

In-Depth:

Pornography and the Law

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In-Depth Editor

The recent opening of an adult video store in downtown Fredericton, has attracted over 700 members and also a certain degree of public ire over the last three months.

X-Citement Video, which is prominently situated on Queen street, specialises in the rental and sale of various sexually explicit movies, magazines, and interactive CD-Roms.

According to store manager Sandra Leblanc, a small number of "concerned citizens" have saw fit to express their personal distaste for the products that her store offers. Estimating that she receives around one complaint per week, most tend to be in the form of individuals visiting the Queen Street location to register their disdain:

"As a matter of fact, this morning a guy came in and ... said he didn't like the fact women are in these (movies) and that they're not being treated properly. I get people walking through the door saying 'I can't believe you guys are here on Queen Street.' A lot of older people come in and say 'You'll never see me in here again.'"

Leblanc is quite explicit when it comes to addressing such moral objections: "Basically, (they should not) walk through the front door ... It's all legal, so why can't we be here?"

Before opening shop last December 10, Leblanc claims to have had all her materials examined by the New Brunswick Film Classification Board and all of it was deemed to be legal for commercial distribution.

Furthermore, she contends that to the best of her knowledge, all of her materials depict consenting adults. Thus, while several individuals have requested deviant, and seemingly depraved, materials featuring torture and bestiality, Leblanc is quick to distance herself from such illegal content.

Reiterating that X-Citement Video's wares have all passed legal muster, Leblanc also admits to being unclear as to whether the "four or five" inquiries about illegal material, were made by persons actually seeking them or perhaps by those who were seeking to ascertain that her shop is indeed remaining within the bounds of the law.

Compliance with the Law

Leblanc's claims as to the legality of her products are shared by Sgt. Eric Carr, an Intelligence Officer with the Fredericton Police Force's Criminal Investigation Division:

"X-Citement Video is a brand new business (and it's) very prominent, right on Queen Street. A lot of people see it and a lot of people are offended (but) it's a legal business within the city and, as far as we know, it's operating well within the law."

"People who operate these businesses, regardless of what one thinks of them, they generally stay within the laws ... because if we shut them down, if we seize their material



Sandra Leblanc, manager of Fredericton's X-Citement Video, argues that all of her store's material complies with the law. Which poses the obvious questions: what is the law? who decides it? and how has it been enforced?

Photo by Mark Robichaud

and tie them up in court, that is extremely expensive and they can't afford it. It's as simple as that."

While acknowledging that investigating such businesses to ensure compliance with the law can be a costly endeavour, nevertheless Sgt. Carr emphasizes that the law enforcement agencies will readily get involved if need be:

"We use undercover people, to go in and buy, and we bring people from other communities and pay them to be here ... and we certainly will do it and have done it and will continue to

send our men in to talk to these people. They know that we know and we know that they know. We just try to stay on top of it and hope that they will comply with the law."

Of course when it comes to defining what constitutes compliance with Canada's obscenity laws, Sgt. Carr is the first to admit that the legislation is extremely complex and nuanced.

Canada's Obscenity Law

According to section 163 of Canada's Criminal Code, it is an offence to make, publish, or sell

a "reasonable limit" on his freedom. Whereas mere moral objections were not deemed to be sufficient grounds for such a limitation, the court unanimously held that there are other "pressing and substantial objectives which justify overriding the freedom to distribute obscene materials".

While careful to acknowledge that a direct causal link could not be ascertained between obscenity and harm to society, nevertheless the court argued that some materials might be proscribed on the basis of a "reasonable link" between them and

Classification Board, the obscenity criteria set forth by the Supreme Court in *R. v. Butler* have helped considerably to clarify some grey areas with respect to classifying video and film.

The three Maritime provinces have a co-operative agreement whereby one Film Classification Board classifies all materials coming into the Maritimes. This board can also prohibit certain material as being obscene if it seems to contravene the region's "community standards" or any of a number of criteria which the Supreme Court would likely deem obscene.

In following the Supreme Court's directive, the Maritime Board can prohibit sexually explicit materials which contain any of the following:

"Torture, violence, degradation, humiliation; persons under the age of 18 or appearing to be under the age of 18; indignities to the human body, necrophilia, bestiality, gratuitous defecation or urination; and bondage or domination."

While such criteria seem to have been influenced by the *Butler* decision's concern for "degrading and dehumanizing" materials, a closer examination of the types of sexually explicit material that have been targeted by the authorities over the past few years proves that legal practice does not always conform to the theory.

Enforcing the *Butler* Decision

In 1992, University of Michigan Law Professor Catherine Mackinnon, one of America's leading anti-pornography feminists, had hailed *R. v. Butler* initially as a "stunning victory for women".

In light of the actual enforcement of *Butler* decision, over the last few years, many onlookers are not so sure that *Butler* has been such an unequivocal victory.

Perhaps the spring 1993 issue of the *Feminist Bookstore News*, a Canadian trade publication, best captures the prevailing view of *R. v. Butler* in alleging that:

"The *Butler* decision has been used ... only to seize lesbian, gay and feminist material."

Immediately following the Supreme Court's ruling in the *Butler* case, the Toronto police force conducted a raid on Glad Day Bookshop, a gay and lesbian bookstore. Curiously enough, the only item seized was a feminist, lesbian magazine called *Bad Attitude*.

Two lower courts held that the sadomasochist content of a particular story in copies of *Bad Attitude* could be deemed "degrading and dehumanizing" under *Butler*.

Closer to home, Tristis Baird, Programming co-ordinator for UNB's radio station, CHSR FM, says that she has had video shipments from the United States detained by Canada Customs. Of the three movies that were detained, only one, a documentary entitled *Framing Lesbian Fashion*, appeared to have been opened and viewed.

Such examples of a myopic interpretation of *Butler* prove instructive, insofar as they show the difficulty that arises when agents of the state are left to determine what is (See pg. 7)

Contrasting Views on Pornography:

"To the extent that representations say that it's okay to treat women as somehow inferior, as objects of violence merely for the purpose of stimulating men ... I don't want to see that stuff."

-Prof. Patricia Hughes

"The best thing that women can do in response to pornography that they find offensive ... is to create their own 'woman-positive' erotica".

-Ann Iverson

do it. If it is a ... criminal act, we will absolutely get involved. But to go out looking and skulking around in these places to see if they are doing anything wrong, we do not have the time."

In short, Sgt. Carr argues that the police department is empowered to enforce the laws and not public morality. However this does not preclude them from keeping an ear to the ground and Carr indicates that an officer has already visited Fredericton's newest adult video store:

"As soon as these places open, we

obscene material, defined as "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and ... crime, horror, cruelty and violence." Three years ago, the Supreme Court ruled that this section of the criminal code violated Manitoba sex-shop owner Donald Butler's right of freedom of expression as guaranteed under section 2(b) of the Charter of Rights and Freedoms.

However, the court, in *R. v. Butler*, upheld this violation as being

certain attitudinal changes that may result from viewing said materials.

In short, the court allowed for a limitation of "sexually explicit material accompanied by violence, and those without violence that are degrading and dehumanizing". Thus, the *Butler* decision clearly exempts "sexually explicit erotica without violence that is not degrading or dehumanizing," and also items that have scientific, artistic or literary merit.

According to Ted Bringloe, Director of New Brunswick's Film