecency by morality officer Thomas Welsh and his partner Robert Quinn. The two accused were parked in a car and were spotted by the police who saw that the "driver

---

<sup>103</sup>This assumption is based on the law of Seduction which was section 181 of the Criminal Code of 1892; it specified that the male was committing an offence when having sex with a girl under the age of sixteen. It should be noted that even today the law does not support the idea that consensual sex between males can occur at the age of sixteen.

<sup>104</sup>Jilles Larochelle, The history of the Ottawa Police (Ottawa: to be published 1994).

seemed to have his arm around the passenger's neck and their heads came together a number of times." On noticing "a lot of shuffling" the police approached the vehicle and found "LR with his arm around JL, who had his belt undone and pants loose." The men were asked to get out of the car and "LR became very nervous and JL quite hostile." Apparently LR tried to convince JL to cooperate when they were asked to get back into the car but JL started walking down the street "refusing to come." It was not until he was threatened with force that JL cooperated and got back into the car.<sup>105</sup>

In LR's statement that evening at police headquarters he claimed that he was well known in Ottawa and would not want this charge to leak out. He admitted that they had been drinking and stated that JL was the instigator. JL did not cooperate and was not represented by counsel on his court date. The evidence against him included his initial hostility to the police and the fact that he had other criminal offenses on his record, although not gross indecency. JL was convicted and sentenced to three months in prison; LR was discharged.

The differences between these two individuals are significant. LR claimed middle-class status by stating that he was well known in the town and he was represented by counsel when he appeared in court. He continually

---

<sup>105</sup>Archives of Ontario (AO), Crown Attorney Prosecution Case Files, Carleton County, 1956, RG 22, Series 392, Temporary Box 236.

cooperated with the police, including giving a statement on the night of the arrest. JL did not cooperate with the police until threatened with violence and did not answer any questions that night. He was not represented by counsel on his court date, offered no defence of his actions and had a previous court record. LR's social position and compliance with the system apparently resulted in his acquittal, whereas JL's oppositional actions and lack of legal representation seemed to have been crucial to his three-month incarceration.

This case is an example of how the gay community in Ottawa was under surveillance. The police report stated that the constables noticed two men sitting in the car before they began their surveillance. This might indicate that they had some idea of what was going to occur, suggesting suspect locations were kept under regular surveillance to entrap gay men. For example, in a 1963 case we see an intentional surveillance of an area that was known to be frequented by gays. Two constables, Clancy and Burke, dressed in civilian clothes, concealed themselves "in bushes bordering the lower pathway by the Canal." It was explained in the Crown Attorney's notes that the officers were on "special duty" for a period of seven weeks; their job was to keep an eye on this problem area where several previous crimes had occurred. While observing, they "saw two persons come down separately onto the pathway." The two men

"engaged in conversation and were then observed dropping their trousers."

The accused was seen to bend down resting his hands on his knees - the other man - KP then approached TQ's rear and the act complained of took place. Both men were then arrested and conveyed to the police station and charged. <sup>106</sup>

Each man was charged with two separate offenses, buggery and gross indecency.

The charge of buggery was not common for this period; perhaps it was employed here because the officers claimed they had actually witnessed anal intercourse. In the court proceedings there was considerable discussion about whether the arresting officers could positively confirm that buggery had taken place. Moreover, as each man was charged with buggery, the Crown Counsel had to prove that the passive individual was rightfully charged; he argued that it was true that it was KP "who buggard [TQ] but [KP] could not have done it without the consent and agreement of [TQ]." He continued that there was a "common intention to accomplish an unlawful purpose," and concluded that it was "immaterial which one of these two men put his parts into the other - if it was agreed with the other that one should do the physical act." <sup>107</sup>

The defence for TQ argued that buggery did not take place as his client did not feel "any contact with his body

---

<sup>106</sup>Ibid., 1963, Temporary Box 237.

<sup>107</sup>Ibid.

except [KP] touching his penis." The accused claimed that he was urinating in the park when the other approached him from behind. The attorney argued that there was no penetration of the rectum, therefore it could not be buggery. Finally the last point in the defence was that TQ was "so drunk he did not have the ability to know what he was doing and that it was wrong."<sup>108</sup>

In his closing remarks to the jury, Crown Counsel argued that only slight evidence to prove buggery was required, and if this was not supplied in the trial, then at least attempted buggery was inferred. If there was no attempt at buggery, then the jury must find for gross indecency, which he defined as "acts so indecent as to offend righteous minds." He continued,

whatever may be your own reactions in this case - whatever may be the natural outrage that you feel, you are judges of the facts . . . Some people believe that sodomy between consenting adult males is not a crime. I say to you our Criminal Code . . . says that it is. Whatever you may decide I, and this community whose interests I must protect, will rest content if your verdict is dictated by your conscience - rendered as true according to the evidence so help you God.

The verdict for TQ was unfortunately not recorded. KP was found guilty of gross indecency and sentenced to a one year determinate plus six months indeterminate sentence at the Ontario Reformatory.<sup>109</sup>

---

<sup>108</sup>Ibid.

<sup>109</sup>Ibid.



As these cases indicate, it was not necessary that two individuals charged in a consensual sex case would receive the same verdict. In 1959 two men were charged with gross indecency after being caught in a park situation. In the preliminary trial HS asked for one week to consult with counsel before he pleaded, while his partner RT immediately pleaded guilty requesting judgement in the present court. RT was sentenced to one year and received a suspended sentence, while the following week HS had his case dismissed.

Cooperation with the police and legal representation did not always result in a lighter sentence. In 1955 police arrested RC and charged him with gross indecency for sexual contact with boys between the ages of fifteen and sixteen. According to the file, police became suspicious of RC after witnessing him "cruising" one of the boys at the Hotel de Ville in Hull. It is not clear how the Ottawa police discovered this case, but it is apparent that the accused resided in Ottawa. Police questioned three boys, attempting to get them to admit to having sexual contact with RC. It does not appear that the boys were willing witnesses as one did not admit to doing anything with the accused and the others had to be questioned several times before they admitted to RC "sucking" them.<sup>110</sup>

---

<sup>110</sup>Ibid., 1955, Temporary Box 235.

