HARM REVISITED:

R. v. *Butler*

Sheila Noonan

INTRODUCTION

Following a massive police raid in 1987 on the premises of Avenue Video Boutique in Winnipeg, the appellant and an employee, Norma McCord, were charged with some 250 violations of the obscenity provisions of the *Criminal Code*. At trial convictions were obtained in respect of eight counts. The majority of the Manitoba Court of Appeal later granted the Crown's appeal and entered convictions in respect of all remaining charges.

The subsequent decision at the Supreme Court,[1] where a new trial was ordered, raised squarely whether s. 163 violates the s. 2(b) Charter right to freedom of expression, and if so, whether this infringement could be justified as a reasonable limit prescribed by law pursuant to s. 1.[2] It is the first occasion on which the Supreme Court was presented with a challenge to the Criminal Code provisions which proscribe the publication and distribution of obscene material. In answering the constitutional questions, Mr. Justice Sopinka, writing for the majority, concluded that even though s. 163[3] violates the Charter, it nonetheless can be saved under a s. 1 analysis.

However, the salience of the *Butler* decision rests only in part with the resolution of the constitutional dilemmas posed. The decision also purports to provide clarification of and distinctions between the various doctrinal tests which have been deployed in assessing whether sexually explicit materials are obscene. Not only was this clarification urgently required, but it reduces the force of any future argument that current juridical standards are impermissibly vague. The relevant inquiry is now animated primarily by a reformulated notion of harm which, although thoroughly familiar to liberal discourse, is given new life in this judgment through a concentration on the threat posed to the social order and specifically to the integrity and safety of women. The existing tests are therefore tailored to capture this altered focus.

In this respect, it is the community standard of tolerance which is most thoroughly reconstituted through an infusion of an expansive assessment of harm. While it has heretofore functioned largely as a barometer of liberal tolerance, the test must now address community standards in relation to the capacity of sexual depictions to legitimate, and predispose men toward, violence against women.

In keeping with the spirit of this doctrinal metamorphosis the Charter issues are approached in a manner which centrally locates harm to women, and is cognizant of the threat posed to other Charter values such as physical integrity and equality. Social science evidence of the harm of pornography also was endorsed in proscribing the dissemination of some pornographic material. In discussing proof of harm analogies are drawn to the distribution of literature promoting racial hatred. In this respect, undoubtedly much of the analysis of pornography propounded by the intervenor LEAF was influential.

Nonetheless, questions remain as to whether the rest of s. 163, in particular s. 163(3), could withstand direct constitutional challenge. Moreover, there remains the pressing issue of what types of materials will be adjudged to be obscene in practice. Finally, the efficacy of proscribing the circulation of some pornographic material while the majority of so-called soft porn materials (which equally may constitute a threat to women) are freely disseminated needs to be addressed.

ANALYSIS OF OBSCENITY PROVISIONS

The codification in 1959 of the equivalent of our current s. 163(8) was intended to displace the pre-existing common law test for obscenity articulated in *R.* v. *Hicklin*, namely the tendency of the materials in question to deprave or corrupt morals.[4] The philosophy which underlies the *Hicklin* formulation was the safeguarding of the moral fabric of society by prohibiting sexual depictions which undermined the sacrosanct order of marital sex aimed at procreation. Instead, the focus of the statutory inquiry was to centre on the question articulated in *Brodie* v. *The Queen*:[5] whether the impugned material constituted an "undue exploitation of sex." This formulation led in turn to a series of imprecise and potentially contradictory statements which emerged for assessing whether or not material was obscene. One of the virtues of the *Butler* decision is the endeavour to resolve and clarify the jurisprudence in this area.

Tests of "Undueness"

One of the central difficulties with the jurisprudence pertaining to the "undue exploitation of sex" is that no concise standard emerged to differentiate among the various tests, or to establish guidelines as to applicability of any given test. In short, it became increasingly unclear which of the three extant tests, discussed below, should be applied, under what circumstances, and how any conflict as between the various tests might be resolved. Moreover, the last Supreme Court pronouncement on this question, *Towne Cinema*[6] left many of the these concerns fundamentally unresolved.

i) Community Standards of Tolerance

The community standards test has, since the codification of obscenity, been the principal measure employed to establish undueness. Considerable energy has been devoted over the past three decades to defining its contents. Basically it is a test which represents an evolving standard indicating the national levels of tolerance. While expert testimony need not be adduced to establish community standards, it is clear that the test is one of tolerance, and not taste. In former Chief Justice Dickson's words:

