

Gays and the Canadian Law

by Robin Metcalfe

Probably most Canadians are aware that changes in the Criminal Code in 1969, introduced by then Justice Minister Pierre Trudeau, decriminalized homosexual acts between consenting adults in private. What is less well known is that homosexuality **as such** was never illegal in Canada, and that the 1969 changes simply made legal certain sexual acts; acts which can be either heterosexual or homosexual in nature, but which form a major part of love-making for lesbians and gay men. It is also not commonly known that, whereas the age of consent for heterosexual acts is 16, and 14 for married women, for all homosexual acts it is 21. Thus a 22-year-old who sleeps with a 20-year-old of the same sex is guilty of "gross indecency" and liable to a prison term of several years, which can be extended to life if she or he is classified as a "dangerous sexual offender." The 1969 amendments, while generally making life easier for all sexual beings **over the age of 21**, also preserve and extend the discrepancy between the legal status of gays and straights, and are thus a discriminatory piece of legislation.

In discussing the treatment of lesbians and gay men by the law and its agents, the police, we must look beyond the laws as they are written and examine how they are enforced in practice. Many laws which theoretically apply to homosexuals and heterosexuals equally, are in fact applied largely, even exclusively, to gay people, particularly gay men. Laws which are vague and open to broad interpretation can be and are applied selectively to particular groups and form the basis of police harassment of gays, blacks, the young and the poor. The most serious laws most commonly used to harass gays are laws against solicitation, against gross indecency and against operating or frequenting a common bawdy house, as well as "dangerous sexual offender" legislation.

Solicitation

This is probably the charge most commonly used to harass gay men. Basically, what it means is that while you may legally be able to have sex with someone, it is illegal to actually ask them (and, of course, if you don't, you may be guilty of indecent assault or rape). Many gay men make sexual contacts by "cruising", that is, by frequenting a public place (a street, a park, or a washroom) where they can meet other men looking for the same thing. Besides giving heterosexual thugs ("queer-bashers") a chance to beat or kill gays, this practice also leaves gays open to arrest. Many police departments practice "entrapment", whereby a police officer in plain clothes allows himself to be cruised (usually giving encouragement by his dress, his stance and his general behaviour), and then arrests the man who responds and approaches him. Police have been known to "get their rocks off" in this way, allowing themselves to be felled (given a "blow-job") before making the actual arrest.

Gross Indecency

Gross Indecency is any lewd or sexual act other than one performed between one or two individuals in a private place (most strictly defined to mean a locked room), where both are above the age of consent (for gays, 21). If you make love to someone of the same sex under 21, if you make love without locking the door or if you make love with a third person present, you can be charged with gross indecency. Gross indecency covers **only acts where consent is given**. It does not include rape or indecent assault, which are covered by different sections of the Criminal Code.

Common Bawdy House

A "common bawdy house" is any place where illegal sexual acts have taken place. Your home is probably a common bawdy house, you are the keeper of it, and anyone who visits you is "frequenting a common bawdy house". These charges are sometimes laid against the operators and patrons of steam baths, which in most North American cities are popular meeting places for gay men. See details of Olympic Clean-up, below.

Dangerous Sexual Offender

This is a provision of the Criminal Code which gives the courts the power to extend the sentence which a person has received for an indefinite period. There is no such legislation in England, the United States or most Western countries. All that is required in Canada to put a person convicted of a sexual offence away for life is the sworn testimony of two psychiatrists that he or she is potentially dangerous. There are almost no protections for the rights of the individual - the psychiatrist may interview the prisoner under false pretenses, without his or her knowledge of the purpose of the interview or that her/his comments will be used as evidence to put them away, possibly for life, and the prisoner is given little opportunity to prepare a defence. This provision is applicable to most sexual offences, including gross indecency. Thus for a "crime" such as having sex in a public park or with someone of the same sex under 21, a person can be confined for life. While this may seem far-fetched, such cases have in fact occurred. John Roestad is currently incarcerated indefinitely in Kingston Penitentiary for having sex with men below the age of 21.

As with other laws, this one is applied more often to gays than to straights. A study of 68 convictions of "gross indecency" in Metropolitan Toronto in 1964 found that 30 involved consenting homosexuals over 21 in a "public place", and 22 involved consenting homosexuals between 14 and 21. Only 10 involved heterosexuals, and only 3 involved persons under 14 (two of these were heterosexual).