In the police report RC admitted to everything and stated that he was guilty of gross indecency. Yet at the preliminary trial he pleaded not guilty, basing his defence on the fact that he spoke little English, which was the language used by the arresting officers. His lawyer attempted to suppress the police report by arguing that the term gross indecency lost its meaning when translated into his client's language which was French. Therefore when his client had admitted to gross indecency he had not understood the term. However, the case was sent to trial and RC was convicted of gross indecency based mainly on his own statement in the police report. On 4 November 1955 he was sentenced to serve two years at the Kingston Penitentiary.<sup>111</sup>

The decision in RC's case was harsh, especially when compared to a similar case in the 1960s. RD was charged with gross indecency with several boys aged fifteen to eighteen. The boys were reported to visit RD's home regularly, apparently for sexual encounters. In the court proceedings the question of the boys' willingness became an issue, and the exchange of money was mentioned. The judge remarked that the question of whether the boys had been forced was an issue; he stated, "I may have reason to believe that he [one of the boys] has been back but is a little reluctant to say so." One boy testified that he had

---

<sup>111</sup>Ibid.

met the accused at the Champlain Baths, a gay bathhouse in downtown Ottawa, which suggested mutual guilt of gross indecency. At the preliminary hearing, on 23 September 1966, the accused pleaded not guilty and the case was sent to trial. On 24 January 1967 the accused was found guilty but was given a suspended sentence and put on probation for two years.<sup>112</sup> This sentence is considerably lighter than the one in the earlier decade despite the similar circumstances.

The Criminal Code allowed for suspension of a sentence that was not more than two years. The Code provided guidelines for the type of person who might receive a suspended sentence; this applied to a first-time offender with no previous convictions. It was recommended that certain aspects be taken into regard such as the "age, character, and antecedents of the offender, . . . the trivial nature of the offense, and . . . any extenuating circumstances under which the offense was committed."<sup>113</sup>

A suspended sentence was granted for a few of the gay offenders but it was not always granted with the single condition of probation. For example, in 1954 CF pleaded guilty to gross indecency and received a suspended sentence with several conditions. A separate form in this case file

---

<sup>112</sup>Ibid., 1967, Temporary Box 239.

<sup>113</sup>A.B. Harvey, ed., Tremeeear's Annotated Criminal Code (Toronto: Carswell Company, 1944), 1389.

entitled "Conditions of Suspended Sentence" listed the conditions that this individual must comply with; they included:

1. Report once a week to Probation Officer
2. No drinking
3. Curfew
4. Attend church regularly
5. Look for work and report progress
6. That he will see Dr. Cathcart at least once a month for a period of one year minimum. Longer if deemed necessary.
7. That he will not frequent the following places at any time
  - i) Connaught Restaurant at Elgin and Sparks street
  - ii) By Town Inn<sup>14</sup>

Although this individual enjoyed the freedom of not being sent to prison, he also faced many restrictions for the two year probationary period. Although this might be seen as a tight control on the individual's life, it was a rather lenient decision for the time, which attempted to provide assurances that the individual would not offend again.

A 1960s Assizes case involved RL, a twenty-two year old charged with gross indecency on RM, a sixteen-year-old. RM, when called upon by the Crown, stated that the accused "accosted him first while sleeping" and that the same incident happened five times. The Crown Counsel argued that if a "guilty passion" to commit these acts existed, then this should be sufficient to convict RL. The Crown Counsel attempted to call other witnesses who were not directly related to this case but who had performed similar acts with

---

<sup>14</sup>AO, Crown Attorney Prosecution Case Files, Carleton County, Rg 22, Series 392, Temporary Box, 230.

RL. After an objection from the defence lawyer, the judge questioned the admissibility of this evidence, resulting in a debate. The Crown Counsel argued the precedents by quoting from Martin's Criminal Law 1955, where the admissibility of "evidence of similar acts in cases where persons are charged with unnatural practices" was allowed. The Crown referred to two more cases where evidence of similar acts was used: in Rex v. Sims it was used "to show the nature of the act done by the accused,"<sup>115</sup> and in Rex v. Hartley "to prove the existence of a guilty passion."<sup>116</sup> The judge claimed, though, that "in ordinary cases of indecent assault between men and women" this type of evidence was not admissible. He stated that there was "no question that the law of similar acts would not apply." On 9 January 1961 the prisoner was found not guilty on the grounds of reasonable doubt and was released.

In another case from 1960, the defence counsel argued against the type of charge that his client received. GL was charged with indecent assault on a male; the case concerned the individual molesting his restaurant employees by holding them in his arms and rubbing himself against them. Although this case involved an individual who was under the age of sixteen, and the charge was indecent assault, it is an excellent example of how the lack of definition of

---

<sup>115</sup>Rex v, Sims, 1946 King's Bench 531

<sup>116</sup>Rex v. Hartley, 1940 Time's Law Report 98.

homosexual offenders in the Criminal Code could be used to benefit the defence strategy of the accused. In court, the boy who was indecently assaulted was asked by the defence if he knew what homosexuality was; he answered, "as far as I know a homosexual is a person who prefers to have the companionship of and sexual relations with males rather than females." Defence counsel continued by asking "what sort of sexual relations" but was interrupted by the judge who inquired if they had to "go into all of that." Counsel argued that perhaps he was "unexperienced in these things," but when he was a boy he "never had any of these things happen" to himself; in fact he did not even know what a homosexual was. The judge responded that it was apparent that "boys today know more than you knew when you were a boy." The defence attorney contended that his client should not have been charged with indecent assault and that he intended "to make some reference here about what constitutes an indecent assault." He argued that if his client "did not attempt to do anything else than this man has described," then there was no indecent assault. After this line of examination concluded a motion to quash the case was introduced and subsequently accepted by the judge, and the charge was dismissed.

The evidence presented to this point suggests that by the early 1960s less harsh penalties were being handed down to these types of offenders. A case in 1967 was the

exception that proved the rule as it initially resulted in a three-year sentence, but was appealed and considerably reduced. The case file contains the initial "pre-sentence report" which described AB as a seventeen-year-old male charged with gross indecency with other boys at a drive-in. The report detailed his upbringing, commenting on his unhealthy family life; the information in the report was supplied by the accused, his mother, his room-mate and the arresting officer. It intimated that the accused was a responsible individual and that this was his first offense. Despite this information the first verdict came down as guilty, resulting in a two-year definite plus one-year indefinite sentence.

The sentence was appealed to the Supreme Court of Ontario, however, where it was reduced considerably. A letter from the Department of the Attorney General to John Cassells, the Ottawa Crown Attorney at the time, stated that the Supreme Court "was strongly of the view that the original sentence imposed was excessive and harsh." In the same letter the Attorney General remarked that on reading the case his initial reaction was that the sentence indeed was severe. In the end, the initial sentence was reduced to four months imprisonment. This case suggests that while homosexual behaviour was still a punishable crime, it was not any longer viewed as one that warranted an excessively harsh penalty.