> What matters is not what Canadians think is right for themselves to see. What matters is what Canadians would not abide other Canadians seeing because it would be beyond the contemporary Canadian standard of tolerance to allow them to see it.[7]

The majority of the Supreme Court in *Towne Cinema* affirmed that it is not a test which depends on audience, namely time and manner of distribution, for the act of public viewing to be unlawful.

ii) Degrading and Dehumanizing

The second test which has evolved most recently, namely whether the material in questions portrays the participants in a degrading and dehumanizing manner, addresses some of the concerns articulated by feminists with respect to the availability of pornographic material. In particular, feminists[8] have stressed that the presence of violence, inequality and objectification within sexual representation may legitimate and encourage force, coercion, degradation and dehumanization within human relationships. The concerns encompass not only the endorsement of violence against women and false representations of female sexuality, but include the manner in which women as a group are reduced to mere objects of sexual access. Pornographic depictions rely on representations of women as "sexual playthings ... instantly responsive to male demands."[9] Moreover, pornography is distributed within a context in which women are socially, politically, economically and personally subordinate to men. In this sense, the depictions of women as affirming and welcoming male sexual desires may reinforce women's subjection to men.

The Supreme Court in *Butler* affirms that the circulation of sexually explicit material which is degrading and dehumanizing is contrary to "the principles of equality and dignity." And the appearance of consent to the represented activity will not save such material. Of primary significance though is the Court's stand on the harm of this form of sexual depictions. The Court unequivocally pronounces that the material is problematic "not because it offends against morals" but rather because it is "reasonable to conclude that there is an appreciable risk of harm to society in the portrayal of such material." While admitting that the nature of the harm prohibited is "not susceptible of exact proof," the Court stresses that a significant body of literature now suggests that such representations harm women.

Therefore, the virtue of this judgment is that it identifies the nature of the social harm pornography produces as one which particularly places women at risk. An express statement to this effect at the Supreme Court level is a potentially powerful tool in proscribing materials which pose a risk to women and children. However, although the harm is specified in a manner which is responsive to the concerns that feminists have articulated, it is undercut, in part, by rendering the degrading and dehumanizing test only one of the salient inquiries. Nonetheless, this is arguably off-set by the fact that all tests are now infused with or attentive to the risk of social harm to women.

iii) Relationship of Two Above Tests

a. Confusion from *Towne Cinema*

The question that had remained unresolved post-*Towne Cinema* is the degree to which the degrading and dehumanizing test had supplanted the former community standards of tolerance test. Chief Justice Dickson was clear that while the community standards test was one measure, it was not the only measure of the undue exploitation of sex. He stressed:

> Even if certain sex-related materials were found to be within the standard of tolerance of the community, it would still be necessary to ensure that they were not "undue" in some other sense, for example, in the sense that they portray persons in a degrading manner as objects of violence, cruelty, or other forms of dehumanizing treatment.[10]

However, on the facts of *Towne Cinema* Dickson C.J. indicated, though without explanation, that the only test in issue was that of the community standard of tolerance. Thus, having expressed commitment to the test he fails to "operationalize it."[11]

A significant departure from previous Supreme Court doctrine was suggested in the concurring judgment of Madam Justice Wilson in *Towne Cinema*. In her opinion the primary question is whether the exploitation of sex is undue. In making this assessment, she adopts a contextual approach to the content of sexually explicit material:

> It seems to me that the undue exploitation of sex ... is aimed ... [at]the treatment of sex which in some fundamental way dehumanizes the persons portrayed and, as a consequence, the viewers themselves. There is nothing wrong in the treatment of sex per se but there may be something wrong in the manner of its treatment. It may be

> presented brutally, salaciously and in a degrading manner, and would thus be dehumanizing and intolerable not only to the individuals and groups who are victimized by it but to society at large. On the other hand, it may be presented in a way which harms no one, in that it depicts nothing more than non-violent sexual activity in a manner which neither degrades or dehumanizes any particular individuals or groups. It is this line between mere portrayal of human sexual acts and the dehumanization of people that must be reflected in the definition of "undueness."[12]

