

*Criminal Code*

Canada is asking for changes to distinguish between erotica and pornography in terms of a degree of explicit activity. The Church writes:

The difference is simply one of quantity, more or less sexual activity. We believe the difference between erotica and pornography is a matter of quality of relationship rather than mere quantity of activity or inactivity. We submit that the difference between unhealthy pornography and healthy erotica cannot be measured in degrees of explicitness, but rather is determined in terms of context.

● (1250)

What bothers me is that in this particular Bill, we have gone much further in attempting to redress the wrong but have not really been specific about how those distinctions could be made. We have left the distinctions to be made by customs officers, judges and the like.

This legislation could mean that classics such as *Romeo and Juliet*, for example, could be classified as pornographic and distributors of it subject to criminal prosecution. While this seems unlikely, I mentioned earlier the example of one of Margaret Laurence's books. I believe, alas, that it is not as unlikely as it may seem at first glance.

The other issue I mentioned earlier and would like to say a bit more about is the fact that the onus of proof of what may be of artistic merit is on the artist or the writer. Unfortunately, many artists and writers in our society are not well off, and proving artistic merit could be a considerable expense. More importantly, perhaps, this challenges Canada's fundamental assumption that a person is innocent until proven guilty by placing the burden of proof on the individual. Surely this is not a precedent we wish to see enshrined in law at this time.

I mentioned earlier that I had worked with a number of groups concerned about pornography. As we know, many groups express opposition to this legislation, from the group which clearly wants to see no kind of limitation or restriction on material at all, to that which wants to see some censorship of violent or degrading material but not of erotica, to the third group which wants to see censorship of all sexual material. The National Action Committee on the Status of Women would fall as does the New Democratic Party into that second category. We do want to see restrictions on violent and degrading sexual material but not on erotica.

The National Action Committee has criticized this proposed legislation and has called on the Government to ensure that any legislation focus on violence rather than on sexual acts and that any legislation put the onus on the Crown to prove that the material does not have artistic merit.

An article in *The Globe and Mail* of May 27, 1987, underscores again the concern regarding the legal aspect of this legislation. The article says that, unlike the existing obscenity provision in the Criminal Code which obliges the Crown to convince a judge that the accused has unduly exploited sex, the proposed law places the burden of proof on the defendant who may be found guilty without the Crown

having to say a word unless he can convince a judge that has duly exploited the subject.

Other comments have been made about this legislation by many other groups as well as members of the media. *The Toronto Sun* has said that the Bill is clouded by silliness. *The Toronto Star* said that the Bill has been widely perceived as a cynical attempt by a prudish Government to appease its most extreme adherents, authoritarian individuals and interest groups which are only too anxious to deny others their fundamental rights.

*The Globe and Mail* argues that this repressive view of the world is at odds with the existence of human beings as sexual creatures. Keith Spicer has explained that he feels that this legislation indicates that the Government has fallen head first into a puritan quicksand of trying to define official standards of love and beauty and that every judge, every policeman and every customs officer in the country will have to be an art critic, a literary critic and an arbiter of taste.

Many others have expressed the same kind of concern, from artists to members of the media and a variety of other groups. One particular group with which I am quite familiar is the Committee Against Pornography. This group is composed of women with legal, social, psychological and educational backgrounds who have made a very comprehensive review of this Bill. As happens so often, these kinds of issues are quite incorrectly defined as women's issues. I think they are society's issues, not women's issues.

This group, to which I have referred, along with the National Action Committee and the United Church have certainly worked very hard on a volunteer basis in analysing this kind of legislation. These groups do this because they are so committed to and concerned about the issue. This particular review is extremely long and comprehensive.

The group has made a number of recommendations, but I will not go into all of them. Suffice it to say that even this group, a group of women who have studied the issue and are very strongly and vociferously against the kind of degrading pornography to which I have referred, makes a number of suggestions for changes and expresses, interestingly enough, some concern that because of the lack of definition there may in fact be some material which would not be restricted under this legislation which should be restricted. The group has made a number of major recommendations which have been substantiated by considerable material.

I have not quoted the artist groups a great deal, though perhaps they have been the most vociferous in the media, because they could be seen to have a vested interest. However, a number of concerns have been expressed by groups of librarians, for instance. I mentioned earlier an example of the use of educational materials that might depict people in situations that could, under this legislation, be identified as pornographic. However, if all of that were censored, it would simply have no educational value whatsoever.