Another section of the Criminal Code that affected homosexuals was the one dealing with obscene literature. In 1964 two such cases were brought before the Ottawa police magistrate. The first case involved complaints regarding certain obscene books and magazines which were being sold in at least one local cigar store. On 9 December 1963 a search warrant was executed at the Ritchie's Cigar Store and a number of published materials were confiscated. In all, three charges were laid; two were against the owner of the store for selling an obscene book entitled Male Bride and another for selling an obscene magazine entitled "Caper Animal"; the third charge was laid against the distributor of these materials.

The OPD sent the entire collection of confiscated material to David Coon, the chairman of the Ontario Attorney-General's advisory panel on obscene literature. The Department requested his opinion on which of the publications might be considered obscene. This case file contains Coon's reply in a letter concerning Male Bride addressed to Capital Distribution Company, the company facing the charge. The letter stated that "it is in our opinion that the publication would be obscene within the definition of the Criminal Code of Canada . . . The publication should be withdrawn from circulation." The official outcome of the criminal proceedings in the case was not recorded but it is apparent that this case received



considerable attention. An article in the Ottawa Citizen on 28 January 1964 compared the material confiscated in this raid to a case in Toronto also dealing with obscene material, the eighteenth century novel entitled Fanny Hill. According to the Citizen, Fanny Hill read like a Sunday School reader when compared to the material found in Ottawa as Fanny Hill, although crude, at least dealt with heterosexual themes.

An article published in Canadian Weekly discussed David Coon's position and the influence he had on what type of literature the Canadian public could access. Coon was quoted as saying that he did not view Fanny Hill as obscene and that he was disappointed by the Toronto Court ruling that it was. Coon believed that the main reason it was judged as obscene was that the character Fanny Hill "enjoyed sex so much and said so." The article discussed the type of literature that Coon objected to; he believed that the types of books that should be taken off the shelves were "dreary pocketbooks laden with perversion and sexual sadism."

The Canadian Weekly article referred to this specific Ottawa case and Coon's final decision regarding the material submitted to him. It stated that "fifty per cent of the material complained of is submitted by police," with the rest by private individuals. The article proceeded to name some of the material in this case and revealed the final decision; it stated,

On top of the pile of pocketbooks is Love Drive by Adam Snavelly. The others are similar. There are The Girl Who Invented Sex, Love on the Rocks, Wild Cat, Blondes Don't Give a Damn and Nude Doll - 15 in all, published by Kozy, of New York. The committee decides that only one - Male Bride - is doubtful enough to warrant an adverse report.<sup>117</sup>

The main objection to Male Bride was its ending, where "a handsome young man finally decides he might as well be a homosexual like his friends and rushes into his male lover's arms."<sup>118</sup>

Apparently, any work that might show the homosexual lifestyle as being an acceptable alternative was considered to be obscene. Homosexual sex was considered an act of gross indecency, therefore literature that promoted homosexuality could not be tolerated. Coon had stated that the definition of the Criminal Code would deem Male Bride obscene. If gay sexual activity were against the law then it was obvious, at least to Coon, that any literature advocating an acceptance of a gay lifestyle would be deemed obscene.

Another case dealing with obscene material involved an individual man whose home was searched by police on 22 July 1964. As a result of the search BC was charged with two offenses: the first involved section 153, using the "mail for the purpose of transmitting obscene matter, to wit,

---

<sup>117</sup>AO, Crown Attorney Prosecution Case Files, Carleton County, Rg 22, Series 392, Temporary Box, 237. Canadian Weekly article included in the file, no date or publication source indicated.

<sup>118</sup>Ibid.

obscene pictures"; the second charge referred to section 150a which made it illegal to have in your "possession for the purpose of circulation same, obscene pictures."<sup>110</sup>

The case file detailed the material found which included:

slides of males performing obscene and unnatural acts  
 . . . a film which the officers have viewed and feel  
 that the court would term 'art' . . . printed matter in  
 the nature of Homosexual catalogues, lists, directories  
 . . . There is a guide to gay clubs in the U.S. and  
 Canada . . . also correspondence between the accused  
 and what appeared to be homosexuals . . .

It is apparent from the materials found that there seemed to be quite an active gay life if not in Ottawa then in other major cities of Canada. The individual involved in the case seemed to know his rights, because as the officers entered his home he stated that he would not say anything before he talked to his attorney. He was noted as asking if there was anything wrong with nude pictures. The outcome of the trial was a guilty verdict on section 153 with a fine of \$200; the charge regarding section 150a was withdrawn. There is nothing in the file to suggest how the police were notified that the materials were in the accused's home.

Throughout the 1950s homosexual men were charged with a criminal offense for attempting to satisfy their sexual desires. In the court files of Ottawa it is apparent that the police force actively sought out the homosexual element in society. Police surveillance is evident in many of the

---

<sup>110</sup>Ibid.

cases, including an undercover operation in a heavily frequented gay cruising area. These men were dragged into the court system and subjected to public embarrassment.

The Criminal Code was revised during this decade, resulting in a lessening of the sentence for gross indecency offenders. This was reflected in the court decisions, since by the end of the decade we see lighter decisions being handed down. The cases from the 1960s examined in this chapter further illustrate a trend toward lighter sentencing for these types of offenders. The following chapter will analyze the bulk of the cases from 1960 in order to fully understand the change that was occurring in this period.

## **CHAPTER FOUR: MEDICAL OPINION AND THE SEX OFFENDER IN THE 1960S**

The medical profession became an influence in the prosecution of homosexuals in Ottawa by the beginning of the 1960's. As we have seen, as early as 1950 Canadian medical professionals were publishing articles on homosexuality which argued that homosexuality was a psychological condition that could be treated and cured. In the 1948 revision of the Criminal Code of Canada, it became possible to declare the homosexual offender a Criminal Sexual Psychopath (CSP) after a psychiatric evaluation of the accused was completed. In addition to these types of cases, medical opinion also became relevant in ordinary gross indecency cases as the mental status of the homosexual was increasingly questioned. Throughout the 1960's the growing influence of medical professionals in the proceedings of gross indecency cases is apparent. In the Ottawa cases where there is medical opinion, the majority of the decisions reflect the position that the doctors maintained.