Madame Justice Wilson comments that while the community standards test represents a measure by which to assess impugned material, it fails to articulate adequately the norms according to which some sexual exploitation is permissible and some not. In a cryptic but prescient remark she foresaw the need to explore the relationship between these two tests:

> No doubt this question will have to be addressed when the validity of the obscenity provisions of the *Code* are subjected to attack as an infringement on freedom of speech and the infringement is sought to be justified as reasonable.[13]

While the text of the judgment is unclear, it seemed that the community standards test informed the process through which a finding of undueness obtained. Substantively, it would appear that degrading and dehumanizing aspects of sexual depictions were central to her analysis. The two other judgments, concurring in the result, did not address this problem.

b. *Butler* attempt at coherence

In view of the above, it is somewhat intriguing when Mr. Justice Sopinka declares in *Butler* that Dickson C.J. treated the degrading and dehumanizing test as "the primary indicator" of undueness in *Towne Cinema*. However, the virtue of *Butler* is that both these tests are drawn together in a manner that attempts to impart cohesive expression to an underlying norm. The principle of harm unequivocally infuses Sopinka J.'s assessment of whether given material will transgress notions of "undueness:"

> The courts must determine as best they can what the community would tolerate others being exposed to on the basis of the degree of harm that may flow from such exposure. Harm in this context means that it predisposes persons to act in an anti-social manner as, for example, the physical or mental mistreatment of women by men, or, what is perhaps debatable, the reverse.[14]

Tolerance and harm each must be weighed in assessing whether a breach of community standards has occurred. In Mr. Justice Sopinka's words, "[t]he stronger the inference of a risk of harm the lesser the likelihood of tolerance." While evidence of community standards may be desirable in rendering this determination, it is not required.

In an attempt to provide guidelines as to assessments of undueness Mr. Justice Sopinka adopts a three-tier categorization of pornographic material. It should be noted that this taxonomy is not novel: this was largely the approach advocated by Mr. Justice Shannon is *R.* v. *Wagner.15* The schema, which derives from a content analysis, effectively determines whether material is undue:

> (1) explicit sex with violence;
>
> (2) explicit sex without violence but which subjects people to treatment that is degrading or dehumanizing; and,
>
> (3) explicit sex without violence that is neither degrading or dehumanizing.[16]

In the view of Sopinka J., given that explicit mention is made of violence in s. 163(8), sexually explicit materials which contain violence will "almost always" be undue. Horror or cruelty in depictions may fall into either category one or two. However, explicit sex which degrades or dehumanizes may transgress this standard "if the risk of harm is substantial." Finally, material within the third category will not be undue unless children have been involved in its production.

Necessarily, this categorization relies upon a distinction between erotic and pornographic material which presupposes that the distribution of erotic material will not pose the same risk of social harm to women that the other two categories entail.[17] But here I think we should ask ourselves Catharine MacKinnon's question. Given the present circumstances of gender inequality, "what is eroticism as distinct from the subordination of women?"[18] Has eroticism become inextricably fused with dominance and submission and with expressions of power and powerlessness such that representation of heterosexual intercourse is by definition depiction of unconsensual sex? Moreover, as argued below, we should carefully examine the question of whether sexual representations may by definition reproduce a male epistemology and, hence, reinforce patriarchal power.

Thus on one level the question is: has the decision gone far enough in proscribing images which contribute to the cultural reduction of the female body to the sexual in a manner that devalues women and undermines their claims to greater participation in public life? In effect, the essence of the minority judgment delivered by Mr. Justice Gonthier and concurred in by Madam Justice L'Heureux-Dubé suggests that the blanket license to produce material which is seen to fall within category three may not go far enough in terms of safeguarding against the very harms that the Court seeks to curtail. On another level, the issue is the utility of such measures in the face of structures of representation which operate to produce the objectification of women.

iv) Third Test: Internal Necessities

Even if a finding of undueness obtains in respect of one of the tests outlined above, the inquiry does not end here. The work as a whole must be examined in an effort to assess whether it is deployed in the serious pursuit of a theme. This is an attempt to assess the internal necessities of the work itself. In *Brodie*, Judson J. expressed the intent of this exercise in the following manner:

> What I think is aimed at is excessive emphasis on the theme for a base purpose. But I do not think that there is undue exploitation if there is no more emphasis on the theme than is required in the serious treatment of the theme of a novel with honesty and forthrightness...The section recognizes that the serious-minded author must have freedom in the production of a work of genuine artistic and literary merit and the quality of the work ... must have real relevance in determining not only a dominant characteristic but also whether there is undue exploitation.[19]

In discussing when this test is to be applied, Mr. Justice Sopinka only refers to sexually explicit material which is undue in the sense of having contravened community standards of tolerance. Therefore, it remains unclear whether application of this test can save material that is degrading or dehumanizing.

