

'It started innocently enough' Manitobans Fight Government Book Banning

by Gene Jamieson
of Canadian University Press

It started innocently enough. A woman entered a Winnipeg bookstore looking for some helpful cooking tips from *The Joy of Cooking*.

By mistake she was sold a copy of *The Joy of Gay Sex*. Opening the bookstore package at home, the woman was disturbed by what she discovered inside.

Curiously leafing through the book she found what she felt was distasteful material.

Quickly she picked up the phone and dialed the Winnipeg Police Department who took her complaint.

Less than a week later *The Joy of Gay Sex* and its counterpart, *The Joy of Lesbian Sex* were off the shelves in every bookstore in Winnipeg under threat of provincial prosecution for selling "obscene material".

Thus began Canada's most recent and perhaps most discriminatory case of book censorship by a provincial government.

Immediately after the woman's complaint was received, Winnipeg police officers were sent to a local bookstore to purchase the two books.

After a few days of reading through the books, senior Provincial Crown Attorney Wayne Myshkowski and six other Crown Councils decided the books, which contain sketches and descriptions, offended the "community's tastes and the bookstores could be successfully prosecuted."

But instead of prosecuting, the Provincial got Winnipeg Police, last May, to warn bookstores of impending prosecution if the books were sold.

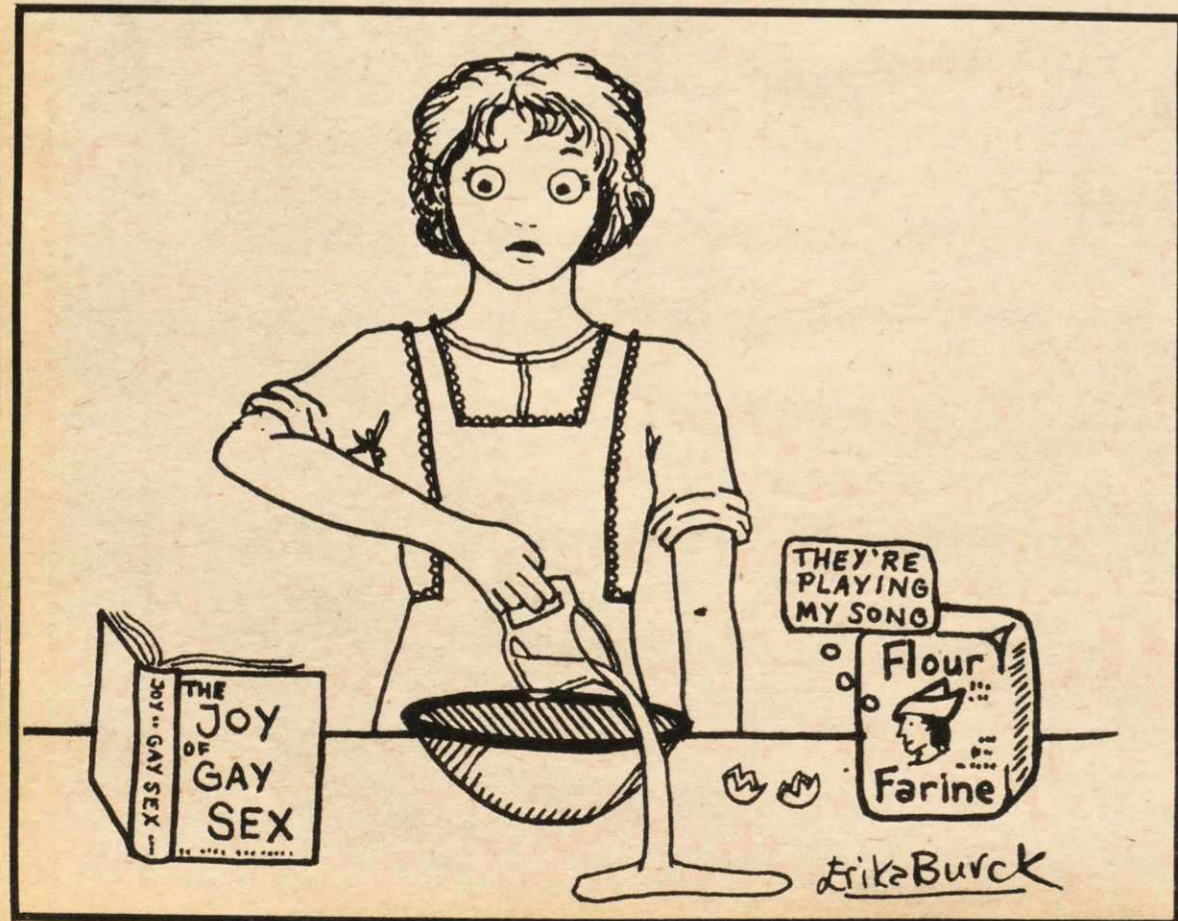
Even though a Classic Bookshop manager was "astounded at the censorship", her company, and others in the city, were unwilling to go to court over the issue and took the books off their shelves.

Last year the Classic outlet in Edmonton faced the same situation. In that case they went to court and, despite winning the case, incurred \$30,000 in court costs. According to the company's head office, it wouldn't be worth it to go to court again in Winnipeg.

Enter Walt Stein. Stein is the head of the history department at the University of Winnipeg and he is not proud of the dubious distinction Winnipeg has earned as the only city in Canada where the two homosexual books have been banned.

Since the provincial attorney-general, Gerry Mercier, was unwilling to prosecute the bookstores for selling the books, Stein felt he would force their hand. He wanted to test the right of the Crown to rule on obscenity. He wanted to get the attorney-general's department in court to try and prove the books were obscene.