Most doctors advocated treatment of homosexual offenders in order to change their sexual habits. These treatments involved various psychoanalytical techniques with

the intent to stimulate the retarded sexual development of the homosexual. Treatment promised the possibility of achieving a "normal" sexual orientation for the individual and, when indicated, usually resulted in a suspended sentence for the offender.

In Ottawa it was not until after 1960 that opinion from medical professionals was utilized by the courts, but there are instances in the fifties where medical treatment was suggested. We have previously seen compulsory medical treatment as a requisite for a suspended sentence in a 1954 case. By 1959 it seems that even the accused was sometimes aware that medical treatment was an alternative to incarceration. For example, in June 1959, JT, charged with two instances of gross indecency, proclaimed a sense of relief at being caught. In the police report he is quoted as saying, "these things happen without my conscious consent and I am sorry afterwards." In addition to showing his remorse he suggested that he had "been thinking of taking this to a doctor to obtain services for treatment but then I was too shy to do it." After reading his statement JT added that he was "glad this happened [be]cause now I will be able to see about getting a cure for this, before I didn't dare mention it to anybody because I was ashamed of myself." JT's plea of guilty on both counts of gross indecency

resulted in a suspended sentence. He was put on probation for one year with required medical supervision.<sup>120</sup>

Perhaps JT stressed the fact that he required medical attention for his problem in the hope that it might be a way to avoid incarceration. Indeed, reports of sentencing patterns regarding homosexuals had been published in popular magazines as early as 1947. Maclean's and Saturday Night had dealt with the issue of the sex criminal, detailing the possible sentences which they faced. In all of these articles the idea of medical treatment for homosexuals was referred to and shown to be an alternative to a penal sentence.<sup>121</sup>

In an interesting case in 1965, GC and JB were caught at Nepean Point and charged with gross indecency after being spotted, in a car, by two morality officers. The officers watched the car after noticing "two male occupants in the front seat" which resulted in a twenty minute surveillance. Their suspicions were confirmed when they saw the person in the passenger seat go "out of view towards the lap of the person behind the wheel." After waiting five minutes the officers approached the car to see what exactly was going on. They did not witness a sexual act, but found the men

---

<sup>120</sup>Ibid., Temporary Box 237.

<sup>121</sup>For example, see Sidney Katz, "The Truth About Sex Criminals," Maclean's Magazine (1 July 1947), 12, 46-48; W.C.J. Meredith "Law and the Sex Criminal," Saturday Night (18 November 1952), 1, 26-27; Kenneth G. Gray, "Sexual Deviations: Problems and Treatment," Saturday Night (26 November 1955), 29-30.

with their "shirts untucked and the driver with his zipper down."<sup>122</sup> In the police statement GC admitted to meeting JB, the driver of the car, and performing oral sex on him; he added that the two had been involved with each other on a previous occasion. JB told the officers that nothing had occurred; he was then put into the back seat of the patrol car. GC admitted to being a homosexual and stated that he had had intercourse with JB three months earlier in JB's apartment. GC seemed quite willing to cooperate with the police and not only confirmed JB's homosexuality but referred to other men with whom he had sexual relations; this included an apparently well known person in Ottawa who owned a popular furniture store.<sup>123</sup>

An interesting aspect of this case was the fact that JB was "employed by the Justice Department as advisory counsel in the Criminal Law Section." This was noted in the preliminary police report and in a letter from John Cassells to his prosecuting attorney, Arthur Christie. In this letter, Cassells informed the counsel that GC intended to plead guilty and that JB was a legal officer for the Department of Justice; he informed Christie to "keep an eye on this case."<sup>124</sup> When questioned at the morality office,

---

<sup>122</sup>AO, Crown Attorney Prosecution Case Files, Carleton County, Rg 22, Series 392, Temporary Box, 238.

<sup>123</sup>Ibid.

<sup>124</sup>Ibid.



JB denied "emphatically that he and [GC] were engaged in the act of gross indecency." He admitted to meeting GC on a previous occasion where GC had made "homosexual advances" towards him, which he rebuffed. He stated that on this particular evening, after picking up GC, he had parked the car and they "talked for a considerable period of time." The officer commented that JB was extremely careful when answering the questions and assumed that this was because of his profession. The officers commented that JB's "actions are similar to that of a homosexual," thereby intimating that the charges were deserved.<sup>125</sup>

When the two men appeared before the magistrate, the case was adjourned after the judge ordered GC to undergo a mental examination; this was allowed before GC entered his intended plea of guilty. The two appeared again on 31 August 1965. At the hearing Dr. Graham testified that on examining GC he found that he had already been admitted five times to The Ontario Hospital for a mental disorder. Graham suggested further examination and the judge remanded GC to The Ontario Hospital for thirty days; JB's case was adjourned further. On 24 September, a letter from Dr. D. Bell-Smith regarding the mental condition of GC stated that he was "suffering from a serious mental illness" and requested the court's "authority to certify him and detain him in hospital for treatment." When Bell-Smith suggested

---

<sup>125</sup>Ibid.

certifying the patient, he was not referring to the CSP section of the Criminal Code; rather he wanted the court to certify him as mentally ill which would require him to remain at The Ontario Hospital and receive psychological treatment.<sup>126</sup>

A final decision is not recorded for either of the two men. The magistrate wanted the case on JB to proceed despite GC's certification but it was noted that he would probably allow for a withdrawal. This was suggested because GC's condition was reported to have deteriorated to a point where he was unable to testify in JB's case.

This situation shows how the medical condition of one of the accused could affect the other case and probably aided in a withdrawal of the charges. Another example of this occurring was a case the following year involving KP and WC, who were charged with gross indecency on each other. The two men were to appear in court on 7 January 1966, but KP was not present since he was remanded for a psychiatric examination. As the Crown intended to use him as a witness in its case against WC, the clerk of the Magistrates Court wrote the magistrate requesting a decision on the matter. He stated,

[WC] stands charged with gross indecency. The Crown's witness would be [KP] who has not [yet] been certified as a mentally ill person. The issue is this, does the Crown wish to proceed with the charge of gross indecency against [WC] with a witness of this calibre

---

<sup>126</sup>Ibid.

and I am not in a position at this time to inform you as to the degree of [KP's] mental illness. You may wish to consider the idea of withdrawing the charge against [WC] as it appears that he was the first offender in this group, whereas [KP] was the repeater.<sup>127</sup>

Initially KP's condition did not result in a withdrawal of the charges for WC; instead the joint charge of gross indecency was dropped and WC was charged separately with gross indecency. The Crown stated that it intended to proceed against WC, indicating it would not be relying on KP as a witness.