No doubt the internal necessities test is aimed at providing for "genuine" freedom of expression. The issue though is whether the distinction between high culture (art) and low culture (pornography) can be sustained. Suzanne Kappeler in *The Pornography of Representation* argues forcefully that both rely upon structures of representation which reinforce male subjectification, and hence manifest patriarchal power:

> What feminist analysis identifies as the pornographic structure of representation not the presence of a variable quality of "sex", but the systematic objectification of women in the interest of the exclusive subjectification of men is a commonplace of art and literature as well as of conventional pornography. It is in the expert domains of cultural representation and the critical discourses that support them that the attitudes to representation, the "acceptable" structures of representation are developed and institutionalized. And it is on their concepts of expression, and their understanding of the role of representation that the law bases itself in its endeavour to protect the freedom of expression.[20]

Such an analysis directly calls into question the efficacy of content-based classifications. For example, many representations invoke reading cues which rely upon and legitimate the sexualization of children without impermissibly depicting forbidden acts or deploying actual children in their technical composition. Of concern then are the social aspects of the production of pornography and the process by and through which women are "transformed from subjects into pornographic objects."[21] To the extent that the material production of culture and the realm of the social understanding of the "sexual" are grounded in the objectification of women, a content-based classification will not necessarily assist in eradicating the underlying social causes of women's oppression.[22] Nor will simply fostering the distribution of alternative sexual imagery disrupt the prevailing cultural constitution of the sexual.[23]

Finally, faced with the content-based classification endorsed in *Butler* the salient question remains: What are the processes by and through which "harm" and "substantial harm" are to be measured? Insofar as guidance is provided by the Court it is to be gleaned primarily from the resolution of the Charter issues.

CHARTER ANALYSIS

While holding that s. 163 infringes the *Charter* by virtue of its prohibition of certain expressive content,[24] the Supreme Court finds that the avoidance of harm to society is a pressing and substantial objective which justifies some restriction on freedom of speech. Further, the fact that our understanding of the nature of this harm has altered since the inception of statutory prohibition does not suggest a "shifting purpose" characterization of the legislation.[25]

In stressing that the dissemination of material which threatens the self-dignity of targeted social groups can be proscribed, the Court likens the social character of the harm of pornography to that of hate propaganda. The proliferation of both these types of material offend fundamental values which justify restrictions on expression. Various articulations of the harm posed are proffered. Sopinka J. cites with approval the MacGuigan report which delineates the danger in the following manner:

> The clear and unquestionable danger of this material is that it reinforces some unhealthy tendencies in Canadian society. The effect of this type of material is to reinforce male-female stereotypes to the detriment of both sexes. It attempts to make degradation, humiliation, victimization, and violence in human relationships appear normal and acceptable. A society which holds that egalitarianism, non-violence, consensualism, and mutuality are basic to any human interaction, whether sexual or other, is clearly justified in controlling and prohibiting any medium of depiction, description or advocacy which violates these principles.[26]

In support of the contention that the objective is pressing and substantial, Mr. Justice Sopinka refers not only to the "burgeoning pornography industry," but to growing concern about the exploitation of women and children.

A consideration of whether proportionality has been demonstrated is set against the backdrop of recognizing that an economic motive for expression is not at the core of the values safeguarded by s. 2(b).[27] Nor are the Code provisions directed at prohibiting the suppression of "good pornography."[28]

However, it is within the context of discussing the rational connection between the legislation and the Parliamentary objective of limiting the risk of harm that issues of proof are addressed. While admitting that a causal connection between pornography and violence cannot be conclusively demonstrated, as per *Irwin Toy*[29] and *Keegstra*, there is held to be a reasonable basis for Parliament to have adopted the mode of intervention it selected. It is sufficient that a rational link between the criminal sanction and the objective of safeguarding women be demonstrated.