"That way," Stein said, "the issue will be before the



courts where it belongs and not the arbitrary ruling of the attorney-general's department.

So one day last May, Stein and a colleague entered a bookstore where the books had been taken off the shelves. Asking for the books in question, Stein was sold copies of each by an employee who found them stacked under a counter.

Upon leaving the store, Stein quickly called Winnipeg Police and complained he had been sold obscene material. A good plan, but it didn't work.

Both Winnipeg daily newspapers ran front page stories telling how Stein was trying to force the province to prosecute and thus test the Crown council's obscenity allegation in court. Unless they prosecuted, Stein said, the opinion of seven law school graduates would carry the power to effectively censor books in the province.

Saying he "would not be forced to prosecute", Mercier let the matter go, but kept intact his warning to bookstores who dare sell the 'obscene' books.

To this day, the attorney-general has not prosecuted a single bookstore. But then again, since the warnings were served, not a single bookstore has tried to sell the books again.

All seems to have worked out well for the Crown. By deeming the books obscene, and then threatening to prosecute stores selling them, Mercier managed to have the book banned. And he didn't even have to prove he was correct in calling them obscene.

That was, of course, before a group of Winnipeggers put their heads together to figure out some way to fight Mercier's actions.

Opposition from gay and community groups across the city began growing when the police warnings were first given.

Over 2000 people signed a petition calling on Mercier to either lift the censorship or else take the issue to court where the issue could be fought out.

The petition contends, first of all, censorship is ridiculous. "adults should be free to read the literature of their choice and that the banning of these books from public sale constitutes a dangerous precedent of state intervention in the public's freedom of thought and expression," the petition said.

But of equal importance, the petition complains that "the actions of the attorney-general's department are clearly discriminatory against a minority group in our society—the lesbian and gay community."

The banning of these books in particular is discriminatory, they said, because books of a similar nature—*The Joy of Sex* and *More Joy of Sex*—have been allowed to remain on bookstore shelves.

The only difference between these books and the ones banned is that the former are for homosexuals whereas the latter are for heterosexuals.

All four books are virtually identical in format and approach.

Even the traditionally conservative Winnipeg Free Press picked up on this point saying such discriminatory book-banning based on sexual preference "contributes to an atmosphere in Manitoba in which it becomes more and more unlikely that homosexuals can find evenhanded justice."

The Free Press editorial went on to postulate that the Crown has attitudes which are decidedly anti-homosexual. "These attitudes," the Free Press wrote, "help create the public atmosphere which the Crown then cites to justify its own efforts at book-banning."

The then-publishing Winnipeg Tribune also joined the ranks of those outraged by the government's censorship.

They chastized the Crown and the local police for just warning the bookstores not to sell the books. In the Tribune's eyes, the bookstores should have been charged and brought to court where a final decision on obscenity could be made.

"That way," the Tribune said, "the police could not be questioned for the selectivity of their ideas on what kind of sex is obscene."

"Instead," the newspaper lamented, "censorship has successfully and unfortunately been applied."

Throughout the whole affair, the P.C. attorney-general Mercier has absolved himself of responsibility.

"The Crown is not attempting to act as a censor for publication for sale," Mercier claimed.

He said the Crown is merely warning bookstores that if they sell the books they will likely be charged with selling obscene material. According to Mercier, no bookstore has been ordered to remove the books. No bookstore, Mercier claims in defence, had the police come in and confiscate the books.

Most people would say Mercier is quibbling over semantics. Mercier knows he doesn't have to send the police to nab the books. He knows the costs of fighting the Crown's opinion of the books in court is prohibitive.

No profit-maximizing bookstore would spend the money needed to prove Mercier wrong in court.

The Tribune was not fooled by Mercier's defence tactics. "It seems incredible that books can be censored in this way," a Tribune editorial said, "and equally incredible that Mr. Mercier would claim that the Crown 'was not attempting to act as a censor for publications for sale'. What was it trying to do then?"

It seems obvious. Why the Crown does not try to complete its censorship bid by bringing the issue to court is still a mystery.

Walt Stein believes it's because the Crown knows it could never win an obscenity case in court.

Mercier said no prosecutions have occurred because no bookstore in the city is selling the books any longer.

If this is his reason, Mercier may be happy to know that this situation has changed recently.

Early in November about 100 demonstrators marched around the Manitoba legislature protesting the Crown's book-banning policy. A group from Liberation Books, an alternative Winnipeg store, participated in the demonstration while openly selling copies of the banned books.

Since then, Liberation Books has been displaying the books on their shelves and doing a brisk business selling them.

Although the bookstore claims they are not trying to entice the government to prosecute, bookstore members have expressed a desire to see the whole issue go to court.

But government sources indicate the bookstore may never be prosecuted. As with Stein, the source said, the Crown won't act if it feels it is being baited.

"It's quite a bizarre attitude," the source said. "It is like a cop who won't arrest a murderer just because the murderer wanted to get caught. Murder is murder, just as selling obscene material is selling obscene material. If Mercier thinks the books are obscene then he should prosecute Liberation Books."

If the Crown does not prosecute, many people, including former Manitoba attorney-general Howard Pawley, feel a dangerous precedent will have been set.

According to these people, the Crown's actions make it plausible that the attorney-general's department may deem any book as unacceptable, get police to threaten prosecution, and thus have the book banned without ever having to prove their case in front of a judge.

For those who have a burning desire to see particular books knocked off the shelves this is very convenient. But for those who value a truly free press, and a free circulation of thought, the whole Winnipeg book-banning case will cause numerous nightmares.