A letter from WC's attorney to the Crown Attorney indicated that the Crown had agreed to drop the charges if "it could be shown that there was no question of latent or overt homosexual tendencies and that the matter was not likely to recur." In order to prove this, WC underwent a psychiatric examination with Dr. A. Blais at the Ottawa General Hospital. The outcome of this examination revealed that WC was a forty-one year old married man with nine children. The doctor examined the patient's personal history, focusing mainly on his early childhood, but found nothing significant that would contribute to "abnormal factors conducive to the development of a mental disorder." The doctor concluded that there was "no evidence of either latent or overt homosexual tendencies"; in his opinion "the incident in question was an isolated one," and WC was a

---

<sup>127</sup>Ibid., Temporary Box 239.

"passive victim due to circumstances and to excessive drinking." He further stated that a homosexual encounter had "no likelihood of recurrence," and suggested the withdrawal of the case against WC.<sup>128</sup> Dr. Blais' letter was then sent to the prosecuting attorney, by the defence.

This case is an example of two ways in which the medical profession could influence the cases of individual men charged with a sexual offense. The medical condition of KP brought into question the ability to proceed against WC, since the only witness had been admitted to the hospital and certified as mentally ill. Also, the consideration of the doctor's judgment aided in a withdrawal of the charges against WC. It is important to note in the cases described so far how the medical professional equated homosexuality with mental illness. This assumption remained consistent throughout the decade; the corollary was, of course, that symptoms of homosexuality could, and should, be treated. If Dr. Blais had found the accused to have homosexual tendencies the case would have resulted in either a jail sentence or required medical therapy.

This point is illustrated in the case dealing with RA, a man employed with the Canadian armed forces overseas. This individual was sent back to Canada and charged with assault in 1966. In a letter from Dr. B. O'Brien it was revealed that RA, diagnosed as a paranoid schizophrenic, was

---

<sup>128</sup>Ibid.

held in the hospital with the doctor's recommendation that he not attend court to meet his charges. After an examination by another doctor, a letter was sent to the Assistant Crown Attorney, Robert Vincent, stating that the situation regarding RA was "nastier than we thought." During his investigation the second doctor discovered that "part of his problem is that he believes himself to be a homosexual and this is what we are trying to overcome."<sup>129</sup> This doctor's suggestion was that the charges be withdrawn and RA remanded to the hospital for treatment. There is no record of the outcome of the court proceedings but it is notable that both doctors believed that medical treatment should take precedence over legal cases.

Many of the criminal cases in the 1960s were affected by section 659 of the Criminal Code concerning the classification of a Criminal Sexual Psychopath. This section referred to many categories of sexual offenders, including those offenders charged under the section on gross indecency. An individual could be classified a CSP if he, "by a course of misconduct in sexual matters, has shown a lack of power to control his sexual impulses and who as a result is likely to attack or otherwise inflict injury, pain or other evil on any person."<sup>130</sup> In order to be labelled a

---

<sup>129</sup>Ibid.

<sup>130</sup>A.E. Popple, ed., Snow's Criminal Code of Canada (Toronto: Carswell Company, 1955), 653.

CSP, it was required that the recidivist undergo psychiatric evaluation by two doctors who would each decide if the individual was a risk to society. Once declared a CSP, the result was a definite two-year sentence followed by an indeterminate sentence, which was continued until the individual was judged to be no longer a risk to society.

The cases in Ottawa affected by this section of the Criminal Code hold a great deal of medical information from the doctors' examinations; there is also a lot of court discussion regarding the application for CSP status. We have seen how medical examinations could result in a lighter sentence; however in CSP cases the outcome could be more negative for homosexuals because it meant an increase in the incarceration period. Classification as a CSP did not result in hospital treatment as opposed to prison time; it was stipulated in the Criminal Code that all CSPs were to serve their sentence in a penitentiary. In other words, while the determination of CSP status was a medical matter, based on doctors' reports, the consequences were legal, namely incarceration. However, it was stated that the CSP could be separated from the other prisoners in order to receive "disciplinary and reformatory treatments." In 1961 the term CSP was changed by an amendment to the Criminal Code, and replaced with Dangerous Sexual Offender (DSO).<sup>131</sup>

---

<sup>131</sup>A.E. Popple, ed., Snow's Criminal Code of Canada 1963. Apparently there was confusion with the word psychopath which resulted in the label change.

The definition and sentence remained the same, however, and that is the term which will be used here in the discussion of the cases from the 1960s.

A look at the cases which involved an application to declare the offender a DSO reveals the negative view that the medical professionals and the court officials held regarding homosexuality. The criteria for a DSO application included repeated offenses and offenses of a more serious nature than merely consensual homosexual sex. However, these cases are important to this study because in the process of the evaluation general statements regarding homosexuality were made.

In the case concerning RM, charged with buggery, twelve counts of gross indecency and indecent assault, most of the participants with the twenty-three year old were males under the age of eighteen. It was acknowledged that most of these incidents involved consensual sexual contact. In the preliminary hearing RM pleaded not guilty to buggery and guilty to the gross indecency charges. He was informed on 5 April 1962 that he would be committed as a DSO which resulted in two psychiatric examinations. The two medical reports included in the file show conflicting opinions as to the danger this individual posed to society.

The first medical examination of RM was conducted by Dr. D. Bell-Smith, who detailed the familial history, schooling and various other aspects of the accused. It was

revealed that RM had experienced a violent upbringing by an alcoholic father and an absent mother, resulting in his leaving school at an early age. When asked about his sexual activities, his answers, according to Bell-Smith, were "guarded and evasive," which the doctor attributed to a "fear of incriminating himself rather than from guilt, shame, or embarrassment." However, it is apparent that he was not hiding his homosexual experiences, for when questioned about his sexual preference RM commented that he "likes them both." Bell-Smith observed that the individual was "fully aware of the nature and quality of his acts and knows the difference between right and wrong," therefore concluding that "he is competent to instruct counsel and fit to stand trial." His final remark was that

This man has formed a pattern of deviant sexual behaviour which will become progressively worse if he is allowed to remain in the community. In my experience psychiatric treatment is not of value once the character disorder has become overt and has existed over such a lengthy period of time. I feel that this man must be considered a dangerous sexual offender.<sup>132</sup>

Bell-Smith commented that RM did not show any overt signs of mental illness, which may have been the reason why he was not certified as mentally ill and remanded to a hospital for treatment.