Hence, it is not required that actual proof of harm be adduced in order for such legislation to withstand constitutional scrutiny. Frankly, this is a rational and welcome perspective. However, having already declared that evidence of community standards of tolerance while desirable is not required, it seems that the courts will now be faced with drawing inferences largely on the basis of the content of the material itself.

This rankles not only due to the inadequacies of solely content-based understanding of representations, but also because it raises a serious question as to which types of sexually explicit material will be targeted. In this vein it is instructive that the first seizure authorized following the release of the *Butler* decision was of gay material.[30] While this decision is currently under appeal it confirms fears that the Code provisions will continue to be deployed disproportionately against sexual depictions which contravene expressions of male heterosexual desire.

In light of this, the knowledge that Supreme Court justices are willing to employ the tools of the *Charter* in an effort to redress social and sexual inequality assumes a more dubious quality. Moreover, what the *Butler* decision graphically demonstrates is the conceptual inadequacies of much of the arsenal at the Court's disposal in this battle. Now that we are thoroughly entrenched in the era of Charter discourse, we will continue to witness efforts to balance the objective of protecting freedom against securing the goals of ending victimization and promoting substantive equality. In respect of these latter goals, Judy Fudge has stressed that the results under the Charter regime have been ambiguous.[31] On the one hand, Charter cases may provide powerful political symbols around which feminist groups can coalesce. However, on the other hand, by focusing on legislative provisions, as in *Butler*, both the socially constituted nature of sexuality and the power relations within which actual sexual practises are embedded are obscured.[32] In instances where such legal challenges are mounted, the potentially incommensurable visions and disparate strategic analyses of what concrete measures best facilitate the eradication of women's subordination cannot be aired.[33] In the end, one cannot help but wonder: in spite of juridical pronouncements sympathetic to the victimization of women and children, how much has actually been accomplished?

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1. [1992] 1 S.C.R. 452.

2. Previous lower court decisions have consistently held that although the obscenity provisions violate freedom of expression they nonetheless constitute a reasonable limit under s. 1. See *R.* v. *Fringe Products Inc.* (1990), 53 C.C.C. (3d) 422 (Ont. Dist. Ct.); *R.* v. *Red Hot Video* (1985), 45 C.R. (3d) 36 (B.C.C.A.); *R.* v. *Ramsingh* (1984), 14 C.C.C. (3d) 230 (Man. Q.B.).

3. Although the Court was faced with a challenge to the whole of s. 163, Mr. Justice Sopinka clearly articulates that the section which will be addressed is subsection 8 which provides:

> For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

4. (1868), L.R. 3 Q.B. 360. Whether material was found to be obscene depended upon an assessment based on the formulation of Cockburn C.J. at 371:

> ...I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

5. [1962] S.C.R. 681.

6. *Towne Cinema Theatres Ltd.* v. *The Queen* (1985), 45 C.R. (3d) 1 (hereinafter *Towne Cinema*).

7. *Ibid.* at 508.

8. Perhaps more than any other single issue, pornography has proven incredibly contentious. By using the term feminist, I do not wish to be taken to suggest that feminists are in agreement on this issue. In fact, it has proven one the most divisive matters for the modern women's movement. While I do not propose to canvass the various positions here, a basic appreciation of the complexity of these differences can be gleaned from reading: Varda Burstyn, *Women Against Censorship* (Vancouver: Douglas & McIntyre Ltd., 1985); Dorchen Leidholdt and Janice Raymond, *The Sexual Liberals and the Attack on Feminism* (New York: Pergamon Press Inc., 1990); and, Susan Cole, *Pornography and the Sex Crisis* (Toronto: Amanita Enterprises, 1989).

9. Per Shannon J. in *R.* v. *Wagner* (1985), 43 C.R. (3d) 318 at 331.

10. *Towne Cinema*, *supra*, note 6 at 15.

11. Beverly Baines, "Annotation to *Towne Cinema Theatres* v. *R.*" (1985), 45 C.R. (3d) 2 at 3.

12. *Ibid.* at 29.

13. *Ibid.* at 31.

14. *Supra*, note 1 at 485.

15. (1985), 43 C.R. (3d) 318 (Alta. Q.B.).

16. *Supra*, note 1 at 484.