The Government has recently introduced proposed amendments to this legislation part of the infamous "peace and security" legislation. The proposed changes would reform nothing, aside from replacing the term "dangerous sexual offender" with the term "dangerous offender", and in several important ways the changes would decrease the already scanty protection for the individual's rights.

Police Repression

The gay community has long been the subject of intense police harassment and abuse. These attacks follow a certain cycle, usually occurring most frequently at times when the police or their governing politicians are trying to improve their public image by looking busy, cracking-down on "undesirables". Such times are before a civic or provincial election, during negotiations for a new police contract or when the police or government have been embarrassed by scandal. The last Ontario election saw a wave of general sexual repression as Premier Davis tried to boost his flagging campaign by appealing to "law and order". The months preceding the Olympics were a time of unprecedented police activity against gays (as well as leftists and "derelicts") in an attempt to drive the gay community underground and out of the sight of foreign tourists.

The subjects of these attacks are gay bars, baths and activist organizations. Often using legal technicalities such

as fire laws as an excuse to enter the premises, the police proceed to terrorize and harass the patrons, holding out the threat of public exposure which could cost a lesbian or gay man her or his job, family or even life.

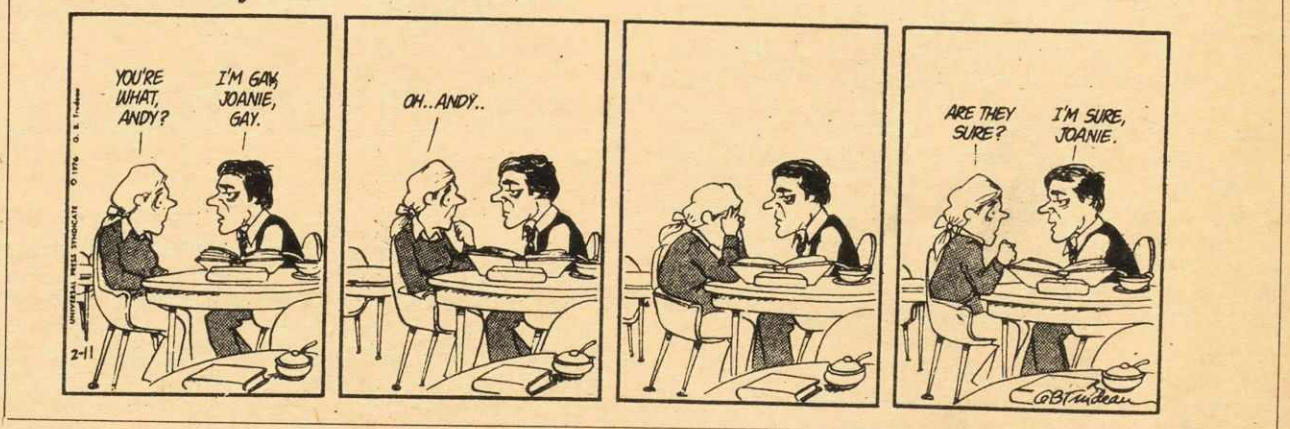
In March of 1975, Ottawa police arrested 16 men, clients of a "Male Modelling Agency", and charged them in connection with a so-called "male prostitution ring". Unlike in heterosexual prostitution cases, where it is the prostitutes and pimps who are arrested, here it was the customers who were charged with "gross indecency". The police called a press conference and released the names and addresses of the accused. Local newspapers played up the story, which the police called "the most sordid investigation we've run into in some time." Media referred to a "homosexual vice ring" and published lurid reports of eleven-year-old boys being molested by perverts. (In fact the prostitutes were all between 14 and 21, hardened "hustlers" and as tough as nails). Although not one of the arrested men was finally jailed or fined, nine lost their jobs, at least one was assaulted by police and called a "pervert" and "scum", eight have required psychiatric care as a result of the ordeal and one committed suicide. Warren Zufelt warned police that he would take his life if his name were published after his arrest. Nevertheless it was, and Zufelt jumped thirteen floors to his death from his apartment balcony.