RM's second evaluation, conducted a day later by Dr. A. Woodruff, resulted in an opposing view of the degree of this

---

<sup>132</sup>AO, Crown Attorney Case Files, Carleton County, 1959, RG 22, Series 392, Temporary Box 237.



man's threat to society and an altogether different recommendation as to his treatment. Woodruff recorded much of the same initial information as the earlier examination, commenting on RM's dysfunctional family situation which involved a mother who would "periodically take off leaving the home and the children behind"; when the boy was fifteen his mother "packed up and left the home" for good. When talking to RM about his sexual history, Woodruff found him quite cooperative, unlike RM's earlier meeting with Bell-Smith. Woodruff noted that RM had experienced homosexual sex throughout most of his life and did not, until his arrest, "understand that this was a very serious problem." It seemed that RM saw his actions as "acceptable and normal behaviour" but was "willing to admit that he would not allow a son of his to become involved in such behaviour and indeed quotes, 'I would knock the brains out of anyone who tried to do it to him.'" With this Woodruff concluded that a "double set of values" was obvious.<sup>133</sup>

In Woodruff's summary he did not recommend that RM be declared a DSO; rather Woodruff concluded that "he was a sociopathic individual but one for whom it might be possible to afford help even on a limited scale." In the process of the evaluation, Woodruff had RM interviewed by a psychologist who performed various scientific tests on him. The psychologist, a Dr. Mayer, concluded that the

---

<sup>133</sup>Ibid.

patient's inadequate psychosexual adjustment has quite evidently developed mainly as a result of his very unfortunate relationship to a ridiculing, rejecting mother as well as the lack of a strong acceptable father figure throughout his childhood years. Although a homosexual orientation is manifest in this young man, however, an underlying preoccupation with heterosexual relationships is strongly evident (Rorschach; TAT; Rotter; H-T-P). It would appear that a most pathological fear of female sexuality is at present fixating this patient's sex life on the homosexual level (Rorschach).

Dr. Mayer believed that RM was motivated "to a great extent at this time to change his distorted sexual orientation" and advocated psychiatric treatment as the possible key to his rehabilitation.<sup>134</sup>

Mayer and Woodruff agreed that the patient was treatable and Woodruff emphasized that "this man is not a danger to the community and would not benefit from being admitted to a hospital where his homosexual tendencies would merely be confirmed, or 'punished' by admitting him to a prison." He suggested that the best solution for RM was an "accepting relationship either with a good social worker under psychiatric supervision, or with a psychiatrist or clinical psychologist alone." Woodruff was recommending an out-patient status for RM, far from the recommendation that Bell-Smith gave a day earlier. Woodruff allowed that if, after two years, RM had failed to redeem himself, he could be returned to the courts for whatever action the court deemed fit. However, he did add that if treatment failed,

---

<sup>134</sup>Ibid.

RM "would not develop violent and hostile tendencies and would merely go on seeking his homosexual satisfactions with persons of the same tendencies." The final decision on this case is not recorded; however a letter from the Assistant Crown Attorney to the director of public prosecutions agreed with Woodruff's findings and advised that the application for DSO be abandoned.<sup>135</sup>

Another case involving an application to declare the offender a DSO occurred in 1966 and involved a Roman Catholic priest. While this file does not include any detailed medical examinations, opinions of three doctors are indicated along with the response of the Crown Attorney. The accused JG was charged, in 1966, with several counts of gross indecency which dated as far back as 1962. Initially, JG pleaded not guilty to all counts but after consultation between his attorney and the Crown Prosecutor, he agreed to plead guilty to two of the charges. It was intimated that a suspended sentence might be likely if the accused were to plead guilty, as it would "indicate an attitude conducive to rehabilitation." In the process of negotiations, the Bishop took an interest in the case and assigned Father Lemoge to assure the prosecutor that if JG received a suspended sentence, "special provisions would be made in regard to his

---

<sup>135</sup>Ibid.

future activities." Clearly, factors other than medical opinion also affected this case.<sup>136</sup>

Dr. Pelletier, after examining JG, described him as an "alcoholic, a confirmed homosexual and an embezzler" and supported the application to declare him a DSO. He suggested that the accused be held without bail; he believed that JG's chances of progress with psychiatric treatment were poor. Dr. Karl Stern suggested that JG was "in good faith denying the charges" as "a bout of excessive drinking resulted in a latent form of homosexuality which manifests so that the patient has a complete amnesia for his acts afterwards." The fact that JG had homosexual yearnings was defended by Stern, who remarked that "it is normal during adolescence to have homosexual relations on occasion." Therefore alcohol consumption was responsible for JG's regression back to an adolescent state which resulted in a homosexual occurrence. A brief statement by Dr. Penetang proposed that the trial should not occur, as it would "only harm him" and suggested that "he is not cured but on his way."<sup>137</sup>

Crown Attorney Cassells reacted to Dr. Stern's assessment in a letter to his Assistant Crown Attorney. He refuted Stern's findings and questioned the doctor's bias in the case. He stated that he was "indeed surprised and

---

<sup>136</sup>Ibid., Temporary Box 239.

<sup>137</sup>Ibid.

suspect[ed] that not only has he little knowledge of the facts, but quite clearly is prepared to accept the version of [JG] without regard to these facts." Cassells rejected Stern's assessment and questioned his reputation as "the most outstanding psychiatrist in Canada," based mainly on Stern's remark that JG was "not in a state of moral responsibility" as a consequence of "alcoholic amnesia."<sup>138</sup>

A final letter from the Assistant Crown Attorney, Vincent, to the Director of Public Prosecutions outlined the Crown's final stance. It stated that the medical information "offers no defence to the charges" and the idea of the alcohol factor did not "diminish in any way the man's legal or moral responsibilities." He continued that

Essentially the medical profession will tell us that we are dealing with an alcoholic and a homo. While Dr. Pelletier says that treatment will be useless, Penetang and Stern, in my interpretation, say that this man will have to be under psychiatric control for the rest of his life and will always be a potential danger.<sup>139</sup>

Yet, despite this negative analysis the case resulted in a suspended sentence with a two year probation. It was stipulated that JG would undergo psychiatric treatment once a month for the first six months and after that once every three months.