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ernment has been canvassed by some as a means of achieving this aim. As to the administration of the EAs themselves we must not overlook the role of the Ombudsman. Although a relatively low-key figure traditionally, the Citizen's Charter initiativemight re-awaken him. If the charters spell out promises of service, as they are intended to, then presumably the Ombudsman's perception of maladministration will alter to keep pace with the new culture. All this is on the plus side but there are two caveats which I need to enter in conclusion. The first relates to the still inadequate levels of accountability and the second to the ethic of the public service.

The time now seems ripe for an overall institutional examination of NS. This is the view of the TCSC and it is clearly correct. More importantly our new revolution calls for a rethink of our administrative and constitutional law. Parliament can make improvements to its own arrangements but it cannot hope to oversee the whole EA apparatus. *Pace* the Citizen's Charter we need to legislate for public grievance procedures but overwhelmingly we need to do something about the policy-making process to engage all customers and all citizens. The American way forward may not be appropriate but I should like to see all government departments shadowed by a high-powered advisory committee with a research capability and a right to participative dialogue enforceable by the courts. NS has done a great service in a number of ways, not least in opening up tantalising glimpses of the way government is actually run. Its finest service might yet be to expose the shallowness of our constitutional conventions and traditions.

What we must not fail to do is to honour the tradition of public service and the public service ethic. There is a revolution afoot here as well. Although NS has devolved power down the line and given many civil servants a greater sense of purpose and belonging, it has produced much else besides. Greater flexibility in pay regimes means removing national pay scales at the end of the day. Civil service jobs are in the process of being put out to tender as I write. If the fashion for privatisation continues unabated we may dissipate our public service element altogether. The TCSC spoke of the importance of the career civil service, of impartiality and maintaining standards. Other have spoken of the demise of the civil service as we know it. I believe that Next Steps is a very important initiative and one which is working a quiet revolution. We must examine our notion of public service more closely and tie it in with a renewed search for adequate forms of accountability.

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17. On this score, I am far less convinced than I once was that such a distinction can usefully be sustained.

18. "Not a Moral Issue" in *Feminism Unmodified* (Cambridge: Harvard University Press, 1987) 146.

19. *Supra*, note 5 at 704-5.

20. Suzanne Kappeler, *The Pornography of Representation* (Cambridge and Oxford: Polity Press and Basil Blackwell Inc, 1986) at 103.

21. Dawn Currie, "Representation and Resistance: Feminist Struggles against Pornography" in D. Currie and V. Raoul, eds., *Anatomy of Gender* (Ottawa: Carleton University Press, 1992) 191 at 203.

22. *Ibid.*

23. For a compelling argument as to why this may be so see Geraldine Finn, "Against Sexual Imagery" (1986-7) 12(2) Parallelogram 315.

24. A similar willingness to broadly characterize the scope of protected expression was displayed in *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.)*, [1990] 1 S.C.R. 1123; and in *R.* v. *Keegstra*, [1990] 3 S.C.R. 697.

25. Such an approach to characterizing purpose was expressly rejected by the Supreme Court in *R.* v. *Big M Drug Mart Ltd.*, [1985] 1. S.C.R. 295. There the Court found that since the legislation historically had a religious purpose consistently maintained by the courts, a secular purpose could not be attributed to it.

26. *Supra*, note 1 at 493-4.

27. Here the Court relies upon *Rocket* v. *Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232.

28. This is a phrase coined by Robin West in "The Feminist-Conservative Anti-Pornography Alliance and the 1986 Attorney General's Commission on Pornography Report" (1987) 4 Am. Bar Found. Res. Jo. 681 at 696 where she suggests:

> Good pornography has value because it validates women's will to pleasure. It celebrates female nature. It validates a range of female sexuality that is wider and truer than that legitimated by the non-pornographic culture. Pornography when it is good celebrates both female pleasure and male rationality.

It should be stressed that such a definition is infused with the notion that heterosexuality is the content of sexuality.

29. (1989), 58 D.L.R. (4th) 577 (S.C.C.).

30. *Glad Day Bookshop Inc.* v. *Canada (Deputy Minister of National Revenue, Customs and ExciseM.N.R* (14 July 1992), (Ont. Ct. Gen. Div.), [unreported].

31. Judy Fudge, "The Effect of Entrenching a Bill of Rights upon Political Discourse: Feminist Demands and Sexual Violence in Canada" (1989) 17 International Journal of the Sociology of Law 445.

32. *Ibid.* at 459.

33. *Ibid.* at 449.