In May of 1976, in preparation for the Olympic Games, police arrested over 160 people in a series of raids on gay bars and baths in Ottawa and Montreal. The Neptune Baths in Montreal were raided and 80 people arrested, most as "found-ins" in a "common bawdy house". The same weekend police raided five bars in Montreal. In two of the raids, one of them on a lesbian bar, police brandished rifles and guns and threatened the clients. Police spokesmen later said that they had had reason to believe that the patrons were "potentially dangerous". 26 were arrested at the Club Baths of Montreal. The Club Baths of Ottawa were also raided, with 27 arrests, 22 as "found-ins", two for "gross indecency" and three for running a "common bawdy house." The police illegally seized membership lists containing over 3000 names and addresses, including those of many prominent figures and some police officers.

The cases described above received a prompt response from local gay activist organizations, Gays of Ottawa (GO) and Gay Coalition Against Repression (GCAR). In Ottawa, extensive efforts by GO to focus public attention on the exploitation of gay people by the police and the media in the "vice-ring" case of last year resulted in much fairer and more accurate coverage of this year's Olympic Clean-Up. In Montreal, which has long lacked a strong gay organization, media coverage was sensationalistic and strongly biased. The birth of GCAR, however, and its organization of a successful demonstration attended by over three hundred gay people resulted in the police abandoning their anti-gay campaign.

These cases demonstrate that the only way for lesbians and gay men to protect themselves from police repression is through an open and public struggle for our rights.

Doonesbury



What's Gay in Halifax

After all this uproar over gay is good and gay is here, I bet you are wondering where all the gay is in Halifax. It's here, look:

- There are two discos for gays, lesbians and their guests; **The Klub** is open Thurs and Sun 9:30 pm til 2, and Friday-Sat. 10:30 p.m. til 3. Privately owned, not licenced. Address, call Gayline.
- **The Turret** is open Friday night only, from 10 p.m. til 3 a.m. Run by the Gay Alliance, it is licenced. Address, call Gayline.
- **The Alternate Bookstore** open 7-10 p.m. Monday til Friday offers a selection of gay, lesbian, women's and libertarian left literature, along with the top gay and lesbian magazines. Address, call Gayline.
- **The Gay Alliance for Equality Inc.** is the only homophile group in the city at the moment. It has meetings twice monthly, on the first and third Thursdays. The former is a supper-social meeting as well as business affair. Address for the GAE is P.O. Box 161 Armdale Station, Halifax. Phone the **Gayline** 429-6969 during its hours, see below.

- **Speakers' Bureau**, a service of the GAE, will give talks and arrange discussions for groups of any size or interest. Contact through the Gayline below, or write the GAE.
- **The Gayline** is a counselling, information and referral service of the GAE for gays and lesbians. Lines open 7 p.m. til 10 p.m. Thursday, Friday and Saturday, 429-6969. In addition to the counselling and information services, the Gayline is means of contact with the GAE and its members.
- **The Voice** is a monthly newsletter for the gay populus. Free of charge in Halifax, mail subscriptions, \$1.50 per year from the GAE. Contains national and local news, upcoming events, reviews and commentary.
- **The Pen Pal Service** is a recently initiated method of providing contact and communication with rural and isolated gays and lesbians. Counselling and information by mail (but we're not a mail order dating service!).

Again the Gay Alliance address:

P.O. Box 161 Armdale Station, Halifax and telephone: 429-6969 Thurs, Fri, Sat, 7-10 p.m.

This Supplement to the 23 September 1976 issue of the **Dalhousie Gazette** has been produced by the members of the **Gay Alliance for Equality (GAE)** of Halifax.

Anne Fulton is a hospital worker. **Bob Isnor** is a translator. **Jim MacSwain** is a puppeteer. **Robin Metcalfe** is an Arts student at Dalhousie. **Bob Stout** is a security guard. **Dan** is the pseudonym for two Americans working in Halifax who would lose their jobs if their names were used. **Gerald Hannon** is an employee of the Body Politic. **Marie Robertson** is active in the National Lesbian and Gay movements and a member of Lesbians of Ottawa Now (LOON). **Joan Shields** is a member of the Ottawa staff of the Canadian University Press. **A.W. Johnson** is the President of the Canadian Broadcasting Corporation (CBC). **Allan Zdunich** is the Editor of the **Dalhousie Gazette**.

**the dalhousie
gazette**