JG's sentence seems very light considering the recommendations of the medical professionals. While the

---

<sup>138</sup>Ibid.

<sup>139</sup>Ibid.

whole of the reports from Stern and Penetang are not present, Vincent was led to believe that they viewed JG as a "potential danger." Perhaps the sensitive nature of this case and the intervention of the Roman Catholic hierarchy resulted in the light sentence despite the medical opinion which would suggest JG could easily have been declared a DSO.

From an analysis of these cases in the sixties it is clear that medical opinion became an important element in the proceedings. The Criminal Code required the examination of two doctors in cases involving an application for a DSO. It is also apparent, in cases where this type of application was not sought after, that medical opinion was referred to and had an impact on the final decision.

The medical examinations show an adherence to the common medical belief of the time. As Chapter Two showed, the medical writing of the fifties mainly argued that the principal cause of homosexuality was retarded sexual function. This occurred for varying reasons in the individual at an early age and could be treated by psychological counselling, hypnosis and various other means. These ideas influenced the medical examinations of the offenders, as shown by the factual searches of their childhood experiences in order to find the reason why the accused did not develop into the "normal" state of heterosexuality.

Each of the cases discussed in these two chapters must be viewed as separate incidents but some general conclusions can be drawn from their analysis. It is apparent that police surveillance of gays continued throughout the sixties regardless of the more lenient treatment they received in the court system. Once arrested the gay offender had to secure counsel and supply a defence for his actions. The main tactic was to deny that homosexual activity occurred and hope that the Crown could not prove otherwise. Another line of defence was to plead guilty to the charge in hopes of receiving a light sentence. This strategy was more common in the 1960s as a consequence of a new understanding of homosexuality. If the individual was willing to admit that he had a problem, then this was seen as the first step to his rehabilitation. Usually a guilty plea would result in required medical therapy allowing the offender to avoid jail time.

In the cases presented, it seems that the social position of the individual could influence the decision. This is best shown in the case involving the Roman Catholic priest. Despite the damaging evidence against this man, his position undoubtedly aided in his suspended sentence. Other cases also show how an individual's profession affected proceedings; for example in the case involving the lawyer for the Department of Justice, his position was noted by the Crown Attorney who asked his assistant to watch the case

carefully. One individual charged pleaded with the police for a second chance and informed them of his high social standing, apparently hoping it might help him avoid the criminal charge.

Indeed, many elements affected the criminal cases from Ottawa. Overall, however, there are two clear trends in the way homosexual offenders were treated by the courts. The first was the use of medical opinion in determining guilt and sentencing. This practice was evident by 1960 and influenced most cases in that decade. The second was an increasing leniency in the treatment of those charged with gross indecency.

An analysis of these cases from Ottawa shows that the trend toward more lenient decisions did indeed begin around 1960. Roughly the same number of cases [fitting the criteria of this study] were brought before the court in each decade; there were fifteen in the 1950s and sixteen in the 1960s. Out of fifteen cases in the 1950s, six (40%) resulted in a harsh sentence, being one year at hard labour, or more; in the 1960s only one harsh sentence is recorded (6%) and this was in a case where the crime was buggery. The apparent trend toward leniency by the 1960s also involved a greater focus on the medical treatment that might be required. In the 1950's there is not one case where medical treatment, instead of jail time, for the accused was decided, yet in 1960 there are three recorded instances. The statistics



recording the lightest sentences also show quite a discrepancy between the two decades (defining a light decision as either a suspended sentence or a dismissed or withdrawn case). In the 1950s there were five light sentences recorded (33%) as opposed to the 1960s when there were eleven (69%). Despite this "progress," it must be remembered that both doctors and law courts continued to view homosexual practice as abnormal or illegal. Surveillance, prosecutions and convictions continued, and homosexuals remained at risk.

## CONCLUSION

This study illustrates how individual gay men were affected by the legal system. Not every gay man was subject to legal prosecution, only the ones who attempted to satisfy their sexual desires in a public place. However, because homosexual practices were illegal, meeting places for gays were of necessity underground. In many cases if a gay man wanted to meet a potential sexual partner he was forced to go to a public area to "cruise" other gay men. This process of cruising became a major part of gay subculture as it became one of the only ways to meet gay men. In other words, despite the fact that there were few prosecutions in Ottawa courts in the fifties and sixties for homosexual acts conducted in private, the fact that they too were technically still illegal had an impact on all aspects of gay life.

In 1969 the Omnibus Bill, introduced by the Liberal government of Pierre Trudeau, decriminalized homosexual acts in private between two individuals above the age of twenty-one. Before his party was elected in 1968, Trudeau had publicly stated his conviction that "the state has no place in the bedrooms of the nation." It could be argued, then that by electing his party the Canadian people had given

their consent to this change.<sup>140</sup> The Omnibus Bill passed by a vote of 149 to 55 and created a lot of debate in the House of Commons.<sup>141</sup> The controversial homosexual clause was generally supported by the Liberals and New Democrats, who argued that the current law was unenforceable and that homosexuality was a medical problem rather than one to be regulated by the law. The Conservative party and the Creditistes opposed the measure and argued against it on the basis of religion and morality.

Despite the 1969 legislation, homosexuals continued to be held in contempt by many members of society, including those who fought for the new law. This new law would not have affected the majority of offenders examined in this study because public acts remained illegal. Not much had really changed for homosexuals even though some viewed the Bill as a major shift in thinking. Moreover, the Omnibus Bill did not attempt to address the discrimination that the individual homosexual experienced. John Turner, the Minister of Justice who introduced the Bill, emphasized that he was not approving of homosexuality as "it is repugnant to the great majority of the people of Canada." He stressed his moral stance on the issue by stating that he "resent[ed]"

---

<sup>140</sup>Canada. House of Commons. Debates. 17 April 1969, 7640. This argument was put forward by Terrence Murphy, Liberal candidate from Sault Ste. Marie; he stated that Omnibus was supported by a majority of Canadians.

<sup>141</sup>Kinsman, Regulation of Desire, 170.

very much the argument of some members of the opposition that this legalized homosexuality."<sup>142</sup>

"Essentialist" historians argue that homosexuality is a biological reality present throughout history. "Social Constructionists," on the other hand, argue that homosexuality is more than biological, that it is a social construct created only in the modern period by a hostile society. Whichever is correct (and both are probably necessary for a true understanding), homosexuality was only defined as a crime in Canada in the late nineteenth century. Since the 1890s, homosexual acts of all types have been criminalized in Section 144 (gross indecency) of the Criminal Code of Canada, and other sections such as those on buggery, indecent assault and obscene literature have also been used to prosecute homosexuals. Despite the fact that as early as the late nineteenth century (at the same time as the passage of these laws), European medical thinkers were moving toward a more disease-oriented approach to homosexuality (i.e. homosexuals are sick rather than sinful; medical treatment is more appropriate than incarceration), in Canada this medical discourse seems to have had little impact until the late 1950s. The cases prosecuted in the Ottawa courts in the 1950s and 1960s reveal two, probably linked, changes occurring in that period. Not only was

---

<sup>142</sup>Canada. House of Commons. Debates. 17 April 1969, 7633.

medical opinion increasingly sought and heeded by the courts, but sentences became gradually more lenient as well. These changes indicate some liberalization of attitudes toward homosexuality in the post-World War II period, but by no means a full acceptance. Even the 1969 Ominibus Bill, which so famously took the state out of the bedrooms of the nation, concerned private acts between consenting adults only. Homosexuality is still not accepted fully by society. Those who solicit homosexual sex in public places or with men under twenty-one remain vulnerable to legal sanction, and their attitudes toward themselves, their partners and their society remain marked by this vulnerability.

## WORKS CITED

### PRIMARY SOURCES

Anonymous, "The Other Side: Living with Homosexuality," Canadian Medical Association Journal, 86 (12 May 1962).

Canada. House of Commons, Debates. 1890, 1892, 1969.

Crankshaw, James, ed. The Criminal Code of Canada and the Canada Evidence Act. Toronto: Carswell Co., 1919.

Crown Attorney Prosecution Case Files, Archives of Ontario. Carleton County, 1959, RG 22, Series 392, 1950 - 1967.

"Editorials and Annotations," Canadian Medical Association Journal, 93 (6 November 1965).

Fieldman, William, ed. "Thompson v. Director of Public Prosecutions," Archibald's Pleading Evidence and Practice in Criminal Cases. London: Stevens and Sons, 1918.

Harvey, A.B. ed., Tremear's Annotated Criminal Code. Toronto: Carswell Company, 1944.

Jackson, C. Colin. "The Venereal Esoteric," Canadian Medical Association Journal, 87 (September 1962).

Kanee, B and C.L. Hunt. "Homosexuality as a Source of Venereal Disease," Canadian Medical Association Journal, 65 (August 1951).

Laycock, S.R. "Homosexuality - A Mental Hygiene Problem," Canadian Medical Association Journal, (September 1950).

Margetts, Edward. "Sex Deviations," McGill Medical Journal, 19 (February 1950).

Pollock, Sir Frederick, ed. Law Reports: Queen's Bench Division. Court of Appeal. 1 London: William Clowes, 1896.

Popple, A.E. ed. Snow's Criminal Code of Canada. Toronto: Carswell Company, 1955.

Roper, Peter. "The Effects of Hypnotherapy on Homosexuality," Canadian Medical Association Journal, 96 (11 February 1967).

Stafford, Ezra Hurlburt, "Perversion," The Canadian Journal of Medicine and Surgery, 3, 1898.

The Report of the Royal Commission on the Criminal Law Relating to Criminal Sexual Psychopaths. Ottawa: Queen's Printer, 1958.

Wellman, Marvin. "Overt Homosexuality with Spontaneous Remission," Canadian Medical Association Journal, 75 (August 1956).

#### SECONDARY SOURCES

Altman, Dennis. Homosexuality? Which Homosexuality?. London: GMP, 1989.

Boswell, John. Christianity, Social Tolerance and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century. Chicago: University of Chicago Press, 1980.

\_\_\_\_\_. "Revolutions, Universals, and Sexual Categories," Salmagundi, 58, (Fall 1982).

Cain, Roy. "Disclosure and Secrecy among Gay Men in the United States and Canada: A Shift in Views," Journal of the History of Sexuality, 2, 1991.

Chapman, Terry L. "Male Homosexuality: Legal Restraints and Social Attitudes in Western Canada, 1890-1920," Law and Justice in a New Land: Essays in Western Canadian Legal History, ed. Louis A. Knafla, Vancouver: Carswell Co. Ltd., 1986.

Chauncey Jr., George. "Christian Brotherhood or Sexual Perversion? Homosexual Identities and the Construction of Sexual Boundaries in the World War I Era," Journal of Social History, 19, 1985.

D'Emilio, John. Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970. Chicago: University of Chicago Press, 1983.

Duberman, Martin, Martha Vicinus, and George Chauncey Jr. eds., Hidden From History: Reclaiming the Gay and Lesbian Past. New York: Meridian, 1989.

Gemmil, J.A, ed. Canadian Parliamentary Companion Ottawa: J. Durie, 1889.

Katz, Jonathan. Gay American History: Lesbians and Gay Men in the U.S.A. New York: Meridian Group, 1992.

Kinsman, Gary. "'Homosexuality' Historically Reconsidered Challenges Heterosexual Hegemony," Journal of Historical Sociology, 4, (June 1991).

\_\_\_\_\_. The Regulation of Desire: Sexuality in Canada. Montreal: Black Rose Books, 1987.

Kritzman, Lawrence. ed. Michel Foucault: Politics Philosophy Culture: Interviews and Other Writings 1977 - 1984. New York: Routledge, 1988.

Larochelle, Jilles. The History of the Ottawa Police. Ottawa: to be published 1994.

McIntosh, Mary. "The Homosexual Role," Social Problems, 16 (Fall 1968), reprinted in Kenneth Plummer, ed., The Making of the Modern Homosexual. Totowa, New Jersey: Barnes and Noble Books, 1981.

Nye, Robert A. Crime, Madness, and Politics in Modern France: The Medical Concept of National Decline. Princeton: Princeton University Press, 1984.

Weeks, Jeffrey. Against Nature: Essays on History, Sexuality and Identity. London: Rivers Oram Press, 1991.

\_\_\_\_\_. Coming Out: Homosexual Politics in Britain, from the Nineteenth Century to the Present. London: Quartet Books, 1977.

\_\_\_\_\_. "Discourse, desire and sexual deviance: Some Problems in the History of Homosexuality" in Kenneth Plummer ed., The Making of the Modern Homosexual. Totowa, New Jersey: Barnes and Noble Books, 1981.

\_\_\_\_\_. Sex, Politics and Society: The Regulation of Sexuality Since 1800. London: Longman Group, 1981.